

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 31st July, 1996

The House met at 9.00 am.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

**Mr. Deputy Speaker:** We will now have Mr. Ndicho's Question.

*Question No. 210*

#### ISSUANCE OF FUND RAISING PERMITS

**Mr. Deputy Speaker:** Mr. Ndicho is not here? We will go on to Bishop Ommani's Question.

*Question No. 365*

#### SERVICE CHARGE COLLECTION BY KAKAMEGA MUNICIPALITY

**Mr. Deputy Speaker:** Bishop Ommani is also not here and his Question is stood over for the moment. Mr. Mulusya's Question.

*Question 489*

#### IMPLEMENTATION OF POWER PROGRAMME

**Mr. Mulusya** asked the Minister for Energy why the Kenya Power and Lighting Company Limited is implementing the electrification programme of the coffee factories in Kangundo, which is being financed by S.C.I.P, in a very slow pace, when the funds are already available.

**Mr. Deputy Speaker:** There is nobody here from the Ministry of Energy? The Question is stood over for the moment. We will have Mr. Wamae's Question.

*Question No. 823*

#### FUNDS FOR REPAIRS TO MATHIRA ROADS

**Mr. Deputy Speaker:** Mr. Wamae is not here, and his Question is also stood over for the moment. Mr. Kamuyu's Question.

*Question No. 377*

#### APPLICATIONS FOR RADIO AND TV STATIONS

**Mr. Deputy Speaker:** Mr. Kamuyu is also not here? The Question is also stood over for the moment. Let us have Dr. Otieno-Kopiyo's Question.

*Question No. 440*

PROPERTIES PURCHASE BY NSSF

**Deputy Speaker:** Dr. Otieno-Kopiyo is not here and this Question is stood over for the moment. Dr. Lwali-Oyondi's Question.

*Question No. 098*

USE OF *OGIEK* NAME BY DOROBOS

**Mr. Deputy Speaker:** Dr. Lwali-Oyondi is not here and his Question is stood over for the moment.

**Bishop Kimani:** Mr. Deputy Speaker, Sir, I would like to ask that Question on behalf of Dr. Lwali-Oyondi.

**Mr. Deputy Speaker:** Why did you not stand up early enough? I have already stood over the Question for the moment! You can ask it when I call it out for the second time. We will go back to hon. Ndicho's Question for the second time.

*(Mr. Ndicho tried to ask the  
Question while from the Bar)*

**Mr. Deputy Speaker:** Mr. Ndicho, we do not ask Questions from the Bar. Furthermore, you have to apologise for coming late.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I wish to give my apologies for coming late.

*Question No. 210*

ISSUANCE OF FUND RAISING PERMITS

**Mr. Ndicho** asked the Minister of State, Office of the President why the District Commissioner's (DC's) Office in Thika refused to issue permits for fund raising functions in Juja Constituency, especially where the applications indicate the Member of Parliament as the guest of honour.

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

The DC, Thika, has issued several permits, among them permits for fund raising in Juja, although the Member of Parliament for Juja Constituency has never applied for such permits nor appeared in any one of the applications as a guest of honour since 1992.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, that answer is not true. As you can see, this Question is No. 210 and I asked it in 1994; but it is coming to the House in 1996. The conditions and circumstances at the time I asked it were very much against me. These days things are very good. I am now getting the permits and the DC is agreeing that my name can be put on cards for Harambees and other functions. But earlier on, if my name appeared in a Harambee card that Harambee could not be permitted by the DC. Now things are different. However, I would like to ask the Assistant Minister to ensure that other Provincial Administration officials in other areas where the Opposition has problems with them, they emulate their colleagues in Thika District, who have recognised that the Opposition was established there legally.

**Mr. Awori:** Mr. Deputy Speaker, Sir, that is not a question. Nevertheless, there is no need for me to give any assurance since the policy of the Government is to allow any Member of Parliament to conduct public meetings when a permit has been issued.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that I have not put a question to him. But since the Provincial Administration in Thika has changed its attitude, can he ensure that other areas are like Thika District, where Opposition hon. Members get their permits for Harambees, public rallies, public processions, public barazas or public demonstrations? We do these things for the sake of our people.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I have just replied that, that is the Government policy.

**Mr. Munyasia:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has told the House that hon. Ndicho has never been given a permit because he has never applied for one. Hon. Ndicho himself has told the House that he has now got permits. Who is misleading the House between the Assistant Minister and the hon. Member?

**Mr. Awori:** Mr. Deputy Speaker, Sir, let me read out the reply for Mr. Munyasia to understand it. "The District Commissioner, Thika, has issued several permits, among them permits for fund raising although the Member of Parliament for Juja has never applied for one".

**Mr. Deputy Speaker:** Bishop Ommani's Question for the second time.

*Question No. 365*

SERVICE CHARGE COLLECTION  
BY KAKAMEGA MUNICIPALITY

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

*(Question dropped)*

**Mr. Deputy Speaker:** Mr. Mulusya's Question for the second time.

*Question No. 489*

IMPLEMENTATION OF POWER PROGRAMME

**Mr. Mulusya** asked the Minister for Energy why the Kenya Power and Lighting Company is implementing the electrification programme for the coffee factories in Kangundo, which is being financed by S.C.I.P, in a very slow pace, when the funds are available.

**Mr. Deputy Speaker:** There is still nobody here from the Minister of Energy. So the Question is deferred.

**Mr. Mulusya:** Mr. Deputy Speaker, Sir, until when is the Question going to be deferred?

**Mr. Deputy Speaker:** Until the earliest possible time.

**Mr. Mulusya:** On a point of order, Mr. Deputy Speaker, Sir. The Speaker himself has severally, and in particular last week, issued ultimatums to Ministers and Assistant Ministers to be in the House to answer Questions. Would I be in order to ask the Chair to take disciplinary action against this Minister who has refused to be in the House? He is still asleep!

**Mr. Deputy Speaker:** What kind of disciplinary action do you think the Chair can take? I can only rebuke Ministers for failing to take their job seriously. Let us have Mr. Wamae's Question for the second time.

*(Question deferred)*

*Question No. 823*

FUNDS FOR REPAIRS OF MATHIRA ROADS

**Mr. Deputy Speaker:** Mr. Wamae is still not here, and the question is dropped.

*(Question dropped)*

*Question No.377*

APPLICATIONS FOR RADIO AND TV STATIONS

**Mr. Deputy Speaker:** Mr. Kamuyu, not here! The Question is dropped!

*(Question dropped)*

**The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo):** On a point of order, Mr. Deputy Speaker, Sir. As the hon. Mulusya said that disciplinary action should be taken against the Ministers, can disciplinary action be taken against those who do not come here to ask questions?

**Mr. Deputy Speaker:** Order! Order! I am actually taking disciplinary action already, because I said if the Questioner is not here, the Question is dropped! And as regards the Ministers who are not here to answer questions, the disciplinary action is that, they will not be allowed to escape answering the Questions because we have only deferred. Question No.440, for the second time!

*Question No.440*

PROPERTIES PURCHASE BY NSSF

**Mr. Deputy Speaker:** Dr. Otieno-Kopiyo, not here! Question dropped!

*(Question dropped)*

**An Hon. Member:** What is happening today?

**Mr. Deputy Speaker:** Question No.098, for the second time!

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, before I ask the Question, I apologise for coming late, but I wonder how you went through the Questions so fast.

*Question No.098*

USE OF *OGIEK* NAME BY DOROBOS

**Dr. Lwali-Oyondi** asked the Attorney-General:-

(a) if he is aware that Dorobos of Nessuit, Likia and Sururu Forests would like to be officially known as the Ogiek; and,

(b) if the answer to "a" above is in the affirmative, whether he could undertake to register this name and see to it that it is used forthwith.

**Mr. Deputy Speaker:** The Attorney-General of the Republic of Kenya, not here? **Mr. Ndicho:** Mr. Deputy Speaker, Sir, you realise that surely all our Wednesday morning sittings are so disgraceful because of non attendance by both MPs and the Ministers. May I recommend that as we go on recess tomorrow and when we open next time, we completely abolish the morning sittings and substitute it with Friday afternoon sittings. I stand to be corrected.

**Mr. Deputy Speaker:** Order! Order! The Question is deferred!

*(Question deferred)*

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker. When will it be answered?

**Mr. Deputy Speaker:** The earliest possible time.

**QUESTIONS BY PRIVATE NOTICE**

CONSTRUCTION OF GODOWN AT MOI AIRPORT

**Prof. Mzee:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that a godown is being constructed within the funnel area of Moi International Airport, Mombasa, alongside the approach lights of the airport on Mombasa Nairobi Road at Kwa Jomvu?

(b) Is he further aware that this construction within the funnel area is contrary to the Airports Authority's regulations?

(c) Could the Minister stop this construction as it poses risks to aircraft landing at Moi International Airport?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I beg to reply. I am aware that there was an illegal encroachment and construction on Kenya Airports Authority land at the said place, but this has now been stopped.

Arising from my reply in part "a" parts "b" and "c" do not arise.

**Prof. Mzee:** Thank you, very much for that answer, but I would like to know why in the first place this area was allocated, and to who, yet the construction had proceeded very far? Will the existing buildings be demolished and restore the area restored to its previous state?

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

**Prof. Mzee:** On a point of order, Mr. Deputy Speaker, Sir. I wanted to know to whom was the land allocated and why?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the question is no-longer material---

**Mr. Deputy Speaker:** It is very material!

**Mr. Awori:** Mr. Deputy Speaker, Sir, as so long as the land is going to be as it was before, I see no point in replying.

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. I do not believe the Assistant Minister is in order. He can explain how he is in order, to sensor an answer that is meant for a legitimate Question. To whom was it allocated in the first place and why? Because it is the same person who is going to get the reallocation after the pressure of Parliament out of this Question is over today. To whom and why was he allocated this land in the first place?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I still insist that as so long as the title deed has been cancelled and the person is no-longer going to have the land, there is no point in me answering that question.

**Mr. Gitonga:** Mr. Deputy Speaker, Sir, could the Assistant Minister confirm or deny that this belongs to Gedion Moi? And will the man be compensated?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I will neither confirm nor deny.

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

#### SHOOTING OF ITE FARM RESIDENTS

**Mr. Kapten:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Administration Police and the Chief of Kaibei Location in Trans Nzoia District have since Thursday, 20th June, 1996, terrorised residents of Ite Farm and all the surrounding areas by shooting innocent people including a school boy?

(b) If the answer to "a" above is in the affirmative, how many bullets were fired by the Chief and the Administration Police between the period of 20th June, 1996 and 24th June, 1996, when they were on the farm?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I am sorry I do not have the reply right now. I will answer the Question tomorrow.

**Mr. Deputy Speaker:** Okay, I direct that the Question to be put on the Order Paper for tomorrow.

**Mr. Kapten:** On a point of order, Mr. Deputy Speaker, Sir. Last time the Assistant Minister attempted to answer this Question and because the Speaker ruled that I had brought some offensive weapons which were spent cartridges, the Question was deferred to today. Can the Assistant Minister answer my Question now?

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Deputy Speaker, Sir, I would rather answer it tomorrow.

**Mr. Deputy Speaker:** Okay, but please make sure it is answered tomorrow, either by you or somebody else. Next Question!

*(Question deferred)*

#### ASSISTANCE TO TURKANA STUDENTS

**Mr. Ewoton:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education, the following Question by Private.

(a) Is the Minister aware that most Turkana parents are poor and they survive on relief food?

(b) Is he further aware that children of the above parents who are in secondary schools and colleges have been sent away from schools/colleges?

(c) Bearing in mind that the only way to enhance development and the welfare of the Turkana community is by educating all their children, what urgent plans does the Minister have to ensure that the children have gone back to school?

**Mr. Deputy Speaker:** Minister for Education, not here? The Question is deferred to tomorrow afternoon.

*(Question deferred)*

#### ELEPHANT MENACE IN NORTH IMENTI

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Tourism and Wildlife the following Question by Private Notice.

Considering that elephants from the Imenti Forest have invaded and completely destroyed food crops in shambas in Naari, Kiirua, Ruiru, Munithu, Kithoka, Mpuri and Nthimbiri Sub-locations from the beginning of last year, thus making the peasant farmers starve, what urgent steps does the Minister propose to take to curb this menace once and for all?

**Mr. Deputy Speaker:** Minister for Tourism and Wildlife not here? Question is deferred to tomorrow!

*(Question deferred)*

*(Loud consultations)*

**Mr. Mulusya:** On a point of order, Mr. Deputy Speaker, Sir. My point of order is that this House would like to be told what is happening because it looks like the Government is taking this House for granted. Some of the hon. Members have already been supplied with the written answers. There is this 'animal' called collective responsibility which seems to have 'died.' There are hon. Ministers here who could, on behalf of the Government, answer Questions. We should be told what is happening with the Government. Is the Government dead or asleep? It should resign forthwith! We have no confidence in the Government!

**Mr. Deputy Speaker:** Order! Order! I am really afraid that it is hon. Members on both sides who are not taking their business seriously because we have seen how many hon. Members from both the Government side and Opposition side who should ask Questions, but they have not been here to ask Questions. We have had only two Questions answered and nine Questions have been unanswered because the Questioners are not here to ask them, or because the Ministers are not here to answer them.

By special dispensation since we have the time, I will ask the hon. Members who have Questions to address them to the Attorney-General.

