

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 2nd May, 2006

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

EXPIRY OF PARASTATAL CEOs' CONTRACTS

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

(a) Is the Minister aware that the contracts of all parastatal Chief Executive Officers appointed in the first half of 2003, have expired?

(b) What action is the Minister taking to ensure continuity of operations based on new performance contracts?

(c) Could the Minister table a list of the affected CEOs?

Mr. Speaker, Sir, I have not received a written answer to this Question.

Mr. Speaker: The Minister has just told me that he has not received the Question itself.

The Minister of State for Public Service (Mr. Akaranga): Mr. Speaker, Sir, I beg the indulgence of the House, so that I may answer this Question tomorrow. I have just seen it on the Order Paper. I have not received the actual Question.

Mr. Maore: Mr. Speaker, Sir, I will reserve what I wanted to say and oblige.

Mr. Speaker: Mr. Maore, what have you said?

Mr. Maore: Mr. Speaker, Sir, I have no objection.

Mr. Speaker: Mr. Akaranga, will you be ready tomorrow afternoon?

The Minister of State for Public Service (Mr. Akaranga): Yes, Mr. Speaker, Sir.

Mr. Speaker: All right. I will defer the Question to tomorrow afternoon.

(Question deferred)

DELAY IN DISBURSEMENT OF MONEY BY GLOBAL FUND FOR HIV/AIDS

(Mr. Ojode) to ask the Minister for Health:-

(a) What has caused the delay in the disbursement of Kshs7.2 billion by the Global Fund for HIV/AIDS, Malaria and Tuberculosis?

(b) Could the Minister table the names of Non-Governmental Organisations (NGOs) that have mismanaged funds meant to fight the aforementioned diseases?

(c) What action is she taking to ensure that the misappropriated funds are paid back?

Mr. Speaker: Mr. Ojode is not here? The Question is dropped!

(Question dropped)

MEASURES TO AVERT DESTRUCTION
OF MUNINA DAM

Mr. C. Kilonzo: Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that Munina Dam, which was constructed with funds from the donor community is about to burst?

(b) What action is he taking to ensure that the dam is not destroyed?

(c) What measures is the Minister taking to ensure that projects funded by the donor community are carried out properly and to acceptable standards?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I would like to seek the indulgence of the House so that I can answer this Question tomorrow. The answer is not ready.

Mr. Speaker: Why so, Mr. Katuku?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I got the Question yesterday and I did not have enough time to get information from the ground. I have talked to the hon. Questioner and if the House agrees, I will answer the Question tomorrow.

Mr. K. Kilonzo: Mr. Speaker, Sir, you have always said that the business of the House should be taken very seriously. Yesterday was a public holiday. So, how could the Minister have received the Question yesterday?

Mr. Speaker: Maybe the Minister works on holidays.

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I meant Friday.

Mr. Speaker: Mr. C. Kilonzo, what is your reaction?

Mr. C. Kilonzo: Mr. Speaker, Sir, last week, the Chair observed that Ministers have not been taking the issue of answering Questions seriously. They want to answer Questions at their convenient time.

I have no objection to the Minister's request, but I would like to appeal to the Chair to insist that Ministers should take the issue of answering Questions seriously.

Mr. Speaker: Very well! I will defer the Question to tomorrow. However, I would like everybody to take the business of the House seriously.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.101

VALUE OF TARDA FUNDED PROJECTS
IN MBEERE DISTRICT

Mr. J. Nyagah asked the Minister for Regional Development Authorities:-

(a) what projects TARDA has funded in Mbeere District in the last three years; and,

(b) what the value of those projects is.

Mr. Speaker: Is the Minister there?

(Mr. Ojode entered the Chamber)

Mr. Ojode: Mr. Speaker, Sir, I beg to ask the second Question by Private Notice on the Order Paper.

(Applause)

Mr. Speaker: Order, Mr. Ojode! That just replies to you! Find out what the applause is all about. Therein lies the answer!

Is the Minister for Regional Development Authorities there? Mr. Wanjala, why are you taking cover?

Mr. J. Nyagah: Mr. Speaker, Sir, this is the third day that this Question has been put on the Order Paper. It is quite disappointing if I cannot get an answer today.

Mr. Speaker: It is, indeed! Is there any Minister who would like to answer the Question?

Mr. J. Nyagah: Mr. Speaker, Sir, I have the written answer and I can read it.

Mr. Speaker: No, you are not a Minister!

The Minister for Gender, Sports, Culture and Social Services (Mr. Kamanda): Mr. Speaker, Sir, I would like to give an undertaking that the Minister will answer the Question tomorrow.

Mr. Speaker: Where is the Minister? Do you have any idea?

The Minister for Gender, Sports, Culture and Social Services (Mr. Kamanda): Mr. Speaker, Sir, I have no idea where he is. However, our offices are in the same building and I will see him and he will answer the Question tomorrow.

Mr. Speaker: Thank you, Mr. Kamanda. I am afraid I have to defer the Question to tomorrow.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. I hope you are aware that the written answer has been submitted by the Minister. This Minister has never answered a Question in this House.

Mr. Speaker: He never answers Questions? Let me find out tomorrow.

Mr. J. Nyagah: Mr. Speaker, Sir, could the Minister be allowed to answer this Question if by any chance he walks in before the end of Question Time? This is the third day that we have been attempting to get an answer.

Mr. Speaker: Let him answer the Question tomorrow. Mr. Kamanda, will you ensure that, that message is passed on to the Minister?

The Minister for Gender, Sports, Culture and Social Services (Mr. Kamanda): Yes, Mr. Speaker, Sir.

(Question deferred)

Question No.311

DEBT RELIEF FOR COFFEE FARMERS

Mr. Munya asked the Minister for Finance:-

(a) whether he is aware of a policy decision in May, 2004, that as part of its measures to revive the coffee sector, the Government would provide debt relief for coffee farmers as it had done for sugar farmers;

(b) whether he is further aware that coffee farmers are concerned that this important policy decision has not been implemented; and,

(c) why there has been this undue delay in relieving the farmers of the heavy debt burden and in effect reviving the neglected coffee sector.

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

(a) Yes, I am aware of the Government decision of 14th December, 2004, to provide debt relief for coffee farmers as was done to sugar farmers.

(b) The appropriate steps to implement the Government's decision have already been taken and we are in the final stages. In the meantime, the Co-operative Bank of Kenya has already been instructed to stop loan recoveries from the coffee farmers.

(c) In order to implement the decision appropriately, certain steps needed to be taken, which included carrying out an audit on the coffee farmers' loans in order to validate the loans that had been granted to the farmers by the Co-operative Bank for specific needs of the coffee industry. This exercise took nearly the whole of last year.

Mr. Munya: Mr. Speaker, Sir, it is unfortunate that it has taken the Government three years to do an audit to help the coffee sector. The NARC Government was in a hurry to help other sectors immediately it took over. Now that it seems to be moving so slowly, when is it going to write the cheque? Without a cheque being written to the Co-operative Bank of Kenya, the loans will never be written off.

Could the Assistant Minister tell us when those cheques will be written and given to the Co-operative Bank of Kenya?

Mr. Kenneth: Mr. Speaker, Sir, the decision to write off debts in the sector was made at the end of the year 2004. The audit took the whole of last year. It has not taken three years. This is the beginning of the third year. However, I have also said in response to part (c) of the Question that a letter has been written to the Co-operative Bank not to recover any monies on particular schemes that the Government approved.

Mr. Angwenyi: Mr. Speaker, Sir, now that the Assistant Minister has said that the Co-operative Bank has been given instructions not to recover the debts, is he prepared to refund the deductions which have been made since the approval was given in 2004?

Mr. Kenneth: Mr. Speaker, Sir, there were particular schemes that were to be written-off. They have not been deducted. Since the Government wrote a letter to the Co-operative Bank, they have not been deducted for usual loans recovery that had been undertaken.

Mr. Salat: Mr. Speaker, Sir, I want to ask the Assistant Minister about the misconception that coffee is only grown in Central Province. We have coffee farmers in Bomet and other areas. What is he doing to make sure that public funds get to farmers outside Central Province?

Mr. Kenneth: Mr. Speaker, Sir, I am very surprised by the remark made by Mr. Salat. In my previous capacity as the Assistant Minister for Co-operative Development and Marketing, I laid on the Table of this House the list of all the co-operative societies that were going to benefit. They cut across all the coffee growing areas of this country.

Mr. Speaker: Last question, Mr. Munya!

Mr. Munya: Mr. Speaker, Sir, what has delayed the gazettelement of the regulations to facilitate the disbursement of the funds, if the rules have already been forwarded to the Attorney-General? When is he going to gazette them? If they are ready, why should they sit on his desk?

Mr. Kenneth: Mr. Speaker, Sir, the rules on the Coffee Development Fund have been discussed. We expect that, in the next two months, they will be completed and gazetted.

Mr. Speaker: Very well! Next Question by the hon. Member for Mathioya Constituency! Is Mr. Kamotho not here? Question shelved!

COMPLETION OF MURANG'A-GITUGI ROAD

(Question dropped)

Next Question, Mr. Ndambuki!

Question No.196

IMPLEMENTATION OF REP
IN KAITI CONSTITUENCY

Mr. Ndambuki asked the Minister for Energy:-

(a) whether he could inform the House when rural electrification at Kisyani-Kikoko-Kalongo and Kaumoni-Kilala areas in Kaiti Constituency will commence; and,

(b) how much money was allocated for the electrification programme.

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

(a) Survey and design work for Kisyani-Kikoko-Kalongo and Kaumoni-Kilala electrification have been completed and implementation work is expected to commence in the next three months. It will be completed by December, 2006.

(b) The above electrification work is estimated to cost Kshs20 million.

Mr. Ndambuki: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. But I would like to know why the work will commence in the next three months. Why not immediately, if the survey and design work has been done?

Mr. Kiunjuri: Mr. Speaker, Sir, "the next three months" can even be from today! I want to assure the hon. Member that, in the next three months, we shall start the project. I also want to assure you that, by December, it will be completed.

Mr. Speaker: Mr. Gitau!

Mr. Gitau: Thank you, Mr. Speaker, Sir, for allowing me to catch your eye. In the whole country, so many rural electrification projects have been promised by the Government. However, hardly 10 per cent have been implemented. When will the Ministry become serious? There is no need of awarding projects and yet, they are not implemented! When will they implement projects as awarded?

Mr. Kiunjuri: Mr. Speaker, Sir, this Assistant Minister is very serious. I have, on several occasions, explained why we have not been able to carry out the projects. I have also assured the House that we have enough materials and designers. Therefore, the work will be done.

Mr. Mukiri: Mr. Speaker, Sir, part of the reason why there is a problem with rural electrification is because Kenya Power and Lighting Company (KPLC) continues to charge Value Added Tax (VAT) on projects that are supposed to benefit the rural people. Could the Government consider waiving VAT? That tax makes the projects very expensive.

Mr. Kiunjuri: Mr. Speaker, Sir, in 2003, the Ministry of Energy tried to convince the Ministry of Finance to exempt those projects from VAT. But the exemption was not given. This House has the power to ask for that exemption through the relevant law.

Mr. Speaker: Last question, Mr. Ndambuki!

Mr. Ndambuki: Mr. Speaker, Sir, could the Assistant Minister tell this House the charges that will be levied on the applicants?

Mr. Kiunjuri: Mr. Speaker, Sir, for every customer to be connected, the average cost will be Kshs35,000 for single phase. Three phase will cost between Kshs40,000 and Kshs41,000. For

the rural electrification of market places, they will be charged between Kshs21,000 to Kshs25,000.

Mr. Speaker: Very well! Thank you! Next Question by Mr. Bett!

Mr. Bett is absent! Question dropped!

Question No.235

OVERLOADING ON NAIROBI
PASSENGER TRAINS

(Question dropped)

Next Question by the hon. Member for Nyakach Constituency! Mr. Peter Odoyo is absent!
Question dropped!

Question No.059

EXPANSION OF NYAKACH WATER SUPPLY

(Question dropped)

Next Question by the hon. Member for Maragua Constituency!

Mr. Mbau is not here? Why am I not hearing any hon. Member complaining that other hon. Members are not taking their job seriously?

(Laughter)

Why do you only complain when it is the Front Bench?

An hon. Member: Because they---

Mr. Speaker: You too are!

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, some of us were ready to complain. We were just waiting until you come to the end. The hon. Member whose

Question I was supposed to answer is not here. But even when a single Minister is not here, the other side always says that Ministers are not serious.

So, today, the Back Bench today seems not to be serious!

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir. Did you notice that Eng. Toro also walked in just two minutes before his Question was asked?

(Laughter)

Mr. Speaker: Which hon. Member?

The Assistant Minister for Energy (Mr. Kiunjuri): The Assistant Minister, Eng. Joshua Toro, only walked in two minutes before his Question was asked!

(Laughter)

Mr. Speaker: Well done, Mr. Kiunjuri!

(Mr. Mwakwere stood up in his place)

Yes, Mr. Mwakwere!

The Minister for Transport (Mr. Mwakwere): Mr. Speaker, Sir, you have emphasised time and again that, hon. Members should take parliamentary sessions very seriously. I am saying that in relation to the Question that was supposed to be answered by the Ministry of Transport.

It is a very important Question because it touches on matters that are of everybody's concern in this country. There are contemporary issues that should be clarified. So, it is extremely disappointing that an hon. Member--

Mr. Speaker: Order, Mr. Minister! You are now making a speech! This is not debating time! I want to say that, every hon. Member, whether in the Front or Back Bench, must take the business of this House very seriously! Absolutely so! I think we must maintain that. That is what we were elected to do. So, please, take your work seriously!

Next Question! I have dropped the one by Mr. Mbau!

Question No.026

DEBT RELIEF FOR KAMAHUHA
FARMERS SOCIETY

(Question dropped)

Mr. Speaker: Next Question by Mr. Ojaamong!

Question No.165

ASSETS SUB-DIVISION BETWEEN
BUSIA/TESO COUNTY COUNCILS

Mr. Ojaamong asked the Minister for Local Government:-

(a) whether he could table a list of assets owned by Busia County Council prior to the creation of Teso County Council;

(b) why these assets have not been sub-divided between the two county councils; and,

(c) given that Teso County Council has not been getting any proceeds from these assets, what modalities he has instituted to compensate the council.

Mr. Speaker: Is the Minister for Local Government here? It seems he is not here.

The Minister for Water and Irrigation (Mr. Katuku): On a point of order, Mr. Speaker, Sir. Due to the seriousness of Question No.235 and given that the Minister for Transport has come, could you allow hon. Bett to ask it so that we can be able to benefit from the answer?

Mr. Speaker: I was not going to drop it because it was the Minister who was absent. So, can you help me by bringing the Minister or do you want me to drop it?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I am on a different Question from the one you are addressing but I can see the Questioner here.

