

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 30th May, 2006

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Conference on Partnership Beyond 2005: The Role of Parliamentarians in Implementing NEPAD Commitments held at the British Museum, London, between 19th and 22nd October, 2005.

(By Dr. Ojiambo)

QUESTIONS BY PRIVATE NOTICE

RAPE/STRANGLING OF
14-YEAR-OLD GIRL

Mr. Sambu: Mr. Speaker, Sir, I have not been given the written answer.

However, I beg to ask the Minister of State, for Administration and National Security the following Question by Private Notice.

(a) Is the Minister aware that on 23rd, February, 2006, at about 11.00 a.m., a girl aged 14 years was strangled and raped by an adult person known to her?

(b) Is he further aware that the complainant reported the matter to the OCS, Kapsabet Police Station, on 24th February, 2006?

(c) Is he also aware that to date, the accused person has not been charged in any

court of law?

(d) Could the Minister assure the House that the suspect will be arrested immediately and charged in court?

The Assistant Minister, Office of the President (Mr. Kingi): Mr. Speaker, Sir, this is a bad way to start the business of the House. However, I wish to apologise because I do not have an answer to this Question. This is because we have proved that the version of the answer that was given to us is misleading. Therefore, we are carrying out thorough investigations to enable us give an appropriate answer. We can do that by tomorrow afternoon.

Mr. Speaker: What is your response, Mr. Sambu?

Mr. Sambu: Mr Speaker, Sir, I will accept that. I do not have any other alternative. The Assistant Minister talked to me earlier and said they did not know the names of the victim; complainant, and the person who committed the crime. However, he should have known that it is unparliamentary to mention the names here. The Occurrence Book (OB) number has been given here and I will give him a copy of the OB.

Mr. Speaker: So, can we put it for tomorrow afternoon?

The Assistant Minister, Office of the President (Mr. Kingi): It is okay, Mr Speaker, Sir.

Mr. Speaker: The Question is deferred to tomorrow afternoon!

(Question deferred)

Next Question by the hon. Member for Yatta Constituency!

REHABILITATION OF YATTA CANAL

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 Yatta Canal has breached at kilometre 51?

(b) Is he further aware that the canal needs rehabilitation?

(c) What action is he taking to ensure that the canal project does not collapse?

The Assistant Minister for Water and Irrigation (Mr. Wanjala): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the heavy rains caused breaching of Yatta Canal at Kilometre 51. The breached section has been temporarily repaired and permanent repairs will be undertaken when the rains subside.

(b) I am aware that the Yatta Canal requires continuous rehabilitation to enhance its performance. My Ministry completed major rehabilitation works on the canal during the last Financial Year (2004/2005) and has included the canal rehabilitation programme in the budgetary proposal for the next Financial Year (2006/2007).

(c) My Ministry, through Athi Water Services Board, is involving the beneficiaries in the management of the canal to ensure its sustainability. In this regard, the beneficiaries have been assisted to form Water Users Associations to enhance management of this canal.

Mr. C. Kilonzo: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the good answer. However, could he tell us how much money has been proposed to be included in the next financial year for this project?

Mr. Wanjala: Mr. Speaker, Sir, as the hon. Member is aware, the Budget will be read in this House next week. Therefore, I would not like to pre-empt the contents of the Budget.

Mr. Speaker: Mr. Wanjala, are you sure the Budget will be read next week?

Mr. Wanjala: Mr. Speaker, Sir, I have said it will be read soon!

(Laughter)

Mr. Speaker: Very well, Mr. Wanjala!

Mr. Ndambuki, please, proceed!

Mr. Ndambuki: Mr. Speaker, Sir, if we have to wait for the Budget to be read, it means any action on this canal might take place may be in August or September, 2006. What measures is the Assistant Minister going to take to help those living downstream to get water?

Mr. Wanjala: Mr. Speaker, Sir, I have said that temporary measures have already been

taken and the water is flowing downstream.

Mr. C. Kilonzo: Mr. Speaker, Sir, one of the reasons why the canal is collapsing is because the amount of water from the source; which is Thika River, has reduced over time. What plans does the Ministry have to construct a dam at the canal's intake?

Mr. Wanjala: Mr. Speaker, Sir, I have said that in the next financial year a lot of work is going to be done. The hon. Member should not be worried. We are in charge!

Mr. Speaker: Very well.

Next Question!

ORAL ANSWERS TO QUESTIONS

Question No.023

ROLE OF REGISTRAR-GENERAL IN POLITICAL PARTIES DISPUTE RESOLUTION

Dr. Ojiambo asked the Minister for Justice and Constitutional Affairs:-

(a) what the role of the Registrar-General is in resolving disputes in political parties; and,

(b) what mechanism is in place to ensure that whenever a dispute is registered, it is disposed of without any external influence or bias.

Mr. Speaker: Is anyone here from the Ministry of Justice and Constitutional Affairs?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I seek your indulgence that this Question be put on the Order Paper tomorrow because the Minister for Justice and Constitutional Affairs is tied up at the Bomas of Kenya.

Mr. Speaker: Dr. Ojiambo, can I defer the Question until tomorrow?

Dr. Ojiambo: Mr. Speaker, Sir, that is okay.

Mr. Speaker: Very well!

(Question deferred)

Next Question by Mr. Salat!

Question No.317

CLASSIFICATION OF DIVISIONS AS ASAL AREAS

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

(a) whether he could inform the House why the following divisions are not categorised as ASAL areas:-

(i) Longisa;

(ii) Sigor;

(iii) Siongiroi; and,

(iv) Ndanai; and,

(b) whether he could consider classifying the divisions as ASAL so as to benefit from ASAL programs given that they have the same climatic conditions as those

areas currently benefiting from the program.

The Minister of State for Special Programmes (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) The divisions are not categorized as ASAL areas because they lie within an agro-ecological zone with reliable rainfall patterns. The divisions have also not suffered severe food insecurity during previous droughts as happened in the 36 districts that are categorized as ASAL areas. (b) The divisions cannot be considered for classification as ASAL areas in order to benefit under the ASAL programmes because the ASAL projects, which were designed and negotiated between the Government and the World Bank under the Project Credit No.3795, Kenya are specific to 22 districts only.

Mr. Salat: Mr. Speaker, Sir, although the Minister did not avail to me a copy of the written answer, the divisions that I have requested him to include under the ASAL programs continue to receive relief food even as I speak here now. We are wondering how exclusive the ASAL programs are. I am not requesting for the entire constituency to be included under ASAL areas, but only a section that covers two divisions.

Is the Minister aware that the divisions currently receive relief food because of the drought that has devastated the country?

Mr. Munyes: Mr. Speaker, Sir, it is true the divisions are a bit dry. Those divisions are not as bad as the 36 districts that fall under ASAL areas. Currently, the ASAL programs cover 22 districts under a program that is funded by the Government and the donors. Maybe, it is after we have covered the remaining districts that we can consider those divisions.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Is the Minister in order to inform the House that we know the Government has a problem with the donors? We are not aware of that. So, is he in order to mislead us? We are not aware that the Government has a problem with the donors. What is the problem?

Mr. Munyes: Mr. Speaker, Sir, the hon. Member should be aware that we are supporting 22 districts in the ASAL areas in conjunction with donors. This is mainly done under the World Bank-funded projects. So, 22 districts benefit under the ASAL GOK/World Bank funded projects.

Mr. Owino: Mr. Speaker, Sir, what criteria is used to categorize areas that fall under the ASAL areas? This is because there is a section of my constituency which gets relief food but has never been categorized as an ASAL area.

Mr. Munyes: Mr. Speaker, Sir, there are specific indicators we look for before we categorise a district under the ASAL areas. The indicators are aridity, rainfall patterns and amounts, poverty levels, civic conflicts, human population, livestock population and severe food insecurity caused by drought. We use the seven indicators to ascertain whether an area fits under those 36 ASAL districts.

Mr. Salat: Thank you, Mr. Speaker, Sir. Even the teachers who are posted to the divisions I have mentioned, seek transfers to other places. That is why even the performance of those divisions in the national examinations is very poor. The Minister should consider including those divisions under ASAL areas so that they can benefit from the ASAL programs. Could the Minister tell us how often they review the areas in the country that should benefit from the ASAL programs, instead of only sticking to the 22 districts? There are some areas that also experience drought. Could he touch on specific areas and not districts?

Mr. Munyes: Mr. Speaker, Sir, in all fairness, we are now operating in 22 districts. We need to expand to 36 districts very fast. We are reviewing that this year, and we will support his district.

PENSION DUES FOR MR. P.K. NG'ANG'A

Mr. Muturi asked the Minister for Finance:-

(a) whether he is aware that Mr. P.K. Ng'ang'a, a former employee of the Judiciary, (P.J.No.1103), retired on 1st July, 2000;

(b) whether he is further aware that the said Mr. Ng'ang'a is eligible for payment of pension dues calculated on basis of salary scale PLS 5 but has up to date neither been paid his pension gratuity nor his monthly pension; and,

(c) why the Government has not honoured the High Court Order in Civil Case Miscellaneous Application No.166 of 2001.

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

(a) I am aware that Mr. P.K. Ng'ang'a retired in July, 2000.

(b) Mr. Ng'ang'a was paid his commuted pension gratuity amounting to Kshs280,550.50 on 11th August, 2000 calculated on the civil service salary scales as provided for under Cap 189 of the laws of Kenya. He was subsequently placed on a monthly payroll with effect from 1st October, 2000 and has remained on the payroll since that time.

Mr. Muturi: Mr. Speaker, Sir, before I can ask the Assistant Minister a supplementary question, he should answer part "c" of the Question.

The Assistant Minister for Finance (Mr. Kenneth): Mr. Speaker, Sir, on part "c", a court case was filed and the court order has not been implemented because discussions are currently going on. This is because the scales of the Civil Service were totally different from what was passed for the Judiciary, where the scales of the constitutional office-holders were different from the other members of staff.

Mr. Muturi: Thank you, Mr. Speaker, Sir. I asked this Question, highlighting the case of Mr. P.K. Ng'ang'a, a former employee of the Judiciary just to bring out the disparities that exist in calculation of pension by the Department of Pensions. This problem is affecting not just Mr. P.K. Ng'ang'a but all the members of the Judiciary who have retired and have not been upgraded. Could the Assistant Minister give us an indication when the Department of Pensions will work out the dues of all those retirees in accordance with the new salary scale (PLS5)?

Mr. Kenneth: Thank you, Mr. Speaker, Sir. I am glad that the hon. Member has pointed out that the problem does not only affect that former member of staff. The problem affects all the staff who work in the Judiciary Department and the scales that prevailed then. I assure the hon. Member that in the next three months, the Attorney-General and the Department of Pensions will resolve the problem of the Judiciary staff once and for all.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. The Assistant Minister said in part "c" of his answer that some negotiations are still going on. Is he in order to tell us that he is negotiating a court order instead of implementing it?

Mr. Kenneth: Mr. Speaker, Sir, I spoke about all the other members of staff because the terms that prevailed were awarded to the constitutional office holders within the Judiciary. However, the other members of staff within the department felt aggrieved. That is what I have said. I have said that this problem should be resolved within three months and the right pension calculated.

Mr. Muturi: Mr. Speaker, Sir, the said court order was made on 19th June, 2003 and it is now three years down the line. I urge the Assistant Minister to ensure that the court order emanating from this case is implemented across the board without having to require other retirees going to court. We saw even a former Chief Justice go to court to challenge the Director of Pensions.

Mr. Kenneth: Thank you, Mr. Speaker, Sir. The purpose of having a resolution to this matter is to avoid any further retiree going to court. As I have said, I am sure that we can resolve this problem within those three months.

Question No.228

TARMACKING OF ROADS
IN SOUTH MUGIRANGO

Mr. Omingo asked the Minister for Roads and Public Works:-

(a) what is the status of the design works conducted by M/S Span Construction Company Ltd. on the Kamagambo-Riosiri-Nyansembe (D205), Mogonga-Kenyenya-Etago, Nyansembe-Nyabera-Ranen (D204), and Ogembo-Rongo (D20) roads and what the cost estimates were; and,

(b) whether he could explain why the tarmacking of the roads has not commenced and state when the works will commence.

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I beg to reply.

(a) The design works on the 60km section of Ogembo-Rongo Road (C20), Kamagambo-Riosiri-Nyansembe Road (D205) and Nyansembe-Etago-Kenyenya-Mogonga Road (D204) is on-going. The works started in January, 2005 and will be finalized in June this year. The cost of the design of the project is Kshs19,080,189.

(b) The tarmacking of the roads has not been commenced because the design works are still on-going. The project will be programmed for construction once the designs are complete.

Mr. Omingo: Mr. Speaker, Sir, I am extremely disappointed by the flat answer given by the Assistant Minister. The Minister was with his Excellency the President on 8th February, 2004 when the contractor was on site. I have evidence that by December, 2005, design works and the report, Ref. No.RG400/1 were ready. Further, the drawings were ready by the month of August, 2005. Could the Assistant Minister tell this House why Gucha District and South Mugirango Constituency in particular, is not being considered for development and whether it is on priority, political correctness or otherwise?

Eng. Toro: Mr. Speaker, Sir, I have said that the design is not yet complete. I cannot tell the hon. Member when work will start on the roads until the design is complete. I have also said that the design will be ready by next month. However, there is no question of side-lining the district as the hon. Member has said. We prioritise the roads after the designs are complete. I am sure that something will be done.

Prof. Olweny: Thank you, Mr. Speaker, Sir. We have heard that the President gave an assurance that the roads would be done by February, 2004, but it is now two and half years down the line. Could the Assistant Minister tell us why it has taken over two years to have the designs done? What has caused the delay?

Eng. Toro: Mr. Speaker, Sir, we still expect to get the necessary funds from the Treasury so that we can commence construction of the roads. Since the design will be ready by next month, we will look into the possibility of constructing the roads once the funds are availed to us by the Minister for Finance.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the Assistant Minister says that they will begin construction when finances are available to the Ministry. Could he explain to the House whether the required finances have already been provided in the previous Budget or whether he is expecting them to be provided in the coming Budget?

Eng. Toro: Mr. Speaker, Sir, we will budget for the project in the next financial year once we are sure of getting funds from the Treasury.

Mr. Omingo: Mr. Speaker, Sir, the Assistant Minister is actually not being honest with himself and the House. I have stated here that the design was complete by December, 2005 and that the registration number of the report is RG400/1. The President gave an undertaking that we would get this road. Now that the drawings are ready, could the Assistant Minister confirm that he will have a line item for this road, so that the people of South Mugirango and Gucha can have a kilometre of tarmac running through their constituencies?

Eng. Toro: Mr. Speaker, Sir, the process of design for construction is a long one. I do not know what stage of design the hon. Member is terming "complete". Until we have the final design draft we cannot say that the design work is complete. The final draft must be approved by the design engineers. That is when we can say the design work is complete. Maybe the hon. Member is talking about an incomplete process. However, I would like to assure the hon. Member that once we get the final design from the consulting engineers we will be able to prioritise the project. I also said that we are still waiting for the Minister for Finance to accept the ceiling for the Ministry of Roads and Public Works.