#### ORAL ANSWERS TO QUESTIONS

*Question No.098*

#### USE OF *OGIEK* NAME BY DOROBOS

**Dr. Lwali-Oyondi** asked the Attorney-General for the third time:-

(a) if he is aware that the Dorobos of Nessuit, Likia and Sururu forests would like to be officially known as the *Ogiek*; and,

(b) if the answer to "a" above is in the affirmative, if he could undertake to register this name and see to it that it is used forthwith.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I must, first of all, apologise to the House for having come in late and also apologise to the hon. Questioner because he has no written reply to this Question, the reason being that this was a Question which ought to have been properly addressed to the Office of the President because it is within the Office of the President that we have Registrar of Persons. So, there was that confusion between my office and the Office of the President. But in order not to delay the answering of the Question further between the two offices, I will answer that Question on behalf of the Government.

(a) Yes, the Attorney-General is aware that the Dorobos of Nessuit, Likia and Sururu forests have made petitions to change their name so that they are officially known as *Ogiek*.

(b) The formal application has to be made by the community leader to the relevant authority who is in this case the Registrar of Persons, and if he is satisfied that the overwhelming majority of those communities do desire change of name, then he can effect the change.

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, these people have asked to have their name changed to *Ogiek* just like the Luhyas have called themselves Luhyas and Kikuyus, Kikuyu. Why can the Attorney-General not tell the country that from now henceforth we shall refer to Dorobos as *Ogiek* and not Dorobos. And that will be final.

**The Assistant Minister for Public Works and Housing** (Mr. Mwamzandi): On a point of order, Mr. Deputy Speaker, Sir. The hon. Member asking the Question is not a Dorobo and he comes here to say that the Dorobos would like now to be called the *Ogiek*. How do we believe that he held a meeting with Dorobos to request for that name?

**Mr. Deputy Speaker:** I beg your pardon, what is your point of order?

**The Assistant Minister for Public Works and Housing** (Mr. Mwamzandi): Mr. Deputy Speaker, Sir, to change a name of a tribe is a very serious thing. The hon. Member asking the Question is not a Dorobo to request the Attorney-General and he says that the Dorobos would like to be called by another name. How do we take it that he was consulted by the Dorobos so that they are known by another name?

**Mr. Deputy Speaker:** Order! When hon. Members ask Questions, we assume good faith on their part.

**Mr. Wako:** Mr. Deputy Speaker, Sir, as I stated, the Government is aware that at various barazas, a number of petitions have been made for the change of name. What is important, and this is a serious matter of change of name, is to ensure that overwhelming majority of that community do, in fact, want to change that name. If they do want, the Government would not stand in their way of changing the name.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, the normal practice in this country has been that when an ethnic community wants to change its identity, it goes ahead and changes it. When the Kamasias wanted to call themselves Tugen, they did not go to any Registrar of Societies. How can the Registrar of Persons register tribes?

**Mr. Wako:** Mr. Deputy Speaker, Sir, as I stated earlier, it is true that communities would like to change their names, but we must be sure that it is not just a few individuals who want to change the name. If we are sure that the entire community wants to change the name, then the name can be changed in official records by the Registrar of Persons.

**Dr. Kituyi:** On a point of order, Mr. Deputy Speaker, Sir. The specifics of my question were very different. Is there any format with the Registrar of Persons for the registration of tribes? Is there any formal document by Government for the registration of tribes?

**Mr. Wako:** Mr. Deputy Speaker, Sir, for example, currently, the Dorobos have a registration code number 53 in computers for the registration of persons and, therefore, if they want to be recognised properly so that they are catered for in the registration of persons list, then they have to make petition to the effect that the entire community wants to be referred in the official documents by a particular name.

**Prof. Mzee:** On a point of order, Mr. Deputy Speaker, Sir. Is he in order to mislead the House? They have already applied and he is now asking them to make a petition. What is the difference? They have already applied for the change of name in your office!

**Mr. Wako:** Mr. Deputy Speaker, Sir, they have applied to my office, but some of them, have made their intentions known by also petitioning at various *barazas* held by the Provincial Administration. We want to make sure that the entire community wants that change. As I stated earlier, the Government will not stand in the way of changing that name.

**Mr. Deputy Speaker:** Hon. Kamuyu, by special concession, I give you the opportunity to ask your Question for the third time.

**Mr. Kamuyu:** Thank you very much, indeed, Mr. Deputy Speaker, Sir. First, before I ask my Question, I apologise very much for coming late. I also apologise on behalf of the Minister for coming late.

#### *Question No. 377*

#### APPLICATIONS FOR RADIO AND TV STATIONS

**Mr. Kamuyu** asked the Minister for Information and Broadcasting:-

- (a) without reference to TV and Radio cases whose matters are pending in court, how many Television and radio licence applications are still being processed in the Ministry; and,
- (b) if he could list the names of companies or individual applicants, their dates of application and state when they will be issued with the licences.

**The Minister for Information and Broadcasting** (Mr. Makau): Mr. Deputy speaker, Sir, hon. Kamuyu should not apologise on my behalf because in the first place, he was not in. In fact, he should apologise to me

because I have been waiting here to answer the Question, but he was not in. He should apologise to me. Having said that, I beg to reply.

(a) As the hon. Member appreciates, there are certain matters connected with the applications for broadcasting licences currently pending before court which cannot therefore, be discussed for obvious reasons. Therefore, the matter is *sub judice*.

(b) In view of the answer in part (a), part (b) does not arise. Thank you.

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid answering a Question when it is very clear? The Question states: "without reference to those issues that are in court---". Does he mean that all the cases about applications are in court?

**The Minister for Information and Broadcasting (Mr. Makau):** Mr. Deputy Speaker, Sir, I have already said that the questioner has acknowledged that the matter is pending in court, referring---

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

**The Minister for Information and Broadcasting (Mr. Makau):** I have not finished his point of order. I have just said that the hon. Member has referred to the fact that the matter of giving out of broadcasting licences is in court and, therefore, it cannot be discussed. I would like to refer the hon. Member to the Goldenberg case which cannot be discussed because it is in court.

**Mr. Kamuyu:** On a point of order, Mr. Deputy Speaker, Sir. You will recall that this Question came from the last Session and it was never answered. The Minister is answering it for the first time after one year. You will also notice that in part (a), I have said "without reference to TV and Radio---." I am not interested in whatever is in court. I am only interested with what is not *sub judice* because they run into dozens of applications. Could the Minister leave whatever is pending in court and touch only on matters which are not *sub judice*?

You will also recall that part (b) says; "could the Minister list the names of companies or individual applicants---." Can the Minister be serious and answer this Question?

**The Minister for Information and Broadcasting (Mr. Makau):** Mr. Deputy Speaker, Sir, the explanation that I have given is that already, we have a matter which is in court. This matter in court refers to broadcasting licensing. I am saying that the matter is *sub judice* because even in the court, the matter that was presented by Royal Media refers to---

**Hon. Members:** No! No!

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

**Mr. Deputy Speaker:** Order, Mr. Mulusya, let him first finish.

**The Minister for Information and Broadcasting (Mr. Makau):** Mr. Deputy Speaker, Sir, the matter that is now in court refers to applications that are pending and they are even mentioned here. So, by listing any application I am violating Standing Orders No. 74 and 37(10).

**Mr. Achieng-Oneko:** On a point of order, Mr. Deputy Speaker, Sir. The *Sub Judice* rule has been commonly used in this House as a cover-up by Ministers when answering Questions, some of which might have been taken to court. But here, we want the Minister to be specific and tell us at least two case numbers, so that we are satisfied that the issue is *sub judice*.

**Mr. Makau:** Mr. Deputy Speaker, Sir, the matter in court is application number 1030 of 1993 and this case refers to all the applications that are pending. It also goes further to refer to a specific case, that is one of the applications.

**An hon. Member:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Mr. Minister, how does just giving the list of names of companies or individuals, whose applications are pending and, therefore before the court, become *sub judice*?

**Mr. Makau:** Mr. Deputy Speaker, Sir, it becomes *sub judice*---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Continue, hon. Makau.

**Mr. Makau:** Mr. Deputy Speaker, Sir, it becomes *sub judice* in that the case that we are referring to in court refers to a number of applications. So by listing or reading the number of applications pending, it touches on the case that is in the court.

**Mr. Kaptan:** On a point of order, Mr. Deputy Speaker, Sir. The Minister should not mislead this



House. You, yourself are a lawyer and you know the rule of *sub judice*. This rule will only apply in the case of Royal Media, which has filed the case against the Kenya Broadcasting Corporation (KBC). It does not refer to other applications, parties or people who are not parties in the case. Is he in order to mislead this House by saying that he cannot answer the Question simply because Royal Media has made an application in court? We are not asking anything about Royal Media, we are asking about other applicants.

**Mr. Makau:** Mr. Deputy Speaker, Sir, that is why I am saying "among those other applicants", not Royal Media. Royal Media is actually, in its application, inquiring about other applicants that have been considered and the names of those other applicants are here. So, it is *sub judice*.

*(Mr. Makau consulted with Mr. Deputy Speaker)*

*(Loud consultations)*

**An hon. Member:** Now that you have consulted the Chair, give us an answer!

**Mr. Kamuyu:** Mr. Deputy Speaker, Sir, I rise to seek guidance from the Chair. The Minister is clearly avoiding to give an answer, particularly to part (b) of the Question. Therefore, I would like specific guidance from the Chair as to the way we should proceed from this moment onwards.

**Mr. Deputy Speaker:** Order! Frankly, I am not satisfied by the Minister's response.

*(Applause)*

Order! I am not satisfied that you cannot answer part (b) of the Question without prejudicing the rule of *sub judice*. The Question itself says: "Without reference to TV and Radio cases whose matters are pending in court---". This means they want just to know the names and lists of other applicants, who are not covered by that.

The case in court does not cover all that are in the world. If you think it covers all cases, say so.

**Mr. Makau:** If we are to go by the precedent that has been set here by the Speaker himself, Goldenberg scandal, for example, is already before a court of law and you cannot discuss anything about it. Having said that, in these applications, there are other applicants that are referred to in this application. It is not only Royal Media Services. So, I believe that the Questioner was referring to Royal Media Services. But, apart from Royal Media Services, we have other applicants that have been referred to in this case.

**Mr. Deputy Speaker:** All that the Chair can do is to say that it is a legitimate Question which cannot be blocked by the rule of *sub judice* and that is my understanding of part (b) of the Question. So, it is up to you to answer the Question.

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. We have rules in this House. The Chair has made its communication to the Minister loud and clear in very simple English. The Chair is of the opinion that this is a legitimate Question. Is it in order for the Minister to try and argue out that---

**Mr. Deputy Speaker:** Order! Order, hon. Shikuku! Let us not have a debate on that. Hon. Makau, I think you should answer Question (b)

**Mr. Makau:** Mr. Deputy Speaker, Sir, I will avoid one of the applicants in Question part (b)

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

**Mr. Deputy Speaker:** Order! Order, hon. Oneko! I am afraid that I will not entertain any more points of orders now.

**Mr. Makau:** Mr. Deputy Speaker, Sir. I beg to answer Question b.

Mr. Deputy Speaker, Sir, there are 39 applicants who applied for licences to operate radio stations and 103 for television stations. I have a list for those applicants here and the dates they applied for the licences. One thing that is impossible to do is to say when these licences will be issued because the issuance of these licenses depends on other matters. There is no country that has enough frequency spectrum that would cater for those number of licences. According to the number of frequencies made available by ITU, we would not be in a position to give licences that will enable 103 TV stations to be established in this country. Not even 39. So, I will lay this list of applicants on the Table and any hon. Member can come and read. It is not confidential. It is public knowledge and you can have a look at it here.

*(Mr. Makau laid the list on the Table)*

#### QUESTIONS BY PRIVATE NOTICE

## ASSISTANCE TO TURKANA STUDENTS

**Mr. Ewoton:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

- (a) Is the Minister aware that most Turkana parents are poor and they depend on relief food?
- (b) Is he further aware that children of the above parents who are in secondary schools and colleges have been sent away from schools and colleges?
- (c) Bearing in mind that the only way to enhance development and the welfare of the Turkana community is by educating all their children, what urgent plans does the Minister have to ensure that the children have gone back to school?

**The Assistant Minister for Education (Mr. Komora):** Mr. Deputy Speaker, Sir, I would like to apologise to the House for coming late. I was looking for answers to reply to this Question; and even as it is, I will have to do some editing if I were to read it properly.

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

(a) I am aware that most parents in Turkana are poor and that many survive on relief food. However, I have to add, Turkana is not the only district in the country with poor parents. There are other districts which have even poorer parents and rely on relief food.

(b) I am not aware that children of the above parents have been sent away from school. I would like to suggest to the hon. Member to provide specific details of the students who have been sent away from school.

(c) Turkana is one of the ASAL districts which get special percentage over and above the other districts. In the last three years, Turkana District has been assisted with Kshs3,124,264 in form of bursaries. In the light of the fact that the Government has doubled the amount of bursary for this year, more assistance will be accorded to Turkana children and many other children.

**Mr. Ewoton:** Mr. Deputy Speaker, Sir, according to the reply by the Assistant Minister, I am not satisfied because he has not even given me a written reply. The Minister should supply me with a written answer so that I can read and understand his reply.