Mr. Speaker: Mr. Ojaamong, can I defer your Question to tomorrow or Thursday?

Mr. Ojaamong: Mr. Speaker, Sir, I think tomorrow will be better.

Mr. Speaker: Okay. It is not your fault. The Question will be accorded first priority.

(Question deferred)

Mr. Speaker: Next Order!

Mr. J. Nyagah: On a point of order, Mr. Speaker, Sir. Is it possible for me to plead with

you to allow the Minister for Regional Development Authorities who has just arrived to answer my Question which has been outstanding for three days?

Mr. Speaker: Now, the Minister will be ordered to go and sit first to receive my order. Well, I had sent hon. Kamanda to the hon. Minister for Regional Development Authorities, Mr. A.M. Mohamud because although he gave me the answer to the Question he was not here. We are very unhappy about it. So, be here tomorrow to answer that Question.

I want to tell the House that there is a misconception that the House begins when an hon. Member's Question is to be asked or answered. The House begins at 2.30 p.m. I want to ask any hon. Member: Who saw the Chair come late?

Hon. Members: None, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: So, please keep your time! I am paid to be here at 2.30 p.m. and you are also paid to be here at 2.30 p.m. and I do not get a different salary than you do. So, keep your part of the bargain! Minister, are you prepared for tomorrow?

The Minister for Regional Development Authorities (Mr. M.A. Mohamud): Yes, Mr. Speaker, Sir, but in the afternoon.

Mr. Speaker: I will ask Mr. Gichohi to put it for tomorrow morning.

The Minister for Transport (Mr. Mwakwere): On a point of order, Mr. Speaker, Sir. May I plead with you to allow the hon. Member, Mr. Bett, to ask his Question which was directed to my Ministry so that I can answer it?

Mr. Speaker: Order, Mr. Minister! I appreciate the enthusiasm with which the Minister is pleading on behalf of the hon. Member but I am afraid I will never go back. The hon. Member was absent and he has to suffer for it. So, I am afraid I cannot do it.

Next Order!

Mr. Odoyo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Mr. Odoyo, your Question also fell on its face!

Mr. Odoyo: Why, Mr. Speaker, Sir?

Mr. Speaker: Mr. Odoyo, the House starts at 2.30 p.m. and all hon. Members must be here. You were not there. If you have a good enough reason, then approach the Chair in the Chamber. I have already made an order.

Mr. Odoyo: Mr. Speaker, Sir, I was with the Clerk.

Mr. Speaker: That makes it even worse!

(Laughter)

Next Order! Just a moment, is there any Minister with a Ministerial Statement? Yes, Mr. Munyao!

MINISTERIAL STATEMENTS

ADDITIONAL INFORMATION ON QUESTION BY PRIVATE NOTICE: PAYMENT OF LOAN OWED BY KMC TO NBK

The Minister for Livestock and Fisheries Development (Mr. Munyao): Thank you, Mr. Speaker, Sir. Two weeks ago, you asked me to reply to Question No.6 by Private Notice which was asked by hon. Wario and I had promised to bring the information today. I had answered parts "a",

"b" and "c" but the only issue which was left was for me to lay the documents on the Table on loan applications, offer, agreement and minutes of KMC board approval. Mr. Speaker, Sir, according to the records, the Kenya Meat Commission (KMC) board was aware of the loan facilities as indicated in this document. On the strength of this, the Government recommended additional overdraft facilities of Kshs120 million. I now lay the documents on the Table.

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

Mr. Speaker: Hon. Wario will have this document availed to him by the Clerk-at-the-Table and if he has anything to seek from the Minister, I will be in a position to allow it.

EFFECTS OF DROUGHT IN
KENYA AND AVIAN FLU SITUATION

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Speaker, Sir, I have a short Ministerial Statement here on the effects of the drought and also on the Avian Flu situation in Kenya.

Mr. Speaker, Sir, as hon. Members are aware, both arid and semi-arid areas have not received adequate rainfall since the *El Nino* rains of 1997 and 1998. This coupled with the failure of the seasonal rains over the last few years, led to the recent disastrous drought.

The objective of this Ministerial Statement is to update hon. Members on the effects of drought and Avian flu scare on the livestock sub-sector.

(Loud consultations)

Mr. Speaker: Order, hon. Members! We cannot follow what the hon. Minister is saying! This is an important issue.

Please, go on, Mr. Munyao!

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Speaker, Sir, the objective of this Ministerial Statement is to update hon. Members on the effects of drought and avian flu scare on the livestock sub-sector. The persistent drought led to increased pressure on grazing and water resources, resulting into rapid pasture depletion which affected the body conditions of our livestock. The livestock producers, particularly in the ASAL districts were forced to move to other destinations in search of pasture and water. High livestock numbers have been concentrated in a few grazing areas leading to phenomenal increase in livestock population densities in these areas, with serious consequences on the environment.

These livestock movements expose animals to increased incidents and spread of livestock diseases. Frequent outbreaks have been reported among animals on transit and in areas they are migrating to. Most livestock that could not withstand the drought, or the threat of disease, have succumbed and died. Of the 24 ASAL districts affected, the worst hit areas were Wajir, Mandera, Garissa, Tana River, Moyale, Samburu, Turkana, Isiolo, Marsabit and Kajiado.

[Mr. Speaker left the Chair]

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

The effect of drought on livestock mortalities is not uniform in all 24 areas. However, it is estimated that on average, we lost 30 per cent of our livestock. This translates into huge economic

and social costs to the affected communities that will be felt for many years to come. It is estimated that the prevailing drought has led to the loss of livestock worth Kshs16.67 billion.

The Ministry, in conjunction with several development agencies, carried out emergency drought mitigative interventions which included animal health interventions involving vaccination against major livestock diseases and treated for various diseases.

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

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, in January, 2006, the Ministry proposed a budget of---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order! There is a *kamkunji* going on at the back. Let us respect this House. Please, respect the House! Hon. Members need to know what the Minister is saying. He is talking about a very important issue; namely, the effects of the drought, and whether or not, it is over. So, please, listen to him!

Mr. Munyao, please, proceed!

The Minister for Livestock and Fisheries Development (Mr. Munyao): Thank you, Mr. Speaker, Sir. In January, 2006, the Ministry proposed a budget of Kshs4.2 billion to mitigate the effects of the prevailing drought. This budget was based on a 10 per cent livestock re-stocking exercise. The budget was later reviewed in accordance with the budgetary limitations and was forwarded to the Treasury.

I wish to inform the House that the Treasury released Kshs400 million to fund livestock emergency interventions in the ASAL districts. The money was used to undertake the following activities:-

(i) A sum of Kshs290 million was used to purchase livestock in 15 ASAL districts, through the Agricultural Development Corporation (ADC) and the Agricultural Finance Corporation (AFC).

(ii) The ADC bought 13,675 of cattle. Out of this number 931 were slaughtered and re-distributed as relief food to the vulnerable people in various communities.

(iii) The AFC disbursed Kshs100 million as loans to ranchers and individuals to purchase livestock in the affected districts.

(iv) A sum of Kshs97 million was used to purchase and transport animal feeds as well as provide strategic water for livestock through tankering. This activity was mainly intended to support the core breeding herd.

(v) A sum of Kshs13 million has been used for disease control through procurement of drugs and vaccines.

Mr. Speaker, Sir, I am also glad to report that the Treasury recently released Kshs100 million to the Ministry which is being used to enhance livestock disease control, among other interventions.

Despite the above emergency measures, my Ministry recognises that the sources of livelihood for most communities in the ASAL areas will have greatly diminished as a result of recurrent drought. In view of this, the Ministry is considering a number of medium and long-term measures to address the current and future droughts. The medium-term measures under consideration include:-

Re-stocking of livestock, bulking for reseeded of the grazing areas, strategic livestock feed conservation, that is hay production, and, of course, re-opening the Kenya Meat Commission

(KMC), which will help farmers.

In the long-term, the Ministry, with other stakeholders, will endeavour to undertake the following:-

Establish and operationalise disease-free zones to enhance marketing of livestock, strengthen and expand national livestock managing information and systems and, of course, invest in value addition in livestock products at source through establishment of abattoirs, rural dairies and small leather processing factories.

In order to undertake the above measures, I would require more budgetary allocations in the coming financial year. In this regard, I am proposing an addition of funds to support this.

Mr. Speaker, Sir, let me focus the rest of my presentation on the issue of the Avian Flu Situation in Kenya. I am aware that this disease is quite strange to most of us and it may be good for me to use a few minutes to update hon. Members about it. The Avian Flu is a highly contagious disease that normally affects birds and to a lesser degree, pigs. It has also been recently found to affect the cat family. The disease spreads rapidly and widely across countries and has a potential to spread to humans with a possibility of causing human pandemic.

The outbreak of Avian Flu began in South East Asia in May, 2003. It later spread to Europe and has recently been reported in Africa, particularly in Nigeria, Egypt, Niger, Cameroon and Sudan. Further spread of the virus along the migratory routes is possible because bird migration is a recurring event.

Countries that lie along the flight pathways of birds migrating from Central Asia and Europe are at risk of introducing the virus to the domestic poultry flocks.

Mr. Speaker, Sir, the Ministerial Statement is a bit long and I will lay it on the Table. Since the issue of the Avian Flu is being discussed all over the world, we, as Parliament, need to support the Ministry's views.

(Mr. Munyao laid the document on the Table)

Mr. Speaker: Thank you, Mr. Munyao. Are there questions from hon. Members on these two issues?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I want to ask the Minister one question. In his presentation, particularly about the drought, I did not hear him talk about the opening of abattoirs in the ASAL areas. This is something very central in dealing with the livestock industry in areas faced with drought. What is the Government doing about the opening of abattoirs in the ASAL areas to facilitate the de-stocking system that he is talking about?

Mr. Speaker: Mr. Munyao, listen to other questions by hon. Members and then you respond to all of them. Please, take notes.

(Loud consultations)

Order, hon. Members! The Minister would like to listen to all questions before he responds to them!

Mr. Lesrima: Mr. Speaker, Sir, the Minister mentioned that the Avian Flu has spread to Egypt and Sudan. We know that Kenya is also on the migratory route of birds. What proof does he have to satisfy Kenyans that, indeed, this virus has not reached this country? Has research been carried out to establish that, that virus has not affected our country? We know that birds migrate as far away as from Russia to the northern part of my constituency. What assurance can he give us that we are, indeed, safe?

Mr. Speaker, Sir, secondly, on the issue of re-opening of the Kenya Meat Commission (KMC), is he aware that the Tanzanian Government is opening a massive abattoir in Dar es

Salaam, which will make KMC a white elephant project because all livestock from this country will be sold in Tanzania? Is he not rather late to keep on talking about the re-opening of KMC when there are no signs at all to show that it will ever been opened?

Mr. Sambu: On a point of order, Mr. Speaker, Sir. I heard the Minister say that loans were made available to farmers. I would like to know whether they were availed through the AFC or the ADC. I want him to clarify this issue, because we would like the AFC to go to the ground and compensate pastoralist, who lost their livestock. They should find ways and means of financing farmers by giving them livestock rather than by giving them money.

Mr. Odoyo: Mr. Speaker, Sir, the Special Programmes Ministry bought food and released some money to buy livestock. Many parts of this country will benefit, if this Ministry buys livestock for drought victims. What is the Minister doing to link up with the Special Programmes Ministry to ensure that substantial and adequate funds are availed to buy livestock from pastoralist areas and supplement food distribution in the places affected by famine?

Mr. Ndambuki: Mr. Speaker, Sir, I would like to seek some clarification from the Minister. It is true that the Government gave money during the dry spell to buy weak animals. The Minister has talked about restocking. I would like to know which areas the Minister is considering for restocking. I would also like to know the amount he has set aside for restocking. Secondly, he talked about making hay on some farms. Could we know which farms he is going to use to make hay? Or, will he buy hay from any farmer?

The Minister for Livestock and Fisheries Development (Mr. Munyao): Mr. Speaker, Sir, I will try to make a rejoinder. In case an hon. Member does not get properly answered, I will repeat myself.

The statement I have tabled here covers many areas, especially in relation to the avian flu scare. I could not read through it because of lack of time. I will circulate it to all the hon. Members and answer some questions out of it. I have not said what I should have said due to lack of time.

On the issues raised by hon. Prof. Anyang'-Nyong'o, I mentioned that it is a long-term plan of my Ministry to open abattoirs in pastoralist areas. Of course, so many areas have been identified for this purpose. I have been to Lokichogio to lay the foundation stone for an abattoir there. There are also abattoirs coming up in Isiolo, Wajir, Kajiado and Mombasa Districts. Our policy on construction of abattoirs has not been interfered with by drought. Whatever we have planned will be implemented.

On the issue of the avian flu, I wish to note that if I had finished reading my statement, then hon. Members would have understood exactly what is in it. I agree that we have birds flying across our country. But I would like to assure the House that my Ministry, especially the Department of Veterinary Services, has established laboratories all over the country. We have got laboratories in the Coast, Western and Nyanza provinces. We also have a bigger laboratory at Kabete in Central Province. We have so far sampled over 400 birds and found that there is no proof of avian flu infection in the country. We have sensitised Kenyans to the dangers of an avian flu outbreak. We have put in the Press our telephone numbers, so that whoever sees any dead bird can report to us. We have opened offices to receive such information. Up to now, I can assure Kenyans that there are no avian flu symptoms in this country.

Mr. Speaker, Sir, on the question of the opening of the KMC, which hon. Lesrima has raised, I would like to say that we have got adequate livestock for this project. We are going to intensify multiplication of animals. We know what the capacity of the KMC was when it was operational. Hon. Lesrima should know it because he is from a pastoralist area. We were slaughtering 1,000 animals a day. That gives about 30,000 animals a month. I can assure you that we have got the livestock to run the KMC. We are opening abattoirs in areas like North Eastern Province and Isiolo District because we want to have meat factories near the raw material.

On the issue of restocking, raised by my former Chairman of the Departmental Committee on Agriculture, it has been our concern. The AFC is serious on restocking. We are now dealing with farmers who lost many animals. Above all, we are first assisting those families whose

livestock was wiped out by drought. We intend to give these families some animals, so that they can start life again. There are some families which cannot live without animals. That is why we are going out of our way to assist families which lost livestock to restock. Out of 22 ASAL districts, this programme will affect 13 districts. Even if we set a target of 500 families per district, we will have done something good. So we want you to support us when ask you to do so.

Mr. Speaker, Sir, hon. Ndambuki was interested in knowing the areas identified for restocking.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order!

Proceed, Mr. Minister!

The Minister for Livestock and Fisheries Development (Mr. Munyao): The districts to benefit from restocking are the ones I have mentioned in my statement. I would like you to read my statement to know which districts they are. There are some districts affected more seriously than others. That is why at the time of livestock off-take, we went first to such areas. My Ministry was buying the weakest animals, which could not survive the drought, so that the farmer did not lose them.