Mr. Omingo: Mr. Speaker, Sir, in the interests of this House, the Assistant Minister should correct for the record the impression that the design work started in January 2005, because when the President was in Gucha in February, 2004 the engineers were in the district. They were actually identified by the President. Could the Assistant Minister correct this information to set the record straight?

Eng. Toro: Mr. Speaker, Sir, I cannot argue about that. If there is a typographical error about 2005 or 2004 it is easy to correct it. The most important thing is that this design will be ready by next month.

Question No.324

PAYMENT OF DUES TO
MR. J.M. KINUTHIA'S FAMILY

Eng. Muriuki asked the Minister for Livestock and Fisheries Development:-

(a) whether he is aware that the late James Mbugua Kinuthia (P/No.38225) who was working as a Dip Attendant in Ol Jororok Division, Nyandarua District, was employed on 1st August, 1978 and passed away on 16th July, 1991; and,

(b) what steps he is taking to ensure that the family of the deceased is paid his salary for July, 1991 and leave dues for the period January, 1991 to 16th July, 1991.

The Assistant Minister for Livestock and Fisheries Development (Mr. ole Ntutu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the late James Mbugua Kinuthia, P/ No.38225, who joined service as the Subordinate Staff II, Job Group A. with effect from August, 1978 passed away on 10th July, 1991.

(b) The deceased's salary amounting to Kshs825.80 has already been released to the District Commissioner, Nyandarua, being the payment for the 10 days he worked in the month of July. I urge the next of keen to collect the salary from the District Commissioner's office, Nyandarua.

Eng. Muriuki: Mr. Speaker, Sir, the answer I have has another paragraph, which the Assistant Minister has not read out, about the leave days. However, it is very sad that it has taken

the Government 15 years and a Parliamentary Question in order to find Kshs825.80.

Could the Assistant Minister tell the House why he cannot pay the money for the leave days, so that the deceased's family can wind up this matter?

Mr. ole Ntutu: Mr. Speaker, Sir, the hon. Member claims that this amount has not been paid for 15 years---

(Loud consultations)

Mr. Speaker: Order, hon. Members. We cannot follow the proceedings of the House. Please consult quietly.

Proceed, Mr. Assistant Minister.

Mr. ole Ntutu: Mr. Speaker, Sir, according to our records, on 16th January, 1992, which was one year after the death of Mr. Kinuthia, the PS authorised the District Veterinary Officer to tell the family of the deceased to forward the relevant documents for payment.

Mr. Waithaka: Mr. Speaker, Sir, it has become a habit of the Government to release the benefits of people who have died, or those of retirees, after a Question is asked in this House.

Could the Assistant Minister explain to this House what mechanism the Ministry is putting in place to ensure that when one dies, the next of kin are paid immediately, and that they do not have to wait until a Member of Parliament asks a Question in Parliament before money is released to them?

Mr. ole Ntutu: Mr. Speaker, Sir, that is a good idea, but release of money also depends on the families of the deceased. They are supposed to obtain letters of administration, so that the whole process can be legal. That is the best way to speed up these payments.

Eng. Muriuki: Mr. Speaker, Sir, Kshs825 might have been a lot of money in 1991, but now it is just peanuts. Could the Assistant Minister tell the House what he is doing to compensate the family of the late Kinuthia by paying it interest for the period 1991 to now? This Kshs825 is not even enough to pay for fare to the Nyandarua District Commissioner's office and back home!

Mr. ole Ntutu: Mr. Speaker, Sir, our Ministry does not have any plans for compensation. So, I am sorry about that.

Mr. Speaker: Next Question.

Question No.321

IRREGULAR COLLECTION OF FUNDS
BY NYAKINYUA GROUP

Mr. Speaker: Is Mr. Sirma not here? The Question is dropped.

(Question dropped)

Question No.241

RETIREMENT OF MR. FRED OMUTUNYI

Mr. Marende asked the Minister for Water and Irrigation:-

(a) whether he is aware that Mr. Fred Amutabi Omutunyi, P/No.7808658, who was employed as a Water Supply Operator II, was retired purportedly on attaining the retirement age in the month of October, 2000;

(b) whether he is further aware that the said worker was at the time of the purported retirement 40 years old, fifteen years before the official retirement age; and,

(c) whether he could ensure that Mr. Omutunyi is either reinstated or paid his full benefits for the years of service to the Government and due compensation for the pre-mature retirement.

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Mr. Fred Amutabi Omutunyi was retired on age grounds in October, 2000. Mr. Omutunyi was actually dismissed from service with effect from 1st May, 1998 on account of gross misconduct. He had been accused jointly with others of abandoning their duties at Chesikari Water Works in Mount Elgon and, as a result, a water pump at the station was stolen. He appealed twice to the Public Service Commission of Kenya against the dismissal but both the first and second appeals were disallowed, thus effectively closing his case.

(b) Mr. Omutunyi was 41 years old at the time of dismissal from the service.

(c) My Ministry can neither reinstate Mr. Omutunyi nor pay him any benefits since his appeals against the dismissal were disallowed. A person dismissed from service loses all retirement benefits due to him or her.

Mr. Marende: Mr. Speaker, Sir, I find the answer by the Minister most unsatisfactory. The Minister does not even seem to be aware of the records which are kept by his Ministry. I have in my possession, among other things, a letter dated 16th October, 1998, which indicates that this officer was dismissed from employment with effect from 1st June, 1999 and not 1st May. This letter was signed by the District Commissioner for Mount Elgon District. I also have a letter in my possession---

(Loud consultations)

Mr. Speaker: Order! Those hon. Members at the corner, could you give the House the respect it deserves, so that we can transact business? Mr. Marende is asking a very serious question. Let him be heard.

Proceed, Mr. Marende.

Mr. Marende: Indeed, Mr. Speaker, Sir. The letter conveying the interdiction is dated 16th October, 1998 and it is signed by the District Officer for Mount Elgon. On 30th November, 1999, the same District Officer lifted that interdiction. That position, therefore, factually conveyed in the documents which I have and which I intend to table, contradicts the answer by the Minister. Could the Minister, therefore, consider reinstating this officer with full benefits since the interdiction was lifted?

Mr. Speaker: Could you table the documents first?

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

Mr. Speaker: Mr. Minister, could you look at the documents?

Mr. Katuku: Mr. Speaker, Sir, I would like a clarification, because he is quoting the document signed by a District Officer and I do not deal with District Officers. I would like a clarification.

Mr. Speaker: Mr. Minister, maybe you would like to look at these documents because there is a letter signed for the District Commissioner, Mount Elgon, which was supposed to convey the decision of a District Advisory Committee. I do not understand what all this is about. Could

you have a look at the documents in fairness to both you and this Kenyan and then come back on Tuesday?

Mr. Katuku: Yes, Mr. Speaker, Sir.

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

(Question deferred)

Question No.301

TITLE DEEDS FOR LAND OWNERS
IN SETTLEMENT SCHEMES

Mr. Choge asked the Minister for Lands:-

(a) how many land adjudication sections and settlement schemes exist in Aldai Constituency;

(b) how many of these adjudication sections and settlement schemes have been completed; and,

(c) what he is doing to issue title deeds to the land owners in these adjudication sections and settlement schemes.

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

(a) There are 23 adjudication sections and one settlement scheme in Aldai Constituency.

(b) Out of the 23 Adjudication systems, 20 are already registered and two are already complete. Two are to be registered after field queries are completely solved while one is still under demarcation.

(b) The only settlement scheme, that is Kapwaren, has already been title surveyed and the maps are undergoing checking to facilitate registration.

(c) Land owners in the registered adjudication sections are advised to collect their title deeds from the Nandi District Land Registry.

Mr. Choge: On a point of order, Mr. Speaker, Sir. Is the Minister in order to talk of Nandi District Land Registry when there are two districts, North Nandi and South Nandi? Which Nandi is he talking about? It is either South or North Nandi District!

Mr. Kamama: Mr. Speaker, Sir, this district was created two or three years ago, and uses the same District Lands Registrar for the purpose of efficiency. So, the two districts have only one District Lands Registrar.

Mr. Choge: Mr. Speaker, Sir, I would like to thank the Assistant Minister for his answer. What I would like to know from him is: Which of those three land adjudication sections is he referring to? Could he name them?

Mr. Kamama: Mr. Speaker, Sir, I would like to name the three land adjudication sections. They are Bochonge, Koibarak and Legemeti.

Mr. Khamisi: Mr. Speaker, Sir, it is obvious that the adjudication work in the country is going on very slowly. The reason why it is slow is lack of personnel to do the work quickly. Could the Assistant Minister tell this House what he is doing to increase adjudication personnel, so that this work can be hurried up? Kenyans are getting a little bit impatient about this issue!

Mr. Kamama: Mr. Speaker, Sir, I want to admit that this problem exists in my Ministry. I would also want to point out that we have managed to register quite a number of pieces of land using the staff we have at the moment. We are looking into the issue of recruiting more officers when finances will be available.

Mr. Sambu: Mr. Speaker, Sir, one of the areas that is undergoing registration of titles is Konjoke. Could the Assistant Minister tell the House whether the people who were moved from Konjoke to create a game reserve will be issued with title deeds for the new land they got in exchange for the old Konjoke?

Mr. Kamama: Mr. Speaker, Sir, this matter is being addressed by my Ministry. I want to confirm that the people who were relocated will actually be given some land that is approximately 1,541 acres. These people will be accommodated on that piece of land.

Capt. Nakitare: Mr. Speaker, Sir, this Ministry has confused people in some parts of this country. I would like to say that the problem in Aldai Constituency is similar to the problem in Trans Nzoia District. At Kanyarkwat Settlement scheme, land adjudication and allocation is questionable. People have double land allotment letters, causing three or four people to occupy one plot. Land adjudication and allocation in Kitalale has caused tribal clashes. Could the Assistant Minister tell this House what steps he will take to rectify anomalies in his Ministry?

Mr. Kamama: Mr. Speaker, Sir, that is a totally different Question. I just want to say that Kanyarkwat and Kitalale are well known for clashes, as mentioned by the hon. Member. This matter is being handled by our office and the Provincial Administration in Trans Nzoia District. It is an issue that has brought many problems, and it is being addressed. We will find a solution to this issue.

Mr. Speaker: Last Question, Mr. Choge.

Mr. Choge: Mr. Speaker, Sir, most of the adjudication sections have taken a very long time. Work in many adjudication schemes has taken over 32 years. Could the Assistant Minister consider issuing titles where land queries do not exist?

Mr. Kamama: Mr. Speaker, Sir, I just mentioned earlier that where we do not have queries, applicants can see our District Lands Registrar in Nandi District, and they will be assisted appropriately.

(Loud consultations)

COMMUNICATION FROM THE CHAIR

CIRCULATION OF PROPOSED AMENDMENTS TO SEXUAL OFFENCES BILL

Mr. Speaker: Order, Order hon. Members! That is the end of Question Time.

Hon. Members will probably have realised by now that there is in circulation proposed amendments to the Bill listed for discussion under Order No.7. That is the Sexual Offences Bill. They are being circulated to hon. Members because they came out after the Order Paper had been printed. If Debate on this Bill is not exhausted today, the Bill will be on the Order Paper tomorrow. But I would like to request any hon. Member who has any amendments to this particular Bill, or the following one, to make them available, so that hon. Members can have them in good time. With that information we will now go to the next Order.

BILLS

Second Reading

THE SEXUAL OFFENCES BILL

(Ms. Ndung'u on 26.4.2006)

*(Resumption of Debate interrupted
on 2.5.2006)*

Mr. Speaker: It was Hon. M'Mukindia on the Floor. If he is not here, he is deemed to have forfeited his time.

Is there any hon. Member interested in contributing to this Bill? Yes, hon. Marende.

Mr. Marende: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this important piece of proposed legislation. To begin with, I beg to support this Bill because it is my contention that this piece of legislation is most opportune for this country, in that passing it will make our country be in line with other nations. It is common knowledge that sexual offences are among the most heinous and despicable of all criminal acts. Sexual offences are grouped in the same category as genocide and offences against humanity. It is, therefore, good that this piece of legislation has been proposed.

I note from the Bill that its intention is to harmonise and consolidate all laws relating to sexual offences. In that way, we will move to a situation where we can find all laws relating to sexual violation in one piece of legislation. The prevailing situation is most unsatisfactory, because various sexual offences are provided for in different statutes. The provisions are scattered in far too many statutes, and it is difficult for Kenyans to find and understand them. There are certain sexual offences that are provided for and defined in the Penal Code, Chapter 63 of the laws of Kenya. There are other offences in the Children Act, which is Act No. 8 of 2001. So, the effort to bring all these provisions under one Act is very commendable. It is an endeavour aimed at tidying up the law on sexual offences.

Mr. Speaker, Sir, speaking on that matter---

(Loud consultation)

Mr. Speaker: Order, Members! Order! I think the hon. Member is contributing to a Bill that has aroused a lot of national interest. It is only right that this House listens to contributions by hon. Members so that it is possible to either oppose or support views that have already been expressed. So, let us give this debate the attention that it truly deserves.

Mr. Marende: Mr. Speaker, Sir, I was saying that this piece of legislation is most opportune and it is going to make provisions in an area that has otherwise been ambiguous and amorphous. This Bill is also going to fill a lacuna.

It is, indeed, worrisome that we have statistics which reliably indicate that at the moment, in every single day in this country, there are 300 sexual violations. It is important that this situation is brought under control, otherwise, this is a nation that is threatening to degenerate into anarchy very soon in so far as protection of human rights on sexual violation is concerned.

Mr. Speaker, Sir, speaking on behalf of the Departmental Committee on Administration of Justice and Legal Affairs,

we have noted the concerns of hon. Members of this House from the contributions that they made on the Floor of this House. We have also listened to other stakeholders in Kenya and we have endeavoured to propose to this House various amendments that will ensure that the worries of hon. Members are addressed so that the fears that they have with regard to the effects of this piece of legislation are allayed. The Departmental Committee on Administration of Justice and Legal Affairs tabled before this House a list of proposed amendments on 3rd May, 2006. It is those amendments that have been circulated with effect from this afternoon and we expect that hon. Members will read them and acquaint themselves with the details therein.

Mr. Speaker, Sir, the proposed amendments are meant to ensure that the proposed Bill is in harmony, consonance and consistent with other existing pieces of legislation beginning with the Constitution. Section 77 of the Constitution provides a presumption that every Kenyan charged with an offence, including a sexual offence as is envisaged by this Bill, is innocent until proven guilty. This Bill, in certain respects, appeared as if it was going to contradict that constitutional provision. Therefore, the Committee has proposed amendments to ensure that evidence is adduced by the prosecution rather than a situation whereby certain provisions of this Bill shift the burden of proof from the prosecution to the accused person as is constitutionally provided.