**Mr. Komora:** Mr. Deputy Speaker, Sir, I have just received this reply and I have handed the copies to the Clerk of the National Assembly.

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

**Mr. Deputy Speaker:** Order! Order! I have been more than fair by allowing hon. Members to ask Questions for the third time. So, since many Ministers are walking in and many of the hon. Members whose Questions are on the Order Paper are walking in now and considering that this is a Wednesday, I feel that I should give them a chance to answer their Questions. So, I would rather, give two minutes to everybody, with one principal Question and one supplementary question.

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

**Mr. Deputy Speaker:** Order! Order! Order Mr. Ewoton! Mr. Ewoton, we have compromised. I was over generous to allow you to ask the Question when I saw the Assistant Minister come in because I had already deferred the Question. Okay? So, I am saying that, now that I have seen many Ministers who were absent are now walking in and many Members of Parliament who were similarly absent when they should have asked their questions are also walking in, and I am conscious of the fact that this is Wednesday the 31st, I would rather give each of them a minute or two each than defer the Questions. Therefore that is the end of your Question. Others will get the same treatment. Mr. Mwiraria.

**Mr. Ewoton:** On a point of order, Mr. Deputy Speaker, Sir. My Question should be deferred because I am not satisfied with the answer.

**Mr. Deputy Speaker:** See me in my Chambers and I will advise you on what to do! Mr. Mwiraria.

## ELEPHANT MENACE IN NORTH IMENTI

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Tourism and Wildlife the following Question by Private Notice.

Considering that elephants from the Imenti Forest have invaded and completely destroyed food crops in shambas in Naari, Kiirua, Ruiru, Munithu, Kithoka, Mpuri and Nthimbiri Sub-locations from the beginning of last year, thus making the peasant farmers starve, what urgent steps does the Minister propose to take to curb this menace once and for all?

**The Assistant Minister for Tourism and Wildlife** (Mr. Kisiero): Mr. Deputy Speaker, Sir, first of all, I would like to tender my apologies for coming late and then beg to reply to this Question.

My Ministry has taken the following measures in order to curb the elephant menace in all areas mentioned by the hon. Member.

First of all, the Ministry has, through the Kenya Wildlife Service (KWS), established a permanent force in Kithoka area, staffed with rangers. Two outposts have also been established and Naari in Ruiru areas. Rangers from these posts repulse elephants which invade the cultivated areas and where necessary, shoot rogue ones.

Secondly, the Ministry is currently rehabilitating Meru National Park with a high tensile voltage fence and when complete, the fence will prevent elephant movement into Imenti.

Thirdly, the Ministry, through the KWS, is planning to put up a fence around Mount Kenya which will prevent elephant movement from Mount Kenya to Imenti region. In addition to this, KWS Community Wildlife Programme and Naari Wildlife Association are planning to put up a 22 kilometre solar electric fence from Kiringo to Kanyumba Hills which will further deter elephants from invading the cultivated areas in the region.

Finally, my Ministry is planning to establish live-hedge barriers in Kithoka and Ruiru to prevent elephant from invading cultivated farms.

All the above measures will go a long way in curbing elephant menace in the affected areas.

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for the answer but quite candidly, I do not think the Ministry is taking the issue seriously. The problem is so acute that the Bishop for the Methodist Synod for Kaaga has called for a peaceful demonstration tomorrow, which is the 1st of August, but he has only called it off because of the deaths of the leaders of Eastern Province.

Mr. Deputy Speaker, Sir, the question I want to put to the Assistant Minister is simply this: Since KWS has fenced places in Laikipia to protect wealthy and rich Wazungu farmers from elephants, free of charge, then why do they have to charge the people of North Imenti some money before they do the fencing themselves.

**Mr. Kisiero:** Mr. Deputy Speaker, Sir, I am not aware of any charges that are imposed by the KWS in Imenti. Probably when my fellow hon. member gives me the details, I will be able to take up the matter.

**Mr. Deputy Speaker:** Mr. Kamotho, you had a Ministerial Statement to make.

## MINISTERIAL STATEMENT

### CONTAMINATION OF SCHOOL MILK

**The Minister for Education** (Mr. Kamotho): Thank you Mr. Deputy Speaker, Sir, for giving me this chance to clarify some points which were brought to this House last week during the debate on the Vote of the Ministry of Education.

Mr. Deputy Speaker, Sir, on 24th of July, 1996, this House was informed by the hon. Member for Limuru, Mr. Nyanja, that he had some information that the School Milk Programme was withdrawn from Central Province.

Secondly, he said that he had evidence that a Catholic Priest, together with the Archbishop of Nairobi, Cardinal Otunga and himself, went to a scientific laboratory and proved that the Milk Scheme in Central Province was meant to sterilise pupils. As I have already informed this House, the statement by the hon. Member was scandalous and had no truth in it. The statement was calculated to create hatred, despondency, suspicion and misunderstanding between the peace loving people of Central Province and the Government. To say the least, the statement was very irresponsible. I wish to now respond to the allegations by the hon. Member. I wish to inform this House that the Kenya Co-operative Creameries (KCC) does not have special or separate processing procedures for the milk supplied to the School Milk Programme. The milk originates from the same source with the milk in the open market. The KCC only changes the packaging to differentiate School Milk Programme from the milk meant for the general market. The quality is therefore the same. The fresh milk to schools, just as the milk to the open market, is usually supplied to areas which are near the processing factories and has a short lifespan of 24 hours. The Ultra-Homogenized-Treated (UHT) milk is supplied to remote areas because it can stay fresh for up-to three months.

Mr. Deputy Speaker, Sir, as an annexe to the statement that I am going to lay on this Table which is comprehensive enough, I have attached every detailed information on the supply of school milk to each district in Central Province for both the fresh and UHT type of milk from 1991 to 1995. The hon. Members of this House will have learnt from my Statement that Central Province receives its milk from the same sources as all the other

districts and that chances of contaminating the milk are nil and the allegation is void.

The hon. Members will also have learnt from a Press release by the Catholic Secretariat, which I am going to Table here, that neither the Catholic church nor any individual Priest has alleged that the School Milk Programme for Central Province is contaminated with sterilising substances. Cardinal Otunga has personally, and I am going to Table his letter, made a categorical denial through a letter to me, distancing himself from the utterances of hon. Nyanja as Annexe Two of this Statement.

Mr. Deputy Speaker, Sir, as the Minister in charge of the School Milk Programme, I demand an unconditional withdrawal of the allegations of hon. Nyanja and an unqualified apology to Kenyans and the entire educational community of Central Province for the outrageous and false statements he made in this august House. I table all the details, including the break down of the milk supply to Central Province.

Mr. Deputy Speaker, Sir, those documents include a Press statement from the Catholic Secretariat and a letter from Cardinal Maurice Otunga, personally written to me. Also, there is a comprehensive statement about the process of milk, the distribution and the total milk supplied to Central Province since 1991 and it will still be supplied in 1996.

*(Mr. Kamotho laid the documents on the Table)*

**Mr. Deputy Speaker:** Next Order! Hon. Munyasia was on the Floor.

## MOTIONS

### DEATH SENTENCE FOR RAPISTS

THAT, in view of the fact there is a tremendous increase of rape cases; and, being aware that most of the rapists are HIV positive and that their victims are in most of the incidents infected with HIV virus; and, noting with concern that the courts continue to mete light sentences to the culprits and realising that there is an urgent need to minimise HIV infection in the society, this House calls upon the Government to introduce an amendment to the Penal Code, Cap 63 of the Laws of Kenya to provide for a mandatory death sentence to rapists who are clinically proved to be HIV positive.

*(Mr. Gichuki on 24.7.96)*

*(Resumption of Debate interrupted  
on 24.7. 96)*

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, I had just mentioned that this House has no problem with the Motion as it is.

**Mr. Deputy Speaker:** Do I understand that the Motion was already moved and you are seconding it?

**Mr. Munyasia:** Yes, Mr. Deputy Speaker, Sir. I had said that the House has no problem with the Motion as it is.

**The Assistant Minister for Education (Mr. Komora):** On a point of order, Mr. Deputy Speaker, Sir. The hon. Minister has asked for a specific reaction from the hon. Nyanja in the light of the weight of his statement.

**An hon. Member:** Mr. Nyanja is not here!

**Mr. Deputy Speaker:** Order! Order! I thought it was a point of order about debate on this Motion. Mr. Munyasia, continue to second the Motion.

**Mr. Ndicho:** Maneno hayo yamekwisha na hakuna maziwa katika Mkoa wa Kati.

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, I said that this House has no problem with the death sentence because we have said it must stay on our Statutes. But we can advance a few arguments to strengthen our position against those who think that death sentence should be removed. The Christians have put forward arguments that the death sentence allows human beings to take away other peoples' lives and that it is only God, who can do that. But I wish to quote the Bible, by telling them that in Genesis 9:6 it says "Any one who will kill man, he also by man will be killed". In Matthew 26:52, he says, "Any one who kills by the sword, by the sword also will be killed". For the Roman Catholics, there is the new Catechism, Section 2266, which acknowledges

that the public authority has a legitimate right or responsibility to punish commensurate to the mistakes or the offense committed. It also does state that in very grave matters, death penalty may be allowed.

Mr. Deputy Speaker, Sir, we agree that as a society, we owe it to the victims, to punish those who commit the offenses against them. There are those who say that the death penalty should be removed because it is anyway on the decline in many other parts of the world. But I wish to state that the death penalty is actually not on the decline. China, the largest and most populous state in the world retains the death sentence, even for offenses, like hooliganism. The United States of America, another great power in the world, in 1994, passed the Violent Crime Control Act and this Act has death sentence for over 60 crimes. In Africa, except for South Africa, all states retain the death sentence. In Asia, almost all the states retain the death sentence. I think it is only a few states in Europe, that have done away with the death sentence.

Mr. Deputy Speaker, Sir, we can say that the death of a killer is the best way of ensuring that the killer will not kill again. It has been proved that many of the criminals, after prison are bound or have a tendency to commit those same offenses for which they had been imprisoned before law. That is why we say that if the killer is killed, then it should be one way of assuring the society that they will not be killed.

Mr. Deputy Speaker, Sir, what this Motion is seeking is merely the expansion of the death penalty. We already have it on our legal books. But all we are saying in this Motion, is that it should now include rape, especially by those culprits who are HIV positive and know that they are HIV positive. Our own Penal Code, Section 140 says that for rape, the culprit may be committed to life imprisonment with or without corporal punishment. It further says in Section 141, that even those who attempt rape, are also liable to life imprisonment with or without corporal punishment. Rape is defined in Section 139 only as a man having carnal knowledge with a woman without her consent. Even the one who would have sexual intercourse with a woman in her sleep would be guilty of rape and he will be sentenced for life. What we are saying in this particular case is that, if there is something more to it, if it is not just rape, but it is rape with infections of HIV, then a sterner sentence, than life imprisonment should be given.

Mr. Deputy Speaker, Sir, the consequences of that infection are as follows: That the person who is raped, will have all the efforts that she was making to avoid becoming HIV positive brought to nil. If she had been abstaining, that would have been cancelled, and also, if she had been using safety methods, that would also have been cancelled. She will then finally develop AIDS. If she is married or perhaps she wanted to marry, then her marriage is gone. Then she becomes a medical problem. I understand that AIDS is a very painful disease. In the rich countries, they have drugs, like AZT, that might lengthen someone's life for a little while. But in this poor country, we have no drugs and the State has not even decided on what kind of assistance they should give to those who suffer from AIDS. It becomes a painful burden for the poor families in this country.

Lastly, the patient is going to die and when he or she dies, she not only dies with her husband, but also with some of her children. Those that she leaves behind will be destitute. The elderly relatives who were depending on her, would also have to become destitute. That is why we are saying that rape for the AIDS positive culprits is a very serious offense. In normal circumstances, we would say that rape does offend the dignity, the pride and the self-esteem of the victim. But in this particular case, we are saying that if the rapist is HIV positive, it leads to death. That is why beyond life imprisonment, which is already provided for this offense under Section 140 of our Penal Code, we should have no problem extending it to death sentence.

Mr. Deputy Speaker, Sir, if the rapists were to be taken to jail, I understand that there sodomy is a very common practice. Unless, we pass legislation to say that the rapists will have to be in seclusion, because if they mix with the other prisoners, it is quite likely that they would rape them too, or they will even make friends with them and they will be spreading that disease. This is why for me, the option left for these particular offenders, should be death sentence. We are not taking this disease in this country very seriously. We have had to organise conferences earlier for problems of population explosion. I remember attending one such leaders conference somewhere in 1989, when politicians met together with other leaders, like the clergymen, the Provincial Administrators and so on, in Kenyatta International Conference Centre (KICC), and we deliberated on efforts that we should make to curb population increase. We met in 1994 and talked about the Social Dimensions of Development.

Mr. Deputy Speaker, Sir, since the time we met in 1994, and talked about development, as political leaders we have never shown that we realise AIDS is a serious problem which also needs the political leaders to convene and discuss the matter. This Motion is calling upon us to legislate and exercise our political responsibility. I think it is high time that the Minister for Health and even the Attorney-General did impress upon the Government, the need for such a conference so that we may meet together and see what we can do, for instance, about drugs for assisting the AIDS patients.