POINT OF ORDER

IMPOUNDING OF MOTOR VEHICLES BY POLICE DEPARTMENT

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. K. Kilonzo?

Mr. K. Kilonzo: Mr. Speaker, Sir, last week on Wednesday I rose on a point of order and sought a Ministerial Statement from the Attorney-General, who is the custodian of our laws, on the issue of illegal impounding of vehicles by the police. He agreed to bring a comprehensive Statement here on this issue on Thursday last week. But on Thursday last week, he did not bring it. The Chair then ordered him to bring it today. It is clearly evident that the AG has disobeyed the Chair. What directive are you giving on this issue?

The Attorney-General (Mr. Wako): Mr. Speaker, I think the HANSARD will bear me out. I remember that when the hon. Member raised this issue and mentioned the AG, I stood up very quickly and stated that what was being complained of was being done by the Police Department, which falls under the Office of the President. I believe that you directed that the matter be dealt with by the Office of the President.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to mislead the House when what the hon. Member wanted was the legal status of the vehicles? It was directed at the Attorney-General and not the Minister of State, Office of the President. It was about the legal aspects of the cars.

Mr. Speaker: Order, Mr. Sambu! We get into all these because we do not want to do the hard work. We, therefore, escape from putting specific Questions and ask for Ministerial Statements which are not binding, by the way. Please, do your work! Put Questions on the Order Paper and the Ministers will come here because they are bound to come and respond to them.

Next Order!

BILLS

Second Reading

THE SEXUAL OFFENCES BILL

(Ms. Ndung'u on 26.4.2006)

(Resumption of Debate interrupted
on 27.4.2006)

Mr. Speaker: Mr. Wetangula was on the Floor. However, I know that he is not there. He had 20 minutes to go. Is he there by any chance? If he is not there, he is deemed to have forfeited his right to continue.

I will, therefore, give the Floor to the Vice-President and Minister for Home Affairs.

The Vice-President and Minister for Home Affairs (Mr. Awori): Thank you, Mr. Speaker, Sir, for giving me this opportunity to make my contribution to this very important Bill.

From the outset, I want to state that I fully support this Bill. Sexual offences seem to have gone totally out of hand and it looks as if there is nobody who is safe. When I say "nobody", I really mean nobody: No woman, whether it is a mother, sister, daughter or an aunt is safe. It is not just women. Even young boys, including men, tend to be in danger of sexual offences. The worst people are the perpetrators. One would expect that they would be social deviants but, in many cases, they are what one would call "normal people". You will find teachers, lawyers, doctors, pastors and even bishops who are also committing these offences. The worst part is that we now have parents and guardians of children perpetrating these offences. We must fight this scourge! We must fight it with every weapon that is available.

I am happy to note that the Bill puts a lot of emphasis on the protection of the girl-child. While I know that no matter how hard we fight, we may not be able to eradicate sexual offences but we must go on record as having tried to reduce these sexual offences.

Mr. Speaker, Sir, we already have very many existing laws in the Penal Code and the Children's Act. We have laws to fight sexual offences. However, what we need now is to strengthen them, to close the loopholes and bring them up to date.

The law that we have to enact through this Bill must be consistent with the existing laws. A few of the clauses in this Bill are contradictory to the existing laws. You cannot put the responsibility of proving guilt or innocence on the accused. It is important that we ensure that the law follows the other laws.

Mr. Speaker, Sir, I want to simply ask my colleagues that while we are looking at the weaknesses in this Bill, we do not trivialise; that we have to be conscious and sensitive of other people's feelings, particularly women. How mature and triumphant it would have been if this Bill was brought in the House by a male hon. Member or if a male hon. Member co-sponsored this Bill with the gracious lady. However, because I am very keen to ensure that the Bill goes through, I want to appeal to my colleagues to look at it very positively. No matter how abhorrent the crime is, we must give the accused the benefit of the doubt. That is the principle on which all our laws are based. The accused cannot be asked to prove his innocence. The state has all the machinery to gather all the evidence to show if the person is guilty or not. If there is any reasonable doubt that the person is not guilty, then that person must be released. He must be given the benefit of the doubt. This is simply because you cannot punish innocent people. We have to avoid enacting a law that can be used for malice, jealousy or revenge. We want a law that cannot be used to blackmail others. It is evident from some of the clauses that this law will be used for that.

(Applause)

Mr. Speaker, Sir, you cannot or never wish your worst enemy to find himself in prison.

However, looking at the various clauses, unless we amend or remove them, we run the danger of getting very innocent people in prison. At this stage, our Judicial system is short of judges and so cases take a long time to be heard. Those which have been determined and people make an appeal, they take an equally longer time for the appeals to be heard. Many times I have made visits to prisons. You will find that the majority of people there are waiting for their cases to be heard---

(Loud consultations)

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! The Standing Orders are clear! You must be seated unless you are transiting! I see four hon. Members standing in their places and there is a very important Bill. This Bill is absolutely important. Please, listen to the contributions of others so that you may debate, as it were, having heard what the others have said.

Proceed, your Excellency, the Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I was just making a point; that we must not have any clause that may be responsible for an innocent person to be put in jail. We would not want an innocent person to spend ten years, five years, one year or even a day in jail. We have to make sure that these laws are consistent with what we are doing.

Perhaps, we should not put too much emphasis on punishment alone. We have to try and see why this is happening. If you look at the punishment alone, you would think that murders would be getting fewer because we still have the death sentence for murder. However, the murders continue to increase. If it is just the question of sentence, robbery with violence calls for capital punishment yet the robberies continue irrespective of that. We then must start asking ourselves: Why have we become worse than animals? Animals would never molest their children. They never molest a weaker animal.

Mr. Speaker, Sir, in my view, it can only mean one thing; that we have completely lost our family values. This is one area which we must look into. While you cannot legislate against or in favour of them, it is important that we look at this. There is no longer any respect for and within families. Nobody is giving respect to his or her father, uncle, auntie or any other respectable people in the society. Even the communities themselves seem to have lost totally, the structures that kept us together, and helped us to behave as human beings.

Mr. Speaker, Sir, those among us who are much older can remember clearly what an auntie, an uncle or any other respectful person meant. That kept the family values together. That goes beyond the family. Even within the Government, we have no respect for institutions and structures. That is simply because we have taken foreign ideologies and cultures in the mistaken belief that we are now becoming civilised. Some of the clauses in the Bill legislate against culture. Culture, like religion, is something which we cannot legislate against because those are things which are very sensitive, indeed. We should try and look very critically at every clause, particularly the ones that touch on culture. If we do that, we will succeed in having a good Bill that will protect our children, women and everybody else.

Parallel with enacting this Bill, it is important that we increase the number of magistrates and judges. I am happy that, this morning, I opened a newspaper and saw an article which the Attorney-General had published, that proposes to increase the number of judges of the High Court, Court of Appeal and magistrates' courts. I think that is the way forward. We should have as many judges as possible. While having them, it is absolutely essential that they be properly trained. They should not just have gone through the Kenya School of Law. They must be sensitive to the system so that the sentences they pass are commensurate with the crime at hand. I am happy to note that

the Bill puts a great deal of emphasis on the girl-child, so that she is protected. We also have children who are mentally handicapped and need to be protected.

Mr. Speaker, Sir, I am happy to say that sentences for people who offer custody to such children are even stronger. That is the way forward.

Mr. Speaker, Sir, I want to plead with the sponsor of the Bill, and the Committee led by hon. Muite, to harmonise some various parts of it, so as to gain support. Once we support the Bill, it will protect all Kenyans, males, females, children and adults.

With that, I beg to support.

The Assistant Minister for Housing (Mrs. Tett): Thank you, Mr. Speaker, Sir. If passed, this Bill will have the highest number of amendments. It will also be a legislative eye-opener for other Parliaments all over the world. It will put our country squarely on the limelight. It will be a historical legislative achievement in Kenya. The Ninth Parliament will go down in history, as the one which passed the Bill. The Bill is long overdue and many victims have suffered. When we go out of the country, we hear many foreign Members of Parliament enquiring about the Bill. They are waiting for the Bill to be passed here, so that they can also use it in their countries. That notwithstanding, I pose the question: What happened to some members of our society? Why are rape cases increasing on a daily basis?

Our country ranks among the top in the world, in terms of the number of rape cases. Every 30 minutes a woman, a girl or a boy is raped. That is appalling. I also pose the question: Who are these people who rape five-month-old babies and 86-year-old women?

Recently, there was a 96-year-old woman who died as a result of rape. What sort of animals do such things? I call them animals, although there has never been cases of animals like elephants or giraffes that rape their young ones. Those are not just animals. They are worse than animals. No animals rape their own. They also go as far as raping mentally-ill children. Who is supposed to protect the mentally-ill people? It is our duty, as Members of this House and the society as a whole, to protect those children. Therefore, we should come out and support the Bill.

Our cultural norms and values have been thrown out of the window. In our society, it was a taboo to rape a minor. To those who rape children, the taboo does not seem to exist any more. They do what they want so as to enjoy themselves. We really do not know where such anti-social behaviour comes from. Is it as a result of our failed social lifestyles? It has been suggested that our failing social conditions and lifestyles have contributed to this anti-social behaviour. As a community, and Parliamentarians in this House, we cannot allow or condone such an outrageous behaviour.

Every day, the situation degenerates further. The time has, therefore, come for us to reverse this trend. I believe this Bill will do just that. This Bill will definitely reform the thinking of those who may be tempted to commit such a crime. At the moment, the law, as we all know, is totally inadequate. It is a law that requires production of proof including the calling of witnesses on the part of the victim. Does a man who decides to rape a child or a grandmother do it before a witness? Does he go out singing that he has raped somebody? Of course not! However, the law provides that the victims of rape must prove that they were raped. This is a law that is totally inadequate. How can a victim who is so traumatised remember all the details that are required by the court? How can a victim validate the evidence which is required as is stipulated in the Evidence Act?

The requirements are punitive to the minor and the lawyers are known for turning evidence upside down. They ask victims torturous questions without any remorse. They only care for the rapists. Such requirements of law make it possible for the rapists to get away scot-free. This Bill seeks to remove such requirements as indicated in Subclause 34(4).

We are aware that accused rapists get bail. Thereafter they go back to the community where they committed the crime. This gives them the opportunity to see the victims, chest-thump themselves and laugh about telling the victims that nothing can happen to them. This is really torturous to the victims. They also threaten the victims with death or anything bad if they continue

with the case. This further traumatises the victims. Such dangerous criminals should not be given bail. They intimidate the victims greatly.

The family members of the victim also treat her as the offender and she becomes fearful. This Bill will set up a framework that will ensure the protection of the victims of rape. The Bill places the ruthless sexual offenders against the State as opposed to some hopeless, poor victims. The Bill also provides for a minimum sentence. It is long overdue because it will go a long way in protecting the victims of rape.

Mr. Speaker, Sir, this Bill proposes to deal with cases of sexual abuse as cases of violence and not offences against morality as is the case now. Such offenders will now have to reckon with formidable State machinery rather than singular families. We have come across cases where parents of young victims are made to accept compensation in order to withdraw rape cases before court. Some parents have been bribed with items such as bicycles, wheelbarrows or cows in order to redeem the offender. How does the child who was raped feel? Perhaps, when they are negotiating for the items, the child is seated with them while undergoing so much pain. The child can do nothing about it.

This Bill proposes that the right to determine cases will now be exercised by the Director of Public Prosecutions (DPP) and not the police. This will remove the possibility of arbitrary withdrawal of cases since the State will now become the complainant. The victim is thus protected in this case. We have heard of so many cases whereby the rapists go scot-free. Many times, we have heard of children being raped by their own fathers. The mother to the children is so vulnerable, poor and entirely dependent on the husband. She is helpless and, therefore, turns to her child and tells her not to whisper anything to the outside world. You can imagine the great suffering of that mother because she has no alternative. She has sick children to fend for and yet she is jobless. The father continues to rape the child and all the mother can do is to tell that child to keep quiet. Inwardly, the pain of the mother is unbearable, but she is helpless. Who is charged with the responsibility of protecting such vulnerable victims?

Under Clause 8, on page 353 of the Bill, it is our duty to protect those victims.

Mr. Speaker, Sir, many times we have seen the evidence of inhuman acts in Nairobi Women Hospital. We see children who have been brutally raped, mutilated and disfigured. It takes many doctors to mend such damages. Surely, we cannot let this issue go on like this. I do not know how many of us in this House have been to Nairobi Women Hospital to see how traumatised those victims are. I bet very few of us have gone there.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Those victims have to undergo a lot of pain due to repeated operations. This Bill seeks to stop this suffering. Those who get to hospital are the lucky ones. What happens to the victims in the rural areas? How many of them report their ordeal to the police? None. Some are even raped by their own fathers and uncles. They do not even get to hospital to receive medical care. They live in pain throughout their lives and only God knows how they get healed.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! That is completely out of order. Proceed, Mrs. Tett!

The Assistant Minister for Housing (Mrs. Tett): Mr. Deputy Speaker, Sir, those are the ones who suffer silently. There are many like those victims in our midst.

The other day, we saw on TV, a child who had suffered in a home. She had been raped for

three years by her own father. It is only when the mother noticed that she could not walk properly that she questioned her. The child confessed that it is her father who has been raping her. Surely, we cannot let this kind of beastly behaviour to go on. What about the boy who was sodomised by his uncle? These are the true stories that we hear about every day on TV and radio. It touches some of us. This brutality will haunt those children for the rest of their lives.

Mr. Deputy Speaker, Sir, I do not know how I would feel if it was my own child being subjected to rape. There can never be any form of punishment or otherwise that can equal the mental and emotional distress and social stigma that a defiled or sexually-abused victim has to live with for the rest of his or her life.

Let me also touch on the police stations. In most cases, when the victims go to the police stations to report the crime, they are mocked and asked a lot of questions. The policeman will start laughing and asking what happened. It is so embarrassing that the victim has no option, but to forget about it and go back home. This Bill covers all this.

The process of obtaining a P3 Form is also another nightmare. Sometimes the P3 Forms are not there. If they are available, a victim has to pay some money to get them.

Mr. Osundwa: On a point of order, Mr. Deputy Speaker, Sir. Since we have heard enough on this Bill, could I suggest that the Mover be called upon to reply?

Mr. Deputy Speaker: Order! The Chair rules that it is not yet time for the Mover to reply. Therefore, we will continue with the debate. Mr. Osundwa, you may put that question much later.

Mr. Odoyo: She has finished!

Mr. Deputy Speaker: Mr. Odoyo, look at the Standing Orders! Mrs. Tett, have you finished?

The Assistant Minister for Housing (Mrs. Tett): I am just about to finish, Mr. Deputy Speaker, Sir.