We have noted certain flaws in the Bill which hon. Members worried about. We have been so thorough right from the Preamble of the Bill to the Schedule which is the last part of the Bill. In the Preamble, for example, we have noted that the Bill, as drafted, provides for among things prevention and protection of all persons from harm and other sexual acts. You cannot prevent sexual acts because, to a very large extent, they may, in fact, be normal. So, what we have proposed to the Preamble to correct the anomaly is the introduction of the words "unlawful sexual act". This is because other sexual acts are quite legitimate.

We have also, in our endeavour to propose amendments which we expect this House to approve, looked at, for instance, the clause relating to sexual abuse. Hon. Members expressed worry about Clause 23 of the Bill which addresses sexual harassment. In proposing an amendment to this clause, we have noted that hon. Members were worried that this Bill, in case it becomes law, may outlaw an act of seduction which is quite normal. A few hon. Members said that their children may not find wives because they would not be allowed to admire their colleagues at places of work and so on. To correct that anomaly, the Committee has proposed that Clause 23 be deleted altogether and be substituted by a new provision.

Mr. Speaker, Sir, the new provision ensures that what will, in fact, be unlawful are only those acts that are persistent and unwelcome. Therefore, a new Clause 23 is proposed and, among other things, it will provide for sanction against persons who are in positions of authority over other workers inclusive of women and even men. This clause targets those persons who persistently make sexual advances or request for sexual favours which are unwelcome. There is, therefore, a new proposed clause that ensures that normal and legitimate acts of seduction are permitted to go on. It is only those acts which have a criminal connotation that will be outlawed.

Hon. Members worried about provisions proposed by the Bill with regard to female circumcision, that is, Clause 31 of the Bill. This clause, among other things, proposes outlawing of female circumcision. The Committee has taken cognisance of the fact that certain Kenyan communities still view circumcision as a cultural event that is harmless and carries no serious danger to their daughters and wives. The Committee has, therefore, proposed that Clause 31 be deleted altogether so that it may be dealt with as a criminal offence under the Penal Code which is Chapter 63 of the Laws of Kenya. A person who forcefully circumcises a female, inclusive of a daughter or a wife, will be charged with assault or causing grievous body harm. Where the victim is a minor, that is, under 18 years of age, they could also be charged under the provisions of the Children Act which is Act No.8 of 2001. The Departmental Committee on Administration of Justice and Legal Affairs feels that the provisions of Clause 31, as proposed in the Bill, are superfluous and should, therefore, be deleted. We urge hon. Members to agree with us and vote in favour of the Bill. There are some Members, especially my brothers and sisters from communities like Maasais and Kisiis, who were worried that they will lose their seats if they advocated for outlawing of female circumcision. That fear is now allayed. I can see Maj-Gen. Nkaiserry smiling in satisfaction. I believe my colleagues from the Kisii community are also satisfied.

Maj-Gen. Nkaiserry: On a point of order, Mr. Speaker, Sir. Is it order for the hon.

Member to say that it is only the Maasai community which is against female circumcision?

Mr. Speaker: Why pick on them?

Mr. Marende: Mr. Speaker, Sir, perhaps, the hon. Member was not quite attentive. I am glad that I have now attracted his attention. I said "other communities", and the Maasais are among them. I am glad that the hon. Member has not faulted the factual part of my contribution.

Mr. Speaker, Sir, the Committee has also found it necessary to propose an amendment to Clause 34 of the Bill. It proposed a change on how a court could seek evidence. The Committee has proposed an amendment which allows for substitution of the word "shall" with "may", so that the courts retain their discretion.

Mr. Speaker, Sir, to allay the fears of hon. Members that parties involved in a sexual offence may not be allowed to adduce evidence of previous conducts of their accusers--- That was the concern of Mr. Wetangula when he talked about Clause 36. The Committee has suggested that Clause 36 be deleted.

There were serious concerns that corroboration, which is a standard method in every trial that goes on in our courts today, may be diluted by Clause 38. The Committee has, therefore, suggested that Clause 38 be deleted, so that the law remains intact as it is today. Evidence adduced in cases relating to sexual offences is weighed and tested like evidence in any other criminal case.

Mr. Speaker, Sir, hon. Members also feared the time frame within which an offence could be brought to the fore against the accused persons. Some hon. Members who may have committed offences close to sexual violations are fearing that such cases could be resuscitated and revisited upon them. We have addressed that by deleting Clause 36. I want hon. Members to note that criminal offences provided for or enacted in any statute to do not have retrospective application. Those offences could apply from the day the law takes effect. Therefore, hon. Members need not worry about possible past incidences being revisited against them.

Mr. Speaker: Order! Mr. Marende, I do not know whether you are in order to address yourself specifically to hon. Members. I do not know whether, as a matter of fact, you are not trying to say that hon. Members are guilty of that. We make laws for general application to all Kenyans, including hon. Members. So, address yourself to the generality of the law.

Mr. Marende: Yes, Mr. Speaker, Sir. That is what I am doing! I am addressing Kenyans through Members of Parliament who are, in fact, the representatives of the Kenyan people. If you peruse the document introduced by the Committee on Administration of Justice and Legal Affairs, it strives to take into account the worries and concerns demonstrated by hon. Members, and other stakeholders who appeared before the Committee.

Mr. Speaker, Sir, there were worries that certain provisions in the Bill may interfere with the institution of marriage. Those concerns were shown and actively demonstrated in Clause 47 of the Bill. For instance, Clause 47 makes it an offence to have sex with a person who is asleep. We have, therefore, proposed that Clause 47 be amended to exclude married persons. Kenyans can still have sex with their partners when they are sleeping, as long as they are married. It will not be a criminal offence any more.

Mr. Speaker, Sir, fears that were brought to our knowledge by hon. Members and Kenyans themselves have been addressed. The proposed piece of legislation is good for Kenyans. It is a legislation whose time has come. It will put us in step with the rest of the world and the community of nations. It deserves the full and undivided support of this House.

With those few remarks, I support the Bill.

The Minister for Environment and Natural Resources (Prof. Kibwana): Mr. Speaker, Sir, thank you for giving me this opportunity to stand and be counted as a Member of Parliament and a man in this beautiful country of Kenya who is supporting the Sexual Offences Bill, 2006.

Mr. Speaker, Sir, contrary to what many people in the country thought and said, this House

has risen above pettiness and bi-partisan approach to support the Sexual Offences Bill, 2006. The House wants to send a strong message that sexual deviants are not going to be tolerated in our society. They are going to be punished heavily. The Bill does not just speak about punishment, but also medical treatment where necessary. I want to thank this House for supporting this Bill as a whole.

Mr. Speaker, Sir, I have a friend, and I will not mention her name because of her own protection, who said in public that she was going to be a virgin until marriage. Since she said that in public, some men started stalking her because they wanted to act in such a way as to demonstrate that, that was not going to be permitted. So, this lady had even to abandon using public means of transport because she was scared of being violated. This demonstrates that women-folk in this country carry a perpetual fear of being violated. That itself, is perhaps, one of the greatest fears that we subject women-folk to. Every time a woman wakes up and even when she goes to sleep, there is this fear hanging over her like the sword of Damocles that she can be violated or raped. Therefore, when we talk about sexual violence, it is serious business, and it is important that our country has now decided to act against this crime in a very clear fashion.

When one looks at this Bill in totality, one of its themes is that minimum sentences are going to be introduced, so that they act as a deterrent among serial offenders. Secondly, another important theme of this Bill is that children are going to be protected, and that is why there is protection of children in terms of child trafficking, child sex tourism, child prostitution, child pornography, defilement and so on. That is extremely important.

Mr. Speaker, Sir, there are aspects of this Bill that have met reasonable criticism within the House and outside. One of these relates to sexual harassment as explained in Clause 23 of this Bill. I need to draw the attention of the House and the country to the fact that sexual harassment demeans people. When there is untoward and unsolicited sexual advance through touching, looking, hissing or all those forms, this is not demonstrative of male prowess, but is very abusive to the women-folk. I am sure that women who are routinely subjected to such harassment have had their lives and dignity devalued. I think it is important for us to put this message across within our country and cultures as civilised people, a people who emphasise consensual sex and who give dignity to sex by making sure that it is practised within parameters of dignity and consent. We have to be careful about disembowelling Clause 23 so that, a very important plank of this Bill is removed, that is sexual harassment.

So, I am appealing to this House that as we go to the amendments, we should be careful so that we do not amend in such a way that the part of this Bill about sexual harassment is made a nullity. I am sure that even men who do not want sexual advances from women or other men, are very unhappy when there are unsolicited sexual advances towards them. So, we must look at this matter from a gender perspective and not simply say that women like to be approached and when they pretend they do not like it, it is just pretence. This is a very special plea so that we do not diminish the part of the Bill that describes sexual harassment. Sexual harassment is very harassing, if I am allowed to say so.

Mr. Speaker, Sir, although some amendments have been proposed so that we de-emphasise female circumcision from this Bill and relegate it to culture and the Children Act, since we are going into the modern world, we also need to send a strong signal against female genital mutilation. Kenya is one of the most successful African countries and a role model in many disciplines. Truly, this is an act of subjugating the female sex. This is an aspect of de-emphasising their sexuality. This is not the final stage. It is not really an act of culture sanctioned by many years of history. Again, it is my plea that this House retains aspects that prohibit forced female circumcision in this Bill, especially where there is no consent or even where there is consent on the basis of inadequate knowledge and cultural pressure. Many of us here, who are parents, would not

like to see our daughters circumcised. In the same vein, perhaps, this House needs to rise to the occasion and send a very strong signal that female circumcision is a matter of the past and it should be relegated to the history where it belongs. We should not simply support it because some of our constituents do so and we do not want to anger them.

Mr. Speaker, Sir, the provision relating to rape, including an attempted rape, sexual assault and indecent acts is not clear in this Bill. In fact, it not well differentiated. This is because the element of penetration runs through many clauses in the Bill. Sometimes, penetration is used to describe rape. Clause 3, for example, describes rape, while Clause 4 describes an attempted rape. So, it is important to really clarify these different sexual offences, so that when one is being charged with a specific one, it is clear.

Mr. Speaker, Sir, this Bill does not also define rape clearly. We also know that the male also can be raped. Again, as we amend this Bill, it should be clear to us that also a man can be raped. Therefore, there should be a provision for a man being raped, or an attempted rape happening to him, and not just a woman. This is because the definition of penetration, apart from when a male is being raped through the anus, does not describe how the male are raped by the female gender. So, the crime of rape and attempted rape need to be specified. It should be clear so that there is no male chauvinism regarding the Bill. We know both women and men can be raped.

Mr. Speaker, Sir, again, the definition of rape in this Bill is general. However, this definition can be used in courts of law to also include marital rape. That is rape within the family setting where there is no consent by one of the parties, particularly the woman. Therefore, the definition of rape needs also to be clarified, particularly where parties are married. It should be clear that within marriage and where there is no separation or one party is not suffering from a sexually-transmitted disease, the provision about rape should not arise. I think some of the amendments by hon. Members are targeting that particular aspect.

Mr. Speaker, Sir, another innovation of this Bill is separation of sexual offences where this is done in the context of the view of a family member, a child or a person with disability. It is important because such offences introduce significant trauma to those who watch the happening of the crime. Sometimes people engaging in this crime actually call upon family members, for example, to watch. This is because, in their perverted mind, this is part of their enjoying what they are doing. So, it is important to distinguish between species of sexual offences and give them special attention and stiffer punishment. Unfortunately, the minimum punishment for such offenders is ten years in jail just like for ordinary rape and sexual assault. So, if this is a special kind of sexual offence, it is important also for the punishment to be special.

Mr. Speaker, Sir, on defilement or rape of children, this proposed law did well to categorise it in the age bracket of zero to 18 years. I do not support the amendment of the child to be defined like in the Children Act. This because in matters of sexuality, we want to protect all those who are in age bracket of zero to 18 years and not necessarily to just protect children who are very young. Indeed, in this Bill, there is an attempt to put a provision that for defiling children who are 11 years and under, the punishment is imprisonment for life. The sexual defilement of those who are 12 years to 15 years, the minimum sentence is 20 years. For those who are 16 years to 18 years, the sentence is 15 years. So, again, in the spirit of protecting children in a very important way, we require to maintain these categories of consideration and punishment.

Mr. Speaker, Sir, as the Bill proposes, it is also important to distinguish gang rape from rape by one individual. In the situation of punishment for gang rape or defilement, the punishment is 15 years. Whereas defilement by one person who is under 11 years, the punishment is imprisonment for life. So, again, the sentences need to be harmonised, so that where there is gang rape, or there are sexual offences before family and children, the punishment correspondingly highlights the seriousness of the laws.

Mr. Speaker, Sir, it was said earlier that Clauses 13, 14, 15 and 16 protect children. This is because they talk about child trafficking, child sex tourism, child prostitution and child pornography. However, we need to be careful about Clause 13 which talks about child trafficking. This is because, particularly in the international arena, when housemaids or helpers come from the villages to Nairobi or any other town, to assist in terms of rearing children, this is considered to be child trafficking. So, we require to ask ourselves whether we want it now controlled under Clause 13 or not. We should also ask ourselves whether our understanding of child trafficking in this particular proposed law is qualified or it should be regulated in a different way.

Mr. Speaker, Sir, Clause 24 is also important because it protects officers working under instructions of others. For example, I, as the Minister for Environment and Natural Resources, if there are people working under me, they should be protected from my onslaught in cases where I am taking advantage of them. Of course, those of us who are bosses feel threatened by regulations like these because we think that sometimes they might be taken unfairly against us by false accusations if people under us suspect that we may sack them. But the spirit of this proposed law must also be about the credibility of evidence, so that when people are accusing others of sexual harassment or taking advantage of them by virtue of being in authority--- For example, given what happened recently in South Africa and Uganda, we also need to make sure that when other people accuse us wrongfully, there is within the law adequate safeguard, so that those false accusations do not become the basis for convictions. Indeed, even in this particular Bill, it is important to protect the use of sexual offences for political purposes. This is because if I want to liquidate my political opponent, I simply resort to charges of rape or other sexual harassment. It is also important that the proposed amendments will prevent the use of sexual offences to liquidate our political opponents. We all know that this is a feature which has begun to rear its head, not only on the continent, but also elsewhere. Sometimes sexual offences are used to attack political opponents even more than corruption. Our societies appear to be more against sexual offences than corruption.

Mr. Speaker, Sir, the last provision that I want comment on is the question of wilful transmission of the HIV/AIDS virus. Since I have not looked at the HIV/AIDS Prevention and Control Bill, I do not know whether that is also covered there. It is important for it to regulate the question of those people who, wilfully, transmit HIV/AIDS and other sexually-transmitted diseases to others. The issue of wilfully transmitting HIV/AIDS should not just be restricted to sex because, the HIV/AIDS virus can be wilfully transmitted to people in other ways. The perpetrators of such acts should also be captured by this Bill.

Mr. Speaker, Sir, therefore, as I conclude, I would like to note that it is very positive that the entire House, and Kenyans at large, are now in the mood of protecting our children, womenfolk and menfolk through the passage of the Sexual Offences Bill, particularly where we are protecting children from the way they have been preyed upon by sex pests.