*[Mr. Deputy Speaker left the Chair]*

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

In America for instance, it has been decided that because this is a serious problem, they are not going to wait until drugs have been tested and proved to be effective. People should be treated even as the experiments are going on with those particular drugs. We should propose the same here that drugs, like what our colleague, Hon. Mary Wanjiru brought here, should still be tried. It is not for us to begin saying even before we have tested them that they cannot work. The drug Pearl Omega by Prof. Obel should be distributed to those patients, it does not do any harm---

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

*(Question Proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I rise to contribute to this very important Motion and I would like to pay particular tribute to the Mover of the Motion, hon. Gichuki, and the Seconder of the Motion, hon. Munyasia, for bringing to this House an issue which to me is very important. We are aware of the scourge of AIDS and I think as of now, each one of us knows somebody, a friend, or a relative who has died because of AIDS.

According to National AIDS Control Programme Bulletin released in July, 1994, it is estimated that one in every 18 adults are infected by HIV. In urban areas, one in every 9 adults is infected. However, in 1993, it was estimated that there were about 760,000 people infected with HIV. As of now, a reasonable guess could be a figure in excess of one million. When we are discussing this issue, which has a lot of repercussions, on the Penal Code, the Administration of Justice, the health systems, and the social public of this society, we should take into account two factors: One, on the average, it takes about eight years for the infected person to develop the clinical symptoms of the disease AIDS. Two, consequently, a number of people may not be aware for quite some time that they are HIV positive. Taking that into account, and as I am speaking now, right on the very beginning, to underline the seriousness with which the Government takes this problem--- But at the same time I would like to indicate, that I want to move a slight amendment to the Motion, which I have had the opportunity to discuss with the Mover and Seconder of this particular Motion.

Mr. Temporary Deputy Speaker, Sir, the first part of the Motion is actually to widen the side core of the people who will be caught up in the Penal Code because this Motion restricts us only to rape cases; those who may be caught up in this penalty, whereas, if I understood the Mover right, even the Seconder, and if also I know my statistics right, in some cases of rape, AIDS is spread. But the overwhelming majority of the spread of AIDS is not in rape cases only. The overwhelming majority of the spread of AIDS is with those people who know that they are HIV positive, yet intentionally and deliberately go around to unsuspecting members of the public and infect them with AIDS. Therefore, I think we will be doing a disservice just to restrict the entire Motion only to rape cases. I am proposing that at the very end of the Motion, we delete the full stop and add the words; "and to any person who knowing that he or she is HIV positive, deliberately or intentionally infects the HIV virus to unsuspecting public."

Mr. Temporary Deputy Speaker, Sir, the other amendment that I would want to propose, is in line seven, the last line but one. That should be amended by deleting the words "death sentence" and substitute thereof, "life imprisonment". The effect of this would be, as the Seconder had said already, that any person who rapes, is liable for life imprisonment. But what that means in essence is that, the Judiciary then has a discretion to award anything from one day imprisonment to life imprisonment. As I understood the Mover of the Motion to say, the sentences, in fact, it is there in the Motion itself - The sentences normally meted out to these people are very light compared to the seriousness of the offence itself. But what I am now proposing, will have the effect of making life imprisonment mandatory. In other words, if somebody comes within the purview of this Motion, as amended, evidence is taken and the offence is **[The Attorney-General]** proved, then the courts will not have the discretion to award one to three years. They must sentence that person to life imprisonment.

It will be mandatory life imprisonment and, therefore, that portion will read as follows:-

"That this House calls upon the Government to introduce an amendment to the Penal Code, Cap 63 of the Laws of Kenya, to provide for a mandatory sentence to rapists who are clinically proved to be HIV positive or to any person who knowing that he or she is HIV positive,

deliberately or intentionally infects the HIV virus to unsuspecting persons".

Mr. Temporary Deputy Speaker, Sir, the examples that were given by the Mover and the Seconder of this Motion are really examples which fall into the later categorically being proposed by this amendment. I believe the Mover referred to a letter that appeared in our newspapers from a couple who had been here as tourists. These people, on going back to their country, wrote back a letter stating that they had sexual relationship with about 33 Kenyans, naming names and that, therefore, those Kenyans must be HIV positive. Now, that was not a situation of rape but a situation where somebody knowing that he was HIV positive, deliberately and intentionally lured the unsuspecting public into a sexual relationship and, therefore, transmitted the HIV virus. I would like such a person to be caught by an amendment to the Penal Code.

**Prof. Mzee:** On a point of information, Mr. Temporary Deputy Speaker, Sir. Since the Attorney-General is making a very important amendment, could I ask him to consider castration because life imprisonment will not solve any problem? If you remove these people's testicles then somehow you will solve the problem.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, the introduction of castration may be regarded as discriminatory because it only applies to men and not to women. If we take the example I have just given, here is a lady tourist who deliberately went into sexual relationship with virile young people at the Coast and thereby infected them with that disease. We are aware of a case in Cameroon where a very beautiful lady, moving in a high society, deliberately went around having sexual relationship with highly placed people in the society and infected them with AIDS. Just before she died, she released the names of those people. So, women are as capable of deliberately spreading this disease as men are and, therefore, the law that we will provide, which will be life imprisonment, will suffice.

We are also aware particularly of tourists who have come to this country and then after they have entered into sexual relationship with the people at the Coast, write and say, "Here is DM 90,000 for you to prepare your funeral because I infected you with HIV virus". I am congratulating the Mover and the Seconder for having brought a serious matter to this House. I am going further to say that we should not confine this Motion to rape cases but we should actually include it where it matters, that is, to those who have AIDS and they knowingly or deliberately spread the disease.

Life imprisonment, to me, so long as it is mandatory, will suffice in the circumstances of this case because as we know, once the disease is fully blown, the man is on his way to death and he is going to die anyway.

Therefore, let God himself, through that process, take him. I am glad that the Seconder did quote Biblical passages and so on. Let us leave it to God to take his life after the person has suffered for that period with HIV virus.

The Seconder did refer to the debate that took place here on the issue of capital punishment. Death sentence, of course, is there in our statute books, but we should not, in my view, increase the number of offenses or penalties which carry the death sentence. In fact, the trend now is not so much to increase the offenses which carry capital punishment, but to progressively reduce such offenses from our statute books. So, there are a number of resolutions in this regard, both internationally and regionally. Therefore, whereas we do have death sentence, we should not, by this Motion, put in another category of penalties which carry capital punishment and, particularly, on this matter. The person is dying anyway and, therefore, we should let the law of nature take its own course.

An issue was raised on the doctor-client relationship and the principle of confidentiality, particularly in this matter. Another issue was raised about secluding these people within the prison so that they do not spread the disease within the prison because of what we know at times does happen there, and the whole issue of the spread of contagious diseases and so on. As I stated earlier, this disease has brought a number of rethinking on a number of well-established norms, be it professionally and so on. Even on a number of rights of communication, but these are issues which are still intricate and are being discussed because at the end of the day, you must bear in mind that, nobody should be discriminated against, not just on the grounds of race, but even on the grounds of disease.

AIDS is just like any other disease and these are some of the issues which are being discussed very much under the task force which I set up. It is a task force to review the penal law and procedures and it is chaired by Justice Lutta. It is reviewing the entire administration of the justice system, right from the time an offence is reported to the police through investigations, the hearing of the case in court, imprisonment, prison conditions and so on. Therefore, in their interim report, they are searching for some of the pertinent issues which have so far been raised by the Mover and Seconder of this Motion, some of which I have just stated. Definitely, we shall also be consulting professionals themselves. In fact, the Kenya Medical Association approached me to set up a task force to look into the laws and policies relating to public health issues. They had in mind this dreaded disease called AIDS. So, it is a matter which is under active consideration and thinking on the part of everybody who is involved.

Therefore, all those other issues are definitely going to be talked about at the end of the day and a solution found.

Mr. Temporary Deputy Speaker, Sir, as many people have said, at the end of the day, it becomes an issue of morality. Whereas laws cannot completely enforce morality, but it reaches a stage where we say as a society that somebody who becomes immoral and a danger to the society as a whole, must be sanctioned. That is why I do support this Motion, as amended, that whereas matters of sexual relationships are issues of morals, and whereas they can effectively be dealt with morally, we must at the same time protect the members of the society from some of the acts of some of the members of the society. Therefore, where somebody has got this disease and knowingly spreads it, the society must be protected from such a person.

Therefore, I would like to conclude by thanking the Mover and the Seconder of the Motion and I do hope that in our discussion, we will accept the amendments which I have brought and which really are geared to actually dealing with the problem which is there in our society today.

With those few remarks, I beg to move the amendments.

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Dr. Misoi): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I rise to second the Motion as amended by the Attorney-General.

This is a very important Motion. I would also like to thank the proposer of the Motion for bringing into this House a Motion about a matter which is of a very serious concern to the international community, and particularly so, to the Kenya nation. This is because we are told that statistically, Kenya rates quite high in the order of merit of countries which have high rates of AIDS infection.

Mr. Temporary Deputy Speaker, Sir, we realise that the Government has tried to bring in measures to control and create awareness in the minds of the public to the dangers of this particular disease. It appears as if those measures are not effective enough to control or reduce the rate of infection. It is frightening that the percentage given statistically is quite high, particularly in urban centres. The menace is moving to the rural areas because of the flow and migration of people to and from the rural areas. When we mention a figure of over 1 million people being carriers, you can imagine the rate of spread through 10 million people, when they relate sexually with other people. Sooner or later, the nation will face extinction. This is a very serious matter because before you know that you are a carrier of AIDS virus, you will have infected so many people innocently.

This is the danger which leaders, politicians, media people, clergy and all opinion leaders in this country must rise up and give the desired priority in fighting this menace. It is very important that we devote more resources in educating the population, particularly the youth who are the biggest victims of this particular disease. This is because the youths are the most sexually active members of our community. At the same time, they are the most productive in this nation. So, when they fall victim to this disease, the losses are great. There are losses to the economy, community and families. The agonies we undergo are so enormous that we need to take effective measures immediately. We should devote more resources and finances to control it and carry out research to find out effective control measures.

Mr. Temporary Deputy Speaker, Sir, it is only a few years ago that we had the Kemron drug, which was assumed to be one of the drugs which can assist us. We do not know how that drug is fairing. In recent times, we had Pearl Omega from Prof. Obel. It is now shrouded in controversies. It is important and necessary that when newly invented discoveries are made and brought to the attention of the public, they should be screened and tested. They should not be condemned outrightly. We know that there are herbs and other medicine which can cure diseases. So, Pearl Omega should not just be written off simply because it has not been thoroughly tested. It is the responsibility of the Ministry of Health and the Board responsible for drug testing to ensure that this drug is subjected to proper testing in our hospitals, to find out whether it can assist in alleviating this particular problem. We have rules and regulations and I do not understand why the samples of this drug cannot be collected and submitted to hospitals for testing under controlled situations, so that we can know what we are talking about. The Minister is here and he should be able to assist us in that aspect.

With regard to the clergy, we believe and say that Kenya is a Christian community and the Moslems are also there. They are supposed to have moral ethics. Apparently, they are not effective. This is because we have broken our traditional norms and community ethics. In their place, we have adopted the new religious concepts. This is the western type of morals. Time has come for us to go back to our roots. This is because our roots protected us for ages until where we have reached. But now, we are going down the drain because we are adopting so many useless beliefs and different lifestyles. So, to control this menace, we have to go back to "zero grazing". We should do the right thing at the right time. This is important for our youth so that they cannot be misled by being told that there are condoms and other protective mechanisms and that they are safe from AIDS. We have to go back and behave the way we used to behave before. We have to reduce the care-free attitude which



allows anybody to do all sorts of things with our partners. We have to abstain from unnecessary sexual exploitation all over the place.

**The Temporary Deputy Speaker** (Mr. Wetangula): Dr. Misoi, I have not heard you quote anything about the Motion, and actually the punishment of the rapists. I think that is what the Motion is all about.

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Dr. Misoi): Mr. Temporary Deputy Speaker, Sir, I have simply said that I am supporting what the Attorney-General has already introduced as an amendment, that they should be given a mandatory life imprisonment, when they have been found to have raped our girls while infected with AIDS. Those who are spreading it deliberately should also face the same law. It is very important to isolate them from the community. Apart from that I am also saying that we need to take other measures to protect our people before they are exposed to this particular disease. Mr. Temporary Deputy Speaker, Sir, I call upon all of us to take this issue as a very serious matter. It is more serious than politics and ambition to assume positions. How can you assume positions when people are dying? Whom are we going to rule in this country, when where people are dying in big numbers? The people who are dying are not only the young. Some of them are big people. Some of them are politicians and professionals like doctors. None of us is safe from this danger.

Therefore, I thank both the Mover of the Motion and the Attorney-General for bringing that amendment, which is very important. I thank the Ministry of Health for ensuring that there are enough funds to fight this menace not only locally, but also regionally and globally.

With those words, I beg to support.

**The Temporary Deputy Speaker** (Mr. Wetangula): Hon. Members, having been informed that the Mover and Seconder were consenting to the amendment I will propose the question of the amendment and put it now so that we debate the amended Motion.