The most important provision in this Bill is Clause 40. It provides for medical treatment for the survivor which will now be borne by the State. Currently, the survivors pay their own medical bills. You can imagine how expensive these bills can be. If this Bill is passed, the medical expenses will be met by the State.

Mr. Deputy Speaker, Sir, this Bill also provides for the creation of a sexual offenders register. At the moment, there is nothing like that. All these offenders can go on raping throughout their lives and nobody knows who they are because there is no sexual offenders register. They can go from town to town---

*(Several hon. Members stood
up in their places)*

Mr. Deputy Speaker: Order, hon. Members! I am sorry for this interruption, but hon. Members are flouting their own Standing Orders. Standing Order No.85 states that hon. Members should not be standing in their places; like Mr. Muchiri! Mr. Kajwang is quite in order because he has frozen in his place. May I appeal to hon. Members to ensure that they are seated. If they so wish, they can go out instead of walking around in gangways and in front of the hon. Member on the Floor. Please, let us allow the hon. Member to continue and consult in lower tones.

The Assistant Minister for Housing (Mrs. Tett): Mr. Deputy Speaker, Sir, I know many hon. Members want to contribute. This will serve as a reference to the vulnerable institution that would like to employ such deviant people. It has also been said on the Floor of this House that this Bill has some ambiguities in the definition of sexual offences. This can be addressed. What is greater? Is it the evil of rape? We should pass this Bill.

Mr. Deputy Speaker, Sir, I can go on and on defending this Bill, but I would like to ask the hon. Member to think of the boys who are sodomised, the women who are raped and the brutality and injuries that the victims will never forget in their lives. I ask this House to look deeper into this

Bill and to think deeply.

The child of one of our hon. Members here was sodomised and died. This boy was 12 years old. That hon. Member knows the pain of rape in this country. The boy died at 12 years old.

Mr. Deputy Speaker, Sir, I beg to support the Bill.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, thank you very much for giving me this opportunity. I stand to support the Sexual Offences Bill. I would also like to thank hon. Members who are lawyers. They spoke very informatively on this Bill on Thursday afternoon. I would like to express my gratitude to Mr. Kembi-Gitura, Mr. Kajwang, Mr. Muturi and Mr. Wetangula. As one who is a layman in law, I learnt a lot about this Bill. I learnt a lot about the necessity to improve it. One hon. Member said that we can make better ideas to add value to good ideas.

Mr. Deputy Speaker, Sir, this is a Bill whose time has come. It is a Bill which is a very good idea to the development of this nation. It is a Bill whose conception and development has occurred at a time of crisis in the cultural evolution of this nation. There is a crisis facing the rural society which is increasingly becoming urban. The crisis is also challenging the legal infrastructure of this nation. Many years ago, when I was an under-graduate student, I learnt jurisprudence, social justice, constitutional law and administrative law. But those, as it were, are the fringes of the legal profession as it touches on the common man. To the common man, civil law and criminal law are very germane to the day-to-day living.

Mr. Deputy Speaker, Sir, as Mrs. Tett has just said, to the father and mother; to the uncle and the aunt; to the brother and sister, the raping and defilement of a child and the sodomising of a young boy is an extremely painful experience not just to the victim and relatives, but also those who are concerned about the well-being of the victim. But laws are not simply made so that victims could be sympathised with; neither are they made so that offenders could be punished. They are made so that human societies can increasingly become civilised in a world in which the well-being of the majority becomes the well-being of the minority as well. Therefore, we are speaking of a law that is going to take care of, not just those who are offended by the offence, but also those who offend as well.

Mr. Deputy Speaker, Sir, if you look at Clauses 50 and 51 of this Bill, some very important statements have been made. This House has not paid attention to them so far. I would like to quote from the Bill, so that we can understand that, as we make this Bill into law, it will still be subject to being looked at by the Law Reform Commission from time to time. It will still be subject to being looked at by the various departments of Government. It may still come back to this House for further review. I am making that point because the House has been concerned about some weaknesses and inadequacies in the Bill. While it is in order for this House to move amendments to those inadequacies and weaknesses, whatever inadequacy or weakness that still passes on will be subject to Government policy, regular review and further amendment by this House, as is the legal and parliamentary tradition in this nation has already established. Let me quote Clauses 50 and 51 on the National Policy Framework:

"The Minister shall:-

- (a) prepare a national policy framework to guide the implementation and administration of this Act in order to secure acceptable and uniform treatment of all sexual-related offences including treatment and care of victims of sexual offences;
- (b) review the policy framework, at least, once every five years; and,
- (c) when required, amend the policy framework.

Mr. Deputy Speaker, Sir, I am saying that (b) should be (c). Those are some of the amendments that need to be done by this House in terms of the mistakes that are in this Bill. That could be carried out in this House without any further ado.

Mr. Deputy Speaker, Sir, regarding Regulation, Clause 51 says:-

"The Minister may, in consultation with the Minister for the time being responsible for matters relating to internal security, prisons, social services, education and

health, make regulations regarding;

(a) any matter which is required or permitted by the Act to be prescribed by regulations;

(b) the inter-sectoral implementation of this Act; and,

(c) any other matter which is necessary or expedient to prescribe in order to achieve or to promote the objects of this Act."

Mr. Deputy Speaker, Sir, why am I referring to these two particular clauses of the Bill? I am referring to these two particular sections of the Bill because concerns have been raised in this House, and quite rightly so; that, this Bill touches on many other laws in the law books. This Bill is not just a matter of being passed by the House to be a single law. It is something that will need to be reviewed by various other sections of the Government. I do believe that these two particular clauses of the Bill do provide adequate room for the Attorney-General, other Ministers and departments of Government to embrace this particular Bill as a core business of the Government. It touches on various aspects of life and law. That was pointed out to us by hon. Members of this House who are lawyers.

Mr. Deputy Speaker, Sir, if you look at the idea of rape and the reason why a policy framework is necessary and will become vital, rape or sexual offences are very closely related to poverty. If you look at the frequency of sexual offences in many developing countries, you will find that they are very highly co-related with poverty. It is said that when a man is harassed at the workplace for 12 good hours, he does not have proper food, he is frustrated in society, it is very highly likely that when the man goes home, he will take off his frustrations on the most immediate partner or person; usually the wife. If you look at the American society historically, you will find that the element of family violence occurs very much in poor sections of the society. So, if we are going to deal with sexual offences, we must also pay attention to poverty and elements of inequality in our urban centres. For example, the densely-populated slums in our City like Kibera, Mathare and so on are associated with a lot of crime like homicide and sexual offenses. So, a policy framework that is going to deal effectively with a problem of sexual offences will have to deal with issues of inequality and poverty in our nation. That is why these two Clauses 50 and 51 of this Bill are very important because we are dealing with a highly complicated and yet very central element of the life of our nation; the deprivation of our people.

Mr. Deputy Speaker, Sir, for the first time in the history of this country, we have found a note into making law that deals with a problem in the nation that is beyond the Penal Code. Therefore, this historic moment of putting this Bill into our law books is extremely important because it opens a door to policy-making and law-making into an area of our socio-cultural and economic life, which is extremely important to the development of our nation.

Mr. Deputy Speaker, Sir, this Bill also touches on what I call sexual terrorism in offices, both in the private and public sector. A nation like ours, where those who hold power in bureaucracies and private sector are largely male, upward mobility of our female folk in our nation becomes very difficult. Whether we like it or not, we are a masculine-oriented nation both in terms of traditional and popular culture. Why do I say so? You also need to listen to popular music. You will hardly find a song by a man singing to the praises of a fellow man, except when he is thanking him for a drink or when he has slaughtered a cow.

For a musician to praise you, it is because of something good you have done to him; he is returning a favour. But when you listen to musicians praising women, it is usually because of some sexual exploitation and beauty. So, we are both a condescending nation as far as the female folk are concerned, and very masculine oriented. When this comes to the workplace, it leads to the fact that for a woman to be upwardly mobile, more often than not, there will be a demand for sexual offers by those in power. So, this is a reality in our nation. If, indeed, we are going to be proud of our sisters, mothers and wives, we must confront this element of our national psyche and deal with it in a manner that will transform our culture and give legal framework to deal with some of our

psychological depravity.

Mr. Deputy Speaker, Sir, a society that is rapidly changing culturally as is happening here, is likely to experience a lot of psychosomatic problems or psychosomatic illnesses. When you read in our newspapers about a man raping his two daughters, it is not only a crime, but a sign of sickness. Such a person must be psychosomatically ill. This is something that is not just happening in Kenya. I remember when I was in Malaysia at one point and I was reading the papers in the morning, they were not different from the papers in Nairobi. That is because Kenya and Malaysia are going through a similar time of cultural and economic transition where people are so uncertain about their personality and they express it in a frustrated and, quite often, perverted manner.

A society going through that kind of experience needs some kind of legal framework that will deter people from expressing their psychosomatic illnesses on other human beings. We must, therefore, protect our young ones and our women from psychosomatically ill individuals. This is not just about men, but women too. When this law is being made, and I have read it, is not meant to punish or correct only the wrong in men. It is a Bill being made for society. When you meet a woman who is also psychosomatically ill, you are in for problems.

Mr. Deputy Speaker, Sir, this Bill must be understood to be a piece of legislation coming at a very critical time in our history, and a piece of legislation that is both necessary and vital. Precisely because it has no precedent in our nation, it is likely to have internal problems in terms of construction and phraseology. Those internal problems should be confronted by this House as a law-making body, and not rejected as a perverse experience or perverse expression in the law.

Mr. Deputy Speaker, Sir, I challenge the House to confront itself with the reality of our nation. This House must challenge itself to responsibility and duty; to look at what is wrong with this Bill, not because the wrong is intended, but because there is no precedent to go by.

This Bill was bound to come into conflict with the Penal Code, because it is dealing with a crime, and the Penal Code is the centrepiece law in our nation that deals with crime. Any piece of legislation that deals with crime has to come into conflict, in some way or other, with the Penal Code. But I would urge that in areas where this Bill comes into conflict with the Penal Code, we rely on our lawyer colleagues to help us sail through the difficulties and come up with a law that will rise to the occasion on the needs of this nation.

Mr. Deputy Speaker, Sir, I also want to point out the problem of the law enforcement agencies. I would like to humbly submit to the Attorney-General that law enforcement agencies in our nation, to date, do not seem to believe that there is actually something called "rape". They do not seem to believe that there is something actually called "sexual assault". Each one of us in this House has numerous experiences where either we have gone to police stations personally or we have sent somebody to report an attempted rape, actual rape or a sexual assault. The police officer at the Report Desk will ask the complainant, "What were you doing there?" This is a question that is often asked when they report to police; "What were you doing there?" Or even perversely, "What kind of dress were you wearing? Or even more, "At that time of the night, where were you going?" I have looked at the Constitution of the Republic of Kenya and there is nowhere where it is said women must not be out of their homes at night, or where it states how long or short a woman's dress should be. There is no law that prohibits a woman from wearing a long trouser. So, for a police officer to ask a woman such questions, it is a violation of the human rights and fundamental rights of a Kenyan citizen.

(Applause)

Mr. Deputy Speaker, Sir, in rape cases, and I am sure my lawyer colleagues will testify to this, the kind of evidence given to court by those who defend rape offenders, is quite astounding. I have read the East African Law Reports on these cases and it is pathetic. It shows that either they know that there is no good law that will defend rape victims and defend their rights or they know

that there is no institution in our nation that is given the responsibility of educating law enforcement agencies as far as sexual offences and sexual assault are concerned. It is high time a law like this came into being so that we can confront this malady in our nation.

Mr. Deputy Speaker, Sir, when the drafters of this Bill thought in their own wisdom, because there has been such travesty in the law courts, police stations, the burden of proof should be on the accused, it was not because they were trying to go against the Constitution. I would like to submit that it is their frustration with the system that drove them that far. In order to deal with that frustration, let us listen very carefully to our lawyers in this House. Let us amend that particular Clause in this Bill and put it right, so that for the first time in the life of our nation, we shall make every Kenyan a full citizen, be they male or female, and make every Kenyan truly equal within the law. Let us not live with this thing as something bothering our consciousness as we go to the grave. I say this because, sooner or later, we shall be in the grave, and when we go up there with St. Peter and Jesus Christ questioning us, "why did you leave our women and children to be tormented by rapists and sexual assaulters," there is very little we shall say, because we were provided with an occasion to correct it in this House, but we did not rise up to it.

I am pleading with the hon. Members, that we do, indeed, understand the weaknesses in this Bill, but it is upon us to make the necessary amendments, and when the Ninth Parliament finishes its term, we can be proud to say to the people of Kenya and the world that we rose up to the occasion and passed a law which will stand the test of time and will promote the dignity of our children and our women and men for an indefinite time.

With those remarks, I beg to support.

(Applause)

The Attorney-General (Mr. Wako): Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to speak on this [**The Attorney-General**] very important Bill. Let me begin by saying that I support this historic Bill. I commend the efforts of the Mover of this Bill, Ms. Njoki Ndung'u, and the seconder of this debate, the shadow Attorney-General, Mr. M. Kilonzo.

This is a social Bill. As such, it goes beyond partisan interests. The fact that the Mover of this debate is a Back-Bencher; the seconder, the shadow Attorney-General, and the Government respondent, who is supporting the Bill, is the Attorney-General, to me, this is the best way forward for this very important legislation.

(Applause)

Mr. Deputy Speaker, Sir, it may be recalled that when I moved the Criminal Law (Amendment) Bill in 2002, I stated that the amendments as at that time were stop-gap measures, and that I looked forward to this House debating the Sexual Offences Bill. I am glad that, in the formulation of this Bill, the hon. Member has not only co-operated with my office but there has also been wide consultations involving all stakeholders, which led to this Bill in the way it is now.

Mr. Deputy Speaker, Sir, I said so because, as we all know, and as was stated by the shadow Attorney-General, the Penal Code that we have in our statute books came into force way back in 1930. It must be recalled that, in fact, the Penal Code that came into force in 1930 was itself based on a legislation in England which was passed in 1861 and amended slightly in 1885; and then produced to the colonies through the Indian Penal Code at the beginning of the last century. So, we are dealing with a piece of legislation which has been around for 140 years with slight amendments over time. Whereas in the United Kingdom (UK) itself there has been tremendous progress in legislation on this issue; and whereas in other countries like India and even our neighbours, for example, Tanzania and Rwanda, there has been tremendous progress in the

legislation on this issue, we, in Kenya, have not advanced as much apart from the stop-gap measures that were introduced in the year 2002.

Consequently, the kind of issues that were meant to be dealt with at that time are not the kind of issues that we are facing today. We are, today, facing issues like sexual tourism, child pornography, child trafficking, the HIV/AIDS pandemic and other numerous ills which were not thought of at that time. I support this Bill because it is now dealing, in a comprehensive manner, with the issues I have just mentioned.