As I have suggested, as we amend this law so that there is consensus about it, let us not amend it to the extent that we take away its substance, particularly in the area of sexual harassment as well as in that of the punishments proposed such that the punishments are diluted too much. However, we should also be careful so that the law can speak clearly regarding the issue of rape within marriage and child trafficking, so that we do not get ourselves into a situation where the movement of a lot of the children who are not so young, from the rural areas to urban areas to work as house helps, is regarded as child trafficking; or continue female circumcision by arguing that this is a cultural practice.

Mr. Speaker, Sir, as I said from the beginning, in my capacity as a man, I cannot even imagine the magnitude of violence felt by people who, in their daily life, as they sleep or walk around, know that they are a perpetual target of violence. Perhaps, the idea of knowing that you can be exposed to violence at any time is one of the most critical elements of violence that we do not

even think a lot about as we think about violent crimes where people fight each other using guns and other weapons. That is why I am very happy that this House has come together to make a statement regarding violence against children, women and men. I am very happy with both sides of the House for supporting this Bill.

With those remarks, I beg to support.

Mr. Muite: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Bill. I will be very brief because the Committee on Administration of Justice and Legal Affairs has been intimately involved in the generation of this Bill at every stage. With the suggested amendments that the Committee came up with, I am entirely happy and satisfied with the Bill.

Mr. Speaker, Sir, there are only two points I would like to make. There has been a lot of concern raised by hon. Members as to whether there can, possibly, be rape within marriage. That is a question that has been posed to me even by some of my colleagues in this House. I see that the proposed amendments by Mr. Marende include the deletion of the clause that talks about marital rape, so be it. But I would like to point out that if you give into temptation and betray your wife by committing adultery, and you have the misfortune of being discovered by your wife, there are three options: She may decide to forgive you, perhaps, because of the welfare of the children, or divorce you, or do both of the above. However, before she does so, since these are not decisions that are made quickly, if there is an extra bedroom in the matrimonial home, she will move into a separate bedroom where she will ponder and very quietly go through her pain to decide whether to forgive or divorce you or what action to take. If you break the door to that room and force yourself on her, that is marital rape. It is adding insult to injury. You are the one who has humiliated and made her move into a different bedroom. Accord her time to go over her pain and decide whether to forgive or divorce you.

So, it is a pity that because of hon. Members' concern, who do not want to see that there can be rape within marriage, there is a proposal to delete that clause. So be it. But sometime in the future, we will need to accept that women are human beings just like men, with their own self-respect and dignity. Marital rape can be there. I hope that when the time is more convenient, we will re-visit that particular issue.

Mr. Speaker, Sir, the second and last issue I would like to raise is that, as a nation, we need to re-look at our values. What are our values as a nation? By legislating alone, we are not going to be able, without shared values, to do away with some of these things that never used to happen in the traditional society. We will not go far. It is understood that in the traditional society, you would not touch a woman by force. It was unheard of for a young man to go to bed with a woman of the same age as his mother. There is a breakdown of morality in society. The definition of morality includes values shared by a nation. I would like to see affirmative action being initiated by, perhaps, the Ministry of Gender, Sports, Culture and Social Services, in consultation with all stakeholders, including the religious sector, to see whether we can begin to restore the social values in our society, so that we can become a nation that is self-respecting.

Mr. Speaker, Sir, I urge hon. Members to support this Bill and pass it as the first step towards containing the runaway and unacceptable incidents of rape that we read about daily.

With rose remarks, I beg to support.

Prof. Oniang'o: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this debate. I, too, will not take long.

Mr. Speaker, Sir, I want to take this opportunity to say that I believe Kenya has come of age. We went into the weekend worrying about what would happen to this Bill. I want to congratulate Ms. Ndung'u for having had the courage to bring it forward and to the public. For those of us who have been confronted with questions by members of the public know that there has been so much fear amongst men. They were feeling hounded by women. They feared that if this

Bill is passed into law, they will be accused wrongly by women. However, we continue, every day, to read about the heinous acts that are committed against small kids and grandmothers. We are aware that even boys are now being sodomised. This Bill has enabled us to pronounce words that we could not pronounce in public, in front of our children and other people we respect and even fear. That is something we could not do before. I remember meeting with Ms. Ndung'u last week, and telling her that Kenya cannot be left behind on this matter. We have done our best. I think the least we can now do is to pray and leave everything to God.

Mr. Speaker, Sir, I would like to congratulate the Departmental Committee on Administration of Justice and Legal Affairs for having taken time to go through this Bill and having the Kenyan society as a whole in mind. I believe that when we make amendments to this Bill, even if some of the issues that some of us care about are deleted, we shall pass a Bill which can be amended later on. That is what a Bill is all about. We have debated the Bill and exposed it to many communities in Kenya.

Mr. Speaker, Sir, nobody would like their loved ones to be raped. It is true that there are grey areas in the Bill. There have been fears that people will be wrongly charged, and such things do happen. Therefore, we need to pass a Bill which takes care of everybody. I would like to support what hon. Muite has just said. We are at this stage because most our cultural values have broken down and probably they will remain that way. This is because of globalisation. In many of our vernaculars, we do not even have the word "rape". There was nothing like sexual harassment. I remember when I was growing up, I could never even move near my father. Girls slept on their own and they were counselled by their aunts and grandmothers. The same thing happened with boys. With urbanisation and globalisation, all that has broken down. Some of the programmes that we watch on television do not help us at all.

I want to compliment our male colleagues in this House. They too have thought about this matter very seriously. Indeed, we feared that this Bill would not be passed in this House, but our male colleagues have taken time to look through it and at the end of the day, we will pass a good Bill. However, the most important job remains with the parents in terms of how we bring up our children. It also remains with our teachers. We would like to restore national and human integrity. Animals do not even behave the way some of our people are behaving right now. Animals do not rape their little ones. I keep hearing that girls are being raped because they are wearing mini-skirts. Two-year-old girls are not being raped because they are wearing mini-skirts!

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, in some of the countries that we visit, when a paedophile or somebody who defiles and rapes a little child, goes to jail, his fellow inmates kill him. They will say: "Yes, we commit crime, murder, but we do not do this to children". Something has clearly gone wrong. I am going to be a happy mother, leader, grandmother and Parliamentarian when we pass this Bill.

Mr. Deputy Speaker, Sir, I would like to inform the members of the public out there that the fears they have been having that we are haunting and targeting men should not be there. Rape affects the whole society. When a woman is raped by a gang which breaks into her home, this destroys the family and the community at large. When we pass this Bill, we will address more important issues that threaten to disintegrate our society.

Mr. Deputy Speaker, Sir, I would like to thank everybody who has been involved in the drafting of this Bill. I would also like to tell Ms. Ndung'u, who is like my younger sister, to leave

everything to God because we must pass this Bill in this House.

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

The Assistant Minister for Education (Dr. Mwiria): Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support those who have supported this Bill. I stand here to say that I am one of them.

Maybe we should also reflect on why men are being seen to be the ones who are more against the implementation of the Bill than women. This is probably because we have not quite come to terms with the fact that rape, just like abortion or any of the other crimes that we dare not talk so openly about, is much more a woman's problem than it is a man's problem. It is the woman who has to deal with the consequences all her life. Therefore, we need to appreciate that fact. We need to rid ourselves of our conservative selves that make it difficult to appreciate the difficulties that some of our women have to go through even though we have accepted certain other values that are in direct contradiction of the issues that are being addressed in this Bill.

Rapists, I agree with those who have spoken, must be punished very severely. In doing so, we are going to encourage many who do not report rape cases, to do so. As has been indicated before, there are many cases of rape that are not reported. Probably, only one out of ten rape cases is reported. If people know that rape is going to be punished severely, we are more likely to encourage many victims to report rape cases. We also need to punish rapists very severely because women must no longer be the ones on the defensive always. It is them who have to prove good reputation. They do not want to talk about rape because if they talk about it, it will look like they are the ones who entice men. They have to prove that they are mentally sound. They are scared of talking about rape because of the repercussions in certain communities including even communities where husbands will not tolerate to think that it is possible that their women were raped and they instead turn this against the women along with the violators. It is also necessary for us to punish rapists severely, so that we discourage men who have come to believe that their genital organs are great weapons to generate fear.

Mr. Deputy Speaker, Sir, in as far as I am sympathetic with the hon. Member for Kasipul-Kabondo who was harassed a great deal for the point he made, maybe the problem was the crudeness with which he made the point. If our women behave the way he said, it is because that is how we have brought them up. We have brought up women to believe that sex is bad and it is only good for those who are loose. If you are associated with sex, you must be a loose woman. We have made them to believe that sex is only good for procreation and for the pleasure of men. Women, therefore, will not dare come up with it.

So, when people talk about women being shy, we need to appreciate the difficulties or the culture in which our women are being brought up. We should address that as an educational issue other than just ignore the fact there are, indeed, cases where women cannot talk about sex even though they believe in it. The society does not expect them to discuss anything about sex because it is not about them, but about men. That is why men want women to be circumcised because sex is for the pleasure of men and not women.

Mr. Deputy Speaker, Sir, I am happy because the clause that talks about the benefit of proof has been deleted. We are now saying that it is not only up to those who are being accused to prove that they are innocent until proven guilty.

Mr. Deputy Speaker: That is just a proposal. The clause has not been deleted.

The Assistant Minister for Education (Dr. Mwiria): Mr. Deputy Speaker, Sir, I empathise with that proposal because these are also issues about trust. If you live in a society where people tell lies left, right and centre about anything, what do you expect them to say when it comes to sexual advances? Some of these laws are possible to implement in societies where people are generally honest and where honesty is accepted as a value. As we know, dishonesty sometimes is

rewarded. People go round telling lies the way they want. In such a situation, it is possible for those who can easily tell lies and are listened to, to take advantage.

However, we should not just blame women on the possibility that they will cheat. We should ask ourselves why women may be tempted to cheat sometimes. This is because we do not have any other mechanisms in place to make it possible for them to tell their stories without being victimised. Therefore, there are issues about what respect we have for our women and whether or not we are prepared to treat them as equals and not to just assume that we can do anything and the society will think that it is the woman who was right. Again, this has a lot to do with the gender and power relations. Until we address those issues and the issues about honesty, we will not get very far in terms of ensuring that the possibility of dishonesty is not being misused and against women. All the same, I do not think that Clause 17, which was proposed to be deleted, should be deleted. Female circumcision has been a very big issue. I would propose that the clause stays because forced circumcision is a violation. In many ways, it is also a rape against our women. It has serious consequences on our women. It is a woman's problem in terms of their sexual life, self-confidence, health, ability to procreate, education, career progress and intrusion into their own privacy. We are strengthening traditions which have no values. I do not see why we cannot ban female circumcision. I do not know why it is an issue. I also do not know why it is an issue in certain communities in this country. I cannot understand why hon. Members, who will never have their own daughters circumcised, will argue for it for fear of repercussions in elective politics.

It is about leadership! We know that it is not a good habit. If it is not good for our children, it cannot be good for other children, irrespective of whatever traditions held by the society or elective results. If we cannot dare risk and talk about issues that will change the society for the better, then I think we have no business being the representatives of the people. I, therefore, say that it must not be an issue; that some hon. Members should feel threatened if such an issue comes up. I think it is much more important for such hon. Members to question themselves whether they are true leaders who can take risks for the benefit of the society and future generations, as opposed to thinking about their immediate benefits of coming back to Parliament. We should not even talk about why some women ask for circumcision. They do not realise that there are cultural issues to deal with. They include the possibility of fear of rejection and lack of information about the consequences. There is also the fact that, some of those issues have become a tradition and fashionable. Again, we have to deal with those cultural roots. We should not say that, in some societies, it is the women who are demanding for it.

In other words, I agree that Clause 31 should be retained. When you see a woman being circumcised others are screaming and celebrating while the poor girl is wailing! I do not know what kind of value that is. I do not know why, as a society, we agree that those values must be maintained, when those who are being circumcised do not want it. They are being destroyed!

Mr. Deputy Speaker, Sir, I do not agree with those who say that circumcision is a question of evolution, and that we must give it time; that those things will evolve with time. What is the point of catalyst of change and education? Why did we accept the missionary values? Why is it that we must leave evolution to apply to certain cultures? Why must it be for Maasais or Kisiis, when other communities have already given up those traditions? Again, we must ask questions. We should wait until when? Should we wait until we destroy a generation of young women who will later become old women? It is easy for us to say that, especially when we are not doing it on our own children. Basically, it is the issue of whether or not we are being dishonest; that we can prescribe something for other people, but not for ourselves or those who are close to us.

Mr. Deputy Speaker, Sir, when we talk about culture, we must not only accept what favours us. We cannot say it is culture and, therefore, we leave it. Why are we here in Parliament? Why do we go to school for education? Why do we embrace Western religion? Why is it that we only talk

against things when they do not favour us? If we cannot appreciate that culture is dynamic, we have no business discussing it at all. That dynamism includes change. That is change with regard to circumcision, marital rape and so on. In that regard, I am glad that the two issues are proposed to be retained in the Bill. I agree that those who use culture and religion against women to oppress and harass them sexually, should be guilty of an offence and punished.

Mr. Deputy Speaker, Sir, I disagree with the proposed deletion of Clause 38 on corroboration. How do you expect a young under-age child or poor student to discuss sexual harassment with his or her own parent? How do you expect jobseekers to expose themselves when they know the danger that is likely to come against their potential employment? What do we expect of minors or those who believe and confess their sins to priests? To protect that, let us retain that clause.

Those who say it is not possible to rape a married woman are, obviously, being dishonest. How possible is it that women in their 20s have six to seven children? Is it so pleasurable to have so many children? What do we do with cases of women who have been made pregnant by drunken husbands who want to vent their frustrations? What do we do with women who have psychological problems because their men force them to have sex every night and cannot live as normal human beings? So, it is wrong and dishonest to deny that marital rape takes place. Therefore, the inclusion of Subclause (v) to me, is in bad taste. I will not support that because I believe there is marital rape. Rape does not only happen to those who have not entered into marital contracts.

Mr. Deputy Speaker, Sir, as we talk about this issue, I think it is important for us to address issues of culture and religion. The issue of wife inheritance is backward. It is a form of violation especially when it does not involve the consent of the woman. Issues of forced or arranged marriages and polygamy--- To accept that you can have several wives is an indication of lack of respect for women. It has nothing to do with your great potential as a husband. It is an indication of the extent to which you do not have any value for women. For you, women are objects for pleasure.

Mr. Deputy Speaker, Sir, likewise, I wonder why we say that women, sometimes, invite rape because of the way they dress. In addition to what other people have said, there is no clause in our laws that indicates how we should dress. It is important to go back to our traditions and remember that, in most societies, people were usually half-dressed. They walked half-naked. If you go to Southern Sudan and some parts of this country, men and women walk along together very scantily dressed! However, they do not rape their women. So, the whole thing has to do with attitude. It has got to do with people realising that they need to be civilised. Just because a woman is dressed in a certain way that attracts your animal self does not mean that she is wrong. We need to examine ourselves and exercise self control.