*(Question, of the first part of the amendment,  
that the words to be left out  
be left out, proposed)*

*(Question, of the first part of the amendment,  
that the words to be left be left out,  
put and agreed to)*

*(Question, of the second part of the amendment,  
that the words to be inserted in place thereof  
be inserted, proposed)*

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

*(Question of the Motion as amended proposed)*

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Motion as amended by the Attorney-General. This is not a Motion for KANU or the Opposition. This is a Motion for all Kenyans. I will beg that we debate on its intrinsic merits. The Motion speaks of amending the Penal Code to provide mandatory life imprisonment for AIDS victims who have sexual relations with members of the opposite sex, but with a deliberate and malicious intention of infecting them with the disease.

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

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

In other words, what the amendment is doing is to try to impose a life sentence on those people who are carrying seeds of death and deliberating trying to plant them into other people. My understanding of the amendment is that it also covers women who might be using various tricks to try to lure men into having sexual relationships

with the women themselves, who know that they are HIV positive and that they are likely to infect their partners with the disease.

Mr. Temporary Deputy Speaker, Sir, I think the amendment is reasonable and I support it largely because, I am opposed to capital punishment. When we talk about rape, some of us do not understand what it is. In fact, when we talk about rape, many people have the concept of a stranger struggling with a woman whom he does not know, tearing off her clothes, eventually overpowering her and having carnal knowledge of her. In fact, those types of rape are very rare. They are very few. The most common types of rape take place between friends.

These days, we are even talking about rape between a man and his wife. The most common type of rape is what we call "date rape". This is where a man and a woman go out together, spend most of the night in a disco, have a lot of drinks and then in a grey area between "yes" and "no" some sexual activity takes place.

These days, rape takes place even between decent men and decent women. Using the strict legal criteria of rape, as having carnal knowledge of a woman without her express consent, in fact most of the hon. Members of this House would have committed rape at one point or another. I do not know whether the Mover of the original Motion, who wanted rapists to be hanged, would countenance half of the hon. Members of this House being sent to the gallows because they took advantage of a situation.

*[The Temporary Deputy Speaker  
(Prof. Mzee) left the Chair]*

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

I am not here to minimise the seriousness of rape as an offence. In fact, rape is a most heinous crime. It is a crime against humanity. It is a trespass into the body of a woman. It truly violates the personal worth and dignity of the person who is raped. It causes major psychological problems and feelings of worthlessness to the victims. Where the rapist also happens to be HIV positive, he also plants the seeds of death into the rape victim.

So, we need a maximum punishment, which does not amount to capital punishment, for rape. That is why I am supporting the Attorney-General's proposal that we have a mandatory life sentence for this type of a rapist. I am opposed to capital punishment and, as you will recall, in 1994, I introduced a Motion in this House seeking to abolish capital punishment for all offences in Kenya. The reasons we advanced in support of that Motion, which was, unfortunately, defeated because of a conspiracy by KANU, were that capital punishment is a primitive, backward and barbaric form of punishment. It is a cruel and inhuman form of punishment which is a relic of the dark days of humanity when torture was acceptable as a form of punishment. Today, we in Kenya are in a civilised nation and should seek civilised solutions to crime. We should seek ways of preventing crime and rehabilitating our criminals instead of sending them to hang. I think it will be too late for us---

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Murungi in order to mislead the House that the Motion he brought here in 1994 on the abolition of death penalty was defeated because of a conspiracy by KANU when so many hon. Members of the Opposition also voted against that particular Motion?

**Mr. Murungi:** Mr. Temporary Deputy Speaker, Sir, I do not think that, that was a point of order. What I was saying is that we should explore different ways and means of preventing both AIDS and rape in this country. This is because when we try to kill the rapist, we will be acting too late. By the time we kill the AIDS victim he will already have infected his victim with the seeds of death. So, we will not be saving the life of the woman who has been raped.

Secondly, what is the point of killing a man who is dying, any way? A rapist who is HIV positive may die at any time. Why should we spend our resources killing a man who is dying of AIDS? We should let him die in the natural course of events instead of passing a law of capital punishment against that person. We will be merely accelerating his death.

Mr. Temporary Deputy Speaker, Sir, I think what we need is not to kill, what we need is education for our people to understand the causes of AIDS and rape, so that we can prevent these two instead of resorting to barbaric punishment like capital punishment. We need to understand why people in this country rape if we intend to stop rape. A lot of research has been done in this area and these are some principal causes of rape. First, we need to go into the background of the rapist. Some of the rapists are sexually deprived people; sexually starved people who badly need some sex which is a basic human need. We have categories of people in this country who cannot identify normal sexual partners the way the elites identify them. I am talking about men who are ugly, deformed or that kind of thing and cannot attract any women. We also have classes of people who are

physically detached from society like soldiers---

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have heard hon. Murungi inform people about causes of rape. But, is he in order to assume that it is only men who can rape and not women?

**Mr. Murungi:** Mr. Temporary Deputy Speaker, Sir, I have practised as a lawyer in this country for quite a number of years and I have never heard of a woman brought to court and charged with rape. It is men who are always charged with rape and in fact as framed in the Penal Code, it is assumed that the rapist is a man. That is why I was suggesting to the Attorney-General that this amendment should include women who use tricks to lure men into sex.

With those few remarks, I beg to support.

**Mr. Wetangula:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this very, very important Motion. I must start by congratulating Mr. Gichuki for bringing up this Motion because it is addressing an issue that is very pertinent in this country.

As a matter of interest, after this Motion had been Tabled here, I walked on the streets of Nairobi and spoke to 100 people at random and this is the response that I got. I was asking them what we should do with rapists. I did not mention the issue of HIV.

Fifty-six people said rapists should be hanged, 19 said rapists should be castrated, 17 said the current law and punishment is adequate and eight were not aware of anything about rape.

Mr. Temporary Deputy Speaker, Sir, you can see from this, that the majority of Kenyans feel very strongly against rape. Indeed, you can also see that the majority advocate for death sentence. I, for one, do not believe in the death sentence, it is unpopular worldwide, it is being phased out almost everywhere and we must find ways and means of punishing offenders rather than sentencing them to death. It is with this, that I support the amendment by the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, there is no doubt that severe punishment should be meted on rapists whether they are HIV positive or not. Available police statistics show that rape cases have been steadily increasing from 1989, to date and these are cases that are reported to the police, leave alone those that are not reported. For instance, in 1989 395 cases of rape were reported to the police, in 1990, 383 cases were reported and in 1991 it rose to 417 cases. In 1992 it rose to 454, in 1993 it rose to 696, in 1994 it rose to 773, in 1995 it rose even higher to 822 and for the first half of 1996 already 625 cases have been reported. This makes a total of 4,265 cases. Not to mention that the majority of rape victims do not have the courage to go to the police to make reports because largely they are women and young girls and they feel ashamed going to the police to make the report.

Mr. Temporary Deputy Speaker, Sir, I also found out from the statistics available that courts have been meting extremely lenient sentences to rapists. Over 90 per cent of rapists victims either go scot-free or are sentenced to a maximum of five years in jail yet the maximum sentence---

**Prof. Mzee:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could you ask the Attorney-General to listen to these important statistics which are being given?

**The Attorney-General:** Mr. Temporary Deputy Speaker, Sir, I am listening.

**Mr. Wetangula:** Mr. Temporary Deputy Speaker, Sir, the majority get very lenient sentences, the maximum in most cases being five years as against the available legal provision of life sentence. It is, therefore, important that we amend the law to provide for a mandatory life sentence.

Mr. Temporary Deputy Speaker, Sir, in many cases we pass Motions here which we do not follow up by the appropriate law amendment. I want to urge the Attorney-General, that as soon as we pass this Motion, we want to see an amendment to the Penal Code to provide for what we are all calling for. I again said that statistics available show that many rapists are acquitted because of the following reasons.

Women victims report the incidents to the police long after the event and we all know that to prove that somebody has raped, there must be medical evidence to prove sexual intercourse. Where the victims report to the police very late, the medical examination often does not reveal the rapist's semen deposits or other physical signs of rape on the victim.

Rapists also get away scot-free because, women who are victims of rape quite often go to take a bath and clean themselves up before they go to the police to report and in so doing, they are getting rid of the available evidence that the police will need to nail the rapist. A number of women I talked to, also complained that when they go to the police to report and this, the Minister in charge of the police should take this into account very seriously, the majority of police doctors are men and they treat women victims of rape very callously. They do not take the report seriously. They send them away and tell them to come the next day or third day or fourth day by which time all the evidence to prove rape is gone!

I want to urge the Minister for Health to liaise with the Minister in charge of police and post as many female doctors to the police as possible to assist in helping rape victims have their cases properly handled. Sometimes I have been told by the women I talk to that, they suspect a conspiracy between male police doctors and rapists to subvert their reports, and this is a matter that should be looked into.

More important is not just the issue of rape, but the question of people who knowing very well that they are HIV positive embark on an evil mission of spreading the disease to unsuspecting people. Such people, I would want to urge the Attorney-General to amend the law not to provide for a life sentence in terms of rape as he has moved, but to equate such cases with cases of murder because murder is knowingly and wilfully causing the death of another person. And a HIV positive person who undertakes the mission of spreading the disease is knowingly and wilfully causing the death of other people and they should be charged with murder like any other murderer so that in the event they are convicted, they face the law as it is now.

We know of the famous case from Cameroon where a very beautiful young lady literally went to bed with what one can say "Who-is-Who in Cameroon" including half the Cabinet. When she died half of the Cabinet was at the funeral to see whether it was actually the woman they had moved with or not that was dead so that they could know what to do next. We have similar cases here. There was that case of a young man who took a co-operative loan and went to Nyeri. I think the young man was either from Nyanza or Western Province, and kept a list of 43 women he slept with and infected them with HIV positive. Such fellows should be charged with murder and such a fellow, in fact, is a real killer. He is not any different from son of Sam or Jack the Ripper. He is a serious killer and must be charged with murder to face the law.

Last but not least, I want to urge the Attorney-General to conduct regular seminars with Magistrates and Judges and those who administer justice and tell them that while they have the discretion to sentence people at will, society demands that the punishment must reflect on the offence.

Thank you, Mr. Temporary Deputy Speaker, Sir, I support.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! I would like to read the Motion as amended before the House and delete as follows. The Motion before the House as amended reads as follows:-

THAT, in view of the fact there is a tremendous increase of rape cases; and, being aware that most of the rapists are HIV positive and that their victims are most of the incidents infected with HIV virus; and, noting with concern that the courts continue to mete light sentences to the culprits and realising that there is an urgent need to minimise HIV infection in the society, this House calls upon the Government to introduce an amendment to the Penal Code, Cap 63 of the Laws of Kenya, to provide for a mandatory life imprisonment to rapists who are clinically proved to be HIV positive and to any person who knowing that he or she is HIV positive deliberately or intentionally infects the HIV virus to the unsuspecting persons.

**Dr. Lwali-Oyondi:** Bw. Naibu Spika wa Muda, asante sana kwa kuniruhusu niseme maneno machache juu ya hii Hoja ambayo imeletwa hapa na mhe. Gichuki.

Huu ugonjwa unaojulikana kama "AIDS" au UKIMWI. Kuna maneno mawili hapa 'AIDS' na HIV. HIV maana yake ni kwamba mtu ana viini vya ugonjwa lakini ugonjwa haujakomaa na ukianza kuambiwa ya kuwa una AIDS ndio kusema sasa dalili za ule ugonjwa zimeanza kuonenaka. HIV kwa kirefu ni Human Immuno Deficiency Virus. Viini hivi ndivyo vinatoka au kuua kinga za mwili ambazo kwa kawaida hutumika kujikinga kutokana na ugonjwa kutoka kwa mtu fulani au eneo fulani. Kwa kawaida, miili yetu najikinga yenyewe na si lazima unywe dawa. UKIMWI huharibu kinga zote mwilini na hapo mtu anaweza kuwa na ugonjwa wowote, kama vile homa, kifua kikuu na kadhhalika, hata kama umeshachanjwa. Hii ndiyo sababu ugonjwa huu unaua watu kwa sababu unapopata ugonjwa wowote, basi utakufa kwa sababu kinga zake mwilini zimeuliwa na viini hivi.

Mtu akipata huu ugonjwa ni kifo kwa sababu mwili hauna kinga. Utaua vijidudu na dawa lakini baada ya kuvuia ugonjwa mwingine utakushika na utaendelea hivyo hadi utakapokufa.

Hoja hii inasema hivi, wale watu ambao wananajisi wenzao na kuwaambukiza huu ugonjwa inastahili wawekwe jela maisha yao yote. Hapa nakubaliana na Hoja hii na ningependekeza wanyongwe. Siku hizi watu hawanyongwi lakini wanapelekwa katika jela, watakaa huko na mwisho wao watakufa. Kwa hivyo, kifungo hiki cha maisha ambacho Mkuu wa Sheria amependekeza, ninakubaliana nacho. Hii ni kwa sababu mambo ya kunajisi yamezidi katika Kenya.

