

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 16<sup>th</sup> July, 2014

The House met at 9.30 a.m.

*[The Deputy Speaker  
(Hon. (Dr.) Laboso) in the Chair]*

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Order, hon. Members! We do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

Hon. Members, we now have a quorum. The House is now properly constituted. We can start business.

STATEMENTS

**Hon. Deputy Speaker:** Let us start with the Statement requested by hon. Njogu Barua. This was to be responded to by the Leader of Majority. Is the hon. Member in the House? He is not here.

We will move on to the next one requested by hon. Wesley Korir. This is to be responded to by the Chair or the Vice-Chair, Departmental Committee on Defence and Foreign Relations. Yes, hon. Wamalwa.

**Hon. Wakhungu:** Thank you, hon. Deputy Speaker. On behalf of the Departmental Committee on Defence and Foreign Relations, I rise to respond to the Statement request by hon. Wesley Korir, the Member of Parliament for Cherangany Constituency.

Hon. Korir requested a Statement from the Ministry of Defence on the following issues:-

- (1) the financial compensation if any---

**Hon. Deputy Speaker:** Order, hon. Wamalwa! Are we responding to a person who is in the Chamber or not? Is hon. Wesley Korir in the Chamber? I think we had agreed that when a Member requests a Statement, he or she must be in the House for it to be responded to.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, last week, there was a new precedent set on that matter. When the hon. Chair of the Departmental Committee on Agriculture,

Livestock and Cooperatives had an answer for hon. Abass who was not there, the Chair ordered that he could table the report for hon. Abass to read in future. That precedent was set last week.

**Hon. Deputy Speaker:** I think if the respondent is ready and the Member is not here, we will take that response. Therefore, we will not have any supplementary questions on the same. Hon. Wamalwa, could you table your response?

**Hon. Members:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order, hon. Members! There was a Member who requested the Statement and hon. Amina has given me a precedent that was set last week. What we can do, which we have done before, is to go through the other Statements. We have been asking the office to inform and remind Members that their statements would be read this morning. So, we will do a first round of the Statements that are on the Order Paper. If we call them out for the second time and the Members are not here, we will make that decision of tabling the Statement. This is the ruling. So, can we, first of all, proceed with the third Statement?

**Hon. Members:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order! Hon. Members, what is the excitement all about? Yes, hon. Wamunyinyi.

**Hon. Wamunyinyi:** On a point of order, hon. Deputy Speaker. It is really not an excitement. There was a Statement sought by the Member for Cherangany. I want to seek the Chair's guidance in relation to a response to a Statement sought by the Member for Cherangany. Hon. Wamalwa who has just attempted to respond to the Statement is the Deputy Chief Whip of the Opposition, and he is a Member of CORD. I wonder how he can try to respond to a question on behalf of the Executive. This is important and we need to have it clarified.

(Applause)

**Hon. Deputy Speaker:** Order, hon. Members! I think this is not a precedent. It has happened before. Hon. Wamalwa is responding as a Member of the Committee and he is not responding on behalf of CORD. He is responding as a *bona fide* Member of the Committee of Defence.

Hon. Members, I am sure you are well aware that what has led us to the issue of calling the Cabinet Secretaries to the Chamber to respond is partly because of the complications that you are raising in the House at the moment.

Hon. Members, let us proceed as we have agreed. First, we do one round and make the decision on tabling in the second round.

Let us go to the Statement requested by hon. Halima Ware. First of all, is she in the House? Hon. Members, this is going to be another serious matter. This is because if you are informed that the Statement you have requested will be made, you know when the House starts on a Wednesday morning. Hon. Halima is also not in the House?

**Hon. Members:** She is here!

**Hon. Deputy Speaker:** The response is coming from the Chair, Departmental Committee on Administration and National Security. Is the Chair in the House? I can see the Vice-Chair. Have you been detailed to answer this question?

**Hon. Lentoimaga:** Hon. Deputy Speaker, I do not have that Statement for hon. Halima but I have the fourth Statement. I am not ready with the third one.

**Hon. Deputy Speaker:** There seems to be a problem. We cannot be listing Statements on the Order Paper if they are not ready, or if they are not going to be available. I am told there is already a response here. Let us go to the next one and then we will do the final round.

Is hon. Moroto in the House? I can see him in a very flashy, good colour.

**Hon. Members:** Jogoo! Jogoo!

**Hon. Deputy Speaker:** I can see that he is still very passionate about the *jogoo* party.

#### ASSAULT OF MR. WILLIAM NG'ORIS BY POLICE OFFICERS

**Hon. Lentoimaga:** Thank you, hon. Deputy Speaker.

On 6<sup>th</sup> June, 2014, hon. Moroto, the Member of Parliament for Kapenguria Constituency, requested a Statement regarding the assault of William Ng'oris of Keese in Kwanza Sub-county, Trans Nzoia County. The hon. Member alleged that Mr. Ng'oris was assaulted and detained in Kitale Police Station by police officers on 1<sup>st</sup> June, 2014. However, the Officer Commanding Police Station (OCS) instructed that he be taken to hospital while the District Criminal Investigations Officer (DCIO) promised to undertake further investigation into the matter. The victim was arraigned in court and no single charge was preferred against him, and was subsequently released.

The hon. Member sought to be informed on the following:

1. the identity of the police officers who assaulted the deceased;
2. the person or authority that instructed the police officers to arrest him;
3. measures taken by the Government to ensure that police officers involved in similar cases are brought to book; and
4. the possibility of the Government to meet the medical costs incurred by the said victim and compensation for unfair arrest.

The Cabinet Secretary has written a Statement and wishes to state as follows.

In May, 2014, the DCIO, Kitale, received information that a suspect, Mr. William Ng'oris, who was under police investigation, was involved in commission of various crimes, including robbery and an assault in Kwanza Division of Trans Nzoia County. Among the crimes suspected to have been committed by the suspect was the assault of Salome Nyambura, who was grievously shot with an arrow on the head while attending a Chief's meeting in Chepchoina Settlement Scheme. It was also alleged that the suspect was involved in two other cases of murder and arson, which were already before court.

Subsequently, on 1<sup>st</sup> June, 2014, CID officers from Kitale DCIO's Office, accompanied by GSU officers visited William Ng'oris' home. They arrested the suspect and searched his house for firearms in vain. However, upon interrogation, and after his failing to satisfactorily answer some pertinent questions, the officers arrested him and booked him at Kitale Police Station vide OB No.19 of 1<sup>st</sup> June, 2014. The following day, the OCS went to the police cells on a routine visit and the suspect complained of dizziness. The OCS, therefore, instructed a police officer to escort him to Kitale District Hospital. The visit to the hospital was booked under OB No.45/2/6/2014. He was

examined by the doctor who prescribed some painkillers and allowed him to go back to the cells, where he was booked vide OB No.50/2/6/2014.

Although after further investigation the police could not gather sufficient evidence to charge the suspect, it was apparent that he was instrumental in the commission of various robberies within Chepchoina and its environs. It was, therefore, found necessary to take the suspect before court and bind him to keep peace under Section 43(1) as read together with Section 46(a),(c) and (d) of the Criminal Procedure Code before the Chief Magistrate's Court in Kitale in a miscellaneous application. He signed a bond to that effect.

The Government is not aware that the suspect was assaulted during the arrest, interrogation or while in police custody, nor did he complain to any senior officer, the doctor who attended to him or the court when he was being bonded. The arrest of the suspect was informed by the intelligence gathered during investigation of various crimes in the area. Police officers are bound by law and the Constitution while interrogating suspects; any officer found to have tortured a suspect in custody is dealt with in accordance with the law.

The Ministry is, therefore, not liable to either meet the medical costs or compensate the suspect.

**Hon. Chumel:** Thank you, Deputy Speaker. I just want to declare that the Statement given here is not up to date, because this man was--- There are some corrections that I wanted made, especially with regard to my question on the identity of the police officers who assaulted the victim – they have written “deceased,” yet this guy is still alive. Mr. William is still alive. I need to know the identity of the police officers who assaulted Mr. William Ng'oris. According to this Statement, GSU officers from Kerita went to that place. Not all the officers in Kerita went there. Already there is damage done to the house of William Ngoris. Even young children were hurt. Mr. Ngoris has documents from the hospital. When we took the documents to the police, so that he was given a P3 Form, they were rejected.

**Hon. Deputy Speaker:** What is your clarification?

**Hon. Chumel:** In fact, there is nothing we can say about this matter here. I wanted him, or you, to declare that I have time with this Committee. I would like to give them the documents, so that they go and examine William Ngoris' house and himself. There is nothing we can argue here. When they talk of Chepchoina, it is just like Mount Kenya and Mount Elgon. I think there is a kind of a mix-up and cover-up. I know that those who assaulted Salome are being protected up to now because I come from that area. They are now trying to victimize William Ngoris.

**Hon. Deputy Speaker:** So, you are not satisfied?

**Hon. Chumel:** No, I am not satisfied.

**Hon. Deputy Speaker:** Hon. Maanzo, are you interested in seeking further clarification on the matter?

**Hon. Maanzo:** On a point of information, Hon. Deputy Speaker, I would like to seek clarification. Since this suspect was kept in custody for more than 24 hours, was that in accordance with the Constitution? This suspect was taken to hospital for medication. Is that not an indication that there was a medical report and, therefore, somebody should be liable for assaulting the suspect?

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, I want to seek clarification from the Vice-Chairperson. In a case where the individual presented his medical reports and the police failed to issue a P3 Form to him, what options are there for the members of the public to be assisted?

**Hon. Eric Keter:** Hon. Deputy Speaker, my concern is that the report given by the Vice-Chairperson indicates that there was not enough evidence to prosecute this gentleman. The report goes on to say that he was taken in to keep peace in the area where this individual lives. What made the officer really ensure that he signed a document to keep peace, yet he was convinced that there was not enough evidence? I want some clarification on that, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay. I believe those are three clarifications.

Yes, Vice-Chair.

**Hon. Lentoimaga:** Thank you, hon. Deputy Speaker. I think I need to recognise the fact that there was some mistake in claiming that this is a deceased person. That is wrong. We need to apologise to William for that error. I do not know where they got the idea that he is already dead from. So, we need actually to apologise; that is wishful thinking that somebody is dead, yet he is alive. So, through the Member I wish to apologise for that particular error.

Hon. Deputy Speaker, secondly, Kenyans are entitled to P3 Forms when they are assaulted; I think we need to follow up this issue of a P3 form for William. I think we can work with the Member. Hon. Moroto is a member of the Committee. So, I wish to invite him so that we can pursue this particular issue for t William to get a P3 Form and then he can get the right assistance from the police through the Committee. We can get more detailed information from the Member, and any other Member who has details orf this particular incident.

Hon. Deputy Speaker, thirdly, I am not aware that this particular person was locked in for more than 24 hours. It is not in my Statement. I think he was taken to court. When they reached the court there was not enough evidence but the police are still claiming that they have some particular information that William had committed some crime, although they do not have enough evidence. Normally when this kind of incident happens people are bonded to keep peace, and if they commit more crimes then they are arrested again.

On the issue of medical attention for him, I think he was taken to a doctor who may have found that he was not really sick and that was why he was given pain killers. Maybe he was not seriously sick. That is subject to the doctor examining him even further to ascertain whether he has any ailments. In the mean time that is the position, but I think we can pursue it further as a Committee.

**Hon. Deputy Speaker:** Hon. Onyura, still on the same?

**Hon. Onyura:** Hon. Deputy Speaker, just for clarification, the Vice-Chair has admitted that a lot of information that he has in his Statement is wrong. What action is he going to take against those who have given him this kind of false information? It is seriously false because this is a victim of injustice and he is hearing that Parliament has been informed that he is dead. I think he will be thoroughly traumatised.

**Hon. Deputy Speaker:** Yes. That is totally true and it begs the question whether any investigations were done because somebody would have known in the course of

investigations that somebody is alive. Hon. Vice-Chair, it also makes us doubt the level of investigations which were carried out whether you are talking of a dead person or a living one. Hon. Moroto, get the last clarification as the one who asked the question.

**Hon. Chumel:** Thank you, hon. Deputy Speaker. I just want to thank the Vice-Chair because he has given me that opportunity to bring all these medical documents which I have. On the other side he should know that this guy was in for six days and not 24 hours. I said this Statement was not clear. He was arrested on the first and he stayed in up to the seventh when he was released. He was taken to court on the seventh day; that was when he was released by the court. That is another mistake. I do not have much but I will take the necessary documents to him.

**Hon. Deputy Speaker:** Last, Marcus Muluvi.

**Hon. Muluvi:** Thank you, hon. Deputy Speaker. Mine is a very simple one. Allow the Chair to bring a comprehensive answer to this. In my view, this casualness from the Ministries should not be allowed. It is very unfortunate for somebody to be denied a P3 Form, which is a right. It is very unfortunate for a person to be referred to as “deceased” when he is still alive. That, in my view, is a clear manifestation that no investigation was carried out on this matter, which hon. Moroto raised, and there was no visit to the victim.

Hon. Deputy Speaker, I think as a National Assembly we should not allow flimsy answers from whatever quarter and that is my position.

**Hon. Deputy Speaker:** Okay. I think your sentiments are very valid. Therefore, hon. Vice-Chair, your answer is certainly insufficient by all standards. Hon. Moroto told you that he can give you more details. Once you call the CS make sure that you invite the hon. Moroto to be in that meeting.

David Ochieng, is it something different? We cannot go on on this!

**Hon. Ochieng:** Hon. Deputy Speaker, it is about something very different.

There is a Statement I sought in the month of March. I have been requesting the Leader of the Majority Party to provide that Statement but he has not done so to date. I do not know whether they are waiting for it to lapse. The Statement was on the status of *boda boda* motorcycle riders, and specifically what is being done to help them do their job in the right manner. I made the request in March. I have severally requested that a response be brought to the House but up to today I have not received it.