Mr. Deputy Speaker, Sir, to deal with those problems, we have to address other extraneous factors. There are factors that go beyond sexual relations. We have problems of insecurity. I think rape happens much more in situations where there is insecurity.

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

Is my time up?

Hon. Members: Yes! Yes!

Mr. Deputy Speaker: Who is the time-keeper here, other than Mr. Deputy Speaker?

Dr. Mwiria, please, continue!

The Assistant Minister for Education (Dr. Mwiria): Mr. Deputy Speaker, Sir, I was saying that we cannot address issues of sexual harassment outside the wider context in which those matters take place. One of those issues is insecurity. Unless we improve security in this country,

more of our women will continue to be raped. Unless we deal with issues of poverty, many of our women will subject themselves to possibilities of sexual harassment. Unless we deal with power relations, where those who are in positions of authority have no respect for women and their subordinates--- Unless we improve that and cultivate a culture of equality, it is going to be difficult for the under-privileged and subordinates not to fall prey to men who are willing to exploit such possibilities.

Mr. Deputy Speaker, Sir, unless we deal with issues of religious extremism, we are exposing or creating possibilities for rape. These are people who carry out overnight religious prayers including night masses for Catholics.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Please, consult in low tones!
Proceed!

Mr. Kipchumba: On a point of order, Mr. Deputy Speaker, Sir. You heard the hon. Member say that night prayers including the masses that Catholics have at night encourage rapists. Is he in order to impute improper motives on Christians who pray at night?

The Assistant Minister for Education (Dr. Mwiria): Mr. Deputy Speaker, Sir, I have not imputed any improper motives. I am just saying that we must put precautionary measures in place. It has nothing to do with only Catholics but anybody who prays overnight and brings young boys and girls together without any security in the midst of an environment which is ripe for this kind of possibility. I want to talk about *keshas* where people just pray all night. In other words, let people pray but let that not be an opportunity for our women to be harassed by men. Everything must be done by even those who organise these religious activities to ensure that, that should not happen. That is what I am saying. Otherwise, freedom of worship must be there but it must not be used to interfere with the freedom and rights of women and young girls.

Mr. Deputy Speaker, Sir, finally, with regard to implementation, I would like to say that a lot will depend on our legal structures. That is; how long it will take for us to take action as a Government and relevant authority; how we deal with the powerful, well-to-do, those who are connected and have money because the law, as we have seen in this country, in most cases favours the rich. As long as people can influence the law, I think it is going to be very difficult for us to get anywhere with this law and any other law.

Mr. Deputy Speaker, Sir, with regard to implementation again, I realise the Ministry of Education is one of those that will be the implementing agencies and also other Ministries. It is important for us to already begin thinking about an inter-ministerial committee that will address issues related to implementation on things that cut across the various ministries. For us in the Ministry of Education, we are going to improve our curriculum with regard to issues that relate to sex education, HIV/AIDS, rights of women and the child, ensuring security in our schools so that our young girls are not sexually harassed, having very strict punishment for offending children and teachers and providing opportunities to discuss these kind of problems in schools.

Mr. Deputy Speaker, Sir, finally, I would like to say that the more we become a trusting nation of people, the more we will get far. Secondly, we must also be prepared to accept the risks that go with leadership, that it is not one way. In this regard therefore, even the things that are likely to make us unpopular including talking---

*(Several hon. Members stood
up in his place)*

Mr. Deputy Speaker: Order! Hon. Members should not be standing when an hon. Member is contributing. Will you sit down!

Proceed!

The Assistant Minister for Education (Dr. Mwiria): Mr. Deputy Speaker, Sir, I am concluding and I am sure I have taken a bit of time. However, I am just saying that we must be prepared to take risks that go with leadership, including having the courage to talk about traditions and values that we know add no value. This is what leadership is all about and that we must agree and accept the fact that finally our culture is constantly changing. We cannot only accept certain parts of this culture that favour us but we must also accept what is not palatable and that which we do not like that much.

Mr. Deputy Speaker, Sir, with these remarks, I support.

Mr. Odoyo: Thank you, Mr. Deputy Speaker, Sir. Let me add my voice to the excellent views and ideas expressed by my fellow Members of Parliament.

As we stand here today, let me also congratulate the initiator of this Bill, hon. Njoki Ndung'u for what we have now christened "The Njoki Bill". She has captured the spirit of the Bill which among other things was to deal with these types of molesters and sexual deviants who prey on young children but equally she has captured the spirit of these young men who see 80-year-old grandmothers and "salivate" while leaving the young girls to pass by as they prey on these old women.

(Laughter)

I congratulate her and all the Members of Parliament for this work.

Mr. Deputy Speaker, Sir, there is an element that many Kenyans, indeed, have raped but equally we have to say that many foreigners have raped Kenyans. This element of foreigners raping Kenyans has not been adequately reflected in the Bill. I have the case in point where the British soldiers were accused of raping our women and compensation was awarded to the victims. They raped 800 Kenyan Maasai and Samburu women who they apparently hunted like animals, preyed upon and carried out what is called gang rape.

Mr. Deputy Speaker, Sir, the gang rape that was carried out by these soldiers created another issue which has not been reflected in this Bill which is the case of illegal children. Illegal children, in my view, unless I stand to be corrected, is where a rape has taken place and there is an illegitimate child.

Mr. Deputy Speaker: Mr. Odoyo, I am not sure whether there are illegal children. Are they illegal children?

Mr. Odoyo: Mr. Deputy Speaker, Sir, I deliberately opted not to use the word "illegitimate" but "illegal" in so far as that when you have the assumption that Kenya is composed of men and women but when a foreign individual "occupies" a body of a Kenyan illegally, that is an illegal act of occupation of Kenya. That is why I used the words "illegal children" because the foreigners "illegally occupied" the body of a Kenyan and thereby led to an illegal occupation of parts of Kenya. I know hon. Kipchumba here may have a different view but let me continue.

Mr. Deputy Speaker, Sir, where a child is born as a result of rape, I believe the Government should take a more proactive role. In the event where those illegal or illegitimate parents or whatever the case maybe are not able to look after this child, this Bill should put it that the Government will take full responsibility for these children who because of rape come to be in this world. This has not been reflected and I believe that the properties of these people, if they are able, should be auctioned so that the State can take care of these illegitimate children.

Mr. Deputy Speaker, Sir, I wish to add my voice to the proposed amendments to Clause 42

by hon. J.B. Muturi who has indeed pointed out that there was a vacuum in so far as false accusations may take place. This proposal says that the accused may be jailed for one year or pay a fine of not less than Kshs50,000. If enforced, to my mind, it is far too high but I believe that those who make false accusations, especially long after the act should be clearly dealt with in the Bill.

Mr. Deputy Speaker, Sir, there is another issue which is not fully covered in this Bill. It is the issue of old women who are being raped every day. In most cases, they are raped by salivating young men. After they go through the nasty ordeal, many of them are unable to live normally. I believe the Government should take some responsibility and assist them. We should not only jail the offenders, but we must also take care of those old women. The Government should set aside some minimum compensation. For example, where a case has been proven and the Government is unable to get compensation from the sexual offenders, it should compensate the victims, so that they are able to lead normal lives in spite of them being shunned by the society. On many occasions, the society is harsh to those old women. Even in cases where some of these women are married, the society does not welcome them back as should be the case.

Mr. Deputy Speaker, Sir, there was a case in point of marital rape. Indeed, Mr. Muite, the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs has attempted to do justice to this Bill by pointing out that--- We know that many Kenyans do not have extra bedrooms. Therefore, many Kenyan wives do not have the option of moving to the extra room, so that if it is broken into, then we can call this marital rape. In Luoland, for example, the option is left open. A woman may go back to her parents and the husband can get her from there. The Government should recognise these cultural aspects. We should also appreciate that there are some cultural elements that this Bill do accommodate. There are cases where elders in our society can intervene. That should not be completely outlawed, especially in cases of marital rape. Many a time, rape may just be a symptom of bigger problems in a marriage. Those problems need to be resolved. We should not say that rape is the sole problem in marriage.

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

Mr. Bett: On a point of order, Mr. Deputy Speaker, Sir. We appear to be repeating ourselves. We must stop some rapists somewhere by this Bill. Would I be in order to request that the Mover be now asked to reply?

Mr. Deputy Speaker: Well, I would have done exactly that had you not told me to do so. However, I will allow some more debate.

Mr. Omingo: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute to this Bill. First of all, I would like to congratulate Ms. Ndung'u, the Mover of this Bill. From the outset, I support this Bill with the intended amendments. I believe this is a good Bill.

Before I give my contribution, I would like to put a few issues in perspective. We must address these issues as they affect us. Sometimes when I find, for example, a man opposing this Bill, it means that he does not have a mother. Of course, I know that any one trying to harass a man's mother is in trouble. I would like the men to look at this Bill in that perspective. It is not necessarily for any other woman, but their mothers. This proposed law is also good for our daughters and sisters.

As one hon. Member said, if this Bill was passed today about 1.5 million Kisii men would go to jail. I would like to inform the House that we will not see the gates of the jails if this is a question of immoral acts. I would like to defend the community which was almost branded as an immoral one. I find this accusation terribly unethical, unattainable and a condemnation of a community that I hail from. It is extremely primitive that somebody would stand in this House and say that if this Bill is passed today, all Kisii men will go to jail. I will not and I do not intend to go to jail. I plead to hon. Members to pass this Bill as quickly as possible.

Mr. Deputy Speaker, Sir, there are issues of culture and values which need to be input in

the Bill. Our children need to be trained to appreciate the culture and morality that we have always upheld. Legislation alone cannot and will never be a panacea to our problems. We must move a step backward and address the issues that are a cause to these heinous acts.

Mr. Deputy Speaker, Sir, I would like to draw your attention to what has been happening in the animal world. We saw a case of a lioness adopting a baby oryx, yet, in the human world, we have been butchering each other. When animals mate for procreation, men actually use this as a weapon of mass destruction. Can we imagine a situation where a one-year old baby is raped by a fully grown-up African man with a mature sexual organ? When that organ is put parallel to that child, it is actually the height of that child. It is quite unfortunate that, that man inserts it inside a child. What can we call that?

Mr. Odoyo: On a point of order, Mr. Deputy Speaker, Sir. Could I request that the hon. Member moderates his language?

Mr. Deputy Speaker: Mr. Omingo, you have heard what Mr. Odoyo has said. Please, moderate your language.

Mr. Omingo: Mr. Deputy Speaker, Sir, sometimes the truth is bitter.

Mr. Deputy Speaker: But, please, listen to what Mr. Odoyo has said. That is the sentiment of the House. Please, moderate your language.

Mr. Omingo: Mr. Deputy Speaker, Sir, but the message is home and dry. We must not use our sexual organs as weapons of mass destruction of our children. A child who goes through that kind of ordeal will never see her motherhood because of that act. Indeed, such a person should be isolated from society and condemned forever.

I would like to suggest that our women must inculcate values on our children. Mothers take a longer time with children. Did you know that legislation upon legislation may not be a solution to most of our problems? We must move a step back and address issues of behavioral change.

Mr. Deputy Speaker, Sir, there were issues addressing marital rape. I am glad that has been addressed. Sometimes, marriage is not always a bed of roses. As one hon. Member said, marriage is like two flies on both sides of a window pane. Those flies out there want to get in, and those ones in there want to get out. When such situations get turbulent in the house, the marriage relationship can also be strained and one partner may opt to implicate the other for purposes of earning a jail sentence of not less than 10 years. I would like to support that the issue of marital rape be guarded cautiously because, at one time when couples disagree, this can pose a situation where somebody may want to push the other to the dogs.

Mr. Deputy Speaker, Sir, I also want to address the issue of child trafficking and pornography. We are losing a generation. We are pretending in this House by saying that our children are the leaders of tomorrow. If we visit cyber cafes, we will find out that our children have access to pornography. Many children are dropping out of school as a result of this. Pornography increases promiscuity and careless sexual relations. We need to guard those issues in line with what we anticipate to do because we must ensure that we have tomorrow's generation. The developed countries regulate movies. Why can we not do the same here, so that we ensure that our children are not avenues for peddling drugs and mind pollution? That is an issue we need to address as a nation.

There is a critical issue that Kenyans and Parliamentarians need to know. We grew up in society where there were high moral standards. Young boys used to stay with their grandparents so that they could be taught moral tendencies of the society. Unfortunately, people have become hyenas and do not realise what their moral obligations are. Fathers no longer respect their daughters. We also have boys who do not respect their mothers. It is for that reason that we must create legislation. As I said before, we must not only depend on legislation, but also introduce the issue of morals and cultural values. That would change our people's behaviour.

I do not know why anyone would fear to pass this law in pretext that they will go to jail if they do so. God was gracious enough to give me a mouth to speak, persuade and request. We should rise to the occasion. We are being looked upon by women out there. I have seen a case of a girl who was damaged beyond repair. Patching up her organs was next to impossible. As I said earlier, that girl will never enjoy motherhood. We want to have a society where respect is mutual. There can always be mutual understanding in terms of advancing an issue or an agenda. Why would a man who has been drinking come home to his wife who was toiling in the farm the whole day, had to cook food for him, walk into his house demanding his conjugal rights regardless of the condition of the woman he left home, and without regard for humanity? Such issues should be curbed. I know some issues may appear too alien to us because of our traditional way of thinking and the way we have lived in the past. However, we must know that we have transformed our society to a modern one. Therefore, we must also embrace modernity and interlink ourselves with the rest of the world in terms of modern age technology and compliancy. We must not live in seclusion.

In conclusion, I plead with hon. Members to accept the amendments. After all, there is no law that can be a 100 per cent perfect. That is why this House sits every other day to review laws which are found to have issues which are wanting. That reminds me of the Affiliation Act which was misused sometimes ago. It was later reviewed because the misuse was obvious and intentional. Since we have the capacity to review laws on public interest, let us pass this law.

With those amendments which have been brought, I support the Bill.

Prof. Maathai: Thank you, Mr. Deputy Speaker, Sir for giving me the opportunity to contribute to this Bill. I want to congratulate Ms. Ndung'u for bringing this Bill to this House and thank all hon. Members for supporting it. Her timing was truly right. Rape is a very serious crime, especially this time when we have the HIV/AIDS and other sexually transmitted diseases. It is of great concern that people who know that they suffer from such diseases will nevertheless force themselves to their partners and spread the diseases to them. Such people should be punished. The recommended ten year jail term is quite appropriate because we must provide a deterrent; a period which will make a person think twice before they force themselves on other human beings. Before I go far, I want to talk on behalf of animals because quite often, people say that those people who rape behave like animals. That is very unfair because I have never seen an animal rape another. It is human beings who rape. Male human beings can learn a lot from the way male animals behave towards females. They persuade and do not force themselves upon their female partners. I think it is very important, as we condemn this crime, as a country, and as a society, to ask ourselves why rape cases have risen in our society. There must be something in our society that is causing the crime rate to rise. While we must condemn, punish and do any extreme thing to deter ladies, I think it would be irresponsible for us, as leaders, not to ask ourselves the question: Why rape cases are increasing in our society.