Kuna watu ambao wamewadanganya watu ya kwamba mtu akimnajisi mtoto mdogo ambaye ni bikira, utapona. Hii ndiyo sababu tunaona watoto wanajisiwa mara kwa mara; unapata mzee wa miaka 60 amenajisi mtoto wa miaka 3; unapata mzee wa miaka 40 amenajisi mtoto wa miaka 7 na kadhhalika. Haya yote mnasoma katika magazeti kila siku. Hii ni kwa sababu kuna mtu ambaye amedanganya watu ati unaweza kuokoka kutokana na ugonjwa huu ikiwa utamnajisi mtoto ambaye ni bikira. Haya si kweli. Ninataka kuwaambia watu

wote wajue ya kwamba ugonjwa huu hauna dawa. Haya yote yasemwa na wote na pia Waziri wa Afya aseme haya na idara ya afya yake itangaze kwa watu wote ya kwamba kwa wakati huu hatuna dawa ya kutibu UKIMWI. Na mtu yeyote anayedanganya watu ya kwamba kuna dawa yeye "anaua" watu. Wakati fulani tulikuwa na KEMRON ambayo sijui ilitokea wapi, ilikuwa ni bure, haikuwa na maana yoyote hata tembe za Aspirin ni afadhali. Waliposema juu ya hiyo dawa, watu walikunywa pombe sana huko Nakuru. Walisema sasa "restriction" hii ya "zero-grazing" "imeondolewa". "Sasa tutakwenda popote kwa sababu KEMRON imepatikana huko Nairobi". "Sasa tuendelee tu kwa sababu KEMRON imekwisha patikana huko Nairobi. Sasa tuko huru kutoka kwa magonjwa kama kisonono na mengine ambayo tunameza tembe na kupona". Watu walisherehekea na walianza kwenda na wenzao bila kupiga breki. Walizidisha mwendo na saa hii wengine wao wako na UKIMWI. Mmekwisha soma kwenye magazeti kwamba kule Nakuru UKIMWI umezidi. Hii ni kwa sababu ya haya madawa ambayo yanasemwa kwamba yanaweza kutibu UKIMWI. Nimefanya virology, utafiti wa virusi. Hivi virusi vinaingia kabisa na kuwa sehemu ya mwili wako. Ndiyo sababu hakuna dawa ambayo itaweza kuvitua bila kukuumiza wewe mwenyewe. Tumaini lililoko saa hii ni kwamba kutakuwa na chanjo. Pengine Mungu akitusaidia, tunaweza kuputa dawa, lakini hakuna dawa saa hii. Na wananchi wajue hivyo; njia ya kujikinga ni kuwacha usherati.

**An hon. Member:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Dr. Lwali-Oyondi:** Bw. Naibu Spika wa Muda, bado nimebaki na dakika chache sana, ingawa ningependa kusema mengi. Kwingine kuna watu ambao wanaenda kote wakishapata huu ugonjwa. Kule Nakuru kulikuwa na mtu mmoja tajiri, na bado yuko hai, ambaye baada ya kujua kwamba ana UKIMWI, alienda akizunguka akiwapa mabibi za watu Kshs500 na kwenda nao. Kama bibi wengine wanaweza kusikiza haya maneno, kwamba mtu anakupatia Kshs500 au Kshs1,000, ujue huyo mtu ana UKIMWI. Alienda kwingi lakini alipata kitubio pia. Baada ya mwanamke mmoja kupata huo ugonjwa kutoka kwake, alimuliza: "Bwana, wewe ulikuwa na huo ugonjwa na ukanipatia? Siyo?" Bwana huyo akasema; "ndiyo".

**Mr. Mumba:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Dr. Lwali-Oyondi:** La. Dakika zangu ni chache sana. Sasa huyo mama alienda pia kwa mtoto wa huyo bwana wa miaka 21, akamdanganya na pesa na akaenda naye mara tatu ama nne. Sasa hivi, huyo mototo ana UKIMWI na alienda kumwambia huyo bwana, na akaenda mpaka kwa Chifu. Hayo ndiyo mambo yanayofanyika. Lakini mtu yeyote ambaye anambukiza wengine na huo ugonjwa ni muuaji. Kama inaweza kuthibitishwa kwamba alifanya hivyo kwa makusudi, inatakiwa apelekwe korokoroni na akae huko maisha yake yote.

Bw. Naibu Spika wa Muda, tunataka pia Wizara ya Afya ione kwamba kuna utengano katika jela ili wale wanaouguwa UKIMWI wawekwe kando. Hata mimi nikifungwa na nikiwa na UKIMWI, yafaa nitenganishwe na wengine kwa sababu kule jela-- Mimi nimekwisha kuwa huko, na kuna ushoga. Wafungwa wakiwa na UKIMWI wataambukiza wenzao gerezani. Inatakiwa jela iwe inapima damu ya watu wanapoiingia huko, wakiwa na hizo virusi, wawekwe peke yao na kufanya ushoga wao huko na kuuana huko, bila kuambukiza wengine.

Ukimwi sasa unaelekea kuu asilimia 25-30 ya idadi ya watu katika upande wa Kisumu, Nakuru na Mombasa. Yaani, kati ya kila watu wanne, mmoja wao ana ukimwi.

Kwa hayo machache, ninaomba kuunga mkono. Ahsante.

**The Assistant Minister for Education (Mr. Komora):** Thank you Mr. Temporary Deputy Speaker, Sir for allowing me to say a few words on this Motion. First, I would like to thank the Mover of this Motion because it is a Motion which is long overdue. I would also like to thank the Attorney-General for the amendment.

When hon. Munyasia was seconding the Motion, he referred to a statement by the Lord Jesus about the consequences of murder. I would also like to refer to the Bible and urge everybody, not only in this House but in the whole Republic, to read the Book of Jeremiah, where God himself, clearly spells out the punishment for unrepentant sinners. When people do not want to repent their sins and turn to better ways of living, they will get diseases and be killed by those diseases. One major thing that we must do in this nation is actually to uphold our moral standards, whether we believe in Christianity or not; whether we believe in any religion or not. God is telling Kenyans to turn to issues of morality and behave properly and avoid immorality, adultery, homosexuality and, as result, avoid HIV. This is what the Lord is saying in that Book.

The target of the Motion is, strictly, HIV. Therefore, what I understand is that its purpose is to impress on the nation that people should fight this evil disease, and also fight those people who, intentionally, go out to infect others maliciously for the purpose of killing them. Sometimes, as the Attorney-General has said, people may not even know that they are infected, but they go along with their sexual urge and do these acts with people, who are innocent. It is very unfortunate that there are certain types of men, and unfortunately occasionally a few women, who believe that the safest person to go for sex with is a young girl or a young boy. As a result, our

school girls in this Republic are becoming a very serious target of men of evil intentions. To me, those who go and do these evil deeds to young girls deserve more than a life sentence. The only encouraging thing is that the Lord Almighty, has already provided the death sentence for those who are already infected and those yet to get it, until a cure is found, which still a long way off. It behoves every leader and everybody of sound mind to protect our young girls from these people. It is very important that we all join forces with religious leaders and other types of leaders to make sure that we protect our youngsters in the schools because, already, we have evidence that this diseases, HIV, infects the larger sector of the community that is active. This disease affects the group that should be working, reproducing. This is the group that forms the major part of labour and is economically active in the nation. Therefore, every effort should be made to convince people to avoid irresponsible sex so that we can save our people.

I am puzzled that people sometimes take the law into their own hands. When they know that a person is HIV positive and is raping people's daughters or wives and he is got red-handed, wananchi take the law into their own hands and kill the man. According the law, that is tantamount to committing murder. But, what consistency is there in the law with regard to that a man who has been murdered because of raping? That man is an agent of death to innocent Kenyans. So, I would urge the Attorney-General to examine this issue very carefully. Where mob justice is concerned, if it is proved that the victim of mob justice is HIV positive, the question of imposing death sentence should be ignored. That person should be considered for life-imprisonment or manslaughter instead of facing death sentence. This is an important area.

There is a problem here since most of those who are raped are known because many cases are not reported. Therefore, the issue here is this: If we could identify those people who are HIV positive and look for ways of preventing them from engaging in active sexual activities within the population, we will be doing a better service. How many women and men report these rape cases to the police? An hon. Member said here that some women rape men also. If they do so, the men are ashamed because it is the other way round. No man would like to go and say that he has been raped by a woman.

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Assistant Minister in order to mislead the House that women cannot rape men when in India, a 15 year old child was raped by three girls until he died?

**The Assistant Minister for Education (Mr. Komora):** In fact, I have never said that women cannot rape men. All that I have said is that men feel shy in publicising their inability to have accosted a woman and getting themselves raped by women instead. The men feel shy and so they do not come to the public. But if they were to come to the public, the women would also be equally charged.

**Mr. Kiliku:** Jambo la nidhamu, Bw. Naibu Spika wa Muda. Mhe. ni msomaji wa Biblia na anajua kwamba bibi ya mfalme alikuwa akitaka kumnajisi Yusufu kule Misiri. Hawezi kukumbuka juu ya Biblia ya kwanza? Yusufu alikataa.

**The Assistant Minister for Education (Mr. Kamora):** Yusufu alikuwa kijana mzuri na Mungu alimbariki kwa sababu hiyo. I do remember about that one, but it is a fact that the Bible is specific. Unless you repent my dear brothers and sisters, we are in trouble. In all our efforts to educate our people to keep away from immorality, we should make sure that we live a clean life and avoid HIV. We should come together and actively support everybody in this effort.

With few remarks, I beg to support the Motion.

**Prof. Mzee:** Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving this opportunity to contribute on this important Motion.

There are three factors that are involved in this Motion. The first factor is the HIV disease, the second factor is rape and the third factor is the spread of HIV. Firstly, if we look at the HIV disease, it is a reality. The most unfortunate thing about the HIV disease is that it hits directly at men's pleasure. The other factor is that it is caused by a virus. I am a veterinarian and you have got to believe me. To date, there is no medicine for curing virus diseases. Up to now, there is no effective medicine for any virus leave alone for AIDS. The chances that we are going to discover any medication to cure AIDS are very, very slim - possibly, non existent.

**Mr. Achola:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Prof. Mzee not misleading this House because we have been told from many quarters that AIDS can now be cured?

**Prof. Mzee:** We have to face the reality. Up to now, there is no effective medicine for curing a virus disease because a virus particle becomes part of your body and it becomes very hard to distinguish it from any part of your body. So, it is very unlikely that we will ever get treatment for AIDS. The sad thing is its mode of transmission. It is transmitted by the mixing of fluids from one person to another person including semen. The most prevalent mode of transmission is through sexual contact, and because sex is a very important aspect of a

human being, it centres around the fact that we are existing and sex is recreated. Without sex, probably we would not be existing in this world. The HIV disease is unlikely as a disease to have a treatment. The only way we can treat AIDS is by management. We have been able to control cancer through management. We should be able to control AIDS through management. Management here calls for strict morality. There is no shortcut. We need that. Christian, Islamic and African traditions are all against free or uncontrolled sex and adultery. We have to forget about Western standards of life. I have seen advertisement on television in America saying that the Americans cannot change their way of life. Sex is essential to their way of life. So, they are advocating for the use of condoms. I do advocate for the use of condoms.

I do advocate for the use of condoms but it should be secondary to morality. Africans, muslims and christians are all against adultery and if we are very faithful to our partners, then there is absolutely a very little chance of spreading AIDS. Faithfulness to our partners should be advocated even if one is a polygamist who has five or four wives. If all of you are faithful to one another and no other party interferes with your marriage and introduces AIDS, then morality should prevail. So, being faithful to your partner is a very very important aspect of controlling the HIV virus and we should teach one another about this deadly disease by talking about the use of condoms and about its treatment and other protective measures against this disease.

The second thing is rape. Rape is the most inhuman act which can be committed against a woman. It is a violation of a woman's rights. All over the world, you will find that people are against rape. A Member of Parliament, hon. Mak'Onyango, said that he does not believe there is anything called rape. Rape is a very serious crime and if people say that they do not believe in rape, they do not have a place in this House. One thing about rape is that the rape cases in this country are mishandled. They are mishandled by the police and the doctors.

The only way we can deal with rape cases properly, Mr. Attorney General and Mr. Temporary Deputy Speaker, is through proper handling of the rape victim who is the woman. The best person to handle a rape victim right from the police station is another woman. Therefore, I advocate that all police stations should have policewomen to handle rape cases and that policemen should not be allowed to handle a rape case at all because they are unsympathetic to the victims. They mishandle them and make them feel guilty and consequently run away from the police station. The second person who is the doctor should be female because female doctors are more understanding because this problem is strictly confined to women. When people talk about men being raped, I refuse that by saying that men can only be sexually harassed but they cannot be raped. It is a very ---

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I just want to inform the learned professor that I agree with what he has just said on both accounts that police stations should let policewomen deal with these rape cases. So, I agree with you.

**Prof. Mzee.** Thank you, Mr. Attorney-General.

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. When the Attorney-General says that he agrees with what hon. Prof. Mzee has said, does he mean that he agrees that men cannot be raped and harassed sexually? Does he agree with that statement?

**Prof. Mzee:** Mr. Temporary Deputy Speaker, Sir, there is another aspect to this problem and it is the spread of HIV. The spread of HIV is very serious.

With these few remarks, I beg to support.

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

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard what the Attorney-General said and what the hon. Member said as far as the women are concerned. But when men rape the cows, does that still stand or should we get a veterinarian to deal with people who rape cows?

*(Laughter)*

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

**Mr. Gichuki:** Thank you Mr. Temporary Deputy Speaker, sir, for calling upon me to reply to this vital Motion. Unfortunately many Members wanted to contribute to this Motion but due to the time factor, I am limited because I find myself with only about five or ten minutes since I would like to give another member maybe two minutes to say one or two words.