**Hon. Deputy Speaker:** The Clerks-at-the-Table have noted the reminder. If the Statement request has lapsed, can you advise the hon. Member to re-present it?

**Hon. Ochieng:** Hon. Deputy Speaker, it has not lapsed. Maybe, someone is waiting for it to lapse.

**Hon. Speaker:** Hon. Members, I want us to do the last round.

Is hon. Njogu Barua in the House?

**Hon. Lentoimaga:** On a point of order, hon. Deputy Speaker. I now have the Statement requested by hon. Halima, if she is around.

**Hon. Deputy Speaker:** Order! Order! I have just started from the top of the requests, coming down. I have not reached you yet.

Is hon. Barua in the House?

**Hon. Member:** No!

**Hon. Deputy Speaker:** Very well! The Leader of the Majority Party, or whoever was to respond to the request can table the response.

Is hon. Wesley Korir in? Hon. Pukose, you are standing in for him. So, can the Chair of Defence or the Vice or the designated Member of the Committee respond to the Statement request?

**Hon. Wakungu:** Hon. Deputy Speaker, as I try to respond to the Statement request, I want to make it clear to other hon. Members that we are, indeed, in a presidential system, and not a parliamentary system.

Hon. Deputy Speaker, we sat as a Committee and decided that we have the capacity and capability of prosecuting the matter on the Floor of the House. It is not an issue of Cord or Jubilee.

**Hon. Deputy Speaker:** Hon. Wamalwa, do not give us a lecture on why you are answering. Just go ahead and respond to the Statement request.

**Hon. Wakhungu:** Hon. Deputy Speaker, on behalf of the Committee on Defence and Foreign Affairs, I beg to respond to the Statement request that was raised by hon. Wesley Korir, who is my neighbour. He has just texted me that he is on the way. He is actually parking his car. He will be here at any moment.

The hon. Member requested a Statement regarding the Kenya Defence Forces (KDF) on the following issues:-

(a) financial compensation, if any, scheduled for soldiers returning from combat duties in Somalia or bereaved families---

**Hon. Mulu:** On a point of order, hon. Deputy Speaker!

**Hon. Deputy Speaker:** Order! Order! Hon. Makali, what is out of order?

**Hon. Mulu:** Thank you, hon. Deputy Speaker. As we all know, this is a House of records. It was previously ruled in this House that only the Chair of a Committee or the Deputy can respond to Statement requests. I do not know whether we are changing the rules. In many occasions, the Speaker directed that when the Chair and the Deputy are not present to respond to statement requests, Statements should either be deferred or the Leader of the Majority Party should be requested to go and look for them.

**Hon. Deputy Speaker:** Hon. Makali, I am not aware of what you are saying.

**Hon. Mulu:** Hon. Deputy Speaker, this is a House of records. We can check that one out. The HANSARD can bear me witness.

**Hon. Deputy Speaker:** Okay, hon. Makali. We shall refer to the HANSARD, but this is not the first time that a Member who is not the Chair or the Vice-Chair is responding on behalf of a Committee. We will, however, bear you witness, as you have said, through looking at the record to confirm whether there has been such a ruling. For now, in my view, the Member is perfectly in order to respond on behalf of the Committee. Should we find that it is not the case, you will be informed.

Hon. Wamalwa, please, proceed.

**Hon. Wakhungu:** Thank you, hon. Deputy Speaker. For the sake of hon. Makali, maybe, out of ignorance, if something has been communicated---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Order! Please, hon. Wamalwa, can you also not incite hon. Members? Just respond to the Statement request, as you have been asked to do.

Please, continue and respond to the Statement request.

**Hon. Wakhungu:** Hon. Deputy Speaker, hon. Korir had requested to be informed on the following:-

(b) whether the terms and conditions of service of Kenya Defence Forces (KDF) soldiers serving in the African Union Mission in Somalia are contained in the MOU between the AU and the Government of Kenya, which was signed in Addis Ababa, Ethiopia, on 2<sup>nd</sup> June, 2012.

Hon. Deputy Speaker, Article 6 of the MOU provides for personal reimbursements in cases of death. The AU pays death compensation to beneficiaries of the deceased soldiers at the rate of US\$50,000. The AU also pays disability compensation to soldiers who are injured in the course of AMISOM duties. Disability payment to the beneficiaries is a percentage of the death compensation – an amount dependent upon the degree of permanent disability, which is determined jointly by a Government of Kenya and African Union Medical Board assessment.

The AU also pays allowances to soldiers of AMISOM at the rate of US\$1,000 per month. It is also noted that besides the stated compensation, soldiers serving in AMISOM are also retained in the Government of Kenya payroll and are paid their monthly salaries and allowances.

On medical care and treatment, Article 16 of the MOU makes provision for medical and dental support for Kenyan soldiers serving in AMISOM. Under the MOU, the Government of Kenya is obligated to provide the level one and level two medical care in the mission area for Kenyan troops deployed to AMISOM. The AU is under obligation to provide level three and above medical care, including in out of mission areas, and medical evacuation.

The KDF personnel serving in the AMISOM are provided with medical care at the following levels: basic level, level one, level two, level three and level four, which is in accordance with United Nations standards. Basic level medical care constitutes first aid and preventive medicine, which is provided at sub-unit level. Care is also provided by the troops themselves or by trained paramedics or nurses.

Level one medical care provides first line primary health care, emergency resuscitation, stabilisation, and evacuation of casualties to the next level of medical care within the AMISOM deployment. At this level, a military medical officer is available. In addition to the basic equipment, there is a field ambulance that is attached to the facility. There are three levels of one facility for KDF serving in AMISOM. The facilities are located in Kismayu, Afmadow and Busar.

Level two medical care provides second line health care, emergency resuscitation and stabilisation limb and life-saving surgical interventions, basic dental care and casualty evacuation to the next level. At this level, there are two general orthopaedic surgeons, among other medical personnel. There is also one level two hospital in Doble, Somalia. The facility also provides air ambulance for evacuations to level three facilities.

Level three medical care combines capabilities of level one and level two units, with additional capability of providing specialised in-patient treatment and surgery as



well as extensive diagnostic services. There are 16 doctors, among other medical personnel at this level. The Defence Forces Memorial Hospital in Nairobi serves as a level three facility for KDF personnel serving in AMISOM.

Level four medical support provides definitive medical care and specialist medical treatment. These include specialist reconstruction and rehabilitation. Such services are provided for at the Nairobi Hospital, the Agah Khan Hospital, Kenyatta National Hospital and in South Africa.

On management of stress and post-traumatic stress disorders, prior to deployment of troops to AMISON, there is a pre-deployment psychological training, which is conducted to prepare the soldiers before they start on the tasks ahead of them. During the deployment, mental health workers are embedded in the troops. They conduct individual counselling, group counselling, education and---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Order, hon. Members! The level of consultations is high. We cannot hear the response.

**Hon. Wakhungu:** Hon. Deputy Speaker, I am summarising.

When troops return to the country on completion of their tour of duty in AMISOM, there is post-deployment psychological debriefings, which are conducted. Cases of post-traumatic stress disorder are treated. There is a psychological clinic at the Defence Forces Memorial Hospital in Nairobi, which handles and manages post-traumatic stress disorders.

The above measures have been put in order since inception of *Operation Linda Nchi*, and they continue to be operational.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you.

Hon. Pukose, now that you are designated to follow up on this matter, you will continue with that responsibility. You are now the owner of the Statement request on behalf of Wesley Korir. Can you seek the first clarification?

Hon. Pukose, whose card are you using?

**Hon. (Dr.) Pukose:** Hon. Gichigi's. Thank you, hon. Deputy Speaker.

Thank you, hon. Chris Wamalwa for having taken up this matter, discussed it as a committee and brought a response here, despite the fact that your Chair and Vice-Chair are missing in the House.

The clarification, I want to seek is that before our soldiers joined AMISOM, we had "*Operation Linda Nchi*;" in this operation, many of our soldiers died or sustained permanent injuries that have put them in permanent disabilities. On behalf of hon. Wesley Korir, I want to ask if the Government is going to compensate them, because we are aware they have not been compensated. Is the Government going to compensate those who died? This is because AMISOM are saying they are compensating victims at a rate of Kshs.4.3 million. That is the US\$50,000; they are also compensating for disability as a result of injury suffered. So, are those soldiers going to be compensated? That those who died and those with permanent disabilities, because they also have families!

The second clarification is that he said for these soldiers, there is post-traumatic stress counseling which is being undertaken. For these, soldiers as you are aware, the psychological trauma they suffered while serving in AMISOM has both the short-term and long-term effects. Many of our soldiers, after leaving the forces, have not had any care. We do not have any medical cover for them, as the USA has got the Veterans Association Hospitals and other facilities. What happens to these soldiers after they leave service? Do we have a plan in place to take care of these soldiers, and also those who have diligently and patriotically served this nation?

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, hon. Joseph Limo, is it a clarification on the same?

**Hon. Limo:** Thank you, hon. Deputy Speaker. I was actually raising this to seek your guidance because there was a guideline which was given earlier by the Speaker on how to raise Statements and respond to them. We are really worried that the quality of the responses is not meeting the standards. One, the person who raises the Statement is not aware that the response is coming, and two, there was also a guideline that the person raising the Statement should appear in the committee, so that when they are responding, he is aware, and is not a stranger to the response. We seek your guidance on that.

**Hon. Deputy Speaker:** Okay, according to the information that I have before me, all Members whose Statements appear on the Order Paper were aware that their Statements were to be given this morning. Therefore, if they are not here, it is their own choice not to be here; it is not because, they have not been informed. This is the information I have. I stand guided if that is not the true position.

You have to get your own card, hon. Pukose.

**Hon. (Dr.) Pukose:** Thank you, hon. Deputy Speaker. I want to let the House know that hon. Wesley Korir, wherever he is, is actually following and has just texted me saying this is what he wanted.

**Hon. Deputy Speaker:** Okay; you have been designated; even if he was to come now, the question is on you. You are the one who has been given the responsibility; therefore, you will see it through to the end.

Now, is this further clarification from hon. Opiyo Wandayi?

**Hon. Wandayi:** I have some one or two clarifications. Hon. Wamalwa has talked in general terms about the kind of support services these soldiers are getting. I want us to deal with facts and figures. In the absence of very clear statistics as to how many soldiers have suffered injuries during the *Operation Linda Nchi*, *post-operation Linda Nchi* and how many soldiers have actually succumbed to those injuries since their return from Somalia, and more importantly how many soldiers have died in Somalia--- This is because we are aware that soldiers are dying day in and out in Somalia---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order Members! Your consultations are loud.

**Hon. (Dr.) Pukose:** It is a fact that Kenyan soldiers are coming back in either coffins or body bags on a daily basis from Somalia. So, unless we have statistics, his response will not satisfy us. This is because, we do not know how many of these soldiers

are being taken care of either in death or because of the injuries they have suffered. So, can he come out clearly on that?

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, hon. Harrison Kombe, is this a clarification on the same? It is not.

Hon. Daniel Maanzo, is it a clarification on the same?

**Hon. Maanzo:** Just as my friends have said, I just want to seek clarification on what has been done so far. How much has been paid? This is because where families have lost their people--- We have not seen anything being done, including in my own constituency. So, could they tell us what has been done so far?

**Hon. Deputy Speaker:** Okay, can we get those clarifications?

Hon. Jared Opiyo, I cannot see your request!

**Hon. Opiyo:** It is there hon. Deputy Speaker. Thank you, very much, hon. Deputy Speaker. I also wanted to seek a further clarification on the road map that the Government has on the *Operation Linda Nchi* in Somalia; as is evident, we are experiencing a lot of loss of lives and families back here are traumatized by a war that is really unnecessary. I really want to be told how long we are going to stay in Somalia and whether there is a road map on the same.

**Hon. Deputy Speaker:** Hon. John Waiganjo, is it on the same? Not on this one.

Hon. Justice Kemei, is it on the same?

**Hon. Kemei:** Yes, hon. Deputy Speaker. I need clarification concerning post-combat traumatic care for our soldiers. I am seeking this clarification because the information we have is that those who fought in the First and Second World Wars--- Quite a high number of them is suffering from trauma. I need clarification as to whether the care we are giving to our soldiers after coming back from Somalia is sufficient, so that we do not witness what we read about the USA, that their soldiers were committing suicide.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Leader of Minority Party, is it on the same?

**Hon. Nyenze:** Thank you, hon. Deputy Speaker. I also wanted to seek clarification concerning those soldiers; I have read in newspapers that so many soldiers are dying, and we are not getting a clear picture of the number of soldiers who have died. I also want to know - this has been debated - whether it is possible to withdraw Kenyan Soldiers from Somalia. What value will Kenya get by keeping them in Somalia instead of being bombed left, right and centre?

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** We are really now getting out of the Statement that was sought and moving into other areas.

Hon. Wamalwa please respond to what is relevant to the Statement.

**Hon. Wakhungu:** Thank you, hon. Deputy Speaker---

**Hon. Deputy Speaker:** I am sure you may not be capable of saying whether we can withdraw our soldiers from Somalia.

**Hon. Wakhungu:** I am still responding, hon. Deputy Speaker.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order! Order!

**Hon. Wakhungu:** Before our soldiers went to Somalia the issue passed through Parliament and they went there for a purpose. I am sure the situation is going to be analyzed on a continuous basis. Obviously at the right time, that is going to happen.