I want to suggest that one reason why we have the crime rate rising is because of misuse of drugs and alcohol. I think that issue is very important for us to look into. Unless we address the issue of drugs and alcohol misuse in this country, including the misuse of drugs and alcohol in our schools and the fact that we literally have opened our bars and turned some of our estate houses into bars and allowed people to operate them in their homes, shops and *kiosks*; unless we can seriously look into that issue, then we are just paying lip-service to the issue of rape. Normal human beings and men do not go around raping women and do not sit idle and hide in bushes waiting for vulnerable women and children to rape them. However, a person who is under the influence of alcohol and drugs would rape. So, I think that it is a matter of great irresponsibility that we as a country, leaders, and even as a Government, have allowed drugs to go literally everywhere in this country. We used to be a conduit where drugs would come into this country and be repacked

and be exported.

[Mr. Deputy Speaker left the Chair]

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

Today, we all know that people are peddling drugs everywhere. We know of schools where drugs are peddled at the gates and children are given drugs. We know that. So, what do we do as a country, as parents, as teachers and as legislators? Will we allow drugs and alcohol to be misused and then resort to castrating or sending rapists to jail? I want to appeal to all of us to address that issue. We have all been looking at the records from NACADA and we have seen the good work the department has been doing. We have been following the good work Mr. Kaguthi has done for many years. We know that drugs and alcohol abuse in this country is a major issue. I do not see that concern being expressed beyond saying that we should not have drugs. When children consume drugs in schools to the extent that they resort to destroy properties and each other, then honestly, there is something very wrong in our society.

Mr. Temporary Deputy Speaker, Sir, the other reason why rape cases have increased is because of the way women dress. Quite often, when a woman is raped, she becomes not only the victim of rape, but she is also accused of inviting rape. We live in a country where some of us dress very scantily, virtually going around naked; our breasts are not covered and we have very little dress around our waist. But in those societies, you do not hear of rape. So, I believe very strongly that it is something that has to do with drugs and alcohol abuse and also the breakdown of our cultural values. To a very large extent, we are a society which raises our children without values. Many of our children get their values from the televisions, radios and dances. If anyone of us has watched the television, especially those channels intended for the young people and for entertainment, I do not know of any other country which exposes its people indiscriminately to such vulgar expressions and suggestions on television and then we express shock when there is rape or when women are molested. What do we expect?

Mr. Temporary Deputy Speaker, Sir, I also want to bring in the issue of poverty. If you live in a slum area and you have one room where the mother, father and their children all sleep, what kind of morality can you expect to come out of such households? If the man slept with his girl, what kind of self control do you expect? In other words, I want us to condemn rape and punish the rapists. I also want us to ask ourselves: "Why?" and deal with the causes of rape and not just be satisfied with punishing the rapists, when we ourselves sometimes put our people in environments where rape and/or incest is encouraged or is facilitated by the environment in which our children are living.

Mr. Temporary Deputy Speaker, Sir, we cannot just punish symptoms, and I want to agree with the hon. Member who has said that we ought to see rape as a symptom of something much deeper. There was rape in the traditional society. Even if you read the Bible, you will realise that there has always been rape. There will always be rape in the society, but there can be deterrents. We need to deal with rape by introducing deterrents. Therefore, I want to suggest very seriously that we support the National Campaign Against Drug Abuse (NACADA) and all those institutions that are advocating for control of drugs and alcohol and to remove areas where alcohol is consumed, especially in the estates and in the kiosks; where bars are opened until very late in the night, in order to encourage people to go home and take care of their families.

Mr. Temporary Deputy Speaker, Sir, the state of women and children in any society is a reflection of the kind of men who control that country. The women and children reflect the attitude

of men in any country. So, we are living in a country where our women and children are constantly under threat of rape. We must ask ourselves what has gone wrong with our men, because men are partly supposed to protect their women and children. So, there is something wrong with men who cannot protect their women and children. We need to ask ourselves: "How come we have a society where so many men not only fail to protect their women, but are actually the ones who are violating the women and children?"

So, Mr. Temporary Deputy Speaker, Sir, once again, I am very concerned by the causes, facilitators or answers to the question "Why the rape?" I condemn rape completely and I want to see rapists punished. I also want us, as a society, to ask ourselves what we are doing to facilitate or what shall we do to stop the facilitation of rape?

Recently, I saw a picture on Limuru Road, just before you get to the junction of UNEP; Some of you must have seen the picture, it was actually on the left hand side as you go towards Limuru. It was a very provocative picture of a man wearing underpants. Now, why on God's earth would we allow advertisements that provoke sexual interest in our country, and then pretend that we are very horrified when we are raped? We must refuse these advertisements that are deliberately put forward to provoke men or people who are then very easily provoked to rape. If you look throughout our society, you will see signs everywhere and, sometimes, you ask yourself: Why not? Why would anybody who is slightly provoked, under the influence of alcohol or drugs and is a weak man not go and rape the next woman he sees?

So, Mr. Temporary Deputy Speaker, Sir, let us look at these issues that answer the question "Why?" because if we see rape as a symptom, then we will deal with the reason or cause and we shall have improved our society so that despite the fact that we have a law, we really do not want to fill our jails with men or to spend the rest of our lives castrating them because there are so many of them. We would rather create deterrents so that few of them are moved to violate women.

With those few remarks, I beg to support.

Capt. Nakitare: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am protected under Standing Order No. 87. Having listened to speakers, there has been a lot of repetition---

(Several Members stood up in their places)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Capt. Nakitare! Why is everyone standing here?

Proceed, Capt. Nakitare!

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, there has been a lot of repetition in this discussion. With your favour, may I request you to call upon the Mover to reply.

The Temporary Deputy Speaker (Mr. Khamasi): Yes, I am convinced. Having presided over this debate, I believe we are still using the same arguments over and over again.

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

Ms. Ndung'u: Mr. Temporary Deputy Speaker, Sir, I am ready to reply. However, with your indulgence, I would like to donate five minutes to each of the following hon. Members:-

The Assistant Minister for Gender, Sports, Culture and Social Services, Mrs. Chelaite; the Assistant Minister for Health, Dr. Kibunguchy; the Minister for Tourism and Wildlife, Mr. Dzero, Mr. Wario and Mr. K. Kilonzo.

The Temporary Deputy Speaker (Mr. Khamasi): Order! Is that not another way of taking the Chair and extending debate when you are supposed to be responding? This is basically the time

for you to respond on what has been discussed on this Floor. I want to believe that all the people you have named are not going to repeat because we have curtailed debate on this issue on the basis of Standing Order No.87. I am, therefore, inclined to accept what you are saying. Those people called upon should take note of Standing Order No.87.

The Minister for Tourism and Wildlife (Mr. Dzoro): Bw. Naibu Spika wa Muda, kwanza, ningetaka kumpongeza Mhe. Ndung'u kwa kuleta Mswada huu Bungeni kuhusu hujuma ya ngono ama ubakaji. Kwa vile ambavyo sina haja ya kurudia yale ambayo yamezungumzwa kulingana na uamuzi wako, ningesema tu kwamba kuna umuhimu wa kuangalia juu ya Mswada huu kwa sababu ya yale ambayo tunayaona yakifanyika, hasa siku hizi. Ni mapenzi yangu na naamini ya kila mmoja kwamba, pengine Mswada huu ungetokea hapo awali labda mambo mengi hayangefanyika leo. Lakini kama ilivyozungumzwa sina haja ya kurudia. Mbali na kuangalia Mswada huu, kuna umuhimu wa kuangalia sababu ambazo zinachangia ubakaji ama hujuma ya ngono.

Ningetaka kuongea kwa ufupi kuhusu hali ya ngono hasa kuhusiana na utalii. Kama inavyojulikana ni kwamba vijana wetu na watoto wadogo wameingia katika hali hii. Jana, vyombo vya habari viliweza kutuonyesha kwamba kuna wavulana na wasichana fulani ambao wako shuleni hapo Nairobi lakini wanakwenda mahali fulani kujiburudisha na mvinyo. Vijana hawa wetu ni wadogo sana. Hali hii haifanyiki tu kwa wale ambao wako katika shule za upili. Nimegundua kwamba hata wale ambao wako katika shule za malezi na msingi; vijana ama watoto walio na miaka kati ya 11, 13 na 14 wanafanya mambo hayo na hasa katika sehemu za utalii. Kwa hivyo, ninaunga mkono jambo hili kwa sababu watoto wetu ndio watakuwa viongozi wa baadaye na ni muhimu tuwe na msingi ulio bora.

Bw. Naibu Spika wa Muda, kwa hayo machache, ninaunga mkono.

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite): Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill. I want to congratulate Ms. Ndung'u for having brought this Bill to this House at the right time.

I do not want to repeat what my other colleagues have talked about. However, our Ministry of Gender, Sports, Culture and Social Services fully supports this Bill, and we agree with all the sentiments raised by hon. Members. I also want to thank the relevant Departmental Committee for a job well done and for bringing the amendments. However, I want to say that we support the constructive amendments.

As we all know, this is a very important and crucial Bill, all the eyes of Kenyans are looking upon us and waiting to see whether we are going to pass it or not. I am happy for all my colleagues in this House who have supported this Bill. I am sure that we are soon going to have in place a legislative framework that will deter those who will commit sexual offences.

Mr. Temporary Deputy Speaker, Sir, this Bill is meant to protect the aged, middle-aged, the youth and the children. This means that the whole society will be protected. Statistics have shown that the rate of rape in this country is so alarming. At least 16,882 rape cases are witnessed every year. This translates into a rape occurrence at every half an hour in Kenya. The Sexual Offences Bill seeks to harmonise all laws pertaining to sexual offences. It also puts in place minimum sentences for offenders. At the moment, we do not have any sentence to deal with those offenders. It also widens the definition of rape to include male individuals as victims of sexual offences and women as perpetrators. It also seeks to treat and rehabilitate the offenders.

Mr. Temporary Deputy Speaker, Sir, as we all know, the Penal Code also discriminates against the girl child by expressly prohibiting the rape of boys under the age of 18. The offenders are given a life sentence. However, it does not treat the rape of girls under the age of 18 in an equal gravity. In addition, the Penal Code categorises rape as an issue of morality, and not moral standing of women which can still be adduced as evidence in a court of law. I would like to emphasise that

on the burden of proof resting with accusers, it is not only discriminatory but also tends to trivialise the crime.

This Bill has come at the right time; a time when cases of rape of both women and men, and defilement of children have reached an alarming proportion. When you listen to a radio station or watch a television station, everyday, you will come across a rape case. What does this mean? It means that we must address this issue and pass this Bill so that we can minimise incidences of rape, if not eradicate them.

Mr. Temporary Deputy Speaker, Sir, this country is a signatory to conventions of all forms of discrimination against women. We are also a signatory to the International Covenant on Civil and Political Rights and The Africa Charter on Human and People's Rights. I am concerned to learn that the House intends to delete Clause 31 on the Female Genital Mutilation (FGM).

Mr. Temporary Deputy Speaker, Sir, I support the proposed amendments to the issue of female genital mutilation (FGM), which is a cultural issue. It is taken as a part of societal culture. But it is harmful to women in this country. Although, I accept it, we will have to review it at a later date. We should enact this proposed law so that we may stop FGM practices. Many speakers have asked why we have rape incidents in this country at an alarming rate.

In conclusion, I would like to say that the current law does not cover emerging issues like sexual tourism, child pornography, child trafficking, trafficking of persons for sexual exploitation and sexual offences committed by those in positions of authority, especially at work places such as agricultural estates. Intentional infection of rape victims with the HIV/AIDS and sexually transmitted diseases is also not covered. I want to end by saying that I support hon. Members who have said that culture and traditions must be discussed exhaustively, so that we are able to identify the root causes of rape incidents, which at present are occurring at an alarming rate.

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

The Temporary Deputy Speaker (Mr. Khamasi): Order, Order, hon. Members! When Mrs. Chelaite took the Floor she told me that she was not going to repeat anything that had been said on the Floor. But, to my dismay, she did exactly that. Those hon. Members who will contribute from now onwards should realise that the Chair is always here. If you were not here and do not know what was said earlier on the Floor you should know that I will not take in any more repetition. Any hon. Member who stands up must bear this ruling in mind.

*(Dr. Kibunguchy and Mr. Wario
stood up in their places)*

Who is it? Is it Dr. Kibunguchy or Mr. Wario.

Let us hear you, Mr. Wario.

Mr. Wario: Asante mhe. Naibu Spika wa Muda. Ninakushukuru kwa kunipa fursa hii. Ningependa kumpongeza mhe. Ndung'u kwa kuleta Mswada huu.

Utakapoangalia kifungu cha 22(1) utaona ya kuwa sheria hii imeharamisha uhasiano wa ndoa baina ya mtoto wa kambo na baba wa kambo. Lakini katika dini ya Kiislamu unaweza kumlea mtoto na, iwapo huna uhusiano wa kidamu au hamjanyonya matiti moja, sheria ya Kiislamu inamruhusu baba wa kambo kumuoa mtu kama huyo. Hii sheria itakapopita itawaumiza Waislamu. Ningependa mhe. Ndung'u atambue kasoro hio.

Ya pili, sisi tunapambana na maswala ya ubakaji na tumesahau maswala ya zinaa. Mtoto wako anapokuja nyumbani na mwanaume ambaye si bwana yake unakuwa radhi kama mzazi kwa sababu umesoma na kuendelea sana. Unakubali mtoto wako akuambie fulani ni rafiki yake. Kwa hivyo, kama hatuzui zinaa, tusipoteze wakati kwani hatuwezi kuzuia ubakaji.

Hii sheria inaharamisha uhusiano wa kimapenzi na mtu yeyote ambaye hana akili timamu.

Leo hii niko na akili timamu, lakini haijulikani kama kesho mwenyezi Mungu anaweza kunifanya niwe mwenda wazimu. Je, hii nikusema siwezi kuwa na uhusiano wa kimapenzi na mke wangu? Ni lazima tulifafanue jambo hili kwa sababu leo tunaweza kuwa na afya na kesho tuwe wagonjwa.

Nikimalizia, hatutafaulu katika vita hivi iwapo hatutaiga mila zetu za kiafrika. Katika mila zetu maswala ya mavazi ni jambo kubwa sana. Kwa hayo machahe, ninaunga mkono Mswada huu.

The Assistant Minister for Health (Dr. Kibunguchy): Thank you, Mr. Temporary Deputy Speaker, for giving me this opportunity.

(Mr. K. Kilonzo stood up in his place)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. K. Kilonzo! It is Dr. Kibunguchy's time.

The Assistant Minister for Health (Dr. Kibunguchy): Thank you, Mr. Temporary Deputy Speaker. I would also like to thank Ms. Ndung'u for bringing this Bill before the House. I will be very brief. I just want to mention two aspects that probably have not been given emphasis here.