Mr. Deputy Speaker, Sir, this Bill contains provisions on child prostitution as well as provisions relating to child trafficking. The Bill seeks to make it an offence to expose children to pornography. It has a more elaborate definition of incest, which takes into account our own traditional ways of looking at incest, taking into account our own extended family systems.

It also deals with the issue of deliberate transmission of HIV/AIDS and other life threatening sexually transmitted diseases by one person to another. These are issues which were not contemplated when the existing Penal Code came into force.

Mr. Deputy Speaker, Sir, this Bill deals with an issue we do not normally provide for in our legislations. The only other legislation in which we have provided for it is in the Narcotic Drugs and Psychotropic Substances Act, where we have said that the law is not just law but rather it must go hand-in-hand with treatment. Very moving examples have been cited from the Floor of the House by Mr. Bett and Prof. Anyang'-Nyong'o. A paedophile is not just a law breaker. He or she must be sick. Therefore, Clause 40 of this Bill seeks to provide for medical treatment for such a person. It does not just seek provision for custodial sentence but it says that even as such, if a person is in prison, he is entitled to medical treatment. That is why I am supporting the Bill.

Mr. Deputy Speaker, Sir, I agree with the previous speaker that law does not operate in a vacuum. In order for the legal framework to be effective, it must not operate in a vacuum. That is why this Bill in clauses 50 and 51 provides for the provision of a national policy framework in which this law will operate. Obviously, issues such as eradication of poverty will have to be handled as some of the underlying factors which contribute to some of the issues addressed by this Bill.

Let me add that this is not just a matter of eradication of poverty. We have discovered that in the West, this is a disease of the rich; the very affluent. Things are happening at that level, which will shutter your mind. Acts of paedophile and child pornography, just for the pleasure of seeing a child being raped or participating in a sexual orgy, are perpetrated by the affluent members of society in the western countries. Therefore, this Bill envisages implementation of a law that will take into account the policy and administrative structures which will be put in place and reviewed from time to time as the society progresses.

Mr. Deputy Speaker, Sir, a number of things have been said. Since we are approaching this problem as a House, we should discuss this Bill dispassionately and objectively. We should identify the areas that need to be amended. I am quite sure that the relevant Departmental Committee will be studying the contributions being made from this House with a view to making amendments where, absolutely, necessary. The amendments that will be proposed will be brought to this House and we will enact them into law.

I would like to remind the House that we should undertake to do this in a very realistic manner. For instance, a lot has been said about Clause 31 which seeks to criminalise forced circumcision. If I may say so, this is a cultural issue, and it is true that whereas this law was passed in the UK---

Mr. Odoyo: On a point of order, Mr. Deputy Speaker, Sir. In view of the fact that our very learned friend and the Government's advisor number one on legal matters is the Official Responder to the debate on this Bill, perhaps, he may use his discretion to be fairly brief, so that other hon. Members can contribute and then he can respond as the Official Responder.

Mr. Deputy Speaker: In fact, the Responder should have more time. He still have 30

minutes. The Mover will reply at an appropriate time. The Attorney-General is speaking in his capacity as the Attorney-General, but not necessarily as what you have said. Therefore, unless he wants to cut his contribution short, he is entitled to 30 minutes.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I am entitled to more than 30 minutes, but I will take 30 minutes. The Mover of the Bill will respond to all the issues that have been raised.

Clause 31 talks about circumcision. I just want to remind this House that under the Children's Act, this House has, in fact, passed a law on female circumcision, under Clause 14 of the Children's Act, which states:

"No person shall subject a child to female circumcision, early marriage or other cultural rituals."

In fact, the law states that female children should not be circumcised. Adults can undergo that right voluntarily. There is nothing that stops them from undergoing that ritual voluntarily. The word that has been used, and which is very keen in this section, is "forced". It only becomes an offence where a person is forced, but not where a person undergoes the ritual voluntarily.

Mr. Deputy Speaker, Sir, I support this Bill because it is now gender blind. Whereas rape under the current law is unlawful carnal knowledge of a woman or a girl, as amended under this Bill, it is now gender blind in the sense that even a boy or a man can also be sexually assaulted. Therefore, the definition of rape is gender neutral. This is progress, particularly when at this stage we hear of school boys being lured by sugar mummies and engaging in those acts and the sugar mummies go scot free. If this Bill is passed, the sugar mummies will also be charged with sexual assaults. So, the Bill is gender sensitive.

We have figures to show that there is a rise in the victims of sexual offenses on the part of males. So far, it is 6 per cent and this figure is on the rise. We are not just passing this Bill to protect our sisters, mothers and daughters, but also our sons, fathers and brothers. We are passing this Bill to protect everybody.

Mr. Deputy Speaker, Sir, the current law, of course, is dented towards women, but against men. I do not want to go into the details, but offences such as sodomy only carry a maximum sentence of 21 years whereas rape carries a sentence of life imprisonment. The current law does not take into account forced oral sex, which is now the emerging thing in the world today in order to avoid HIV/AIDS. The new definition of rape is comprehensive enough to cover all those things. I support this Bill because for the first time, we are having a proper definition of sexual assault.

The Bill recognises that people are sometimes sexually assaulted using objects and animals to penetrate the genital organs. Of course, this type of sexual assault causes trauma to the victims. We are not splitting hair on this. Here in Kenya, we even have a case: The Republic versus Dan Ndeda Wamamba, where a man broke a stool and used the broken leg to penetrate his wife. We have also heard allegations involving the police where a woman says that she went to a police station, was tortured and made a confession because a bottle was used to penetrate her. These are the type of things which this law is coming out very clearly against.

Mr. Deputy Speaker, Sir, the broadened definition of rape and sexual assault in the Bill has, therefore, effectively addressed this imbalance. I do not think that the sentences in this Bill are too harsh. A person charged with robbery with violence today carries a death penalty. That can mean that if somebody waves a knife at you and takes your earrings alone, that person can be sentenced to death, whereas if that person assaults a lady, that does not carry a capital punishment. The sentence can just be a few years in prison. We must look at that disparity because somebody who is charged with robbery with violence can get a capital punishment, but somebody who has done a more heinous crime of raping a child who is under 11 years old and depriving the child of forever having babies in future, can be sentenced for imprisonment only a few years. This should carry a capital punishment. I feel that the sentences are not, in fact, harsh enough.

Mr. Deputy Speaker, Sir, research on African Customary Law shows that the offence of

rape was treated very seriously. Amongst the Luhya Community, it attracted a death penalty. In fact, no child was to be named after a person who had engaged in either rape or incest. In other words, that was the end of the life of the perpetrator. Amongst the Subas, it was death by stoning. Amongst the Kikuyus, it was death. The perpetrator was placed in a beehive and rolled down the hill. Amongst the Taitas, the uncle of the perpetrator was instructed to shoot him dead with an arrow. These were serious offences under our customary law. Therefore, our law today does not go far enough. In fact, what I have said about these tribes, goes even with equal force amongst the Luos, Kalenjins, the Kambas, the Somalis and everybody else.

All the ethnic groups treated the offence of rape in a very serious manner. I do not think that the sentences that we have today under the Sexual Offences Act have gone as far as it is necessary to curb this offence, but we can make do with it. So, nobody should be heard to complain that the sentences under this Bill are harsh. In fact, I can quote the words of a 92 years old Taita lady who said: "I do not understand in our days, because in our days, we did not wear any clothes and no man touched the girls. Today, you cover yourselves with everything and yet you are touched". That shows you what we have come to. Therefore, the sentences are not harsh enough.

Mr. Deputy Speaker, Sir, the sentences which are meted here are very similar to the ones in the Rwanda legislations. The sentences in Tanzania are even harsher than the minimum sentences that we have here. Here, the minimum sentence for the rape of an adult is ten years and in Tanzania, it is 30 years. Therefore, maybe the laws here have to be reviewed by the Committee on Administration of Justice and Legal Affairs to see if they can be made slightly harsher. Of course, the laws are quite similar to the United States laws on sexual exploitation and other abuses of children which attract a minimum sentence of ten years for the first time, 15 years for the second time and 30 years for the third instance.

In Botswana, it is a minimum of life imprisonment.

Mr. Deputy Speaker, Sir, I want to touch very briefly on the issue of the Evidence Act. There have been complaints on the Act. Section 163 (i)(b) of the Evidence Act proposes that it should be deleted. It provides as follows:-

"When a man is prosecuted for rape or attempted rape, it may be shown that the prosecutrix was of generally immoral character."

That has been deleted and, in its place, we have Clause 39 which states:-

"No evidence as to any previous sexual experience or conduct of any person against or ---"

When I say, "it has been deleted", I mean it has been proposed to be deleted, if this House feels so.

Mr. Deputy Speaker, Sir, there are two issues that arise here. The section that is proposed to be written is based on a judgement of the Court of Appeal in the case of Maina versus the Republic, where the then incumbent Chief Justice cautioned; and I quote:-

"It is really dangerous to convict on the evidence of the woman or a judge alone. It is dangerous because human experience has shown that girls and women, do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute!"

Because of the comments of that hon. Chief Justice, we have a proposal to repeal that section.

Mr. Deputy Speaker, Sir, generally, in criminal law, one is presumed innocent until proven guilty. In the course of the hearing, the accused previous conduct is never mentioned at all. That is because the court is supposed to judge the issues based on the facts of that particular case. It is only after the prosecution has proven the case, based on the facts of that particular case, and the person has been found guilty that his previous records come into play when it comes to the question of sentencing. That is the general principle of criminal procedure. It is there!

(Applause)

It is just in this particular issue that, somehow, you do not wait until a person has been found guilty. You try to introduce that evidence in the course of the hearing. It is an exception which is discriminatory of the women.

To support me in this, I am very pleased to inform this august Assembly that the case of Maina versus the Republic which formed the basis---

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to mislead the House on his explanation that, in the trial of an accused person, his or her character is never mentioned until after conviction? But, here, we are not dealing with an accused person. We are dealing with the accuser. It is the woman who is accusing the man. We want to check the credibility of the woman. We want to know whether she is lying or not.

(Applause)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, that is why we have said that there must be a balance between the victim and the complainant in criminal procedures. You cannot have rights to the victim to the exclusion of the rights of the complainant. You cannot! The general trend now is to emphasise that there must be a balance between the rights of the complainant and those of the victim. Sometimes ago, the rights of the victim were emphasised more than those of the complainant. That was so even when the complainant was harmed to the extent of being in the death-bed. Yet, we were concerned with the rights of the person who caused that injury. No! The time has come when the right of the victim must be balanced against that of the complainant.

However, I am glad to say that, that particular case of Maina versus the Republic has been overruled in the case of John Mwashigandi Mukhungu versus the Republic. In that case, three eminent judges, whom I think we all have virtual respect for; Justice Richard Otieno Kwach, Justice Bosire and Justice O'kubasu hailed--- And here, I can do no better than quote what they said. They said:-

"We think that the time has now come to correct what we believe is a position which the courts have hitherto taken without proper basis, if any basis existed, for treating female witnesses differently in sexual offences. Such basis cannot be properly justified presently. The framers of the Constitution and Parliament have not seen the need to make provision to deal with the issue of corroboration in sexual offences. In the result, we have no hesitation in holding the decision which hold that corroboration is essential in sexual offences before conviction, are no longer a good law, as they conflict with Section 82 of the Constitution. Therefore, we hold that Maina versus the Republic is bad law. There is, therefore, need to amend the Evidence Act, so as to ensure that it is constitutional and does not unfairly discriminate against any category of crime victims, thereby denying them justice".

Mr. Deputy Speaker, Sir, this particular issue has also confused us a bit because, it has been stated here that it shifts the burden of proof to the complainant. The rules of evidence only permits that relevant evidence must be given. The temporary shifting of burden of proof is something provided for under our own Constitution. It does not shift the burden of proof in a case. At the end of the day, it is the threshold of "beyond reasonable doubt" being proved. But it temporarily just shifts that burden so that, the person who is in possession of those facts, should be able to explain to the court what those facts are. Our own Constitution allows that. Here, I quote Section 77, Subsection 12 Paragraph (a) of our Constitution. It reads:-

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Constitution to the extent that the law in question imposes upon a person charged with a criminal offence the burden of proving particular facts".

So, our Constitution says that, there are situations in which a burden can be imposed on a person charged with an offence to prove certain facts. For example, offences of strict liability where you are found in possession of stolen property. Surely, it is you who has to do some explaining as to whether you knew that, that property was stolen.

Mr. Deputy Speaker, Sir, also under our own Penal Code---

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Attorney-General in order to postulate before this hon. House that Section 77 would shift the burden of proof on the accused person when actually it should be able to address the question of fair trial? If it is a question of fair trial, it is not possible to ask the accused person to prove that he is not guilty!

Mr. Deputy Speaker: Mr. Sungu, that is a point of argument.

Proceed, Attorney-General!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I am just quoting to hon. Sungu the provisions of the Constitution which are very simple and if he reads them carefully, I think he will come to the conclusion that I have come to.

Mr. Deputy Speaker, Sir, the intended shifting of the burden is also provided for under our Penal Code. I will not go into it because of time. Sections 64 and 153 of our Penal Code, actually do so.

I beg to support.

(Applause)

Mr. Kosgey: Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Bill.

(Applause)

Mr. Deputy Speaker, Sir, this is a modern Bill whose time has come. Those who are opposing it really belong to the last century. They are conservatives. When the Mover sought permission to introduce this Bill, those of us on this side of the House supported it.

Mr. Wamunyinyi: On a point of order, Mr. Deputy Speaker, Sir. I believe that we have heard enough from the hon. Members' contributions. Could you call upon the Mover to reply?

(Applause)

Mr. Deputy Speaker: Order! Let me make it clear that there are so many hon. Members interested in contributing to this Bill. Therefore, I do not see any possibility of considering that request. Therefore, hold your peace until we debate this Bill exhaustively.

(Applause)

Mr. Kosgey: Thank you, Mr. Deputy Speaker, Sir. The other day when the Mover moved her Motion to introduce this Bill, we supported it because at that time there were rampant cases of rape, particularly of children. Every other day we see it on television. It has actually hurt some of us. It is about time that deterrent sentences were meted out on these rapists.

Mr. Deputy Speaker, Sir, when the Bill now being debated was introduced to the House, we found out that it encompassed quite a lot of other areas dealing with this crime of sexual offences and we all support it. Those of us who are quite progressive support it but those who are male chauvinists and conservatives oppose it.

Mr. Deputy Speaker, Sir, the punishment meted out for rape, sexual assault, indecent exposure and defilement particularly of children is still very lenient, in my opinion. Being

sentenced to ten years for rape is still very lenient. We would have expected one to be sentenced for life. Similarly, being sentenced for five years for sexual assault or defilement is lenient. A person who defiles a child less than 11 years is handed life imprisonment but one who defiles a one-year old child is handed a 15 to 20 year sentence. It should be life imprisonment and not a 20 year sentence. I hope at the Committee Stage we can amend it to provide for life sentences for all those people who defile minors.