**Hon. Deputy Speaker:** Order! Order hon. Opiyo!

**Hon. Wakhungu:** On the clarification that was sought by hon. Pukose in terms of the compensation, it is true some soldiers have died before AMISOM came in. This Statement request did not ask how many, with due respect--- If hon. Wandayi wants to know how many have died, we are going to do research and bring a report. This is because of what hon. Wesley requested and this is common sense. If you are answering a question in an examination, you answer what has been asked.

*(Laughter)*

That is why people fail examinations. They fail not because of English but because they do not follow instructions.

**Hon. Deputy Speaker:** Order! Order!

**Hon. Wakhungu:** That is the reason why people fail examinations!

*(Laughter)*

**The Deputy Speaker:** Order! Order, hon. Members!

**Hon. Wandayi:** On a point of order, hon. Deputy Speaker.

**The Deputy Speaker:** Order! Hon. Wandayi, I am not taking any more points of order.

Hon. Wamalwa, please complete your response.

**Hon. Wakhungu:** Another question which was asked about my friend, in terms of the post-traumatic stress management for those people who are in Iraq and the world wars--- This statement was very specific and it was about the soldiers in Somalia; there was nowhere it talked about Iraq and the world. But given time, we can as well go back to research and bring you a proper answer. This is because hon. Korir did not ask about Somalia and Iraq. This is what I have to say.

Hon. Deputy Speaker, the issue here is how much has been paid so far. This is a question raised by my friend, hon. Maanzo. If you go back again to the terms of reference, there was nowhere hon. Korir requested to know how much has been said so far as compensation is concerned.

Therefore, with due respect to hon. Maanzo, given time, the Departmental Committee on Defence and Foreign Relations is a very serious Committee. We can go back and look into research and be able to tell him how much has been paid so far as far compensation is concerned.

**The Deputy Speaker:** Thank you; I think you have done well with respect to the questions that were asked. I think we want to close this matter. We cannot spend the whole day it; you know Statements are not our real mandate.

*(Loud consultations)*

Order! Order, hon. Members! We cannot spend this much time on one Statement. Can we, please, be allowed to move on?

We now want to move to the Statement request by hon. (Ms.) Duri. Is hon. (Ms.) Duri here? Is the Chair of Departmental Committee on Administration and National Security here?

**Hon. Lentoimaga:** Hon. Deputy Speaker, the hon. Member for Parliament for Tana River County on 16<sup>th</sup> June, 2014 requested a Statement regarding the brutal killing of Mr. Omari Kabiro at Madogo, Tana River County, while he was guarding a hardware shop.

The hon. Member requested to be informed on the following:-

1. the Identity of the perpetrators involved in the incident;
2. the motive of the killing;
3. the investigations undertaken so far to bring the culprits to book;
4. the number of culprits arrested and arraigned before court in connection with the killing;
5. measures the Government will undertake to ensure that such an incident does not recur in future;

The Cabinet Secretary (CS) wishes to respond to as follows:-

On 15<sup>th</sup> February, 2014 at 8.50 p.m. an unknown number of gangsters armed with crude weapons attempted to break into the Alman Hardware in Madogo Market, which is owned by Aden Abdi. The guard, Mr. Oman Kabiro tried to resist and he was hit several times with crude weapons and he died on the spot. The police visited the scene and commenced investigations immediately vide Madogo case number 365/23/2014.

It was suspected that assorted goods valued Kshs21,900 were stolen. After processing the scene the body was removed to Garissa General Hospital mortuary pending a postmortem. The identity of the perpetrators is not yet known. Nobody has been arrested in connection with the incident.

However, several witnesses have recorded statements and the case is under investigations. The investigations so far indicate that the motive of the killing was to steal from the hardware. Following the incident, night and day patrols have been enhanced in Madogo and its environs.

That is the statement from the CS. Thank you.

**The Deputy Speaker:** Let us hear from the hon. Member who requested the Statement. Hon. (Ms.) Duri, the Floor is yours.

**Hon. (Ms.) Duri:** Hon Deputy Speaker, I am not very much satisfied with the response because after the police confirmed that the gangsters were carrying crude weapons, there was no effort made to arrest even one person out of the gangsters. If you observe the security of the area, it is very sensitive. I do not know why up to this time the police have not arrested anybody connected with the raid.

The other issue is that several witnesses recorded statements but still there was no follow up and arresting of the culprits. The police are charged with the responsibility of protecting life and property of the citizens. The Vice-chairman of the Departmental Committee on Administration and National Security should give us the way forward in the protection of the family of the deceased and the recovery of lost property. This is because the police have failed as far as protection of life and property is concerned.

Thank you, hon. Deputy Speaker.

**The Deputy Speaker:** Is there any other person who is seeking clarification on this matter? Hon. Gikaria, are you seeking clarification on this matter?

**Hon. Gikaria:** No, hon. Deputy Speaker.

**The Deputy Speaker:** If there is no other hon. Member interested in further clarification, can we---

Yes, hon. Kihagi.

**Hon. Kihagi:** Hon. Deputy Speaker, such cases are quite rampant. I would want the Vice-Chairman to tell us up to what time files kept open. This is because you hear so and so has been killed and there is nothing done.

The other month we heard that five people were killed in Naivasha in an attack. As you follow up the matter, you realize that in a few months the police totally forget about the incident. Is it an issue of capacity or lethargy among the police forces?

**Hon. Lentoimaga:** Hon. Deputy Speaker, maybe the police do not have capacity. But they can have capacity if we volunteer information. The police actually depend on witnesses, people who are within the community. I think we could also appeal to our people to volunteer information, because perpetrators of crimes are not people who live in heaven. They are just within our communities.

The other issue about when files closed, normally files are never closed, so longer as information can be got police can still prosecute the case. I think we can prosecute this case through the CS. I wish say that the kind of information we want has not been provided. If hon. Members have not been satisfied, we can revisit the matter in the Committee; we can call the CS to come to the Committee and give more information.

**The Deputy Speaker:** When you call the CS, make sure that you call the hon. Member who requested the statement to attend your meeting .

Okay, hon. Members, we need to more on. Any further information can be sought through the Committee.

We want to move to the next order.

**Hon. Ng'ongo:** On a point of order, hon. Deputy Speaker.

**The Deputy Speaker:** What is your point of order, hon. Mbadi?

**Hon. Ng'ongo:** Thank you, hon. Deputy Speaker. I thought the way things had gone, I would wait to raise this point of order at this stage. If you strictly read the provisions of Standing Order 44 (2) (c) Statements are actually sought from chairpersons. It is not generally the Committee; it is the chair person who should inquire and report back. It is not the Committee that inquires and reports back.

I think the Chair needs to save this House from this entertainment; really some of the hon. Members of CORD who are purporting to answer questions or give Statements on behalf of the Government--- To me it amounts to mere entertainment and a waste of Parliament's time. How do you expect the Whip of CORD to give a Statement on issues relating to our soldiers in Somalia, which includes even withdrawing them? We have two coalitions with different ideas, agenda, principles and policies.

*(Applause)*

The Jubilee policy is to retain the soldiers in Somalia while the CORD policy is to withdraw the soldiers. When you have a CORD Member giving a Statement--- If I was to give that Statement, I would have said our soldiers should leave Somalia tomorrow, yet I would be answering on behalf of the Government. I think we need to be serious about use of Parliament's time.

*(Applause)*

**The Deputy Speaker:** Order! Order, hon. Members!

**Hon. Lentoimaga:** Thank you, hon. Deputy Speaker. Then we can advise hon. Members of CORD to cease being in the Committees because decisions are made at the Committee and not here. After all, even sending our military forces to Somalia was done by this House. Therefore, their deployment there has our authority.

**The Deputy Speaker:** Let us hear from hon. Eric Keter.

**Hon. Eric Keter:** Thank you, hon. Deputy Speaker. My concern is the way you have handled this issue. This is because according to the hon. Member he was not supposed to give the Statement sought. According to the hon. Member, he was not supposed to give the Statement, but as a Member of the Committee, he is supposed to give it. This statement is owned by the Committee; therefore, he has every right to give it.

Thank you.

**Hon. Deputy Speaker:** Okay, Members, I think that was the ruling that I gave and there is a precedent. It is not the first time. I remember, hon. Victor Munyaka, if you remember---

**Hon. (Maj-Gen.) Nkaissey:** On a point of order, hon. Deputy Speaker. I am a Member of the Committee on Defence and Foreign Relations and we agreed. It is wrong for the Members of this honourable House to trivialize national obligation. This country is obligated to international arrangement. We are in Somalia because we are under an arrangement with AMISOM and the AU. We agreed and our soldiers are there. Therefore, it is wrong for my colleague to keep on saying that we want to withdraw our soldiers from Somalia. Our soldiers are doing nothing wrong in Somalia. They are under an international obligation and will not leave Somalia. This House approved their deployment there. We committed the Defence Forces of this country to be part of AMISOM. Therefore, we cannot keep on saying that we withdraw our soldiers from Somalia because we want to play politics. It is very wrong.

**Hon. Deputy Speaker:** Order, Members! I had already made a ruling on this matter. If you need further clarification, you will get a comprehensive ruling on it. I am not going into the content. It is the principle of whether or not a Member of the Opposition can give Statements on behalf of the Government. That is the point I believe you are alluding to, hon. Mbadi. Is it in order for a Member of the Opposition, who is a Member of a Committee, to respond to a Statement request on behalf of the Government? We will take that to our Clerks and the legal officers and you will get a comprehensive Statement. So, let us not go into it. It is not only about this one on Somalia, but on all Statements. We are just making a general policy on the same. So, Members, let us put that to rest, and move on to the next agenda on our Order Paper.

**Hon. Members:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order, Members!  
Next Order.

## BILLS

### *Second Reading*

#### THE VICTIM PROTECTION BILL

*(Hon (Ms.) Odhiambo-Mabona on 30.4.2014))*

*(Resumption of Debate interrupted on 2.7.2014)*

Hon. Grace Kiptui had a balance of eight minutes. Is she in the House? If she is not present, we can have any other Member. On my list, I see that hon. John Waiganjo is the first one.

**Hon. Waiganjo:** Thank you, hon. Deputy Speaker for giving me this opportunity to support The Victim Protection Bill. From the outset, I want to congratulate the sponsor of this Bill, hon. Millie Odhiambo. This Bill is overdue because the global trend is emphasizing on the protection of victims and witnesses. We know what has been happening in our country and the world over. There is an urgent need to protect not only witnesses but also victims. I am aware of Cap.79, which is the Witness Protection Act, but even within the Witness Protection Act there are some areas that are not properly covered. This Bill covers certain areas that are not covered by our other laws.

What this Bill provides for is not covered under the Criminal Procedure Code. The Criminal Procedure Code generally talks about the procedure in criminal prosecutions. It does not provided for reparations or compensation. So, this Bill will fill the gap left by the Criminal Procedure Code. It is also coming to fill in gaps that may have been left by the Penal Code, because the Penal Code only defines crimes and prescribes penalties. It does not go beyond that to look at the wider picture like providing for victims. Even The Evidence Act has nothing to do with the victim. So, this Bill is now coming in to offer solace and information to victims.

As you know, victims of crimes are never compensated within our criminal justice system. In fact, when you are a victim of crime, you have to go and seek compensation in a civil court. So, this is a one-stop Bill that will make sure that even victims are provided for within our system. This Bill will establish programmes to prevent victimization at all levels of the Government. This is important. This is an important Bill because, as you know, the Government is the biggest abuser of victims, particularly where they are victims of State malpractices. So, this Bill will buttress certain positions that were not provided for before.

I look at Clause 4 on the general principles and I cannot help saying that we have had a criminal justice system that lacks in a lot of ways. It is quite discriminatory in terms of the period which a criminal case takes in a court, the manner in which the criminal offence is investigated and the manner in which evidence is presented in court. So, Section 4 appears to be emphasizing an obvious constitutional provision on fair hearing



and expeditious dispensation of justice. It says that a victim shall not be discriminated against on the basis of race, colour, gender, age or language. So, it just says that there shall be fair hearing. It only emphasizes what is within our Constitution. I also see that apart from giving effect to Article 50(9) of the Constitution, it also emphasizes the provisions of Article 50(8). It appears to be telling judicial officers that in certain instances and cases, judicial officers, or the presiding judge, may ask the public to leave her or his court or the galleries of the court generally. This is where a victim is a minor.

I am happy that this Bill also gives meaning to and defines vulnerable victims. It also prescribes special justice for vulnerable victims. The vulnerable victims are children, for instance, who have been sexually abused and people with disabilities. We have matters that come before courts where victims, who also happen to be witnesses, will not be comfortable to give evidence in a court where there are people in the galleries. So, this Bill emphasizes on the protection of the dignity of victims. When I talk of victims, I also mean witnesses. There is need to also have combined programmes for witnesses and victims as happens in other jurisdictions. This Bill provides for some of the things that we do not see provided for in our other statutes.

Hon. Deputy Speaker, I am looking at the application of this Bill at Clause 5. It appears to be going beyond the boundaries of this country. It is a good thing because we have progressively seen crimes being committed between countries. There are a lot of crimes that are committed not within the jurisdiction of this country, but a crime will be committed in other places. For instance, slave trade thrives in some places. We do not enforce our laws in Kenya in respect to it, but slave trade is a real crime that goes on even within this country. If we were keen to enforce our laws and to investigate and gather proper intelligence, we would know that slavery is real within this country as well as human trafficking. Clause 5 says that this law will apply to persons in Kenya irrespective of nationality, country of origin or immigration and people outside this country and it is very helpful. We also know that there is a lot of sexual slavery. Some of the establishments that we have in this country operate under the guise of a homecare. When you look deeper into it, you find that it is actually sexual slavery that goes on within those establishments.