There is the aspect of DNA testing. This will become extremely important when it comes to the implementation of this Bill. We will have to use all cases available to us to prove that certain things like rape and defilement took place. It will become extremely important for DNA, as a test to be given a lot of emphasis. That being the case, I think time has come for this country to use forensic laboratories, although forensic laboratory issues evoke a lot of terrible sentiments, because of corruption allegations associated with it. If we want to do justice in rape cases, we must use forensic laboratories. It will become extremely important for the whole concept of forensic laboratories to be looked into, because it will be extremely crucial when it comes to proving rape cases.

The second issue I want to talk about is the treatment of rape victims. I know that many hon. Members have spoken about the kind of physical damage caused by rape or defilement, especially to the young ones. As a medical doctor, I have had to treat a number of these people when I was actively practising medicine. Of late, we are seeing that a lot of these cases are going to one hospital in this City. Rape victims from all over the country are taken to the Nairobi Women's Hospital. I think it is important that, as a Ministry, we make sure that we train our doctors in the hospitals in remote areas to be able to deal with rapes cases, especially in the field of surgical correction of damage to bodies of rape victims.

Mr. Temporary Deputy Speaker, Sir, also when it comes to treatment we should not think of only the physical treatment. We should also think about the psychological treatment. It is important to have counsellors. It is also important in this era of HIV/AIDS to have anti-retroviral treatment. It is also important that we think about the consequences of rape, such as pregnancies. It will be important for us to have a pill which will prevent pregnancy immediately. We have one such pill in our market. Although termination of pregnancies evokes a lot of bad feeling, it will be important that we consider what pregnancy will mean to some of the rape victims. If a rape could end up in a pregnancy, we should consider whether it will not be more prudent to terminate it.

With those few remarks, I beg to support.

Mr. K. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this historic Bill.

First and foremost, I would like to thank the Mover of this Bill, hon. Ms. Ndung'u for her efforts. I believe that this Bill is long overdue and it should have come long before this year. As a father of daughters, I stand here to say that it is about time we gave back the dignity and civility that the women in this country deserve. While I was going through this Bill, I came across two

issues which I would like to point out. First, there is the issue of victims being called upon to defend themselves against the offenders. In most cases, the victims have had to withdraw because of fear of intimidation and being ridiculed in the courts of law. This Bill seeks to bring about a situation whereby the Government machinery faces the victim. This is a positive aspect that makes us support this Bill.

Mr. Temporary Deputy Speaker, Sir, I wish to inform all my colleagues that this Bill is not a contest between men and women. The country looks upon both men and women of this House to pass this Bill. I fully support it and wish to urge hon. Members to look at the few amendments that have been proposed. Let us not throw the baby away together with the bath water.

(Mr. ole Ntimama stood up in his place)

The Temporary Deputy Speaker (Mr. Khamasi): Mr. ole Ntimama you were not a beneficiary of the donated time, were you?

Mr. Omingo: Mr. Temporary Deputy Speaker, Sir, he has special interest in the matter.

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

Mr. ole Ntimama: Mr. Temporary Deputy Speaker, Sir, I thought I would get an opportunity to make my contribution.

The Temporary Deputy Speaker (Mr. Khamasi): Do you know that the time being used is donated?

Ms. Ndung'u, would you like to donate some time to Mr. ole Ntimama?

Ms. Ndung'u: Yes, Mr. Temporary Deputy Speaker, Sir. However, apart from that, with your indulgence, I wish to donate one minute only to Mr. ole Ntimama, Mr. G.G. Kariuki and Mr. Wamwere.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Ms. Ndung'u! You cannot do that. We will only allow Mr. ole Ntimama to make his comments then the Floor will be yours.

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

First and foremost, I wish to congratulate hon. Ms. Ndung'u for her courage and focus and being able to stand firm in bringing this Bill to this House. It is true that she has done a lot of work to convince people, not only in this House, but also in the country at large. This Bill is now very popular in this House and in the country at large. Even hon. Members who were not supporting it before are definitely now going to support it. I really thank her very much for the courage that she has displayed.

It is important for us to try and open a new chapter in this country, especially with regard to morality and other issues that have made us question the stature of our society. Raping of young children, for instance, is something that has never been heard of in our various African cultures. We do not know what has happened to our people. What has changed the people of this generation? Rape, definitely, was a crime which would earn someone a death sentence from our society. For example, the offender would be put in a beehive together with fire and rolled down a steep hill. So, this Bill is so important and all of us should support it.

There are some hon. Members who alleged that there are some communities, including the Maasai, who still support Female Genital Mutilation (FGM). I want to tell this House that we do not support FGM. We leaders have actually taken the lead in this matter. Since we have said, "No" to the circumcision of girls and actually supported efforts to outlaw FGM, our societies are now beginning to understand us. I realise that we have to do it carefully.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I wish to state that I stand here to firmly support this Bill.

Ms. Ndung'u: Mr. Temporary Deputy Speaker, Sir, I wish to reply.

First, I would like to thank hon. Members for their interest in this Bill and their in-depth contribution during the Second Reading of this Bill.

I must confess that hon. Members have raised issues which myself as the Mover had missed. Indeed, they have talked of certain cultural perspectives which need to be considered and weighed in a debate like this one which is about an issue that is very sensitive in this country. Issues about sex and violence have normally been placed in the private domain and now here we are as Members of Parliament debating this matter. We need to show a good example to Kenyans that we can now discuss such a topic openly.

Mr. Temporary Deputy Speaker, Sir, during the debate hon. Members suggested several amendments which I suppose should cure the issues that may have been overlooked and also bridge some of our social and cultural considerations *vis-a-vis* a comprehensive legal framework to deal with sexual violence.

Every Bill that is passed in this House must face the acid test as to whether it reflects the will of the people through their elected representatives. That is why amendments are deemed necessary so that a broad consensus and our policies can be implemented. This House, I recognise, is a melting pot of cultures, genders and other social issues. We, therefore, need to find a middle-ground through amendments so that this House can own this Bill.

I listened very carefully to what hon. Members said. In fact, I took time to peruse the HANSARD to check what issues and concerns were raised during the debate on this Bill. One of the concerns that some hon. Members raised is that I may have gone outside the mandate that was given to me when the Motion on this Bill was passed on 20th April, 2005. I want to assure hon. Members that I did not go outside the mandate. Indeed, I was required to bring a comprehensive legal framework with regard to sexual offences. What happened is that the current law which was introduced in 1930 did not recognise certain sexual offences which have now been introduced in this Bill. For example, in 1930, the issue of male rape was not something that people could have believed in. The issue of gang-rape was not a reality too and so were other issues such as trafficking, sexual harassment and sex tourism. Therefore, as we look at the Bill comprehensively, it reflects a reality of what sexual offences are today.

Mr. Temporary Deputy Speaker, Sir, hon. Members were also concerned about certain clauses, for example, Clause 38 where they said that there was a shift in the burden of proof. They also felt that there was need to allow for victims to be brought in court during trial. They were, therefore, concerned about Clause 39. Hon. Members were also concerned about the length of delay between reporting and the trial. They were concerned about Clause 36. Further, many hon. Members were clear in opposing the criminalization of the cultural issue of female circumcision as provided for under Clause 31. The legal language of the Bill and some of the interpretations were also questioned. For example, some hon. Members were very unhappy with the inclusion of the word or term anus in the definition of genital organs. I want to assure hon. Members who were concerned about that inclusion that it is not trying to introduce homosexuality through the backdoor. It is simply trying to give evidential basis for the proof of prostitution of male or male rape. That is why it was included.

Mr. Temporary Deputy Speaker, Sir, other hon. Members have raised the issue of indecent assault and why the part of the body of an animal should be included. I do believe that the proposed amendments have taken that into consideration. Hon. Members also raised the issue of the unconstitutionality of denial of bail for cases of defilement. I have conceded that it is unconstitutional and I think the proposed amendment will reflect that. The issue of rape within marriage has been raised by very many hon. Members. It will be addressed in the proposed amendments.

Some issues have been raised with regard to Members' children. If my son goes to Carnivore--- Mr. Kajwang and Mr. Wetangula raised that issue. But I want to caution hon. Members that all criminals are children of people. We need to move away from connecting things in this Bill to children of our own. This Bill talks about how we will deal with juvenile offenders. Children can also be victims. Therefore, we need to take a balanced view on that.

Mr. Temporary Deputy Speaker, Sir, I am fully aware of the amendments that have been proposed by the Committee on Justice and Legal Affairs. The amendments include, among others, the removal of Clauses 31 and 26 which deal with female circumcision and exposure. The proposed amendments also intend to introduce a new offence of indecent assault of adults. The amendments also intend to re-define an intermediary and the need for corroboration of the evidence by an intermediary. The amendments have also provided for a new definition of sexual harassment, so that we ensure that ordinary courtship and other normal sexual relations are not going to be part of that clause. Another amendment is a new provision to exclude any sexual acts between persons who are married to each other.

Mr. Temporary Deputy Speaker, Sir, I wish to state that in the spirit of consensus, these amendments at this time are acceptable because they did not infringe on the key spirit of the Bill. However, in future, we must, as legislators, find ways of discussing issues of female circumcision and rape within marriage. We need to sit down and talk about the reality on the ground. We must keep abreast with the reality that we live in. However, I urge all hon. Members to move to the Committee Stage with a unity of purpose. We all want to address the problem of sexual violence that faces us in this country. As legislators, we want to do our part by putting a proper legal framework that will facilitate a national solution to that problem. There is no Bill that is cast in stone. Even as I moved this Bill, I knew that there would be amendments.

Therefore, Members concerns must be taken into consideration. We must have a give-and-take formulae. I appeal to all hon. Members that, as we move to the Committee Stage, we need to have concession. We must concede on issues, even those that we feel very strongly about. In future, we shall have time to re-negotiate and re-examine contentious issues. But, at this stage, we shall put them aside.

Mr. Temporary Deputy Speaker, Sir, finally, I would like to say that the passing of this Bill is just the beginning. As legislators, we shall do our part by passing the law. But we need to hear from the Executive whether this law will be implemented. We hope that the Executive, the office of the Attorney-General, in conjunction with the Ministry of Health and the Ministry of Education, Science and Technology, will be able to show how they will implement the law; how they will bring the regulations, and how they will ensure that the police and the judiciary and doctors will be trained so that we give real value to this law if and when we pass it. As legislators, let us put the legal framework in place. But let the Government put its machinery in place to ensure that this law works.

Once again, let me thank hon. Members for their contributions, interest and their real concerns about the issue of sexual violence in this country.

With those few remarks, I beg to move.

(Applause)

(Question put and agreed to)

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

Second Reading

THE COTTON (AMENDMENT) BILL

*(Dr. Ojiambo on 3.5.2006)**(Resumption of Debate interrupted
on 4.5.2006)*

The Temporary Deputy Speaker (Mr. Khamasi): Prof. Maathai, you were on the Floor and you still have 27 minutes to finish.

Proceed!

Prof. Maathai: Thank you, very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to continue contributing to this very important Bill.

Mr. Temporary Deputy Speaker, Sir, the growing of cotton is very important because it is a cash crop. The growing of cash crops in this country, especially cotton, coffee, tea and sugar-cane is a very important industry. Unfortunately, many people who grow these cash crops are extremely poor. This is partly due to the mismanagement of these cash crops, corruption in their management and the fact that the farmer does not participate in the processing and marketing process. The farmer literally just produces the raw material and hands over to other people. This is very exploitative of the farmers. This is something we, as Members of Parliament, need to address.

However, every time we discuss cash crops in this House, we lament the poverty that is prevalent in areas where they are grown. I think it is important for the Ministries of Agriculture and Co-operative Development and Marketing to ensure that the processes through which these cash crops are put are such that farmers are not exploited. I think it is we, the legislators and leaders who owe it to our people to put in place systems that protect these farmers. It really does not make any sense that people should be so poor, yet they grow a crop that is extremely valuable. Even at an age where science has produced synthetics, the value of cotton is extremely high. But we all know how poor cotton farmers are. I remember one time visiting the Bura Irrigation Scheme (BIS), where cotton was being grown in large amounts. I was struck by the poverty in that area. I was also struck by the diseases, especially malaria, that are associated with areas where cotton was being grown. In fact, on the day we arrived, the residents were very busy burying their relatives who had died from malaria.

Mr. Temporary Deputy Speaker, Sir, I, therefore, think that as we discuss this Bill, we do not only think about cotton, but also think about what we can do for all our people who deal with cash crops. For the growing of cotton---

*(Maj-Gen. Nkaisserry consulted
with his back facing the Chair)*

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Maj-Gen. Nkaisserry to be sitting while facing the opposite direction?

The Temporary Deputy Speaker (Mr. Khamasi): You are right! He is not in order. Maj-Gen. Nkaisserry, you know the rules of the House. It is right that Mr. Sungu brought to my attention what you were doing. If you want to do some consultation, go behind and sit there!

Proceed, Prof. Maathai!

Prof. Maathai: Thank you, Mr. Temporary Deputy Speaker. I wanted to draw the hon.

Members' attention to the fact that in many places where cotton is grown, for example, the BIS, we need water. It is very important to control the flow of water in our rivers. In this particular case, it is the Tana River which is extremely important in this area. But one of the most destructive activities we do when we practise agriculture is the destruction of river beds. I want to draw our attention to the fact that we cannot hope to continue producing cotton downstream if we do not protect our river beds, particularly the watershed areas. I want to connect this to the fact that the protection of watershed areas, especially the forested mountains, is extremely important to the growing of cotton downstream. We will not be able to sustain that crop as long as we are not careful about what we do with our watershed and waterways.

I understand there is a law that actually discourages farmers from cultivating very close to the river beds. However, in this country, farmers continue to literally cultivate along the streams. It is a bit sad to find farmers encroaching on the wetlands along the rivers. This, of course, destroys the natural waterways. So, when we have heavy rainfall, like we had in the recent past, we have water that flows so fast downstream that it carries with it a lot of soil. Eventually, we have floods downstream. Of course, people who depend on irrigation to grow cotton do not need floods. They need a controlled flow of water. So, I want to connect this to the fact that the Ministry of Agriculture must, surely, do something about the destruction of watersheds and waterways in this country. Unfortunately, we have several Ministries connected to this aspect. The Ministry of Environment and Natural Resources is concerned about the soil that disappears into the water. The Ministry of Water and Irrigation is concerned about the actual water that flows along the rivers. The Ministry of Agriculture is very concerned about what we do with the land along the waterways.

However, I do not think officials from the three Ministries meet to understand the damage that is being done to the waterways and, therefore, to our capacity to develop agricultural activities such as cotton growing downstream. That is partly the reason as to why the farmers are extremely poor. We cannot improve their way of life if we do not improve waterways, watersheds and control the water flowing through their farms.