Mr. Deputy Speaker, Sir, as I said, this Bill is for this century and there is no conflict between this Bill and our traditional customary law. In fact, in the Kalenjin society a rapist was regarded as a deranged person and nobody was to go near him. So, this Bill is in conformity with our customary law.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, Clauses 23 and 24 deal with sexual harassment and there are fears that this can be misused. However, if you read and analyse them, let me say that it will criminalise courtship. I believe it is possible to court without sexually harassing that particular person you are courting. In particular Clause 24 deals with sexual harassment by persons in authority or in the work place.

When I was the Minister for Education, I was informed of a case where a head teacher had sexually harassed pupils and, in fact, impregnated all the 12 girls who were in Standard Eight and he got away with it. He made these girls useless in life just to satisfy his sexual appetite. We are saying that people like that head teacher should be punished severely. In fact, Clause 24 provides that he should be jailed for up to ten years. I think this is a short period of time. He should be jailed for life.

Mr. Temporary Deputy Speaker, Sir, I think everybody knows that in the workplaces whether it is in the offices or institutions, women are perpetually sexually harassed. It is only that they are quiet on this matter. They do not want to say it but we can say it for them. So, I commend the Mover of this Bill. This Bill as I said is modern, forward looking, encompasses and covers a wide range of issues of sexual offences including child trafficking for pornography and sexual exploitation. We should protect our children.

Mr. Temporary Deputy Speaker, Sir, we have seen young girls who have been sexually assaulted and deformed by these deranged rapists being admitted to Nairobi Women's Hospital from various places. One feels like killing these rapists. For us to sit here and say that maybe this may cause sexual harassment or may cause this or that--- Even what has been said that it might lead to marital rape, I do not believe that there is such a thing called marital rape. If a man is in love with his wife, such a thing should never arise.

Mr. Muturi: It is there!

Mr. Kosgey: Mr. Temporary Deputy Speaker, Sir, protect me from Mr. Muturi. He is harassing me.

The Temporary Deputy Speaker (Mr. Khamasi): I saw you look there!

Mr. Kosgey: He said something which you did not hear.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I believe that if a married couple are conducting their affairs normally we should not fear that marital rape can arise because of this Bill.

Mr. Temporary Deputy Speaker, Sir, the bit on whether a person should be innocent until

proven guilty or guilty until proven innocent is debatable as the previous speaker said. I was of the opinion that if it is in conflict with the Constitution, we can amend it here at the Committee Stage. However, it has been explained by the Attorney-General that it is not in conflict with the Constitution. I am quite satisfied because really if somebody has raped a child and it is his word against that of the child, really which one should we believe? When we were at Safari Park Hotel, we were told of a five month old child who was raped. We cannot sit here and decide to defer this Bill, so that we revise it later. We should pass it. If we find out that there are some sections that are not workable, we will amend them by a simple majority. This is not a Constitution.

Mr. Temporary Deputy Speaker, Sir, it might be said that this Bill is in conflict with certain cultural practices, like Female Genital Mutilation (FGM). However, it is already explained here, the Children's Act outlaws FGM. This Bill talks of cases where somebody forces a lady to undergo FGM. Why should we not punish the person who is forcing young girls to undergo FGM? If it is voluntary, then girls can be circumcised. This is a cultural thing that should disappear as our people get educated and we get more civilised. However, this practice is still deep-rooted in some communities such as Gusii.

I have already mentioned something on Clause 24 of the Bill. I am quite happy with this clause. There is a lot of sexual harassment in schools, hospitals and other institutions of higher learning. We have heard of cases where female students are forced to give sexual favours, so that they can attain higher marks. These things must stop. We should ask ladies to speak up when such things happen to them. If this Bill is passed, we will soon have a law that will protect them and punish all those people who go masquerading as male chauvinists.

I do not want to take a lot of time discussing this Bill as other speakers want to contribute.

Finally, I would like to touch on the question of what happens when a person reports a case of rape at a police station. This issue has not been addressed in the Bill. Maybe, I missed out on this issue when I went through the Bill. When a child or a woman goes to a police station to report a rape case, the first thing police officers do is to jokingly ask what happened. At that moment, that person has experienced some form of trauma. It is quite unfortunate that, in most cases, police officers just casually inquire what happened. This is very unfair. Something should be done to make sure that law enforcement agencies do not just take such issues casually. Imagine if it was your child, wife or daughter who was reporting such a case and it was not handled seriously. This is a very serious issue. Ladies should treat this issue seriously. They should not use this issue to behave as if they are fighting men. The issue of sexual violence is not something that ladies should use to compete with men. This matter should be treated with the seriousness it deserves.

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

The Minister for Roads and Public Works (Mr. Nyachae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. I stand here to broadly support this Bill.

The problem of sexual offences has been with us for some years. We have been complaining about this issue. Majority of hon. Members of this House encouraged the Mover to bring this Bill to the House. We cannot have such a short memory of turning round to try and oppose the Bill. We cannot give in to the human beasts; people who are not human beings in their brains. The people who are harassing people sexually through rape and such similar behaviour are not to be taken for granted. We should take a decision to even isolate them.

Mr. Temporary Deputy Speaker, Sir, I am over 70 years old now. I have never understood why a woman or a girl should be harassed sexually or raped when God has given somebody the brain and technique of convincing a woman or a girl. Why should you become an animal and start raping a woman? I am one of those hon. Members who have spoken on this issue in this House before. About two years ago, I said in this House that if I found out that somebody has raped my daughter, wife or granddaughter, I will not wait for the police to handle the matter, I will kill that person! I will break the law to protect my daughter and granddaughter!

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): Yes, what is it, Mr. Mwenje?

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, as much as I respect Mr. Nyachae, is he in order to advocate that people should kill each other if they find them raping their relatives? Could he withdraw those remarks?

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Mwenje! Mr. Nyachae has never told anybody to kill another person. All he has said is that he can kill in such a case. I am sure he knows the consequences.

Proceed, Mr. Nyachae!

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, Mr. Mwenje needs to know that there is something called extreme provocation. In this particular case, it is extreme provocation. It is not for this House to decide how I will react. I am only informing this House. I become so emotional when the issue of rape comes up. I believe rapists should not be in our society. Majority of hon. Members in this House have relatives, daughters and wives, surely, we cannot accept this to go on forever. We must stop it. Here we are being asked to provide a method of dealing with these kind of people and we are behaving as if we are objecting this Bill. When we are in this House, we think the public is not forming an opinion about us. The opinion being formed out there is that hon. Members of Parliament are opposing the Bill because they are accepting rape and sexual harassment as a way of life in this country. That is the simple conclusion people out there are drawing. Are we really condoning it? We are not and we cannot.

Mr. Temporary Deputy Speaker, Sir, let me tell my colleagues here that they should forget about other girls or persons being raped. The trend is such that our own wives are at risk of being raped. How shall we feel if our wives are raped? If you are not going to be happy about your wife going out with another man, then, what about when she is raped? How will you feel about it? I think we must agree to pass this Bill. In my view, this country, and this House, should be unanimous in passing this Bill. Over the years I have been in this House and I think there are certain issues that we can deal with unanimously. This Bill is one of them. We should not be lecturing one another about it. Rape is an issue no community can accept.

The Attorney-General gave quite a number of examples on how various communities dealt with rapists in the past. It is a fact that there is no community which tolerates rape. Even the animal community does not accept it. Have you seen bulls fighting over a cow? No bull allows another bull to touch its mate. You are trying to say that anyone can touch a woman in any manner he wants. This is wrong. The people who are doing these things are not normal. We should not accept it. In fact, all normal people know how to talk to a lady and a lady knows how to talk to a man. There should be no force in sex matter and that is how we have survived over the years.

At my age now, when I have retired from that kind of thing, I can still talk nicely and convince a young girl without harassing her. To engage in rape is animalish. Rapists behave like beasts. We should not allow rape or sexual harassment to continue.

Finally, my request is that we pass this Bill. We can remove the minor issues raised by hon. Members. After listening to what hon. Members have said about this Bill, I realise that there are some minor bad things here and there. Let us remove those minor things and pass this Bill without going round in circles. Let us not deal with these minor issues now. Let us deal with them separately and allow this Bill to go through.

With those few remarks, I say let us not waste time in passing this Bill.

Mr. M.Y. Haji: Ahsante, Bw. Naibu Spika wa Muda, kwa kunipa nafasi niuchangie huu mjadala. Huu mjadala ni muhimu sana, na hili ni jambo ambalo ni lazima tulijadili kwa makini. Mambo ambayo yametokea katika miaka michache iliyopita ni mazito. Hata ingawa sisi ni wanyama, mwenyezi Mungu ametupa akili ya kuweza kutofautisha mazuri kutoka mabaya. Ni jambo la kusikitisha sana kuona watu wakifanya mapenzi na watoto wa umri wa miezi mitatu au

sita; hii ni kinyume na hata tabia ya wanyama. Hata mnyama hawezi kutamani mtoto mchanga hivyo kimapenzi. Kwa hakika mambo yanayofanyika wakati huu ni kinyume na maadili ya mwafrika na ya dini zote.

Katika dini ya kiislamu, mtu ambaye ameowa akifanya mapenzi na mwanamke mwingine kwa nguvu anapigwa mawe hadi kufa. Ni vigumu katika dini ya kiislamu kutoa ushahidi wa mtu anayefanya mapenzi kwa nguvu. Ni lazima kuwe na mashahidi wanne. Kwa kawaida watu wanaofanya maovu kama haya hawayafanyi mbele ya watu. Huwa wanayafanya kisiri siri. Kwa ujumla, ninapendekeza watu kama hawa waadhibiwe vikali. Ingekuwa vizuri tuwe na adhabu tofauti kwa wanaowanajisi watoto na wanaowanajisi watu wazima. Mtu anayemnajisi mtoto wa miezi sita au mwaka mmoja hafai kuishi katika dunia hii. Kama Mswada huu ungeweka adhabu ya mtu kama huyo kuawa, ingekuwa vizuri zaidi.

Bw. Naibu Spika wa Muda, kuna mambo kadhaa ambayo Mswada huu ungeshughulikia. Mswada huu hauzungumzii usenge na ushoga. Haya ni makosa ya kimapenzi. Ninasikitika kuona kwamba Mswada huu unataka mtu anayemnajisi mwanauume mwingine apewe kifungo cha miaka 21, na anayemnajisi mwanamke afungwe maisha. Huu si uadilifu hata kidogo. Ningependa kufanywe mabadiliko ili yeyote anayemnajisi mwanauume au mwanamke afungwe maisha.

Pia kuna mambo ya ushawishi wa akina dada. Watu wameacha desturi na mila zetu. Mkuu wa Sheria aliongea juu ya mwanamke Mkisii wa miaka 90. Alisema mwanamke huyo alisema zamani walikuwa wakitembea uchi na hawakushikwa na wanaume. Sasa ni lazima tujulize kwa nini wakati huu mambo kama haya yanafanyika katika jamii. Mambo haya yanafanyika kwa sababu ya tabia yetu mbaya ya kuiga mila za watu wengine. Wanawake wetu hujirembesha, huvaa nguo fupi na kufanya mambo mengine ambayo huwafanya wanaume wapoteze akili. Hii ndio sababu Kalasinga mmoja alisema: "Kama kitu inasimama akili potea".

Kwa hivyo, ni lazima wanawake wakome kuwashawishi wanaume. Siku hizi sisi hukaa na wanawake bega kwa bega katika magari ya abiria. Katika hali kama hiyo ni rahisi sana kwa mtu kumsukuma mwanamke au kuyagusa matako yake kidogo, jambo ambalo Mswada huu unasema litakuwa kosa la kimapenzi. Ni lazima tuambiane ukweli. Wanaume wana marafiki wanawake, na wanawake pia wana wanaume marafiki. Kwa kawaida kama una bibi na umemweka mwanamke mwingine, huyu wa pili anaweza kukuhadaa kama hufanyi kama anavyotaka. Anaweza kusema umemlazimisha kufanya mapenzi, na kulingana na Mswada huu hilo litakuwa kosa la kimapenzi. Ni lazima tufikirie kuhusu mambo kama hayo. Ni lazima tufanye mambo ambayo yanahitajika kufanywa. Ni lazima tujihadhari na mambo ambayo yanaweza kuleta ubaya katika nchi hii.

Bw. Naibu Spika wa Muda, ni kinyume cha mila zetu za Kiafrika na maadili ya dini hasa Islamu kusema kuwa ni lazima msichana afikishe miaka 18 ili aolewe. Msichana anapobalehe, tunaamini kuwa yeye ni mwanamke na kwa hivyo anaweza kuolewa. Katika sehemu ambazo wasichana hawajasoma, wakiwekwa hadi miaka 18, wanaweza kujiingiza katika usherati na UKIMWI utaongezeka. Ikiwa wanaweza kuolewa mapema, ni sawa.

Kulikuwa na mwanauume mmoja aliyeowa msichana mdogo. Alikuwa amebalehe lakini mwanauume alimwona kuwa ni mdogo. Alipomwoa, alikuwa akilala kitandani mwake na yule mwanamke lakini hamgusi. Mama yake yule msichana alimwuliza kama walikuwa wamefanya mapenzi na mume wake. Yule msichana alimwambia mama yake kuwa hawakuwa wamefanya mapenzi na mume wake. Mama yake alimwuliza walilokuwa wakifanya naye akamwambia kuwa walikuwa wakilala tu. Mama yake alimwambia achukue mavi kidogo amwekee mumewe kwa mto halafu mumewe atamwuliza ni nini alichomwekea kinachonuka. Alimwambia amweleze mumewe kuwa ni mavi kidogo. Ikiwa mumewe angalimwuliza kama kuna mavi kidogo, angalimwuliza ikiwa kuna mwanamke mdogo. Kwa hivyo, yule msichana akamwekea mumewe yale mavi. Alipokuwa akilala akapatwa na harufu mbaya. Alimwuliza msichana yule ni kitu gani kilichonuka kwenye mto. Yule msichana alimwambia kuwa ni mavi kidogo. Mwanauume yule alimwuliza ikiwa kuna mavi kidogo kwa kuwa makubwa au madogo yote yananuka! Naye msichana alimwambia kuwa hata kwa mwanamke, hamna mdogo kwani anaweza kazi zote. Kwa hivyo kusema kuwa ni

lazima wanawake wangojee hadi wafike miaka 18 si haki. Nimepinga jambo hilo lakini ninakubaliana na yale mambo mengine yote.

*(Several hon. Members stood up
in their places)*

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members!

Mr. Y.M. Haji: Bw. Naibu Spika wa Muda, naomba watu wasiukatae huu Mswada kwa ujumla. Ningemuuliza dadangu aurudishe kwa kamati inayohusika ili tuufanyie marekebisho yanayofaa.