**The Temporary Deputy Speaker** (Mr. Ndotto): I did not get your statement.

**Mr. Gichuki:** Mr. Temporary Deputy Speaker, Sir, I was seeking your guidance on the amount of time I have because I wanted to give another Member two minutes of my time.

**The Temporary Deputy Speaker** (Mr. Ndotto): You have only ten minutes.

**Mr. Gichuki:** Thank you Mr. Temporary Deputy Speaker, Sir. Let me give hon. Kiliku and hon.

Shikuku two minutes each then I will reply.

**Mr. Kiliku:** Asante sana Bw. Naibu Spika wa Muda. Mimi nilikuwa nauliza tu baada ya Hoja hii kupitishwa, tafadhali Waziri wa Afya apeleke notisi katika bandari ya Mombasa kwa wale watalii wanaoingia kule. Pia apeleke notisi huko Moi International Airport, Jomo Kenyatta International Airport ili kule upande wa Uganda, wale wakimbizi wote wanaokuja hapa, wajue sasa kuna sheria kuwa mtu akipatikana ananajisi ama mtu akifanya mapenzi akijua ana AIDS, ajue ataadhibiwa vikali hapa hapa. Hii ni kwa sababu wazungu hawadhamini Mwafrika. Na hiyo isipofanyika, itakuwa wakati mwingine tunasiadia lakini wakati mwingine tukiwaogopa hawa wazungu itakuwa ni shida. Hii iwe sheria yenye kuwaadhibu wazungu ama wageni wowote wanaoingia Kenya ambao wana ukimwi. Ukimwi umeongezeka katika Kenya kwa sababu wakimbizi ni wengi ambao huja Kenya wakitoroka vita katika nchi zao. Hoja kama hii ikipitishwa, maanake ni Hoja ambayo inahusisha kila mtu, itambidi Mkuu wa Sheria kutangaza jambo hili ili liandikwe katika magazeti ya kitaifa kwamba Bunge la Kenya limepitisha sheria hii ili watu wote wasome.

Kwa hayo machache, naunga mkono.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, namshukuru sana Mbunge aliyeleta Hoja hii. Tuliambiwa hapo mapema kwamba Wabunge hawahusiki wala hawasemi lolote juu ya ukimwi. Leo, na dunia ijue kwamba Wabunge hawakuwa wamepata nafasi ya kuweza kuzungumza mambo ya Ukimwi. Leo tumepata nafasi hii na tumepitisha. Kuna mambo matatu ambayo nataka kumjulisha Bw. Mkuu wa Sheria. Kwanza tukishapitisha Hoja hii leo, tunataka tutakaporudi kutoka likizoni, tuwe na Mswada katika Bunge hili kuhalalisha maneno hayo. Hii ni kwa sababu Hoja peke yake sio sheria.

Pili, ni lazima Mkuu wa sheria aweke kifungu kimoja katika sheria hiyo kuwahusisha wale wanaonajisi wanyama kwa sababu juzi mama mmoja aliamshwa kutoka usingizini ng'ombe wake ikilia kwa sababu mtu alikuwa amemvamia. Hayo si mapenzi; ilikuwa ni unajisi. Sasa yeye amekubali kwamba wale wanaonajisi akina mama---

**Mr. Wetangula:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to inform the hon. Shikuku that first an animal cannot be raped and secondly the law provides for those who committ bestiality on animals to go to jail.

**Mr. Shikuku:** Asante sana Bw. Naibu Spika wa Muda. Sisi tunajua unyama uko lakini wajue kwamba hii ni aina spesheli ya unyama kwa sababu kama yule mtu anayenajisi ngo'mbe ana ukimwi na anapanda huyo ngo'mbe na sisi hula nyama ya ngo'mbe, tutakuwa namna gani? Hii ni jambo lingine na ni lazima Mkuu wa Sheria aangalie maneno hayo kwa sababu yanahatarisha maisha yetu.

**Mr. Magwaga:** On a point of informatiion, Mr. Temporary Deputy Speaker, Sir. My information to the hon. Member is that even chicken, especially in Kakamega, are also raped!

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, nakubalia na hayo kwa sababu hii ni Hoja ambayo imepitishwa.

Naunga mkono.

**Mr. Gichuki:** Thank you, Mr. Temporary Deputy Speaker, Sir. We can notice the heat the debate on the Motion has generated and it is unfortunate because we did not enough time because I am aware many hon. MPs wanted to contribute towards this Motion. In fact, after this, we request the Attorney-General, like hon. Shikuku has said that after coming back from Recess, we should be able to have a Bill to amend the law; and at the same time we should have a conference for all shades of leaders in this country, so that we can be able to discuss this national catastrophe.

Mr. Temporary Deputy Speaker, Sir, whereas I agree with the amendments of the Attorney-General, I would like to draw his attention to a few issues. Whereas I agree with him where he encompasses other personalities to spread the virus without necessary being rapists because I have a case where, and I would like the House to hear this, somebody with HIV positive gave it to a school girl, and he is a person I know very well. Then the school girl knew that she got this AIDS virus from this person and she revenged with the son of the said person who was her boyfriend. She enticed the young man to have sexual intercourse with her and now the son of this person got the virus. You can see that vicious circle. This is deadly because our people are going to kill each other. Having said that, I would request the Ministry of Health to be more vigorous -, and I can see the Minister on the Front Bench - in the campaign and should look for more funds to conduct seminars across the country so that our people are aware that this disease is here and it is going to finish our people.

**Dr. Lwali-Oyondi:** The hon. MPs should also be given a chance to attend those seminars.

**Mr. Gichuki:** The hon. MPs, as hon. Dr. Lwali-Oyondi, says should be able to go across the country and be invited to seminars, and talk about this deadly disease because it is a serious issue because sometimes we may find ourselves leading no people because they are finished because of AIDS. It is very serious. I know the



Government could be shying off because of the tourist industry, because if they accept that they acknowledge that AIDS is endemic with us and is spreading at an alarming rate; the Government fears that it is going to affect the tourist industry, but we would rather forego three to five years of flourishing of the tourist [Mr. Gichuki] industry than allowing our people to die just like that. This is a sacrifice the Government should undergo.

Mr. Temporary Deputy Speaker, Sir, having said that, recently Prof. Obel talked about the condoms being laced with HIV positive and that is why I am insisting that the Government is not serious with this issue. The Minister for Health should hear this. Prof. Obel talked about condoms being laced with HIV positive and to-date the Ministry has kept mum. It has not come out with a statement to deny that the condoms are not laced with HIV virus as Prof. Obel stated. This is a serious matter and the Ministry should come out openly and declare its stand on the condom issue as Prof. Obel said. I want to---

**The Minister for Health** (Mr. Angatia): On a point of information, Mr. Temporary Deputy Speaker, Sir. I have said here very many times that what Prof. Obel said was incorrect. He is being dishonesty and is going to face thorough grilling by the Medical Practitioners and the Dentist Board for spreading alarmist information which is completely false. Condoms works, at least, up to 70 per cent very well and we encourage that they be used rather than to force people to death.

**Mr. Gichuki:** Thank you, Mr. Temporary Deputy Speaker, Sir. I call upon everybody, especially the hon. MPs as the leaders, the media and the clergymen to spread the gospel that AIDS is with us and our morals should be high, especially, we leaders because we are also not the best morally.

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

*(Question of the Motion as amended put and agreed to)*

Resolved accordingly:

THAT, in view of the fact there is a tremendous increase of rape cases; and, being aware that most of the rapists are HIV positive and that their victims are in most of the incidents infected with HIV virus; and, noting with concern that the courts continue to mete light sentences to the culprits and realising that there is an urgent need to minimise HIV infection in the society, this House calls upon the Government to introduce an amendment to the Penal Code, Cap 63 of the Laws of Kenya, to provide for a mandatory life imprisonment to rapists who are clinically proved to be HIV positive; and to any person who knowingly that he or she is HIV positive deliberately or intentionally infects the HIV virus to the unsuspecting person.

**The Temporary Deputy Speaker** (Mr. Ndotto): Next Order! Hon. Kirwa.  
SELECT COMMITTEE TO PROBE KCC

**Mr. Kirwa:** Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me this opportunity to move this Motion:-

WHILE, taking into consideration the enormous difficulties various sectors of the economy have undergone due to liberalisation processes and noting that the agricultural industry has borne the brunt of these economic adjustments and inherent mis-management particularly in the dairy industry, this House resolves to set up a Select Committee to look into:-

- (i) the main causes that have run down Kenya Co-operative Creameries (KCC); and,
- (ii) give recommendations on how the organisation can be put on sound financial footing.

Mr. Temporary Deputy Speaker, Sir, the thrust of this Motion is to give it the national perspective the KCC has because the history of the organisation dating back 60 years ago, has had a lot to the growth of the economy of Kenya since it was started by the former settlers who decided to come up together and bring up an organisation that could assist in the processing and marketing of their milk products. This has taken a long period of time for KCC to grow to the present state. The initial idea of setting up KCC, as I have said, was principally to process and market the mild products of former settlers. This, they did by introducing some quota system such that no settler was allowed to supply more milk than was required or than the capacity of the processing plant was able to cope with.

This second international perspective should allow us, as leaders of this country, to protect an organisation such as KCC through banning of any importation of milk products, so as to take care of the domestic production and consumption such that any importation is only done when there is some deficit between production

and consumption. This, if it is done, is likely to cushion the various problems farmers have faced over the last 20 years or so because of the different reasons I will be able to give in this particular Motion.

Mr. Temporary Deputy Speaker, Sir, as I have said, KCC as it was growing, expanded to various parts of this country. As we are talking, we have got so many branches spread all over the country and these branches have one thing in common. That is the umbrella marketing organisation. The rest of the processes differ from factory to factory. Some of the factories, once they receive fresh milk, they process various milk products such as butter, milk powder, UHT and so on. This makes KCC a very unique organisation.

Mr. Temporary Deputy Speaker, Sir, this makes Kenya Co-operative Creameries (KCC) a very unique organisation which allows it to have a co-ordinating body nationally, to ensure that what is processed in Kitale can be consumed in Mombasa and the cost of transportation is spread to all the producers. This has facilitated two things; food security for this nation because KCC could ensure that the farmer in Kitale does not unnecessarily suffer from transportation cost for the consumer in Mombasa or in Nairobi. I am saying this because quite a number of leaders have been clamouring for the decentralisation of the organisation and their argument has not been plausible enough because KCC happens to be unique as I have said in terms of production and consumption. While the main areas of production are in Central Province and parts of the Rift Valley Province, the market for milk products happens to be in areas some of which are far away from the areas of production.

Mr. Temporary Deputy Speaker, Sir, as we are talking now, here in Nairobi, despite the mushrooming of all these other milk processing plants, KCC still controls 80 per cent of the milk consumed in this City. Likewise, Mombasa consumes over 90 per cent of KCC milk. Some of this milk that we have in Nairobi and Mombasa happens to come from as far as from Sotik and Kapsabet in the Rift Valley Province.

Mr. Temporary Deputy Speaker, Sir, I hope you will be able to protect me from the unusual interjection by one of the Members here, along the lines of the argument that I have, because the rules of this House stipulate that if somebody has got a contrary argument he has got a chance to deliver his argument to the House. It is not fair for somebody to interject while seated just to distract me from my line of thought.

As I was saying the area of production and the area of consumption are totally mismatched to the extent that any thinking of decentralisation of KCC, purely for political reasons, is not going to be allowed by bright thinking Kenyans. All this has been said in various fora and the people who have been saying it have never consulted us as leaders from milk producing areas. I do not necessary have to be the greatest producer of milk, but by the fact that I represent a very handsome population of producers gives me the authority to speak on behalf of the milk producers. I am saying this because there have been a lot of conflicting statements made by different Cabinet Ministers regarding KCC survival and to the effect that KCC is going to be decentralised. The debate been carried out along very parochial lines by some Members. They have claimed that those of us who are talking on behalf of KCC, have got a political agenda. May I declare here, and now that the only political agenda I have is that I was elected to this particular House to represent my people. I still believe that, that mandate still prevails and the same applies to all the Members except those who were nominated by the President. So if other Members have shirked their responsibility to represent their people or they do not ask for a pint of milk to talk about, they have no business in apportioning blame, or trying to create political angle in a very innocent and noble objective such as this one of KCC.

Mr. Temporary Deputy Speaker, Sir, I have said before that any war the Government wages against the farmers, and history all over the world as proved me right, it does not win. I am only quoting incidents of history that there is no Government that has waged war against farmers. I am telling this Government that they have no business in imagining that they can wage a war against KCC and expect to succeed. This I am saying with authority because I do regular consultation with my constituents and over the weekend, I was doing consultation on this issue of KCC. Farmers, those who support the Government and those who do not support the Government, are saying that the Government must go according to the Policy Framework Paper that indicated that the Government was going to hand over the total management of KCC to the farmers by March, 1996. If anybody goes against that, we are going to speak out. Time has come for all the leaders to realise that we were elected here and we were elected to come and speak on behalf our people. If any Member does believe that he is elected here for different reasons, then God forbid, that Member should not be in this House.