Mr. Temporary Deputy Speaker, Sir, I also want to mention the fact that quite often, when farmers have harvested their cotton, they burn the stalks. They sometimes do so to destroy the pests. Although this is okay, it actually impoverishes the quality of the soil. As a result, farmers have to buy inputs such as fertilizer to enrich the soil during the subsequent growing season. Of course, if you are poor, you will not be able to buy these inputs. So, eventually, you will end up having very poor quality cotton or no cotton to sell at all. So, your poverty will, literally, be entrenched. It is, therefore, very important, especially for the Ministry of Agriculture, to have this holistic approach to cotton production. The Ministry should invest in extension workers, so that they can work directly with the cotton farmers in order to help them improve the quality and quantity of the cotton they produce.

Mr. Temporary Deputy Speaker, Sir, one of the disadvantages that we suffer with our cash crops is the fact that we do not add value to them. We, literally, sell them as raw materials. More than 40 years after Independence, we should have developed the capacity to improve the value of our cotton before we can export to other countries, or even process it for use in our country. I really do not see how, as an agricultural country, we can ever improve our level of development if we do not process our raw materials such as cotton in our own country. We cannot develop if we continue to provide raw materials for industries in other countries.

If you go into any shop in this country, especially the supermarkets, you will be surprised to find that almost 100 per cent of all the products in those shops are produced in other countries and we import them into this country. So, we continue to be, just as we were during the colonial time and thereafter, producers of raw materials and consumers of other countries' manufactured goods.

As long as we continue to have that kind of relationship with other countries, I do not see how we can develop. Our development remains very superficial. We continue to have a very large part of our people - up to 60 per cent or so - who live below the poverty line. Since we are an agricultural country, unless we learn to add value to the raw materials that we produce, I do not see how we can improve our quality of life and the earnings of our people. It is in the interest of our children not only to manage the environment in order to make it possible for us to continue producing raw materials, but also to invest in manufacturing and add value to these products. We should improve the quality of the lives of our people.

With those few words, I support the Bill.

Mr. Ahenda: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make a few comments on the Cotton (Amendment) Bill.

I take this opportunity to thank Dr. Ojiambo for bringing this Bill to the House. Let me start by reminding the House what our fore-fathers used to say at the time of Independence: "We should all go back to the land". That slogan has since disappeared. Indeed, it had a very useful meaning for the nation and the generations to come. If I recall, Kenya is divided into two main geographical conditions, namely, the highlands, where coffee and tea are grown, and the lowlands, where cotton is grown. Cotton has been forgotten.

Recently, the United States of America passed a Bill to help the Third World countries. African countries are in this category. This was meant to assist in the production of cotton. Indeed, Kenya is one of the best cotton growing areas in the world. The Export Processing Zones (EPZs) make billions of shillings, but, unfortunately, cotton which is used in these areas is imported from other countries while we continue to sit on a gold mine and hence our potential in the cotton industry has remained untapped. Ginneries in our country are rotting, and yet the Government is doing nothing to revive them.

Mr. Temporary Deputy Speaker, Sir, we should set up a Cotton Authority to revive the ginneries. We should also establish a cotton development bank to help our farmers to grow cotton, expand the cotton industry and encompass other regions that have been left behind.

If you tour the lowlands in this country, where cotton does well, you will weep to see tracts of land that are lying fallow. I do not know whether it was a systematic way of killing the cotton industry in this country. I do not know of any good attire that is made without cotton. A country that cannot clothe its citizens is not a country. A Government that cannot see how its citizens can be clothed has no business being in power. The best way to clothe your people is by producing cotton.

Mr. Temporary Deputy Speaker, Sir, the cotton industry collapsed because those in power generated a systematic way of eliminating the cotton growers. These people were left in abject poverty. The *wazungus* who were growing coffee and tea in the highlands were given incentives to continue doing so, while no incentive was given to the cotton growers.

A farmer will stop growing a certain crop if it is not giving him good returns. The farmer can even cut down tea if it does not give returns. Compared to tea and coffee, cotton is the most productive, profitable and easiest to grow and manage. Cotton is less labour-intensive, yet it is the cotton grower who suffers the most in this country. That calls for a complete overhaul of the former Cotton Lint and Seed Marketing Board. A new system should be put in place to enable us reap the maximum profits from Export Processing Zones (EPZs). At the EPZs, clothes are made from cotton which is imported from other countries. The money realised merely passes through Kenya. Kenya is just a transit route for the Africa Growth and Opportunity Act (AGOA) goods. As late as last year, hon. Members expressed their concerns in this House about how that money just passes through Kenya on its way to Asian economies. The Asians have brought their machineries and placed them at Athi River. They process cotton from their countries, make clothes and then

send them to Asia as if they come from Kenya. That happens, and yet Kenya is capable of producing better quality cotton. We can reap maximum profits out of cotton grown in Kenya.

Mr. Temporary Deputy Speaker, Sir, that calls for the establishment of a new board or authority to manage and expand cotton growing in this country. I am tempted to believe that our cotton industry can expand locally. Our population is rapidly growing. Kenya being the hub of East Africa, we can help our farmers to exploit that big market. Our industries can flourish and expand.

Mr. Temporary Deputy Speaker, Sir, several suggestions have been put forward to improve the cotton industry, but all of them have fallen on deaf ears. The time has come for us to stand up and be counted! We must expand our cotton industry. Farmers who used to grow cotton 30 years ago are not the same today. Cotton farms should also include irrigated farms. I was lucky to visit some of the irrigated cotton growing areas of India. They produce some of the finest cotton in the whole world. However, compared to what I saw in our lowlands, we can even do better. We have permanent rivers running through those lowlands throughout the year. They can be harnessed to grow some of the best cotton in this region.

Mr. Temporary Deputy Speaker, Sir, I am also tempted to add here that when this Cotton Development Fund is established to help the Kenyan farmer to grow, develop, produce and export cotton, then cotton can easily rank as the top foreign exchange earner for this country because it is a precious "stone". In some countries, it is called "the white gold", and I do not know why Kenyans cannot make it our white gold so that we can grow and export it to the rest of the world.

Mr. Temporary Deputy Speaker, Sir, here are a few tips that I would need to share with the hon. Members of this House because I come from one of those cotton growing areas of this country. There was a public cotton company that fell by the wayside and was sold out for peanuts to some individuals. This should be repossessed, the owner compensated and the Government takes over the creation of sustainable cotton ginneries. If the Government revives cotton growing by giving the farmer credit, then after a year or two, Kenya will be talking a different language in our cotton production, let alone as one of our leading foreign exchange earners besides tea and coffee.

Mr. Temporary Deputy Speaker, Sir, secondly, the irrigation system of producing cotton can ensure that it can be systematically produced throughout the year. Cotton is one crop that does not need rain all the year round. It grows mainly in semi-arid areas and only needs rain for only a very short period of time, and then it just blooms. This is an area that has really been neglected. If the Government can assist the coffee and tea farmers, why can it not assist the cotton farmers? Why can our Government not make the irrigation of those lowlands productive enough to produce the crop which the lowlanders can also use and export?

Mr. Temporary Deputy Speaker, Sir, I beg to sit down but fully support this Bill. Thank you.

Capt. Nakitare: Thank you, Mr. Temporary Deputy Speaker, Sir. While I support this Bill, I would like to outline the values of cotton as a plant.

In entomology, cotton is a nest or hub for residual insects such as ladybirds, and these are the insects that we use in biological pest control when we are growing vegetables organically. Much has been spoken about the values of cotton. When we look at cotton as a plant, we find that it is a nitrogen-picking plant. It has got short roots. Cotton by itself is a fighter of nematodes in the soil. When we come back to its values as a dryland plant, as the hon. Member has addressed it, it does not require a lot of water. It requires dryland farming techniques which are not labour-intensive. Once planted, it is weeded twice a year and you let go. You are left with the work of insects and the sun which glorifies it and you have the yarn.

Mr. Temporary Deputy Speaker, Sir, it was a bit disgraceful to see the Cotton Lint and Seed Marketing Board (CLSMB) disintegrate because of lack of support from the Treasury. The last

Chairman of the CLSMB before it collapsed was the late Odinga. He put in a lot of effort to revive it, but he was not given enough finances to do so. I remember, at that time, there was a cotton seed variety launched in the market. It was moisture and drought resistant and it was not genetically modified. When we look at a country that grows cotton, such as Uganda, which is next door, it does not have a good soil for it. But they have managed to grow it. Cotton grown in Jinja in Uganda, for example, has led to the manufacture of *khaki*. *Khaki* is common in the manufacture of school uniforms. *Khaki* is a long lasting material which was and still is very popular.

Mr. Temporary Deputy Speaker, Sir, some of the countries that are producing synthetic materials do not use them. Most of these countries prefer cotton clothing. Jeans, for example, is a clothing that is popular in the world. It was first manufactured in America. Why are jeans being manufactured in Third World countries and then exported to the USA? It is because jeans are fully cotton. This is similar to what is happening in the Export Processing Zone (EPZ). The EPZ is a syndicate of getting materials into the common markets of the USA.

Mr. Temporary Deputy Speaker, Sir, whereas we are looking at cotton as a yarn, we are ignoring the cotton farmer. It is the neglecting of cotton farmers by the Government that has led to the failure of cotton production in this country. When will the Government realize the importance of a Kenyan farmer? Cotton does not require large-scale farming. It is a small-scale farming crop. It does not require a lot of chemicals. Pests affecting cotton can be controlled by biological methods of pest control. Therefore, a cotton farmer does not spend money on pesticides. By so doing, we will be promoting organically grown crops, which developed countries are sourcing. We will also be increasing soil fertility than imposing chemicals on our soils. It is important to think about this.

Mr. Temporary Deputy Speaker, Sir, it is important to think about cotton marketing. We also have a duty to think about our soil. The lowlands that we once talked about are nothing, but 3,000 feet above sea level. During the colonial days, men and women practised cotton farming. Little did we know that tobacco farming would come in and supersede cotton farming. Right now, there are regulations about smoking. In the long run, tobacco farming will be on the dwindling trend. In this case, a farmer in the lowlands must now be encouraged to grow cotton as a cash crop.

Cotton matures within three months and its returns are valuable. I would like to inform hon. Members that cotton yarn is not the only product of the cotton tree. The cotton tree produces the cotton seed. Near ginneries which existed, like the Malakisi Ginnery, there were factories which manufactured soap out of cotton seed. The cotton seed produces cotton oil for cooking. We also get cotton animal feed from the cotton seed. The cotton by-products supersede the presumption on cotton yarn as an export product on its own. Therefore, the consumption of cotton by-products in the country is enormous. I, therefore, presume that this Bill came at the right time, when Kenya is in need of alternative methods of generating funds.

Mr. Temporary Deputy Speaker, Sir, the life of a cotton plant is not equivalent to the life of a coffee tree. The life of cotton plant is not equivalent to that of a tea plant. It may take 18 months after planting coffee before one can get coffee berries. It may also take 18 months for the farmers to harvest berries and have money. We are looking at a short-term way of making money. The cotton plant protects, fertilises and protects soil erosion by wind. Therefore, the cotton tree is a valuable plant and medicinal to the soil. It produces yarn for export for manufacturing clothes. Why can we not borrow a leaf from Ugandans? When Ugandans set up ginneries, they also introduced textile plants. They also went ahead to introduce sugar plantations and, therefore, they know the value of the by-products of a cotton tree and not that of the principal product which is yarn. The by-products of the cotton tree are the ones which sustain small farmers. The earnings from yarn may be very little because of its weight. However, when you use the seed to produce by-products, you may find that you are making more money in a short period.

The World Trade Organisation (WTO) looks at Kenya and laughs at us because we have

rich soils that we do not use well. Instead, we complain openly that we are poor. We do not train our farmers the old methods of using a *jembe*. If we can intensify the growing of cotton and influence our children to know the value of the crop, we would have less people loitering in urban centres. The use of *boda boda* would be a gone thing. The *boda bodas* would be used to carry cotton yarn to the ginneries and not human beings from one point to the other. Cotton would also bring a lot of revenue to our country. We would also have good roads. The drip irrigation method is being applied in dry-land farming. We have methods of decomposing left-overs and recycling soil. That is the kind of life Kenyans should have, and not lining up at *Dukawalas* looking for fertilisers. What kind of fertilisers do we need to have so as to grow cotton? The growth of the crop is not as intensive as growing maize, coffee or tea. It produces and builds soil fertility to the extent that you can even intercrop cotton and maize, and still harvest both cotton and maize. You can also do companion planting of these crops; maize, beans and whatever else you wish, and you will still have cotton there. Even if you intercrop finger millet with cotton, it will still survive! It does not discriminate and it is a very friendly plant. Why do we not have a look at it?

Mr. Temporary Deputy Speaker, Sir, this region lying below 4,000 feet above sea level is crying. We do not have to look at the highlands and admire the top soil because, once upon a time, it was covered with a forest which has been depleted. In any case, we are headed for a desert in Kenya because we are not conserving our forests or improving soil fertility. Therefore, we are more dependent on supplies synthetically. Why do we not think out of this?

In cotton planting, you can even intercrop it with big trees. You can surround cotton with big trees as a shield and by doing that, you will be conserving the ecosystem and attracting the rains. Once you harvest cotton after three months, you can plant another crop. That is called crop rotation in simple terms. So, this plant, which we have rejected and neglected, leading to the collapse of the Cotton Lint and Seed Marketing Board, should be revived.

With those few remarks, I beg to support.

(Applause)

Mr. M'Mukindia: Thank you, Mr. Temporary Deputy Speaker, Sir. I believe that the reason why hon. Members are not standing up to contribute is because they know that we have only two minutes left. But I want to thank you for giving me this opportunity to support this Bill.

Mr. Temporary Deputy Speaker, Sir, at the very outset, I believe it would not have been necessary for Dr. Ojiambo to have brought this Bill as a Private Member's Bill if our Government truly cared about the plight of cotton farmers. Successive Governments have continued to ignore the cotton crop and lint. By so doing, they have continued to ignore a very large part of our population, because three-quarters of our country is either arid or semi-arid, and most of our people live in those areas. If you ignore a crop that goes directly to give them sustenance and income, then what are we saying as a Government? We have had very little political will to help the people who live in these marginal areas. It is my hope that this Government will have sufficient will to implement this Bill into an Act, and also to assist cotton farmers in this country, initially as a responsibility and duty to our own citizens who are marginalized.

Mr. Temporary Deputy Speaker, Sir, in the past, the Executive or some of the executives have deliberately killed the cotton industry.

(Applause)

Cotton comes in a long line of industries that have been killed in the past, sugar being one of them. It is only now that the sugar industry is

coming back. Something happened to the dairy industry with the death of the Kenya Co-operative Creameries (KCC) in the past. The same happened to coffee and pyrethrum. If you look at agriculture as a whole, at one point in our history, it was not important to the political elite that controlled power in this country. The question is this: Has this changed? Is the Minister for Agriculture present in the House? I do not know. Is he listening? I do not know. Why would he let Dr. Ojiambo bring this Bill here instead of the Government itself doing it?

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. M'Mukindia. You still have 28 minutes when debate on this Bill resumes.

Hon. Members, it is now time for the interruption of business and the House stands adjourned until tomorrow, Wednesday, 31st May, 2006, at 9.00 a.m.

The House rose at 6.30 p.m.