So, it is good to know that we have a Bill now that will look beyond the Sexual Offences Act of 2006 and at the same time counter trafficking in persons. I think this Member has done us proud to bring this Bill; it has come just in time.

Also on protection of victims, I am looking at instances where we have civil war, or something similar to the post-election violence (PEV) that we had, and then we have a lot of victims all at once as a consequence of that state of affairs. What happens in those instances? There is a provision under Part III, Clause 6(4); it states that there shall be a register of victims.

*(The Deputy Speaker (Dr. Laboso) left the Chair)*

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) took the Chair)*

This is important; just imagine from the PEV of 2007/2008, how many victims are unknown to date. For your information - this is the information is in the public domain - no prosecution was undertaken after around 600 people were killed and about 1000 people were displaced; no successful prosecution has been undertaken to date. That tells you that about 600 people who died are who were victims are unknown. It also tells you that 1000 others who were displaced, and who live today, are not anywhere in our registers or conscience. Even those who were displaced, apart from giving certain people Kshs400,000 to compensate for land that was worth millions of shillings---

As a country we must start looking at our victims of crime and at the offenders. That is why I find this Bill to be very important. Part IV of this Bill on victim services is very explicit. In fact, it emphasizes on information. I am longing for the day when we will look at Access to Information Bill and pass it. Due to lack of information; most of the victims do not know--- Even when an offender is released on bail, the victims do not know why he has been released. That is why you see people taking the law into their hands, or saying a person murdered another and now he is out. This is because they do not understand the provisions on bail; they do not know when somebody is put on probation, for instance. A victim must know that when you put somebody on probation, you ask that person to go work in a chief's camp, and the chief's camp is next to the victims home. What happens when that victim meets that offender in the street? People start saying that there is no justice in this country.

This Bill has provisions on information. The victims must know, what the offenders are charged with; they must know when the offender is released on bail; they must know the bail terms; they must when---

**Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. John Kihagi

**Hon. Kihagi:** Thank you hon. Temporary Deputy Speaker. I rise to support this Bill on protection of victims. Before that, let me first inform the House that on the Public Gallery we have Mvuke Primary School. It is a beautiful school in purple from Naivasha; the pupils are together with their teachers.

*(Applause)*

This is a school in Olkaria area, where we expect to get a lot of energy for economic empowerment of our country. So, I want to welcome them, as their Member of Parliament, to this House.

Economic development of a country will depend on how far justice is dispensed in it. We have always said that justice is a double-edged sword. This should be interpreted not only in giving punishment to the perpetrator, but also in ensuring that the victim is properly protected, and actually distribution is seen to have been done. Our justice system has concentrated on ensuring that we punish crime perpetrators, and totally ignores the victim of such perpetration. In that case you find that there is what we may call "re-victimization" where victims suffer double tragedy.

For a long time this country has been good in that. For instance, during the ongoing police recruitment a lot of injustice has been done. We saw people turned away on very flimsy reasons, through corruption and all that. When a crime happens you are supposed to report it to the same perpetrators, that is the police force.

We have the issue of Internally Displaced Persons (IDPs). Most of them were driven out of their farms. Some were even physically molested, yet such people are supposed to report their cases to the same administration that actually spearheaded their eviction from their properties. You find that we are not able to give justice to the victims of crime perpetration. You also find that cases of rape and sexual abuse are rampant. A person who has been raped goes to the police and this person is a victim not a perpetrator, yet the questions and the set-up in the place where justice is supposed to be dispensed are totally crude in terms of the persons who are actually assist the person who has been molested.

I want to congratulate hon. (Ms) Odhiambo-Mabona for bringing this Bill and ensuring that we move towards a justice in the country. The Bill will ensure that victims of crimes are of our primary concern. The perpetrators should be of secondary concern in retributive justice system; this will ensure that victims are not re-victimized.

With those few remarks, I support this Bill and congratulate the Member. Thank you

**Hon. Maanzo:** Thank you Madam Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill and also congratulate hon. (Ms) Odhiambo-Mabona for bringing it to Parliament. As a practising advocate I have seen things happen in courts. The legal system we have in a lot of times recognizes a misadventure. Under the Criminal Procedure Code and the Penal Code, if you are killed by the police by accident it becomes a misadventure and after that your family is not compensated. In cases like the recent matter in my constituency where when gangsters were being chased away by the police they killed a young person. It turned out that even the Government or anybody else was not ready to bury him and there was an expense. So, the expense was borne by the Member of Parliament.

It is in such cases now that we seek to legislate in and make sure that victims of crime are taken care of. As it has been argued before by other Members of this House, victims of crime include minors and children in times of war, civil disobedience and disorder like the last election violence; victims also result from just normal crimes in the streets, and also from what is currently happening currently in the coastal region of this country; almost on a daily basis we have victims of crime, some of whom will never be compensated.

The idea of setting up a board which we will be able to look at a cases and set up a fund which will be able to take care of people who will have been victims of crime is very good and most welcome. We say that this law be supported; I am supporting that we pass it because the country needs it like yesterday.

I will give you another example where a person is attacked at their home by criminals and killed. Then nobody is ever apprehended. In this particular case criminals are involved and there is no one to compensate the victim; even the Government cannot compensate him. In instances where police by misadventure, when cracking down on crime kill people or criminals, or actual suspects, because of not going through a trial system, then you cannot establish whether the person was a criminal or not. Many times the families of those victims are left in dire straits, and without money or people to take care of them. It is good that this issue has been brought up, so that we can look at it again. It can be reassessed by an organization established by law, and such people can be

compensated because there are extremes. That is why it needs to be reviewed to establish whether the person was a criminal, and if he was killed by the police, then who pays. Is it the State?

In cases where people have sued having been victimized by the agents of State, their cases take many years to be completed; when they are completed, execution is a problem. It also takes years once there is judgment to be paid by the Attorney-General's Office. Therefore, there is need to re-streamline this to take care of Kenyans who have been victimized in any manner by criminals, the State or any other organ. Their families, who are left behind or those who live with injuries, should be sufficiently compensated.

With those few remarks, I beg to support.

**Hon. Gichigi:** Hon. Temporary Deputy Speaker, I rise to support this Bill and like my predecessors in this debate, I congratulate Hon. (Ms.) Odhiambo-Mabona for bringing this legislation to Parliament.

A society's civilization is known by how it takes care of its vulnerable people. I think the history of this country is awash with situations where victims, including mass victims of crime, end up suffering more. Looking at all tribal clashes that we have had in the past, the spate of crimes that have taken place in this country, the question you ask yourself is what happens to particular victims. We have even seen that the Government will occasionally assist, as it did at Westgate, families to bury their dead, but that is the end of the matter. The reason that man decided to have governments was to bring civilization. One of the key benefits of government and civilization is security; security is peace. If a person is killed, assaulted or raped and at the end of the day nothing happens to that person in terms of compensation and relief, then we are failing in civilization. I have no doubt that this country has failed victims of crime in the past and in the present. Unless we enhance the provisions of this particular Bill, we will continue to expose victims of crime to more suffering.

I think the provisions that require people, who normally come into contact with victims should be retrained. Literally all the police should be retrained to know how to handle victims. Many police officers see victims as witnesses and not as victims. They will just tell you to write a statement: "Take that piece of paper and write your name and what happened." That is it and there is no assistance that will come to that particular person. So, we need to retrain the police, the national administration officers like the chiefs and teachers to know how to handle victims. It is very painful to get information that, say, a little girl has been raped and the very people who are supposed to be giving protection and aid that particular kid are the ones who harmed her; the police help the suspect to settle the matter. It is important that we have people who are different from the police, or a special department in the police, which is going to be dealing with this area of victim protection and assistance. It should not be the ordinary police that we know. But even those ones need to be trained to distinguish between a witness and a victim.

I have looked at the provisions in Clause 12 about the board. In the current situation where we are all complaining about use of public funds, a board of 12 people may not appear to be many but we probably need to relook at this and reduce the number to a more reasonable figure. The same Clause 12 has a provision that a third of the 12 needs to be of either gender. We could run into problems with that because the same

provisions have statutory representation of different bodies. If those people are of either gender, there could be problems and so we need to relook at the provision on either gender. These will not be representatives, or board members, who will be appointed by the Cabinet Secretary. They will represent different organizations.

Clause 14 deals with compensation of the victims, a very good one, indeed; I am happy that the Mover of this Bill is here. We should try to bridge the gap that exists where a person faced injured by a criminal has to go to a civil court to get compensation, even if a crime has been committed against that person. I think we need to even look at the civil and criminal procedures to ensure that a magistrate gets jurisdiction to deal with both the criminal aspect as well as the civil aspect. The magistrate should not only give a judgment against the culprit but also give a judgment in favour of the victim in terms of compensation, including what we normally call “damages for pain and suffering” where injury has been occasioned.

I think it is important that we look at what is going to happen at the end of the case. We need to think of provisions that will secure the property of the accused in these cases, knowing that he might be compelled to compensate the victim at the end of the trial. We could secure his property at the commencement of the trial.

Hon. Temporary Deputy Speaker, as I end, I will say this, as a country, let us remember the victims of all the crimes that have been committed in parts of eastern, north eastern, currently at the Coast, Bungoma and elsewhere. These are mass victims.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Njagagua, is it a point of order?

**Hon. Njagagua:** Hon. Temporary Deputy Speaker, I had pressed it a while earlier, but I wish to notify the House that---

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You will do that when you will be contributing to the Bill.

**Hon. Njagagua:** Much obliged, hon. Temporary Deputy Speaker.

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Speaker. I was winding up by saying that it is important that this country stops letting down the victims. If this Government cannot provide security to its citizenry then let it come up with a compensation fund in the Budget for victims of crime so that the families of the people who are murdered or massacred in this country get some compensation. This will ensure that we are not left with widows, widowers and orphans who cannot be compensated.

I support this Bill but I will propose amendments to strengthen it so that we truly protect the victims of crime in this country.

Thank you, hon. Temporary Deputy Speaker.

**Hon. (Ms.) Khamisi:** Ahsante sana Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii. Kwanza, ningependa kumshukuru dada yangu, mhe. Millie Odhiambo kwa kutuletea Mswada huu ambao unazungumzia maswala nyeti na muhimu sana yakusaidia waathiriwa katika jamii yetu. Mswada huu unasema kwamba waathiriwa watatoa habari ambazo zitawasaidia ili wapate huduma na fidia kutoka kwa wale ambao wamewaathiri.

Sura ya Pili, Aya ya Tatu inazungumzia mambo yamaridhiano katika kesi fulani na pia, katika kuleta amani. Tukiangalia katika nchi ya Rwanda, tunaona kwamba kitambo walikuwa na vita vya kikabila lakini kwasababu ya maridhiano baina ya zile jamii mbili tunaona hii nchi ikiwa na amani na umoja.

Kwa hivyo, Mswada huu utaangalia mambo ya maridhiano kwa sababu kesi nyingine huwa ni kesi ambazo mwathiriwa na mwathiri wanapowekwa pamoja na jamii na familia huwa kunapatikana amani ya kudumu na haki itakayowaridhisha wote wawili.

Pia, Mswada huu unazungumzia ushirikiano baina ya vitengo vya Serikali vinavyoangalia mambo ya waathiriwa kutokana na majanga ya uhalifu. Kwa mfano, kuna kitengo cha polisi na kitengo cha mahakama. Mara nyingi watoto wetu ambao wameathiriwa kwa sababu ya kubakwa ama kwa kufanyiwa mambo machafu na mabaya kama vile ya ngono huwa wanakosa kupata haki kwasababu vitengo hivi havina ushirikiano dhabiti. Unapata polisi katika uchunguzi wao na ushahidi unakuwa na utata na mahakama inapata ripoti ambayo haitaweza kumsaidia mtoto yule. Lakini wakati vitengo hivi vitakuwa na ushirikiano dhabiti basi mtoto huyu atapata haki yake na anapata haki, basi hata sisi Wakenya tunatoa shukrani sana.

Vile vile, Mswada huu umezungumzia maadili ambayo yako katika Katiba yetu. Mswada huu unasema kwamba waathiriwa wasibaguliwe kwa misingi ya kikabila, kijinsia, dini au umri. Hivyo basi tunasema Mswada huu umezingatia Katiba yetu ambayo inatupatia haki, nasisi Wakenya tunasema “haki iwe ngao na msingi wetu”.

Sisi kama viongozi, tunaiomba Serikali izingatie mambo yaliyozungumziwa katika Mswada huu, kwa mfano, mambo yamaridhiano. Kwa hivyo, ripoti ya TJRC ambayo inaongea juu ya ukweli, haki na maridhiano inafaa itekelezwe ili tusiwe na matukio ya vita vya kijamii kama vile vilitokea kule kwetu Pwani, Kaya Bombo na Molo. Mambo haya hutokea kwasababu hatuna miundomisingi au mikakati ambayo inaweza kuzuia mambo kama haya kuweza kutokea tena.

Ninaunga mkono huu Mswada kwa kusema tutakuwa na hazina itakayoitwa “Victim Protection Trust Fund”. Hazina hii, pia, itaweza kumsaidia yule mwathiri aweze kupata huduma zitakazo mwezesha kupata haki. Nikiangalia katika Mswada huu, ninaona kwamba huduma zimezungumziwa kwa utaratibu unaofaa. Hakika tukifuata mtiririko wa huduma hizi basi haki itakuwa ngao na msingi wetu kama Wakenya.