Mr. Temporary Deputy Speaker, Sir, the genesis of KCC problem is not liberalisation alone as many Members have wanted us to believe. The question of KCC has been partly because of liberalisation. Liberalisation has caused a lot of problems. But liberalisation alone is not the problem because in all countries all over the world, when it comes to food, certain conditions must be met before you import or you export food to those countries. Likewise, Kenya must have a serious food policy where any amount of agricultural products imported must be imported to take care of the deficit between production and consumption. A **[Mr. Kirwa]** lot of milk products that were imported one year ago in the name of liberalisation were imported by well connected

directors in the same organisation (KCC). When we say that these people talk of a political equation to this particular matter---

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The statement being made by the honourable speaker on the Floor of the House is a very serious one. We who are also representing farmers here, would like to know which KCC directors, imported this milk into this country?

**Mr. Kirwa:** Mr. Temporary Deputy Speaker, Sir, it may be abortive for me to start naming names right now. I have a report by a Committee which was instituted by the Government. The Committee was formed on 10th May, 1995. The Task Forces Report, for reasons known by the Government has not been released - When the Government Responder stands to reply he should tell us why that report was never released. In that report, all the companies owned either by those Directors or by their relatives or by people suspected to be close to those Directors are there. In that report the names of those companies are mentioned and we know who owns those particular companies. So, at that particular stage, we will be able to appropriately name the individuals.

Mr. Temporary Deputy Speaker, Sir, I was saying that the genesis of the problem is not liberalization at all. People took advantage of liberalization to import food products into this country. So, when we are talking to the Government, it is because it is the custodian of every policy. It is not Kirwa or the Opposition that formulates policies, but the Government and it is supposed to implement them. What we are saying is that, as far as food is concerned, we want the Government to be vigilant. Any importation of food must take care of the deficit.

Secondly, some of the individuals who have been talking about Kenya Co-operative Creameries (KCC) have been hiding behind Dairy Board pretending that they have got a role in the liberalized market. The Dairy Board Act is superfluous and should be done away with. It does not need any amendment because from the beginning to the end, it serves no function as far as milk processing is concerned.

Let us look at the various reports the Government has been trying to compile through the various Task Forces. I do not understand why the Government, because of public outcry, decides to form a Task Force. We spend public funds, solicit information from members of the public, give them a lot of expectation and at the end of the day, that report is shelved forever. We have various reports that have not been made public. For example, we have the 4th All Africa Games Report which was never made public. In the last Parliament, I asked a Question on it and the then Minister for Culture and Social Services, hon. Njiru, told me that he was going to release the report. Parliament was dissolved, we have come back and nothing has been said about it.

The Government decided to form various Task Forces, one of which was charged with the responsibility of giving recommendations on how KCC can be improved. That report was presented to the Government, but nothing has come out of it. Before that, so many Task Forces had been formed in KCC, some operation committees and they were even talking of a commission and so on, and all these had duplicating functions. As you may see from the report - if the Government will allow you to see - some of those committees are the ones that left KCC in this particular state.

I also want the Ministry of Co-operative Development to tell this House whether the portfolio of KCC falls under their docket or under a different Ministry. Why I am saying this is because, last year, when I asked a Question, the Ministry of Agriculture, Livestock Development and Marketing said KCC does not fall under their docket. Later on, the Minister was at the fore-front in trying to castigate KCC Board of Directors and he was getting undue air-time on KBC and various media castigating KCC. He said that KCC Board of Directors is the one which has put KCC into the present state. We know that some of those directors were in the previous board, but they never had any difference because they used to get orders from elsewhere as it is indicated in the Task Force Report. Later on, the Minister decided that after all he had no war with Mr. Metto. It is not the issue of Mr. Metto *per se*, but the issue of KCC. We want KCC to be run on a sound financial footing. I do not care whether Mr. Metto is the Chairman, what we want is this organization to be run well. Those who have no milk in their own constituencies had better stop talking about milk matters. We cannot become perpetual producers and processors. We are saying this and it is going to be a political rip off. It is going to be a very big explosive issue and I challenge anybody in any area to come where farmers produce milk and see that they cannot win the argument.

Thirdly, the Minister in the Office of the President, hon. Kones, has been talking about KCC matters. So, we want to know where KCC belongs. We cannot pretend that it belongs to all the Ministries.

With those few remarks, I beg to move.

**Dr. Kituyi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to second this important Motion and, from the outset, state that I will deal a bit substantively with the matters of the details of corruption and mismanagement of KCC and express some concern about why, even under this era of multipartism, senior officers in public corporations, parastatals and Ministries continue abusing taxpayers' money and hide under liberalization.

Most Kenyans knew that KCC was ailing and many Kenyans were wondering why Government kept

very quiet when the previous Board of KCC was running down this important corporation. Many Kenyans wondered why Government always took sides to reinforce security of directors who were presiding over the destruction of KCC. What was most strange to Kenyans was that, as soon as a new Board was constituted, top leaders including the very top leader of Government, started getting indulged in very personalized attacks against the management of KCC. Some of the reasons are now coming to light because although Government instituted the task force to look at the problems of KCC the Government has had its own reasons to try to shelve that report. There is no justification why that report has not been made public. I have with me a copy of the Task Force Report which the Kenya Government has refused to bring to light. The report lists the companies and individuals who have been involved in the theft of KCC and they are all very well connected to the political establishment in Kenya.

I will just give a few examples. First, the normal lines of management of a corporation collapsed in the last five years in KCC where directors could direct the financial controller or the managing director on petty things. For example, a junior member of staff who is a friend to a director asking him to order the managing director to allocate a high-cost house to such a junior staff. There were cases where companies owned by directors, a rider, "The quotation for supply of equipment to KCC", and then at payment, the managing director was made to pay above the quoted prices that they had invoiced. I will give some examples of that. In the period 1994/95, out of over-invoicing, the difference between the actual price and price paid through interference by KCC management directors, on tyres alone, they lost an amount of Kshs5,170,000; furnace oil Kshs17,856,000; shrink wrappers Kshs 15,980,1000; detergents Kshs4,800,000; hydrogen peroxide Kshs 12,020,000; pre-pack polythene Kshs3,883,000; spare parts Kshs6,809,000. The company which appears in all major scandals at KCC, Katesai Marketing Group, accounted for a theft of Kshs117,126,116. The variation of price in the invoice after the supply of equipment cost KCC Kshs183,645,419.

As if that is not enough, there have been other cases where the persons involved realised that they could not go on forever. They realised that the owners have discovered and they were going to be thrown out of office. So, what else did they start? They started on massive purchasing of equipment required to last up to ten years. What sense does it make, for KCC to purchase packaging equipment for milk, which will last them for the next ten years? Stocks which were purchased by the previous Board just before they left office, would not be needed for the next five years, amounted to Kshs120,385,808.

One can go on and on. There were indexes of invoices from Katestyle Marketing Group. They sent an invoice for payment, and then one of the directors ordered the financial controller to pay them above the invoice from the company itself. Many other companies that are well connected to the top management in KCC are listed in the report. I do not want to delve much more into that, except to demand that the Government should stop the continuation of misbehaviour of attacking the current Board, which is trying to correct the ills that were done by the Board comprising of hon. Chebelyon and Mr. Raymond Moi.

Secondly, I demand that those who have stolen public money in corporations like KCC should stop hiding in the names of their fathers. Last week, Mr. Raymond Moi wrote a letter to *People Magazine*, because it had accused the Board, to which he was a member. He was very influential. He is one of the persons directing the thefts. He is threatening to sue. Let Mr. Raymond Moi know that whether he is the son of President or not, a thief is a thief, and he cannot intimidate this country because he is President Moi's son.

**Mr. Shikuku:** Amen! Amen!

**Mr. Nthenge:** There is no good thief!

**Dr. Kituyi:** The most painful thing for hon. Members of this Parliament is that, even as we entered the multi-party era, even as we talk of theft in the public corporations, principle players in this exercise are continuing. They do not seem to have any shame, even as we talk about them here. As we have been talking, I will just use a slightly different example here. This House has been discussing the theft of public resources, discretion enjoyed by public officers and in 1996, even after the Public Investments Committee (PIC) of this House has named some thieves who should never hold any public office again and so on, the same culprits continue to steal in 1996. Today, the Kenyan taxpayer is on the brink of losing a lot of money because of a conspiracy between the Permanent Secretary, Ministry of Lands and Settlement, Mr. Sang, and one Elijah Wasike Mwangale.

I am going to table some documents which show how this outrageous thing is happening.

The first thing is that after one Elijah Mwangale had been beseeching the Government and [Dr. Kituyi] begging to be forgiven over a farm called Quintin Farm in Trans Nzoia, he went to State House and persuaded some people that he should be compensated. The Government sent in valuers to Quintin Farm in Trans Nzoia. The Government valuer assessed the farm as worthy Kshs16,100,000. After doing that, Elijah Wasike Mwangale went to Mr. Sang, the Permanent Secretary in the Ministry of Lands and Settlement and told him to---

**The Temporary Deputy Speaker** (Mr. Ndotto): Order, Dr. Kituyi! As much as what you are saying might be correct, and you may be having documents to prove it, it does not relate to the Motion before the House in any way. Therefore, you should stick to the Motion.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I have been very careful on this issue, and you would want to read this Motion, that the preamble of this Motion is not about KCC. It reads as follows:

"WHILE taking into consideration the enormous difficulties various sectors of the economy have undergone due to liberalization processes and noting that the agricultural industry has borne the blunt of these economic adjustments and inherent mismanagement particularly in the dairy industry---"

I am giving an example of the pain that is borne by the agricultural sector because of mismanagement.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order, Dr. Kituyi! I have ruled you out of order. You cannot do that. Please, stick to the Motion which is before the House.

**Dr. Kituyi:** Sticking to the Motion, I am insisting that Mr. Sang should not conspire with Mr. Mwangale to steal Kshs48 million from the taxpayers!

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! I think you should have respect for the Chair. Once I tell you that is out of order, please, stick to the Motion before the House. I know that you have facts on what you are saying, but you can state them elsewhere on another occasion. We have a Motion before the House.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, it is so important that we do not deal with only matters affecting KCC. All the thefts by people who are well-connected with these political establishments have to be dealt with. The starting point is at the former directors of KCC who should be scrutinized and taken to court.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Mulusya:** Mr. Temporary Deputy Speaker, Sir, I thank hon. Kirwa for bringing this timely Motion. Farmers in this country have been misused. There is no other country in the world, where the most hard-working and those who spend strenuous hours in their farms have been made poor apart from Kenya. There has been concerted efforts by this Government, both Kenyatta and Moi Governments, to make sure that farmers are ripped in the open. I mean that there is nobody now, who prides in being a farmer. It is better to call yourself a businessman than to call yourself a farmer.

## QUORUM

**Mr. Moiben:** On a point of order, Mr. Temporary Deputy Speaker, Sir. While I would not like to interfere with my friend who is contributing because I know it is important, you will realise that not even the Assistant Minister nor the Minister for Co-operative Development is here, although this is a very important Motion. Can we hold up and say there is no quorum and then call them to come in? This is because it is very serious.

**Mr. Mulusya:** Mr. Temporary Deputy Speaker, Sir,---

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order, hon. Mulusya! There is no quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Hon. Mulusya, continue. There is a quorum now.

**Mr. Mulusya:** Mr. Temporary Deputy Speaker, Sir, I was saying that today, farmers do not want to be called so. This is because when you call yourself a farmer, it is as if you are giving this Government a licence to come and steal from you. Coffee, tea and dairy farmers have been losing billions of shillings because of this Government. The fact is that, that money never goes to the Government because it is never taken in form of tax. It is money which, through collusion among senior Government officers, ends in pockets of very few individuals. We are not referring to everybody who is in KANU. We are talking about a particular class of people. They may not even be more than 100. These people have conspired to fleece farmers.

Let me go back to the Kenya Co-operative Creameries (KCC). Last week we saw a conspiracy to set trucks and a whole factory on fire. This fire did not result from an electrical fault, but from a conspiracy.

This is a conspiracy to burn the whole KCC, and tomorrow there is somebody ready to buy it because they have already made money out of it. There is this company called Sundowner which belongs to Raymond Moi, who is a past director of KCC. They sell items to KCC at a higher price than the normal market price. For example, thermometer which is being sold in the open market at Kshs450, Sundowner sells it to KCC at Kshs8,447. There is another type of thermometer which can be bought from Howse and McGeorge, which is a comparative source, at Kshs250, but it is sold to KCC by Sundowner at Kshs3,168. An item which costs Kshs680, is sold to KCC by Sundowner at Kshs2,184, an item which costs Kshs2,180 is sold to KCC at Kshs12,144. Another item which costs Kshs150, is sold to KCC by Sundowner at Kshs3,936. Then there is an item known as Buretted Technical Automatic Zero-Fitted which costs Kshs15,2000 in the open market, but is sold to KCC by Sundowner at Kshs63,840. This is total rip-off! Recently, these former directors deliberately decided to ground 32 tankers which haul milk from the milk zones

to Nairobi and other areas. They grounded them when they are serviceable and hired private trucks which belong to them. Since those directors were removed, those 32 trucks are now on the road.

The other day without any justification, those directors employed 377 watchmen which cost them an additional Kshs22 million on top of the heavy budget of KCC payable for wages. When we say that these people are thieves, whether some of them are sons of the President or the "Government", they should rot in jails. They do not deserve to go anywhere else. If this Government does not take any action against that young man, another government will very soon take action on him and he will be a jailbird. We cannot afford---

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! Hon. Members the House is now adjourned until this afternoon at 2.30 p.m.

The House rose at 2.30 p.m.