Kwa hayo machache, ninaunga mkono.

The Assistant Minister for Education (Mrs. Mugo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to support and contribute to this Bill, which I strongly support. As other hon. Members have said, the time to enact this Bill has truly come. I do not think we can afford to leave it in abeyance even for a little while.

Let me begin by congratulating the Mover of this Bill, Ms. Ndung'u, and the Seconder, Mr. M. Kilonzo, for bringing real issues to show why this Bill is necessary at this time. I would also like to thank all those hon. Members who have supported it and those who have not supported it but have pointed out the areas they feel should be worked on a little bit. However, I want to appeal to those hon. Members to bring amendments because this Bill belongs to the House now. We can amend as long as we keep the spirit of the Bill intact. I do not believe there is need to send it back to the relevant Departmental Committee because we have to look for time again to debate it. We have done that in the past. We have brought amendments to a Bill and passed it. If we send this Bill back or not pass it, we will be judged harshly by the world. I do not think in the history of Kenya, the short time I can remember, there has been a time when this crime has been committed as much as today. According to Press reports, the latest victim was a six-month old baby and a great-grandmother of 96. This is completely unheard of. Whereas I do not even believe animals behave like that, human beings have started not to know their young ones or aged people.

Mr. Temporary Deputy Speaker, Sir, as Mr. Kosgey said when he was the Minister for Education, Science and Technology, we have heard similar cases which are horrifying where the people who are entrusted with the girls are the ones who molest them sometimes. There is a case of a principal who molested two or three girls. When they got pregnant, he asked them to meet him down at the cliff in the pretext that he would take the children to an uncle or aunt to look after them. However, he killed those babies. He threw them down the cliff. He went back and did the same with other girls. If we had adequate law on rape and sexual harassment as one hon. Member wanted to raise here, I think these people would have been deterred. Such a headteacher abuses the very job he has been given; to look after young ones. We must enact this law to deter potential rapists. As it is now, they are not concerned whether there is a law or not.

I know that culture has been cited now and again in this House against this Bill. I would like to thank the hon. Attorney-General for making it quite clear that our cultures never discriminated and never harassed women. This is a new phenomenon of the men and women of today because even women harass men sometimes. We should and must not talk ill of our culture. Every time we want to do something, we cover it up with culture. It is absolutely not true.

Mr. Temporary Deputy Speaker, Sir, sexual harassment is part of rape or penetration as many hon. Members have put it. They have been saying: "Let us pass that little thing about penetration and leave all the other things because we will interfere with courtship or normal things of life." This is not true! I want to put it as one hon. Member put it. Mr. Wetangula told us last week that if his daughter went to the Carnivore with Prof. Anyang'-Nyong'o's son and the boy touched this girl and then he was put in, Prof. Anyang'-Nyong'o would not be happy. I want to put it to him this way: How would Prof. Anyang'-Nyong'o feel if his daughter was touched on her

private parts or breast by a boy just carelessly bringing down her dignity? That is interfering with her human rights! It is the girl's human rights also to enjoy life without being harassed by some imbalanced young man.

I am a mother of boys as well - I have a son and daughters. Just like these hon. Members who are worried about their sons - I want to believe that they are also fathers of girls. It is our responsibility, as this House, to act maturely and protect both boys and girls. I think this is what this Bill has tried to do. Where maybe the language used is not appropriate, or maybe what has been said seems to suggest that one side is being oppressed, it should be brought here for amendment.

Mr. Temporary Deputy Speaker, Sir, Clause 23, which has been referred to by many other contributors of this debate says:

"Any person who undertakes any unlawful, unsolicited and unwelcome sexual advances or requests for sexual favours is guilty of the offence of sexual harassment."

I want to agree that, maybe, partly, that needs a bit of re-wording, especially if the request is made to a mature woman. That cannot be sexual harassment. However, when it is a request by a teacher to a student, who cannot say no, or by an employer to an employee who wants to keep her job and is scared that she will lose it, that is taking advantage of someone who is not your equal. You should make your sexual advances to your equal; somebody who can either say no or yes because she wants to, and not because she has been forced by circumstances. I am sure an amendment can be brought to put that clause in the right perspective.

We have seen people with some mental disability, who cannot make decisions of life because of their mental capacity, getting babies. How do they get babies? Is it from real men or from people who are mentally disturbed? I believe this Bill, which is well thought out, because sexual harassment is part of rape and makes a woman feel belittled, can be corrected or re-written where need be. However, we should pass the Bill.

There are also people who commit offences and go to court. I believe our judges are well balanced and can tell through the evidence given, who is lying and who is telling the truth. By the way, do not make this a woman's Bill. This is not just a woman's Bill. It affects you directly, whether you are a man or a woman. We have heard of men who are raped in toilets. Your son, wife, granddaughter, grandmother, daughter and baby are all vulnerable. I am glad to hear an hon. Member say that he would shoot someone if he found him sexually harassing his daughter. That shows some commitment. It would be a sad thing if we threw out this Bill because of some small issues. That is why we felt very unhappy on the first day of debate of the Bill, and horrified by the attitude of some hon. men Members, who treated the issue as if it were a big joke. That is also what happens when women go to report rape cases in police stations and are laughed at. When a raped child is laughed at, she or he cannot even say what really happened and how they felt.

To see hon. Members of this House applaud and joke about this Bill left women hon. Members sad. We wondered how we can applaud such a thing. How can we applaud an hon. Member who said that when an African woman says "no", she means "yes"? That is to say that this Bill is not necessary because rape happens when one goes against what a woman has not consented. If you assume that a woman meant "yes" when she said "no", that makes the Bill null and void and we should not even discuss it. For an hon. Member to say that, I wonder what sort of women he associates with. That was a big shame.

I want to call upon our hon. Members to know that we respect them and we need them to respect us because we are equal as hon. Members in this House. If you speak ill of women, you are speaking ill about us because we are women hon. Members in this House. A country that cannot respect its women is not a good country at all because women are the mothers of any nation. Can you imagine if a young boy listened to you, as his father and as an hon. Member, speaking like that and believed what you were saying? No wonder our boys can rape 96-year-old women or women

the age of their mothers. When you talk like that, you are telling them that women do not matter. I hope that our utterances in this House do not serve to make this nation worse than it is today.

Mr. Temporary Deputy Speaker, Sir, sexual harassment happens in prisons too. We have had cases of warders intimidating prisoners and raping them. Can you imagine a prisoner gathering enough courage to say no to a warder? Even if they were to say no, they would still be raped. Women prisoners are intimidated and have no chance to cry because they are in prison. Children at home, schools and in many other places are also raped because rape happens with male relatives, a father or an uncle. It may take a long time for a mother to know what has been happening, allowing a man in the house to turn against her child. We must pass rules that will safeguard such children. That is why we are legislators. When we legislate, we must take care of such issues. Women and children should be confident enough to come out and report.

Mr. Temporary Deputy Speaker, Sir, in one case, some university students came to us and said they were being harassed. They said that their don wanted some sexual favours so as to give them good grades. We tried to get the girls to complain officially so that we could help them. However, they were scared and said that if we did it, they would never graduate. They also feared that nobody would listen to them and that they would be laughed at. We have also heard some rape cases being linked to this House. If we do not pass this Bill, we will be sending a bad message out there; that, we are trying to protect ourselves.

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard the hon. Member say that there are cases of rape that have been linked to this House.

Could she substantiate that? That is a very serious allegation!

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, unless the hon. Member was not with us in the first Session of the Ninth Parliament, I think I do not need to substantiate the obvious.

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. Whether I was in this House or not, she has to substantiate what she has said, if those allegations are right.

The Temporary Deputy Speaker (Mr. Khamasi): Mrs. Mugo, there is nothing like the obvious. Once you start saying something on the Floor of the House, you must go ahead and complete your statement. You had better go ahead and do it now.

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, it is public knowledge that somebody was taken to the police station to write a statement. However, if it saves the situation, I withdraw my remarks.

An hon. Member: And apologise too!

The Assistant Minister for Education (Mrs. Mugo): I have nothing to apologise for because somebody went to the police station to write a statement. It was all over the newspapers.

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. She cannot conditionally withdraw her remarks. She only needs to say that she is withdrawing her remarks because she has no evidence to that effect. She should not give conditions at all.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): You cannot raise a point of order when another hon. Member is already on another point of order. I am sure you know that.

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

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Sungu!

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, let me take his information.

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, it has been ruled by the Chair that you do not need to substantiate the obvious. This incident happened at Continental House and it was public knowledge.

(Applause)

So, I do not think there is need to substantiate the matter. We cannot run away from facts which are obvious and if we have to be honourable at all, we must accept our mistakes. I think the hon. Member is right.

The Assistant Minister for Education (Mrs. Mugo): Thank you. That is a real man.

(Laughter)

The Assistant Minister for Co-operative Development and Market Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, did you hear the Assistant Minister remark that hon. Sungu is a real man? I am wondering, what is the other man? Is the other one not a real man too?

(Laughter)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Members! Mrs. Mugo, you were doing very well until you went that wrong direction which you have now found difficult to come out from. I would rather that we stop that business. This is a serious debate and so proceed from where you were before you deviated.

The Assistant Minister for Education (Mrs. Mugo): Mr. Temporary Deputy Speaker, Sir, we must address ourselves to the problems that our country is faced with today.

The biggest problem today is rape and child defilement. How many children have been raped in this country? How many of them have died as a result of rape? How many children have been rendered useless and lost humanity because of being raped? How will they continue to live?

If we really care, we must address these problems. Only that way, will we be considered to be saving our families, wives, mothers, daughters, nieces, constituents, our sons and, perhaps, ourselves. The only way we can ensure that is by passing this Bill. This is not a Bill about women. It is a Bill about us. When you think of this Bill, do not even think of your wife. Think especially about your daughter, grand-daughter, grandmother and yourself.

We are not saying that this Bill must be passed as it is now. Let us now concentrate on bringing amendments so that we can amend those areas that we feel very strongly about. That way, we will speed up the work on this Bill and all the women of Kenya will feel that we have done them proud by safeguarding their lives.

The Inter-Parliamentary Union (IPU) conference will be held in Nairobi as from 7th May, 2006 to 12th May, 2006. In fact, delegates have started arriving. One of the main themes during this conference is: "Focusing on Violence against Women." The Committee on Human Rights will be focusing on violence against women. The other committees will be focusing on security and the environment. It will be a shame if Parliaments of the world convened here and yet this House seems as if it will throw away a Bill on violence against women. Sexual offences amount to violence against women.

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

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

I want to thank my colleagues who spoke before me. Particularly, I would like to thank the lawyer Members of Parliament who spoke on last Thursday. They gave us a very incisive expose on this Bill. They did a very good job. Also, I would like to thank the Attorney-General for coming out clearly in spelling out some of the very important points that have been of concern to hon. Members.

I am very happy that the lady Members of Parliament are back with us here and that they are now debating. I want to particularly thank the last speaker, Mrs. Mugo, for what she said.

However, I want to advise the lady Members of Parliament that walking out of the Chamber is not the answer. We must be prepared to convince each other. The debate here is about bringing out certain critical points and weaknesses of this Bill so that we can pass a Bill that will pass the test of time.

We are in a transition in our society, as hon. Prof. Anyang'-Nyong'o said earlier on. When the British came to this country over 100 years ago, they found different communities with different cultures and traditions. Out there in Berlin, Germany, they drew boundaries of the African colonies. We found ourselves in this space called Kenya. Over the 100 years, various communities have existed and co-existed with each other. Right now, our society is in transition. Today, there is rural to urban migration. This is a permanent feature of our lives, which we must come to terms with. It also means that there is an influx of our own cultural values.

Mr. Temporary Deputy Speaker, Sir, at the moment we are all very concerned about the increases of cases of violence, particularly sexual violence.

Sexual violence against children in form of incest, sodomy, defilement, rape and indecent assault are on the increase. When we find a situation whereby a 96-year-old grandmother is being gang-raped by her grandchildren and great-grandchildren, we must ask ourselves what is wrong? Put yourself in a situation where you come back home and you find that your three year-old daughter has been raped by a 40-year-old HIV-positive man because a witchdoctor told him that his only cure is to have sexual intercourse with a small child. These are issues that must be of serious concern to us as a House.

How do we deal with this situation? We need to ask ourselves: Is it because of lack of adequate laws? Is it because of the decadence in our cultures and traditions? Is it because of socio-economic problems that we have in our society? We need to ask ourselves those questions in order to find a solution to the problem.

When the House debated and approved the Motion seeking leave of the House to introduce this Bill, the attitude of most hon. Members was synonymous. That is the reason why, in the Memorandum of Objects and Reasons it is stated here that:-

"This Bill seeks to make provision for sexual offences, their definition, prevention and the protection of all persons from harm from sexual acts. The Bill further seeks to prescribe stiffer and enhanced penalties for sexual-related offences."

That was the spirit of the Motion that we passed here. It states that we should specify very stiff sentences for sexual offenders. At that time, I remember, if I may take hon. Members down the memory lane, we were even talking about castration of rapists. I, therefore, find nothing wrong if somebody who has been tried and found to have committed an act of rape against a child or an old woman is subjected to the sentences which are proscribed in this Bill here. This is what we wanted when we passed the Motion here. To that extent, I would say that the Mover has fully complied with the mood of the House at the time that we gave her leave.

Mr. Temporary Deputy Speaker, Sir, our society is in transition. As the Attorney-General eloquently stated, traditional societies did forbid rape and there are very stiff penalties against this. I know that in traditional Luo society, virginity was a virtue. When a girl got married, they examined her for virginity. In other words, the following day, they examined the bed where she slept with her husband. There was a lady who was meant to carry out the inspection, like the Muslims normally do, to establish whether she was actually a virgin. Anybody who was guilty of violating that virginity got a very stiff sentence. Sometimes he could be thrown into the lake.

After foreigners came into our country, our society acquired other values and very many people also came into our country. I want us to look at the background where we are coming from to see where we are today. Everybody knows that our ladies have not been able to get their rights in our society. In the 1950s, there was a song that was sung by a Congolese musician. It was recorded and it went like this:

"Akili ya bibi haiwezi kushinda ya bwana. Akili ya bibi ni sawasawa ya mtoto"

mdogo."

(Laughter)

Mr. Temporary Deputy Speaker, Sir, that is a very strong statement about what was happening in our society at that time. Today, I know that we would not allow such a record to be sold and that musician would be arrested and prosecuted. He would not be committing any offence known in law at the moment. Even if we were to arrest and prosecute him now, the court would still find him innocent. That is the reason why it is important for us, as a Parliament, to come up with laws that will protect our women.

I have been to a police station and I have witnessed what Prof. Anyang'-Nyong'o was talking about earlier on. A woman came to complain that she had been raped and I saw how she was treated by the police. The policemen were just amused and wondered what she was looking for when she was raped. They implied that she was probably just playing with her husband. We do not expect a woman to find any kind of justice in the hands of those kind of policemen. That is why we need to put it in a law that has been put here in this Bill to compel those policemen to do something if somebody goes to complain about rape.