Mhe. Naibu Spika wa Muda, jambo lingine ambalo ninaunga mkono na ninatoa kongole sana kwa mhe. Millie linahusu kuweka mtoto katika hali ya usalama wakati ameathirika. Tumeona mifano katika nchi yetu. Unapata baba wa kambo anambaka mtoto wa mkewe. Wakati anatenda kitendo hiki, anaenda mahakamani, anapewa *bond* na anatoka nje. Akiwa nje na akina mama ni sisi, wengine tunawapenda waume wetu, unaona kwamba huwezi kuwa kando na mme wako. Unaendelea kuishi na mme wako na mtoto huyu anapolegeshwa katika familia kuishi na mama na baba wakambo aliyembaka, hawezi kupata haki. Huyu mtoto ataendelea kuathiriwa zaidi na mambo mengine. Basi ikiwa tutawapeleka katika taasisi za usalama ambapo watawekwa sawa, wapate chakula, makao na matibabu, basi watoto hao watajua haki zao zitapatikana katika njia ambayo inahitajika.

Pia, Sura ya Nne, Aya 13 inazungumzia wale ambao ni walemavu katika kupata haki zao. Inasema kuwa miundomisingi lazima iwawezeshe walemavu ambao wameathiriwa kupata haki yao. Tunaona katika mahakama zetu mwathiriwa ambaye ni mlemavu anashindwa kufika katika kizimbani ama kuingia katika mahakama na hii ni kwasababu ya vile imejengwa, miundo misingi yake haikuzingatiwa.

Pia, kuna mambo mengi sana ya wale watu ambao wana ulemavu. Uhalifu unaofanyiwa mtu aliye sawa kimaumbile na ule unaofanyiwa mtu ambaye ni mlemavu ni

tofauti. Ninaona Mswada huu pia umewazingatia hao ndugu zetu. Hivyo basi tunasema kwamba huu ni Mswada ambao lazima tuupigie debe sisi kama Wakenya na sisi kama viongozi katika Bunge hili la Kumi na Moja ili haki itendeke.

Tumeona wengi wameuwawa kwa njia hii. Kwa lugha ya Kiingereza tunasema “*mob justice*”. Unaweza kuwa na chuki na mtu fulani, unapiga nduru na kusema huyu mtu ni mwizi ama huyu mtu amefanya jambo fulani. Huyu mtu anauwawa na tunakosa haki kwa watu kama hao.

Jambo la mwisho ambalo ninatoa kongole kwasababu limenifurahisha sana katika Mswada huu ni lile la kuzungumza katika lugha ambayo utaelewa ama lugha ambayo umeichagua. Tunafahamu kwamba lugha za taifa ni mbili, nazo ni lugha ya Kiingereza na lugha ya Kiswahili lakini unapata watoto na akina mama wengi katika mashinani wanapenda kuzungumza katika lugha yao. Hii pengine ni lugha yake ya Kikuyu, Kidigo au Kiluhya ili aweze kuzungumzia yale mambo ambayo yamemvika yeye kama Mkenya. Hivyo basi kukiwa na mkalimani, tunaweza kusikia yaliyojili katika mikasa kama hiyo.

Mhe. Naibu Spika wa Muda, ninashukuru sana na ninaunga mkono Mswada huu. Ninatoa kongole kwa mhe. Millie.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, you should realize that you do not have to use up all your time so that you can give more opportunities because requests are many.

**Hon. (Ms.) Gathogo:** Ahsante, mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii. Ninataka, kwanza, kumshukuru mhe. Millie sana kwa kuleta huu Mswada hapa. Sisi kama viongozi ambao tumechaguliwa kuja katika Bunge hili, kazi yetu ni kuwakilisha wale ambao hawawezi kufika hapa. Tunajua wakati mwingi kuna watu ambao wanateseka.

*(Loud consultations)*

Mhe. Naibu Spika wa Muda, Waheshimiwa ambao wako nyuma yangu wana mkutano mwingine. Ninakuomba uwakanye.

Bi. Naibu Spika wa Muda, kuna watu tunaowawakilisha ambao wanateseka. Shida iliyoko ni kwamba hawana nafasi ya kujitetea; hawajui pa kuelekea ili kupata usaidizi. Ningependa kusema hivi: Ikiwa wewe ama mimi tutanajisiwa hakuna mtu atajua katika nchi nzima kwa sababu sisi ni wabunge. Kuna wengi ambao wamepata shida lakini wamenyamaza kwa sababu hawajui wataambia nani. Kuna visa vingi vya mama na watoto wake wasichana kunajisiwa na kuporwa mali. Hawa ni watu hawana watu wa kuwafariji na kwa hivyo wanasumbuka. Tunashukuru sana kwa ajili ya huu Mswada kwa sababu hii sheria itawasaidia watu kama hawa.

Wapo wale wanaosumbuliwa na wenye pesa. Mtu akipigwa ama auliwe na mwenye pesa humu nchini huwa ni shida kubwa kwa sababu mnyonge hana lake. Kutokana na huu Mswada, tutaweza kuwakumbuka wanyonge na kuwasaidia. Pakitokea maafa kama yale yanayojulikana kama “*bomb blast*” na mengineyo sharti tukumbuke kwamba kuna Wakenya wasio na sauti. Itakuwa ni furaha yetu sisi sote ikiwa sauti zao zitasikika kwa sababu ya huu Mswada.

Tusiwachukulie polisi kana kwamba si wanadamu. Kuna visa ambapo polisi wanajeruhiwa ama wanauwa wakiwa kazini. Huu Mswada unagusia kila Mkenya. Sisemi kwamba polisi wasifanye kazi yao, lakini nao wachukuliwe kama Wakenya wanaohitaji kufanyiwa haki. Ukitembea kortini utaona waathiriwa ambao hawana watu wa kuwatambua. Utapata kwamba hawana watu wa kuwatetea na hawajui haki zao. Huwa hawana namna ya kuendelea.

Tutapitisha huu mswada ndiposa tusimamie watu wetu ambao wamefinyika humu nchini. Ningependa kuwaambia watu wa Ruiru *constituency*, “hi”, na ninawapenda. *God bless*.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you for giving us an extra five minutes. Hon. John Mbadi.

**Hon. Ng’ongo:** Thank you, hon. Temporary Deputy Speaker. Let me also take this opportunity to thank hon. Millie Odhiambo for sponsoring and promoting this legislation. I know that this is one of those constitutionally provided legislation that need to be enacted within a specified period of time and for a private Member to sponsor such a Bill, I think it is encouraging. A lot of times we keep on complaining that the people who are given the responsibility of processing the constitutionally required Bills do not do so in good time. So, it is a challenge to us that we come up with legislation that is provided for in the Constitution.

A lot of times, the victims of crime are people who are disadvantaged in one way or the other; either economically or even in terms of information. Therefore, this Bill comes at the right time for us to provide an opportunity to the victims of crime. As a matter of fact, once crime has been committed the State takes up the case, but the victims are not remembered. Once a conviction is entered into then it becomes the responsibility of the victim to institute civil proceedings for compensation. A lot of times most of the victims of crime are people who are not able to access the legal services provided.

I am happy that this Bill will not only apply to victims of crime that is committed within the country, but even those that are committed outside the country upon Kenya’s citizens. I am also happy that the promoter of the Bill has suggested the establishment of victims services in all our 47 counties so that all the victims get access to justice. I would also like to refer to situations where the people who are accused are given bond. They then get access to the victims. Then there is intimidation and possible retaliation from the accused. If this Bill is passed and becomes law then the Cabinet Secretary will be responsible for ensuring the protection of the victims. A lot of times the accused are relatives to the victims. When you expose them to such an environment then the life of the victim would be threatened.

Clause 14 is impressive, but I would like to urge the promoter to look at it again and come out clearly on how restitution and compensation will be implemented. I think a lot more needs to be done. If you subject any Kenyan to unnecessary torture, loss of property and loss of life--- Most people who subject Kenyans to these things are people of means. We, therefore, need to come up with a procedure of profiling the property of these people so that in the event that they are convicted then a substantial proportion of



their property would go to the victims to compensate them and so that this acts as a deterrent to people who would want to subject Kenyans to unnecessary torture and victimization.

With regard to the calculation, under the Victim Protection Trust Fund, how much should go to the victims surcharge levy? I think we need to come up with a percentage so that we do not leave it to the Cabinet Secretary in charge of finance. If we leave it open, it may take years before it is spelt out and the victims will continue suffering and yet this is something that needs to be done.

I am equally concerned about the membership of the board. I think the members required are about 13 and most of them are Principal Secretaries from various Government Ministries. Yes, it is good to have representation from Government Ministries, but I think we need to limit the number otherwise big boards end up becoming crowds. If you want to come up with clearer policies, you need a leaner and smaller board. When you have all these Principal Secretaries in the board and then you still require gender balance, it may be very difficult because sometimes you may have all Principal Secretaries from one gender. We, therefore, need to look into this issue once more, refine it and reduce the membership of the board.

Hon. Temporary Deputy Speaker, finally, I think as a country we need to look at the victims and it is good that hon. Millie has classified or categorised the victims into the general victims and then the vulnerable ones. We have some people who cannot speak for themselves. We need to protect them even much more than those who are able to speak for themselves. This country has gone through difficult moments. All the way from 1992 there are victims of crimes which were perpetuated, supported and financed by individuals and yet you find we keep on referring to those as victims of the 1997 elections, victims of 2007 elections like the people who came and committed these crimes do not belong to this country.

Hon. Temporary Deputy Speaker, I think it is high time we have a legislation that is going to protect those victims and also protect victims of what some people may think are lesser crimes but are more serious crimes – crimes of rape which happen almost on a daily basis.

So, hon. Temporary Deputy Speaker, with those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Wesley Korir.

**Hon. Korir:** Thank you, hon. Temporary Deputy Speaker for the opportunity to contribute to this very important Bill and like every one of my fellow Members, congratulate Millie Odhiambo for bringing it and thinking about the victims.

Hon. Temporary Deputy Speaker, there are many victims in this country who are suffering because of being mistreated in one way or the other. In the villages, victims are scared of reporting crimes that have been committed against them because of fear that when you report a crime to the police or to the authorities and then that person who has committed the crime against you is released, they come back to torture or haunt you. We need to protect the victims no matter where they are. We need to set up a system that really looks at the victims outside of the normal police and all these other people. We know and it is not a lie that our police system in this country is the most corrupt. We know that if we depend on the police to take care of victims, then we will be suffering.

Hon. Temporary Deputy Speaker, we need a system in this country to look forward and prevent what happened. Look at the situation in this country where the post-election violence victims of 2007 are still suffering in the camps. We had the report by Amnesty International yesterday released and clearly you can see that there are many people still suffering because we do not have a system in this country that prevents such happenings. We lack a system to compensate people who are suffering. We have depended on politicians and the Government to use this as mileage. They give these people Kshs300,000 or Kshs400, 000 and that is not what should happen. We should have a system that, if anything like this ever happens again, we have something that already takes care of the victims.

Hon. Temporary Deputy Speaker, I also like what hon. Mbadi has said, that this Bill also covers those Kenyans who are tortured outside this country. We have many people who leave this country in search of work in other countries and then they become victims of torture and mistreatment out there. We need an agency and a system whereby those people can also be protected by the Government of Kenya.

Hon. Temporary Deputy Speaker, also, we have victims of war. Today I had requested a statement on the same. I am sorry I was late because the President was leaving State House and the roads were closed. I was coming from that area.

I raised a very special issue of victims of the Kenya Defence Forces (KDF). They are victims and they are suffering. Their families are very much suffering. *The Standard* Newspaper, for a whole week focused on the suffering of the people out there because of the war in Somalia. I requested for that statement because we need to take care of those people; we need to take care of the families; and we need to take care of the soldiers when they come back. We need to take care of our people so that this country can go forward. If we do not do that then we are suffering and the country will be dead.

So, thank you very much Millie Odhiambo for bringing this Bill and let us support it. Let us bring amendments to it so that we make sure that it really targets and covers people who are suffering outside this country. We have people who are very poor and those who are very rich. A rich person can do something wrong to a poor person but because they do not have money to get a lawyer, the rich person goes free. We need the Government to provide lawyers for those people who do not have money to hire them so that they can also be protected and get justice like everybody else.

Hon. Temporary Deputy Speaker, I support and thank you very much for giving me an opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You are welcome.  
Hon. James Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Temporary Deputy Speaker for giving me the opportunity. I rise to support this Bill which answers our constitutional requirement in Article 50(9) which looks at the protection and the rights of victims. For a long time in this country, the justice system has always looked at the offender but the victim has always remained unprotected. If you look at this right from the time of investigation, like in the case of rape the process which the victim goes through is actually humiliating. Many victims decide not to go through the process, yet they are the people who deserve to be protected.

Hon. Temporary Deputy Speaker, if you look again at the case of rape, in the trial process itself the way the victim is handled, you would think that the victim is the offender or the perpetrator. Again, that has left out the victim. Even during sentencing, nobody looks at the suffering of the victim. At least, in this Bill there is provision for the victim impact statement which should influence the sentence.

Hon. Temporary Deputy Speaker, even after the offender has been sentenced, nobody looks at the suffering that the victims and their families have gone through. In cases of murder, the family is left without a breadwinner and any support. The legal system, as we see it, does not take care of that. We have civil cases where victims sue for compensation, but many of the people who are affected cannot go through this process.

Hon. Temporary Deputy Speaker, I think this Bill has come at the right time and I am really happy with it because it looks at all the principles. Section 3 looks at protecting the dignity of the victim during the trial process. Again, in the case of rape, even in cases where the offender is a member of the family, he should not be protected. The victim should get full compensation even in cases where the offender is a member of the family.

Hon. Temporary Deputy Speaker, this Bill provides that there should be no discrimination on any basis. Section 4 says clearly that whoever the victim is, they are entitled to protection and rehabilitation regardless of their sex, race and ethnicity. Again, this is extremely important. When we have civil strife, people who are expected to protect victims start asking very annoying questions such as “Where do you come from and how did you find yourself there? Again, if we may use the example of a rape case, people ask “How did you feel about it?” This is a violation of the victim’s rights.

In Section 6, the Bill provides the protective services that the victims need. Many of the victims are not even aware of the legal processes; what they are entitled to; how the trial that is going on affects them and whether the offender will be given bail or be out and for what reason. Many times we know that there are cases where when the offender is released on bail, they hurt the victim. I like this because this Bill provides for safe houses for that.

On compensation, this is the first time that within the same Bill, there is provision for compensation of the victims of crime.

The Bill also provides for the Victim Protection Board and the Victim Protection Fund. This actually provides for what is required and needed for a long time. It also provides that the Cabinet Secretary puts in place regulations that will monitor the whole process. We can put all this in place but if there is no way of monitoring or following up, definitely, we will not get very far.

So, I support the Bill although there may be areas which we may look at with a view to introducing amendments. I believe that the sponsor of the Bill will look into those areas. I like the definition of “child”, which includes “if the victim who is murdered considered somebody as their child”. If such persons were supporting such child, even if they did not legally adopt that child, the child should also be entitled to compensation. That provision may need to be amended to make it very clear that the child in this case was seen as a child of the victim, and was treated as such.

Hon. Temporary Deputy Speaker, I think it is envisaged that the Victims Surcharge Levy will provide enough funding but there is nothing wrong in getting public funds to support the process through the Victim Protection Fund. This is because many

times, victims get into such situations because of failure by the State to provide the protection that they needed. Therefore, I do not see anything wrong in amending this provision to propose that some funds should come from the State. I know that such an amendment will change this Bill into a money Bill but we will be guided appropriately, so that we can add the proposal.

All of us should support this Bill. There are many areas we need to add on but this is definitely a big way forward in addressing the plight of victims of crime.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Millie, are you in the Justice and Legal Affairs Committee? Are you holding brief for the Committee, hon. Nyokabi? As the doctor said, it would be good to have a Member of the Justice and Legal Affairs Committee commenting on it, since the Bill will be going to them.

Yes, hon. Anne Nyokabi!

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

First, I would like to thank hon. Millie Odhiambo for bringing the Bill. It is timely and long overdue. I support the Bill because it addresses a very key issue pertaining to women in this country. Most of the victims of abuse, who need protection, are mainly women. They are the victims of rape. They are victims of disinheritance when their husbands pass on. Young school girls are sexually abused by their teachers. This particular Bill seeks to protect the dignity of such victims by providing better information.

I particularly commend provision 1, where it has better information support services and registration of offenders. We know that many people who sexually abuse women and children tend to be transferred from one area to another. This particular Bill will protect the victims because a sexual offender must be registered in terms of the crimes that they committed. A record has to be provided wherever such a person goes, indicating that the particular person has committed a particular offence.

Hon. Temporary Deputy Speaker, this Bill protects Kenyan victims even if the crimes are committed out of this country. We have a big problem in this country. We have over 11,000 soldiers who train in Laikipia area. If you grew up in that area, where British soldiers train, you will find very many children of mixed descent. These are children who will never know who their fathers are because their mothers have been victims of rape. The people who commit such offences are spirited out of the country. They are not held responsible for their actions. So, this particular Bill will protect and provide an avenue for such victims to be protected.

Looking at the issue of maids in Saudi Arabia, we know what happens to many of them. Many of them are murdered. They may be sexually abused. They are not protected. Some of them manage to find their way out of that country and come back to the country helpless but alive. The cases of those who unfortunately do not make it back to this country alive are lost because there is no way for their relatives to be compensated.

Hon. Temporary Deputy Speaker, there is also the issue of the victims of murder in Lamu County, and generally victims of murder. An unfortunate statement was made yesterday to the effect that those who were murdered were those who grabbed land or were given land in the 1960s for settlement schemes. Those are people's husbands. Wives and

children have been left without husbands and fathers. Somebody would then make such a careless statement when those victims have no way of answering to those questions. I am very glad that hon. Millie Odhiambo has introduced this Bill to this House because all Kenyans are entitled to live anywhere in this country. They are entitled to justice and protection.

When I spoke to hon. Millie Odhiambo about this Bill, it was in particular to some rape cases that happened in Kabete and Kikuyu. The perpetrators had raped schools girls. They were out on bail, and they would go and mock the victim – a Form Three girl – and tell them: “So, *utado?*” It is very unfortunately. In the current Bill, there are no repercussions for them, in terms of undertaking whatever they want. Whenever victims of sexual abuse in this country report such violations at police stations, the police do not care much. They ask the victims in public: “What happened to you?” They are very insensitive as they collect such information. This Bill will protect such victims.

I congratulate the hon. Member for introducing the Bill to this House due to the unfortunate treatment that victims of rape go through. They have no rights. Even when they go through the legal process, they are victimised. In cases where the victims are stalked by powerful and moneyed people, the victims cannot protect themselves. This Bill seeks to protect them.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Yes, hon. Yusuf Chanzu.

**Hon. Chanzu:** Thank you, hon. Temporary Deputy Speaker, Sir. This is a Bill that we all have to support. It is one of the Bills that are going to help us to deal with the issue of human rights sector that has been quite complicated.

The biggest problem is lack of information because there is a lot that goes on, for example, in the rural areas and more than 90 per cent of the victims do not report their cases because they do not know what to do. There are children who are molested, women who are raped and men who are harassed by others in those areas and this is not reported because they do not have any avenue to report. In fact, there are very few cases which are reported on radio and newspapers. So, there is a lot that this Bill will help us to do and it should go hand in hand with Article 35(1) of the Constitution; that is access to information. When people do not have information on what to do then they do not know what should be done.

So, we have got to put in place measures which can help us get these people to at least restore themselves, if not to a 100 per cent to at least some percentage. Recently, there was a murder case in Bungoma. I think all of you must have heard about a mother and her daughters who were murdered. This is because a certain man had been jailed and I was informed that he had suspected that the lady had implicated him in some criminal case. As a result of that he was jailed and the person gave a warning that when he comes out of jail, that woman was going to suffer. When he came out, I do not know whether it is true or not or whether investigations are going on or not, but this man came and murdered the woman and her daughters. They are buried in Vihiga. That is why we need to have enough information, so that people can know what to do. In the case of that lady, maybe it was not the same person who warned her, but when that happened a report should have been made to the police. But, again there is a big problem with the police

when it comes to reporting. Some of us have tried to report cases to police stations and sometimes you are given very interesting conditions. Sometimes if they want to investigate a matter, they ask for fuel or say they do not have vehicles. A number of people end up giving up and are not able to report their cases. For those people who do not have money to pay, it is a very big problem.

This Bill has come in at the opportune time although it would have been much better if it had come earlier. It is good that the Constitution which was promulgated in 2010 had a specific article dealing with this matter. What we need to do is create public awareness. We have had a number of NGOs here dealing with civic education but they only go to big towns, call a few people, come with questionnaires and have them filled in and then go back and say that they have carried out what is required. We need to conduct a survey all over the country arising from this Bill. This is a very good initiative and we need to get more information so that when we are dealing with the situation in future, we know exactly what we are dealing with because there are a lot of cases which are not reported. It is not only the vulnerable groups like I said, but anybody. I am sure some of these members have gone through situations which cannot be addressed because of the complications that they went through.

I have already heard a number of people complaining that the police recruitment that is going on is not free and fair. There are claims of bribery. You do not know who to blame. I received a lot of reports that there was a lot of bribery. So, for those people who are aggrieved, there must be a place where they can report this immediately and the information must not be vague, but include the names of the perpetrators of those kinds of offences.

There is a very important aspect of this Bill which I would really like to stress. The funding of the Victim Protection Fund is a very important component because if you do not have funding, then it is very difficult to implement what you decide to do. It will be necessary that the Mover of the Bill, hon. Millie Odhiambo, looks into this so that we get as much information as possible which can help us provide adequate funding, so that implementation of the Bill can be achieved.

The other thing which the Bill talks about is the protection centers. It is important for us to encourage suggestion boxes, where names are not included. I was informed of how the intelligence people work; I do not know whether they still work like that. There are times when people are just lying around Uhuru Park. You may think those people are either tired, hungry or are drunkards, but some of them are just there for the purpose of collecting information. The only thing is that they are not properly facilitated.

If we must have a peaceful country and one that cares about the welfare of everybody, like we normally say on political platforms, then this is a very important Bill and it must be implemented. For that, I would want to commend hon. Millie Odhiambo and say that all Members here must help in giving information from various areas, so that this Bill is implemented.

Thank you, hon. Speaker and congratulations hon. Millie Odhiambo.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, the words you were looking for are “suggestion boxes”. Hon. Chachu Ganya.

**Hon. Ganya:** Thank you, hon. Temporary Deputy Speaker for this opportunity. From the outset, I want to congratulate my colleague, hon. Millie Odhiambo for bringing

this Victim Protection Bill. This is not just an ordinary Private Members' Bill. It enables us as a country and as Parliament to realize Article 50(9) of the Constitution, which is on protection of victims in this country.

This is a Bill with a very strict constitutional deadline of August this year, four years after we promulgated the Constitution. If we do not adhere to that deadline of four years to have this Bill in place by this House, it has some very severe consequence to this National Assembly. In that light, she is doing this country and this Parliament a big favour by enabling us to beat this very critical constitutional deadline and for that hon. Millie really needs to be appreciated for this noble effort that she has done.

This Bill provides protection for the voiceless victims of crimes and abuse of power. It provides protection in terms of enabling these victims to get better information and better services, both legal and other social services. It also enables for the victims who are highly vulnerable to get special protection from the State. In addition to enabling us to realize our Constitution, which provides for protection of our victims, what hon. Millie has done is that she has also enabled us to actually fulfill our international obligation within the UN systems.

The United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power passed in 1985 commits all member states to come up with legislations that will enable them to have the victims in the countries protected through legislation. This Bill enables this country to also fulfill its international obligation and for this, she has done this country proud. As I was researching on this Bill, I did also look at some good practices elsewhere in the world. The South African Constitution which is actually hailed as the most liberal---

Hon. Temporary Deputy Speaker, the South African Constitution is actually held as one of the most liberal constitutions in the world. I know very few constitutions, if any, actually legitimizing people with different sexual orientation; not even in the United States of America. (USA). The liberal Constitution of South Africa does provide for protection of its victims.

Hon. Temporary Deputy Speaker, the service charter for victims of crime in South Africa; which is also called the victims charter, promotes and provides special instrument to enable the victims in South Africa to get fair justice. That law has a lot of similarity with this Bill hon. Millie Odhiambo-Mabona has proposed. It provides fair treatment, respect and the right to privacy for the victims. For your information, the Bill provides for the rights of assistance, legal and otherwise; right for compensation and restitution. This Bill even enlightens those structures as provided elsewhere in the world and for sure, it is one of the best that we have. I hope our human rights lawyers and our civil society organisations which have the core mandate on issues of human rights will use this wonderful Bill that is before this Parliament to ensure that they fight for the voiceless and enable this nation to achieve that spirit and letter of constitution. It will ensure that even the victims are protected within our land.

With those few remarks, I very strongly support this Bill.

**Hon. Eric Keter:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. First and foremost, I want to take this chance to thank the hon. Member, Millie Odhiambo-Mabona for having come with this very innovative idea and a Bill which is going towards protecting our victims.

Hon. Temporary Deputy Speaker, basic needs like water and food are rights to any victim. It is not a privilege, but a right. You will find that inmates are given one type of food. They should have a right to quality food; not maize all the time as we see in other cells. They are fed on maize throughout as if they are not human beings.

On the issue of medical services, they have a right to medical services. Clause 4 (2), really specifies that we should give these rights to the victims. The other issue which I appreciate in this Bill is provision of clothing and blankets, particularly in prison cells. If you go there, you can see a situation where inmates use very old rugs full of lice and other kinds of insects. In the end, they go home with diseases. They have a right to be given good clothes and also good space. You find that about 60 inmates are given a very small room and because of that they end up contracting contagious diseases and some of them even die before they are released to go home. It is good that we provide these rights for them.

Hon. Temporary Deputy Speaker, I want to end by saying that victims have a right to compensation as specified in the Bill. Cases of our security officers, who patrol or who discharge duties in various places, being subjected to harm, should not arise. They should be compensated and should not be left alone. I remember of a case in my constituency where officers who were patrolling the Kenya/Somalia boarder, fell victim to bandits and they were killed. Nobody ever compensated them despite the fact that they left young children and families. I think it is high time this Bill becomes law to protect these victims.

I want to end by saying that they have a right to read materials, as specified in the Bill. I think we are now going towards a very civilized nation. Kenya is now becoming more civilized. We should provide them with reading materials, whether it is newspapers or any other material so that they know what is happening around them and even outside.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you so much for donating some of your time. Let us hear from hon. (Ms.) Rachael Amolo.

Sorry, there is a point of order from hon. Benjamin Langat.

**Hon. Langat:** On a point of order, hon. Temporary Deputy Speaker. I was in the queue and I have certainly become a victim of technology. When you came in, you denied me a chance. I am requesting that you protect me now that we are talking about the victim protection Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I will reinstate you where you were in the list.

**Hon. (Ms.) Amolo:** Thank you, hon. Temporary Deputy Speaker. I want to thank hon. Millie Odhiambo-Mabona for coming up with this Bill. It is a very important Bill at this time in our country.