Mr. Temporary Deputy Speaker, Sir, once upon a time, I was in prison and I shared a cell with some of people accused of rape. They told me very gory stories in the prison. One of them said that he was suspecting his wife of infidelity and he decided to punish her because, according to his tradition, once you are married, conjugal rights are your rights. A woman cannot deny you sex at any time. Instead of having sex with his wife, this man decided to tie one leg this side, and another leg the other side. He also tied her arms, took a knife and operated her clitoris. He completely disfigured it. That is also sexual assault as defined in this Bill here.

I agree with my other colleagues who said that we need to do some amendments to this Bill. I am happy to hear that the Committee has done its work and that amendments will be proposed. I have in mind Clause 23 which states as follows:-

"Any person who undertakes any unlawful, unsolicited or unwelcome sexual advances or expects sexual favours, is guilty of the offence of sexual harassment."

What is unsolicited or unwelcome sexual advances? One can just wag his tongue, shake his head or blink his eye, and that can be construed to mean unwelcome sexual advances and he can be imprisoned. I agree that as we come up with a law against rape, we should not criminalise sexuality. It should be possible for somebody to tell a lady that: "I admire you, you are beautiful or you are very smartly dressed today" without fearing that he will end up being prosecuted for sexual offences.

Mr. Temporary Deputy Speaker, Sir, I also have an issue with Clause 24. I agree that it needs to be reworded. Clause 30 has to do with offences within the precincts or premises of corporations, societies, *et cetera*. That suggests that, if you own a hotel and somebody is raped in that hotel without your knowledge, you could be prosecuted. This is pushing it too far. I would like to see that amended.

Mr. Temporary Deputy Speaker, Sir, in Clause 31, I want to buy the argument by the Attorney-General. That clause has been criticised by a number of my colleagues. They have said that it does not belong to The Sexual Offences Bill. As the Attorney-General rightly pointed out, the Children Act has already criminalised female genital mutilation (FGM). This one here is merely talking about forced female circumcision. If the lady volunteers to be circumcised, there is no offence committed. We are talking about forced female circumcision. The lady should have the discretion to decide whether she wants it or not. I do not see why my fellow men should be objecting to that. The men are not even concerned. It is the women who are involved!

Mr. Temporary Deputy Speaker, Sir, there is a clause that talks about the burden of proof. It has been said that it is contradicting Section 77 of the Constitution of Kenya. It is shifting the

burden of proof from the prosecution to the accused. But as the Attorney-General rightly says, that must be read with Section 82 of the Constitution - discrimination. The law says that you are innocent until you are proved guilty by a court of law. There must also be a presumption that you are honest and of moral rectitude until you are proved to be a liar by the defence. But Section 163(b) of the Evidence Act implies that the complainant is a potential liar. That is discrimination against women. That is the wrong that is intended to be corrected by Clause 39. To that extent, I fully support the inclusion of this clause in the Bill.

We have also heard the Attorney-General rightly say that there are rulings of the High Court which discriminated against the complainant. We need to empower the people who are complaining. It has been held in several other jurisdictions that, somebody who has undergone rape is very traumatised. There is an observation that was made in a court in Ontario, Canada. The judge had this to say:-

"Rape is unlike any other sort of injury incurred by accident or neglect. Survivors of rape must bear social stigmatisation, which accident victims do not."

Mr. Temporary Deputy Speaker, Sir, accident victims would readily come and say exactly what happened to them. But somebody who has been raped would not talk about it because it is shameful. That is why there is need for special protection.

There is something else that has not been provided for in this Bill. That is the children who are born out of acts of rape. This Bill is completely silent about it. I would have liked to see a provision made in this Bill that requires the rapist to provide for the child until it becomes an adult. That has been completely left out. We had cases of Kenyan women who were raped by British soldiers.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order, Mr. Muturi!

Mr. Raila: The Government will take care!

The Temporary Deputy Speaker (Mr. Khamasi): You are now engaging! I thought I was protecting you.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, actually, he wanted to give me information. He wanted to tell me that, if the rapist is jailed for life, he cannot be able to provide for the child. Therefore, a provision should be made for the Government to provide for such a child until he or she becomes an adult.

We have had cases in British courts about Kenyan women who were raped by British soldiers. The figure varies from 600 to about 800. Some of them were injured in the process because they were gang-raped. Some of them conceived and gave birth to children who are bastards. An application was made in the British court for the British Government to make provision for the up-bringing of those children. If this Bill is passed, the Government is going to have an instrument with which to deal with those offences. That must apply to everybody who is resident in the Republic of Kenya. That includes even a tourist who commits an offence of rape. There is a time when an American marine raped a Kenyan girl in Mombasa and strangled her to death. That American marine got a very lenient sentence at that time. We must make a provision that anybody who commits an offence of rape on the Kenyan soil must be subjected to the Kenyan law. The Kenyan law must take full force. If it is life sentence, then he must serve that.

Mr. Temporary Deputy Speaker, Sir, I want to conclude my remarks by making an appeal to my fellow men here. Let us cast aside our biases. Let us not look at women as inferior beings. Let us not look at this Bill as a war between men and women. Put yourself in the shoes of your sister, daughter or mother, and then stand up here and speak for them!

I want to tell those male chauvinists who want to portray this Bill as anti-men that it is not! Civilised men have nothing to fear. We must protect the society against those irresponsible men

who have no compassion! The ones who rape a three month-old child or a 12-year-old child and, after that, strangles her to death.

This Bill is so urgent that I want to plead that we do not defer it. Let us bring the amendments and I am sure all of us are ready to accept them. Let us deal with the amendments, but we should pass this Bill before we go for any temporary recess.

Mr. Temporary Deputy Speaker, Sir, at one time I used to say that I am a young handsome man from Kenya, the land of sunshine, where men are men and women are part of it. If these men are men, let them stand up and support this Bill so that it can be passed for the benefit of our society.

With those remarks, I beg to support.

(Applause)

Mr. M'Mukindia: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also contribute to this Bill. At the outset, let me join my colleagues in congratulating hon. Ndung'u for working so hard to bring this Bill to the House. I know that it takes a lot of hard work to bring a Private Member's Bill to the House. But it is even more courageous on her part to bring a Bill on a subject that has been taboo for many years in this country.

Mr. Temporary Deputy Speaker, Sir, there are two or three major issues in this country that require us leaders to confront them. But we have shied away from confronting them. These issues include rape or sexual assault, homosexuality and polygamy. These are social issues that affect our society but we have not confronted them.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order! We have had a very quiet time, but now we are receding into loud consultations.

Mr. Wamunyinyi: *Ni hawa wanawake!*

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Wamunyinyi! I would like us to give the hon. Member on the Floor time so that we can hear him.

Proceed, Mr. M'Mukindia!

Mr. M'Mukindia: Thank you, Mr. Temporary Deputy Speaker, Sir. I was saying that we have not been able to confront and resolve these major social issues that affect our society, one way or the other. So, I want to congratulate hon. Ndung'u for being courageous enough to bring this very important social issue to this House for discussion.

Mr. Temporary Deputy Speaker, Sir, the Bill has very noble intentions and I support it very strongly. For one not to support this Bill is to give several negative messages to more than half of our society. As hon. Members know, for every one man in this country, there are 1.1 women. In other words, the population of women in this country is higher than that of men. If we do not pass this Bill, we shall be telling our mothers, daughters and our wives that we do not care, that we do not feel the pain when they suffer. To fail to support or pass this Bill would be cowardly on us. If there are issues that perhaps, touch on cultural values, we ought to be courageous enough to point them out, amend them and move forward. But we cannot deny the very painful experiences that we see in the media everyday that more than half of our population is subjected to.

Mr. Temporary Deputy Speaker, Sir, as the Attorney-General said earlier on, many communities in this country had a way of dealing with the issue of rape. It is noteworthy that most rapists do not do it only once. It tends to be normal for them. Take my community, for example. We had our own way of dealing with rapists. It was never spoken about. Nobody really told you how it is done. But rapists had a way of disappearing. They just disappeared! Now, if we do not pass this Bill, we are going to encourage these extra-judicial ways of getting rid of rapists. Nobody

in the Meru community would tell you they were killed because nobody talks about it. But they do not exist for long once they are identified. I am sure the same is done in other communities in this country. Therefore, we must pass this Bill.

Mr. Temporary Deputy Speaker, Sir, for us not to support this Bill is to say that I, as a father of daughters and sons, do not care what happens to them. We must remember that the issue of rape does not apply only to women. We must accept the fact that men are also raped by other men. We must accept that small boys could be raped by older men or even older women. This is a very serious issue. In some cases, young boys are molested or sodomised by priests as we know from experiences in America. Thankfully, it has not happened in this country that much. But we do not know for sure because we do not know how many cases go unreported.

So, we must ensure that this Bill treats every gender equally. Where we talk about male, we must also include female. The issue of rape or sexual assault applies equally to men and women. I do not think any of us can, with a clear conscience, oppose this Bill given that we have children, grandchildren and mothers in our own homes. How will you feel if your son is sodomised? That will destroy that son forever mentally. How will you feel if your daughter is raped? It will destroy that girl forever. For that reason, the issue of sexual harassment ought to apply equally to boys and girls as well as to men and women. None of us in this House can sleep with a clear conscience if he does not support this Bill. If we have to err, we have to do so in terms of supporting rather than opposing this Bill.

Mr. Temporary Deputy Speaker, Sir, one of the issues that has been raised is how, after passing this Bill, we will protect the integrity and privacy of the victims. Should we not, perhaps, consider trying these cases in camera to ensure that after being traumatised, we do not expose the victims to more trauma? Is that not something to consider? I would like to suggest to the relevant Departmental Committee and the Mover of this Bill to consider ways of protecting victims of rape and sexual harassment when they appear in court. The intention of this Bill is not to expose such victims to more harassment by society itself, which is not sensitive enough to the problems that are faced. The provisions in the Bill should envisage to ensure that all the evidence pertaining to each such case comes out openly without due embarrassment to those involved.

Mr. Temporary Deputy Speaker, Sir, it is quite clear that this Bill tends to concentrate mostly on how the issue of rape and sexual harassment applies to women and girls. That is, perhaps, because the Mover of the Bill, Ms. Ndung'u, is a woman. I think there is something missing; how rape and sexual harassment affect men and boys. I can see her seated on the other side of the House. She is quite busy. I would like to encourage her, through you, to consider very carefully what it means---

*(Some hon. Members stood up
in their places)*

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! I can see senior hon. Members flouting the rules of this House. You should not stand in this Chamber unless you are either transiting or you are on the Floor contributing. I can see some little *kamukunji* over there, with some people in very unique places. Please, consult in very low tones.

Mr. M'Mukindia: Thank you, Mr. Temporary Deputy Speaker, Sir. I was trying to draw the attention of the Mover of this Bill. I know she is consulting, but I hope somebody is noting this down. If you look at all the clauses in this Bill, you will note that the tendency has been to talk about women as being victims of rape. For purposes of equity, it must apply equally to men and women. That is one aspect of the Bill I find faulty. I take this anomaly seriously. I feel, for instance, that my son is not as protected by this Bill as my daughter. He has every right to be protected as much as my daughter. Therefore, this must be reflected in the totality of this Bill. As the Bill is

now, that aspect is not reflected in that way. I believe that this is an oversight rather than an intention. The intentions of the Bill are, of course, noble. So, every provision of this Bill must apply equally to males and females.

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 3(1), which defines the offence of rape, you will see that, perhaps unintentionally, it applies only to the male practically. This is because of the anatomical differences between male and female. Clause 3(1) seeks to provide as follows:-

"a person commits the offence termed "rape" if he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs."

In practice, and biologically, it is impossible for a woman, under normal circumstances, to cause that kind of thing to happen. It is really the other way round. So, we must look at this clause and ask ourselves: "How does it affect women?" In effect, it applies only to men. To that extent, it is not a fair clause. It must be reworded in such a way that it applies to both men and women. So, Clause 3(1), for sure, needs to be looked into. I believe this clause was not worded in this manner to specifically target men. It is just the language which is not clear. So, it must be reworded to apply equally to men and women because, looking at our physiological differences, it not possible for a woman to cause penetration using her own genital organs. That is not normal. Only the other way round is possible.

Mr. Temporary Deputy Speaker, Sir, if you compare that, for instance, to Clause 5, which talks about sexual harassment, the latter applies to men and women equally. So, this means, between Clause 3 and Clause 5, only men can be accused of the act of rape, which is a more serious offence than an act of sexual harassment. So, if you compare the two, you will realise that it is quite clear that at no time can a woman be accused of rape, and yet it can happen. So, this aspect needs to be looked into since the Bill seeks to criminalise only men and leave women who may commit this crime to go scot-free. They only come under the sexual harassment clause. In the interest of equitability, that ought to be covered.

Another clause I have questions about is Clause 7, appearing on page 352, which seeks to provide as follows:-

"A person who intentionally commits rape or an indecent act with another within the view of a family member, a child or a person---"

I take the words "indecent act" to mean a sexual act, unless it is defined in another way. This has be defined very clearly. We have to be very careful. We may end up criminalising the poorest of the poor in this country. Let us remember the housing facilities that we have for our police officers in this country. Our officers are provided with single rooms.

Mr. Temporary Deputy Speaker, Sir, let us look at this scenario: A man has been working for the last six months. His wife comes to visit him. The only way he can do it is by hanging a curtain in the room to separate the bed from the rest of the room. Is that going to be defined as doing it "in full view of the child or other members of the family"? How do you define it? We must recognise the fact that such sexual acts occur under circumstances where people are extremely poor and can afford only one room. How do we ensure that we do not imprison the poorest people in this country, who have no choice other than to do that natural act, at times, within the view of their own children or other family members? That is because they cannot afford anything else. In fact, if we pass this Bill the way it is, all the police officers residing within the police lines will be the ones to be jailed first because they can do it.

If you go to Mathare Valley, what do you do? That is a serious thing which needs to be looked into. The intention of the Bill in this regard is right. However, it has the effect of criminalising the poorest of the poor in this country. We all know the shortages of housing in this country, which has a social impact. So, it is not the fault of such people.

Another clause I have an issue to raise about is Clause 8(4), which is on page 353. It seeks to provide as follows:-

"A person who commits an offence of defilement with a child between the ages of 16 and 18 years is liable, upon conviction, to imprisonment for a term of not less than 15 years."

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! Mr. M'Mukindia, you will have 15 minutes when this debate resumes.

Hon. Members, it is now time for the interruption of business. Therefore, the House is adjourned until tomorrow, Wednesday, 3rd May, 2006, at 9.00 a.m.

The House rose at 6.30 p.m.