Hon. Temporary Deputy Speaker, we have had very many cases which have come up. When you look at the victims that have been affected, usually they have no one to protect them or they do not have anywhere to go. We have had many cases where victims are attacked and at the end of the day, you find that it is your father or a relative who has attacked you. A baby is attacked and he has no voice to speak out. You find a daughter who has been violated by a father living in the same house with the father. Therefore, it is very important that children are protected by leaders in this country. We need to have a



place where such victims can be put. In other countries, you will find that once a matter is reported in a police station, they have a centre where they refer victims. The centre has everything and evidence is preserved. Once you enter the centre, you will get all the facilities that you need so that you do not walk out, the way we do here. Our victims have to walk to police stations to look for police abstracts. Sometimes one is so traumatized that he may not even know where he is going.

Therefore, if we have all these facilities in one place and we also have a room where these people are put as we look for solutions to their issues, that would be a very good idea in our country. We should also have doctors on call so that once you get there, after investigations you see the doctor. That way, nobody can tamper with evidence. If it is a situation where they have to test whether you have been infected with HIV/AIDS or not, you will get a laboratory in the same place. It is very important, hon. Millie Odhiambo-Mabona; keep it up!

We know that if this Bill is passed, we shall have a peaceful nation where victims who are targeted in this Bill will really enjoy, especially our children who have no voice. They will be very happy if they will have somewhere where justice can be provided.

With those remarks, I beg to support.

**Hon. Langat:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to the Victim Protection Bill. Let me congratulate hon. Millie Odhiambo for a job well done and for, at least, saving us the agony of coming to deal with this Bill the way we normally deal with the constitutional Bills, which come late in the day and we are normally forced to burn the midnight oil. She has done a very good job. I have seen that when her temperatures are okay, she does a good job. She has done us proud.

Victims of crime suffer. In many cases, the procedure for dealing with them has been guess work, to say the least. There has been no procedure. We do not know who exactly should deal with them. We have seen efforts by the Red Cross, once in a while. We have also seen efforts by the police, but unless we have a clear procedure of handling those people, we end up losing people not because of the crime itself, but because of failure to manage the victims in good time in terms of access to medication.

The other day in Lamu, if we had a good procedure, we could have saved a number of people. We had a situation where people became victims and there was another attack almost within 24 hours. If we had a procedure which is clearly provided for by the law, as it is being suggested here, we would have saved people. We would have managed the victims in good time and protected them against the subsequent attack. Therefore, this is a timely Bill. We must save victims from trauma. We must fund the body that will be created here. I have seen what hon. Odhiambo has provided in terms of funding and we need to give it more assured funding. The funding procedure which has been proposed here is not assured. It is like we are opening room for this body to borrow and look for donations. We need to have a way of ensuring that there is secure funding from the State. The people that we intend to protect are not foreigners. They are Kenyans and we cannot rely on donors to help our people. Therefore, at a relevant time, we will need to discuss and agree, so that the funding is assured for the body that is going to manage those affairs.

I have seen the Board that has been proposed to manage the funding under Clause 18. The Fund shall be administered by a Board of Trustees, which shall consist of the Secretary of the Board. But I do not see how the Secretary will be appointed. Issues of funding must be transparent. We cannot just leave a room for guess work. Hon. Odhiambo or any other Member should think about the procedure for appointing the Secretary to the Board, so that it is very clear that the person who will manage this will be competitively recruited. Therefore, the people who will be giving money will rest assured that the money will be used for the right purpose. I want to, again, thank hon. Millie and the House at large.

I support the Bill.

**Hon. Ochieng:** Hon. Temporary Deputy Speaker, I can see the Chairman of the Budget and Appropriations Committee leaving and I would like to make a statement before he leaves. This is very important and has been raised by the Member who has just spoken. As I thank hon. Millie Odhiambo for this, the reason hon. Millie Odhiambo did not say that this Bill will be funded from the Consolidated Fund is because she could not tell what that Committee will do. This is a constitutional Bill.

If you look at Article 50(9) of the Constitution, it says that:-

“Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences”.

The reason hon. Millie feared that the funding of this Bill will be done from the public coffers is because she was not sure whether the Committee will approve it. That is why I want to appeal to the Chair of that Committee that when they make amendment to this Bill to provide that money should come from the Consolidated Fund, they should not look at it twice. They should look at it once and allow this Bill to go through. That is what I wanted to say when the Chairman is here.

This is a very important Bill. For once, we are going to have two things happening. What has been known all the years that offences are only committed against the State will change. The criminal justice system is based on the idea that offences are only committed against the State. Therefore, you do not have to compensate and once you commit a crime, you are taken to a court of law and then you become the victim. This Bill changes that greatly that if you commit an offence, the courts of law, as they find you guilty, they will also provide and order you to order something. So, for those who commit offences knowing that they will run away from it and that they will bribe the courts and get away with it should know that if an offence is committed and a judge or a court finds you to have committed an offence, you will take care of your victims. This is very important and this is the understanding that we should have going forward on this.

Offences affecting victims can be of various nature and levels. That is why this Bill must be looked into in that regard. In this country, for the last two or three years, we have been treated to so many cases of political detainees, cases that are taking too much time in court that could be sorted out through this framework. This Bill also talks about victims of abuse of power; not just offences. A lot of it happens. Sometimes, even the Members of this Parliament are guilty of that. That is where you are exercising public power and you abuse it. We will ask you to repair, compensate and make it good. This is what this Bill provides for; that for anybody exercising public power, we will ask you to make it good if you do not exercise that power properly.

It is very important to know that the way we do---

**Hon. Musyimi:** Thank you very much, hon. Temporary Deputy Speaker for indulging me. It is just a point of information to the Member. I wanted to inform the Member that we have a Budget and Appropriations Committee meeting tomorrow and we have invited the Mover of this Bill to come before the Committee tomorrow, so that we can thrush some of the suggestions that are being aired this morning, with a view to enriching the final law at the Committee Stage.

**Hon. Ochieng:** Hon. Temporary Deputy Speaker, that is so encouraging to hear. One thing that I have seen since I came to this House is the way we create institutions severally without thinking how to go about them. In this Bill, hon. Millie seeks to create almost three institutions at different levels. She creates the Victims Services, the Board and a Trust Fund. I want to implore upon her to look at ways of merging those three to make one institution that can take care of all those things that we are talking about. So that we can have an umbrella body that would then create the victim services at every county level. We should not leave it with the Cabinet Secretary. We should let the Victim Services that will be created under this Bill be the body that will create those offices at the county level. If you leave it with the Cabinet Secretary, he could decide where he is going to create them and where not. So, we should establish them and let the Board that will be created under this Bill be the one creating those offices at the county level to help with what is required.

The management of the Victims Trust Fund should also be within a single Board. You realize that she proposes to create Victim Services, a Board and a Trust Fund that all have people working there. If we could put those under one umbrella body, it will be good business going forward.

Like I said, witness protection program in this country is new. It is three years old. One of the things that, that program will be doing is related to this. At the Committee level, we have been grappling on how to ensure that what this Bill provides can also tell what the information agency is doing under a law that was passed in the last Parliament. The other thing that this Bill provides for - and I think this needs to be looked at very closely - is what the Mover is calling the victim impact assessment. She says that, that impact assessment should be done by the victim. I think that should not be so. I think the board or appointees of the board are the ones that should do the assessment. She says that the victim can then decide whether he/she wants this or not. If you are going to use the impact of the offence of the victim, you should not leave it to the victim. You should let the body that we have created here, be the one to decide, just like the probation officers decide whether we need to provide information to the judges. In this case, the body we are forming should be the body that decides whether we need a victim impact assessment and how that impact assessment will be used to help the victims. I hope this is clear because we cannot leave it to the victims. They do not even have resources. They do not know how those things work and so, we should leave it to the body that we will create to help do this. As I finish, I just want to make this clear. The needs of the victims will, sometimes, not be financial. Like a Member said, sometimes, it is just medical. Sometimes, it is counseling that is required and we need to provide for that. I have seen attempts of doing that, but this is limited only to vulnerable victims. You can be as healthy as David Ochieng' but you need counseling. If a crime has been committed

against you and the reason people die is because people act strong. I think services, medical or counseling, should be applied to every victim of an offence and not only the vulnerable victims. As I finish, can I just say, going forward, we have so much in terms of passing Bills in this House that are required to be done under the Constitution. When they are brought before the House, if they are hastened and Members are assisted in making them come through faster, it will help this country deal with this business in a good manner.

Thank you very much hon. Temporary Deputy Speaker and hon. (Ms) Odhiambo-Mabona.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Wangamati.

**Hon. Wangamati:** Thank you, Temporary Deputy Speaker, I rise to support the Bill and thank hon. (Ms) Odhiambo-Mabona for bringing it in the House. It is very important and it is timely for us to pass this Bill. One thing I have observed is the administration of some of those Bills we are putting before the House. For example, hon. Chanzu was talking about a case which was in Bungoma. I particularly, myself, when this happened, took up the matter and followed the case in Bungoma. I was quite happy because the police told me that they have arrested, at least, the person who did that. The whole idea is that the person who committed the killing of five people was also a victim. He had broken into that woman's house and took her things. The woman went to the police and the police arrested that man and took him to court. But when the case was going on, the man told the woman before the magistrate and before the courts that if he was released, he would kill her. The magistrate sentenced him to two months in jail. After the two months, he was released. On the same day he was released, he went and killed the whole family of the same woman. What I am trying to say is that the victims in this country are also known by the administration. The police are, sometimes, not capable of defending or prosecuting those cases. At the same time - and I think this House can bear me witness - when you look at most of the cases, the courts do not have enough time to listen to them. In the case in Bungoma, the court did not give attention to this issue. The man was a crook and he had been doing all manner of crimes and the police knew it. The police having known that person, could not be able to advise the courts about it. I do not know how the law works for those people, but I think the administration of the law between the police and the court is giving room for those people to be free while they have committed a crime.

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) left the Chair)*

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) took the Chair)*

I want to congratulate hon. (Ms.) Odhiambo-Mabona for bringing this Bill. But the administration of some of the Bills that we are bringing, like the police--- The police should be able to reform itself. We have heard that those victims can get lawyers. I do not know how they can get lawyers. I have not seen the lawyers intervening in those cases. The police continue to do those cases and yet, they have no capacity to argue with

the lawyers. I think time has come to examine our Judiciary on how they rule in those cases.

Thank you, hon. Temporary Deputy Speaker.

**Hon. S. S. Ahmed:** On a point of order, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): What is out of order Member for Kisumu East.

**Hon. S.S.Ahmed:** Hon. Temporary Deputy Speaker, thank you very much. The point of order is: We have discussed this matter quite extensively and we are now repeating much of what has already been said. May I---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order hon. Member! There is nothing out of order as far as I am concerned. What issue did you want to raise; reduce the time?

**Hon. S.S. Ahmed:** It is the mood of the House that this matter be now put to question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The mood of the House is already saying no. The mood of the House is not on your side. Let us hear a ladies voice. I know you are missing a ladies voice. The hon. (Ms.) Kedogo.

**Hon. (Ms.) Kedogo:** Thank you Temporary Deputy Speaker, I rise to support this Bill and also thank the Mover of the Bill for coming up with the Victims Protection Bill. It is long overdue. I support it because if you look at the board that is being formed, the Cabinet Secretary shall be responsible for the provision of facilities for persons with disability. Sometimes, persons with disabilities are never recognized but when I look at this, I thank hon. (Ms) Odhiambo-Mabona for coming up with that board and also thinking about people with disability. If you look at Clause 13(1)(d), every court room shall be fitted with special facilities for victims awaiting court room appearance. So, the courts shall also be fitted with facilities for persons with disability. If you look at Clause 13(3) where the property of the victim obtained by the offender in the course of the commission of an offence, then those will be retained and returned promptly.

Hon. Temporary Deputy Speaker, sometimes, properties, even when they are found, they just disappear into thin air. When you look at the board, I am happy. That is because in Clause 19(1)(i), there is one person nominated by the National Gender and Equality Commission. So, there is that representation for affirmative action. In (k), there will be two representatives from the civil society dealing with issues relating to children and women victims protection. So, I am happy that it is there because most victims are usually children and women. On the same, there is one person nominated by the National Council for Persons with Disability. Looking at the board, there will be monitoring and evaluation of the progress of Kenya with respect to the protection of victims of crime. Sometimes, something may be done or said. But if there is no monitoring or evaluation, then usually that thing is doomed.

She has also come up with a trust fund in the Bill which will enable the victims to get proper education, medication, treatment, adequate food, access to reading materials, adequate clothing and sufficient blankets and beddings. Finally, the Bill has some classifications for victims as either general or vulnerable. At the same time, there is confidentiality of the victims. So, it is also taken care of. There is then the protection from further harm before other victims are looked into.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, this is a constitutional Bill and so, we may not have a lot of limitation. Secondly, in terms of limitation of debate, under your own Standing Order No.97(3), you may chose to read that for your information.

**Hon. B.K. Bett:** Hon. Temporary Deputy Speaker, thank you for giving me this time. I want to start by saying that I congratulate the Mover, hon. (Ms.) Odhiambo-Mabona for coming up with this Bill. This Bill will assist in restoring public confidence in the management of our judicial processes in Kenya. Members of the public have been living in fear. They have feared the judicial system, courts, judges and magistrates and the way they are handling our cases in Kenya. I want to be specific that in Part IV of this Bill, where we have officers dealing with victims being required to provide general information to victims, particularly their rights in the judicial system and to give the status of the investigations, it is good. All along, victims of various criminal incidences have been left in the darkness without knowing the progress of their cases. So, this Bill will assist a great deal the victims in terms of knowing the progress of their cases.

This Bill will also assist in terms of scaring away criminals from colluding with those who are in charge or those who are being charged with the responsibility of prosecuting the cases because previously, the victims were disadvantaged in terms of knowing the progress of their cases, knowing their rights and in terms of getting information. So, this Bill will assist in the same.

The victims' protection trust fund is also another element which will assist the victims to meet the expenses arising from the services provided to them. I also want to point out that the requirement by the Bill that the Cabinet Secretary should establish the victim services in all counties is a welcome idea and this will ensure that there is equal access by all the citizens across the country to services without prejudice, discrimination or leaving some areas without such services.

We also have, as a country, to look critically at other victims – like the victims of corruption or economic crimes. Recently, we had a police recruitment exercise and there are so many people who fell victim to corruption, where they were forced to pay some money. All those people are victims. So, this is a Bill that we all support because it will assist in various ways.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): That was well spoken!

**Hon. Anyango:** Hon. Temporary Deputy Speaker, thank you for giving me this opportunity to contribute to this important Bill. This Bill provides a framework legislation which I think we need to develop much further. We have come forward in a country where there are millionaires out of crime. We cannot deal with the drug barons. We cannot tame corruption and this is the tendency in this country; that so many people are determined to be millionaires out of crime. It is good that the Bill proposes that even economic losses would be subject of compensation. We must make it expensive for anybody to be rich out of crime. We must make all criminals be responsible for the costs and the damage that their activities cause in this Republic.

I would suggest, therefore, that the surcharge levy proposed in this Bill should provide that any crime committed in this country, where a victim can be identified, if the fine is due and the bench levies a fine, a percent of that fine should be credited to the

victim protection trust fund. This will ensure that we add that responsibility to the fund. It will be able to represent all victims of crimes in all criminal proceedings so that they present the case of the level of compensation that is appropriate and the judge or the magistrate shall determine a figure that should constitute compensation. This will ensure that the current practice where a trial goes on and a person is convicted, fined or jailed and then somebody who is a victim has to come later to commence civil proceedings against the criminal is done away with.

Criminals are very intimidating. So, that fund should have the capacity that wherever there is a victim and the trial is going on, they will pay for victims to be represented during that trial and present the case on the level of compensation. The bench trying such a crime should be able to pronounce itself as to what amount of compensation should be added to the fine or alternatively the surcharge is a percentage of the fine that will be so levied.

Hon. Temporary Deputy Speaker, there is still another area which I think we need to develop after further research into this Bill. We know those criminals have partners within the law enforcement agencies. If they do, what happens where we have a victim, but we cannot secure any conviction against the criminal? The State should nevertheless pay the compensation necessary to that victim, whether there is a conviction or not. So, we should again require the bench to determine that under those circumstances, he or she cannot convict the particular suspect in that case. However, the court should still pronounce itself as to what amount of compensation should be due to the particular victim who has suffered in the hands of criminals that have now not been convicted and have been released by the court. In that case, such victims should benefit from the Fund nevertheless. This is despite the fact that the criminal was not found guilty.

I think the general principle we should adopt in implementing this section of the Constitution is that all victims of crime should be compensated in this country, either by the criminals or by the Fund. This will ensure that all the criminals know that they will not get away with it. If you have committed an offence, where there is a victim out of your action and the offence provides custodial sentence, you nevertheless would have to pay for the compensation of the victim who suffered in your hands.

Hon. Temporary Deputy Speaker, you may have read in the newspapers that a number of Members of Parliament living in Karen have been victims of gate-hijacking and so on. What happens when law enforcement agencies cannot reach those people because of intimidation? That fund should take to court the requests of victims that they should be compensated regardless of whether the law enforcement agencies have succeeded to get and capture the criminals or secure a conviction. Some of those may require further research in the law of evidence and further research in the fine components in all the proceedings that we are getting. However, the law already gives us the framework under this Bill to enrich it and drive to a point where all criminals will be responsible for all the costs of their activities in this country, either directly or through their contributions to the fund. If we convict you for carrying drugs, whether there was a particular victim on that day, but other Kenyans have suffered in the hands of the drugs you sell, then those people are also victims. That is because they take your drugs and they are now cabbages. They are victims of your activities in that trade. When we catch you trafficking those drugs, then you should pay for the compensation and rehabilitation of

those victims of the class of crime to which you are being convicted today, even if there is no specific victim for the circumstances under which you are caught selling drugs in this country.

I wish to thank hon. Millie for bringing this framework Bill, but further research has to be done to enrich this Bill so that any Kenyan criminal knows that they will be responsible today and in the future out of the costs to our society from their criminal activities. I hope appropriate wording will be provided under different offences where victims do arise.

**The Temporary Deputy Speaker** (Hon. (Ms. Mbalu): Hon. Members, I need to remind you that today being Wednesday, the sitting time is up to 1.00 p.m. Hon. Onyura, Member for Butula!

**Hon. Onyura:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill. Like my other colleagues, may I also thank hon. Millie for a job well done! It is not surprising really because hon. Millie Odhiambo has been among the Kenyans in the fore-front who have been fighting for human rights.

This is an important Bill because it will assist us in ensuring that the Constitution that Kenyans passed overwhelmingly is implemented. This is captured under Clause 50 of this Bill. This Clause meets the aspirations of Part IV of the Constitution of Kenya. If there is any part of the Constitution that made me support the Constitution 2010 fully, then it is Part IV which is on the Bill of Rights. This is one thing that has been missing in our Constitution from the beginning. So, anything that goes to ensure that Part IV is made operational, I support fully.

The provisions of this Bill will encourage people to volunteer information. Eyewitnesses, to be specific, are encouraged to report. The problem we have where crimes are perpetrated is that many eyewitnesses develop cold feet when it comes to reporting the crimes that they have witnessed. That is also because, at times, they go to report and fear that they may be victims. So, the provisions here and this framework will really assist in that.

Hon. Temporary Deputy Speaker, I was also quite encouraged when I read the definition of a “victim” and if you allow to me to read that small portion, it states:-

“Victim” means any natural persons who individually or collectively have suffered harm including physical or mental injury, emotional suffering or economic loss and so on.”

This means there are many people who have been suffering abuse of one kind or another, including economic exploitation. Those are now defined here as victims who can actually now find some recourse or a fall-back in this law which I would urge everybody in this House to support.

Hon. Temporary Deputy Speaker, I was also happy to find here that this law urges treatment of victims with dignity, which has been seriously missing in the way particular authorities tend to deal with victims. Some of those that have been given here like victims of rape, assault and *et cetera* go to report, maybe, to the administration authorities or the police and, instead of being encouraged and listened to, they are jeered or made fun of. This Bill will put a stop to things like those so that victims are actually encouraged and feel that they are receiving help.



It is also pleasing to see that the Bill requires that where a victim goes to make a report or is being dealt with, any special features for the victim, including their cultural values, are taken into consideration. This is so that people are treated bearing in mind what their values are, age, gender and *et cetera*. I think this is really encouraging.

Hon. Temporary Deputy Speaker, I would only add that just the other day, we were recruiting 10,000 police officers. I think part of their training should be issues to do with human rights and the Bill of Rights, including what we are talking about now so that those who are going in afresh, should be made fully aware of what such laws say. Those who are in the field and have been there for long and who still have that mentality of even brutalizing those who go to report should be given refresher courses so that they can be up to date with the requirements of this Bill and similar ones.

We also have victims of poverty and I think whereas the Government may be attempting to address that through support for the elderly people, I think the way it is being done is totally wrong. There is a lot of corruption and it is not clear how those who get this kind of support are listed, registered or even selected. I consider such people not just being victims of poverty, but also victims of corruption.

Hon. Temporary Deputy Speaker, with those comments, I strongly support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you.

Next is hon. Sang, the Member for Buret.

**Hon. Sang:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very important Bill.

I want to start by thanking hon. Millie Odhiambo for coming up with this very important Bill. I know that it is long overdue. For a very long time, victims have been suffering almost everywhere, especially poor victims. On the general principles of the Bill, it provides for the protection of the dignity of victims through provision of better information, support service, reparation and compensation from the offender, in accordance with this Act. For a very long, most of the victims of rape have been lacking information. Wherever we come from, we have a good number of victims. I was telling my friend a few minutes ago that some of us have fallen victim to some conmen in issues of purchase of land, purchase of vehicles and most of those other things.

While practicing somewhere, I realised that most of the victims did not have information. The passage of this Bill will help victims to get information on where they will be getting support from, especially legal support services. On issues of establishment of programmes to assist vulnerable victims, this Bill is also timely. That is because victims will get assisted to get income generating programmes. On issues of child victims, the Bill has sorted out the issue of the rights of children in terms of victims children, assessing adequate food and water. Wherever we have been, we have seen girls lumped together with men and women. I want to congratulate Millie Odhiambo for coming up with this Bill because it will ensure that victims children will access adequate water, food and medical treatment. For a very long, many young victims have been having many problems, especially when it comes to the issue of accessing food and water.

On the issue of securing victims, the Bill provides for psychological support for victims. For those of us who have been practising medicine somewhere before we came to this House, we know that victims of rape and sodomy have been having a lot of

problems because they have been treated casually for a very long time. Victims from poor backgrounds, especially, have been having problems. This Bill provides for psychological counselling and support. When it comes to the issue of property, we have been having issues of people destroying other peoples' property.

This particular Bill seeks to address the issue of victim restitution. For a very long time, immediately after court cases, victims would go home not knowing what would happen next. This Bill has actually tried to ensure that the issue of damage of property is taken care of. The cost of any medical or psychological treatment incurred by a victim will also be taken care of. I know that hon. Millie Odhiambo will improve on this particular Bill but for a whole week now, *The Standard* Newspaper has been running a story of Kenya Defence Forces war victims in Somalia. A good number of families have lost their loved ones and their bread winners. Others have lost their properties.

Our soldiers in Somalia have actually done us proud. This morning, one of the leaders of this country questioned what our soldiers are still doing in Somalia. I want to confirm that they are doing a very good job. The only challenge is that I do not know what will happen to the victims who have lost their loved ones, especially the psychological part of it. The Government should actually do something small on issues of compensation of families of people who have lost their lives in Somalia.

On issues of murder, we have been having mysteries of Kenyans murdering each other for a very long time. It is an unfortunate scenario. This Bill has come at the right time. Of course, we should somehow try as much as possible, as Government, to offer counselling services, offer support and compensation to the families who have lost their loved ones. I do not know whether hon. Millie Odhiambo will, somehow, try to enrich the Bill by having those comen somehow returning what they have stolen from the general public.

With those very many or few remarks, I support and congratulate hon. Millie Odhiambo for coming up with a very important Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Dennitah Ghati, did I see your request?

**Hon. (Ms.) Ghati:** On a point of order, hon. Temporary Deputy Speaker. I know, with all due respect, that this is a very critical Motion and I was just concerned about the quorum in this House to be able to discuss this.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You are concerned about what? Can you raise your voice a bit? I did not hear you very well hon. Dennitah. Hon. Moroto.

**Hon. Chumel:** Thank you, very much hon. Temporary Deputy Speaker for giving me this opportunity to also add my voice to this very important Bill. I know hon. Millie's background. She comes from the civil society world, where she has much experience on the suffering that Kenyans go through, especially the victims. Sometimes, the criminals are protected by the authorities, while the victims suffer much. I agree with all the proposals that she has made. I think she will go further and, maybe, come up with some strong avenues that victims can use in order to secure their positions, especially when they are in those suffering situations.

There are so many institutions that have been started through this House, for example, in our Constitution. Kenyans thought they were going to improve their lives and

services through, maybe, the splitting of the Police Service. We now have the National Police Service Commission and also the other side of the Force. It used to be a force but now it has become a service to the people. You saw what happened yesterday during the just concluded police recruitment. There are so many people who are now suffering through corruption. You have heard today that an old man, because he wanted to secure a position for his daughter, paid about Kshs.300,000. I know it sounds criminal to give such an amount but now, because of the situation, that man had decided to take the little he had so as to secure the young girl a position. After the money was taken, his daughter was returned back. When she just entered the house and the old man saw her, he collapsed and is now gone!

There are many other cases. For example, if you go to a place like West Pokot where I come from, someone is asked to give about Kshs200,000 or Kshs300,000. Where will that poor person get such an amount of money? So, currently, there are many people who are suffering because of that and yet, you find that all those in authority at the moment are just laughing and enjoying because of what they got. The victims who are left--- In fact, some of went up to the last process---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): What is your point of order, hon. Ken Obura?

**Hon. Obura:** On a point of order, hon. Temporary Deputy Speaker. Is the hon. Member for Kapenguria in order to allege that FIDA encourage divorce among couples?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Ken Obura, you wanted to be heard. We have heard you. Proceed, hon. Chumel.

**Hon. Chumel:** Hon. Temporary Deputy Speaker, I just want to tell the hon. Member that I have got a lot of experience. I had about seven wives, but three of them ran to that group and I am missing them now.

*(Laughter)*

Therefore, you cannot compare yourself and me. When I talk, I am doing it out of experience.

Therefore, I support this Bill and encourage that we improve it more to give a proper way of running it.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you for that answer. Let us hear from hon. Richard Makenga, hon. Member for Kaiti.

**Hon. Makenga:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. I would like to congratulate hon. Millie Odhiambo-Mabona for bringing this Bill to this House. This is a very important Bill to our society. I would like to say that it is going to protect the victims. The rights of victims will be protected. I would like to say that the Bill proposes the establishment of information centres. Those information centres are very important because some people fall victim and such information is never reported.

There are some cases where a report is given to the police or to the administration----

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Makenga. You will have your nine minutes during the next Sitting.

### ADJOURNMENT

Hon. Members, the time now is 1.00 p.m. Therefore, this House stands adjourned until this afternoon, Wednesday, 16<sup>th</sup> July, 2014 at 2.30 p.m.

House rose at 1.00 p.m.