

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th April, 2002

The House met at 2.30 p.m.

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

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.051

DISMISSAL OF MR. AYUB

Mr. Obwocha asked the Minister for Transport and Communications:-

- (a) why Mr. Richard Omanwa Ayub, PP.64535, was dismissed from the Kenya Posts and Telecommunications Corporation (KPTC) on 7th October, 1996 and yet he had been acquitted in the Principal Magistrate's Court at Machakos, vide case No.32 of 1995; and,
(b) whether he could order for his reinstatement.

The Assistant Minister for Transport and Communications (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) Mr. Ayub was dismissed from the KPTC on grounds of gross negligence of duty and misconduct involving misappropriation of official funds. In spite of the acquittal in court, on theft charges, he had committed other additional similar offences on which account he was dismissed from service with effect from 25th October, 1996, and not 7th October, 1996, without regard to the outcome of the court case. There were sufficient grounds to dismiss him for gross negligence of duty and misconduct.

(b) I cannot order Mr. Ayub's reinstatement because, firstly, he was dismissed on grounds of negligence of duty and misconduct; these were sufficient grounds for his dismissal.

Secondly, Mr. Ayub was not amongst the employees who were vested to the Postal Corporation of Kenya (PCK), Telkom Kenya (TK) Limited or the Communications Commission of Kenya (CCK). So, the PCK, which was his would-be new employer, cannot consider him for reinstatement because the Communications Act provides that only persons who were employees of KPTC as at 30th June 1999, which he was not, would become employees of the succeeding organisations.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Obwocha, before you ask your supplementary questions, I should point out that Mr. Speaker has directed that Question Time shall be one hour. So, please, note that Question Time will end after exactly one hour.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, I have a copy of the proceedings record of the said case. If Mr. Ayub was acquitted by a competent law court, what other offences is the Assistant Minister talking about? That is victimisation and vendetta against Mr. Ayub. So, if Mr. Ayub's dismissal was not a personal vendetta against him by his superiors, could the Assistant Minister tell the House why Mr. Ayub should not be reinstated? Secondly, could he tell us how much money the Corporation is still holding, which it should have released to Mr. Ayub?

Mr. Keah: Mr. Temporary Deputy Speaker, Sir, there was no personal vendetta whatsoever in the dismissal of Mr. Ayub. I have explained that, although Mr. Ayub was acquitted of the charges preferred against him, he engaged himself in gross misconduct and negligence of duty, on which basis he was dismissed. Irrespective of one's employer, if one engages in gross misconduct, one is subject to facing the sack. The negligence of duty in this case was Mr.

Ayub's delegation, to a messenger, of responsibilities which were not supposed to be delegated to a messenger. Another example of gross misconduct cited in this case involved fraudulent claims of annual leave allowance and travelling expenses by Mr. Ayub. He had claimed travelling expenses for himself and his entire family despite the fact that his wife and two children were in Kericho while he and another two of his children were elsewhere. So, bad blood developed between Mr. Ayub and his employer, leading to his dismissal from service.

Mr. Mwakiringo: Mr. Temporary Deputy Speaker, Sir, it is common practice to warn an employee who breaches his organisation's code of conduct three times before he is sacked. Could the Assistant Minister table the letters by which Mr. Ayub was warned before he was finally sacked? Secondly, what offence did he commit that warranted his summary dismissal?

Mr. Keah: Mr. Temporary Deputy Speaker, Sir, I do not have the letters by which Mr. Ayub was warned, but I believe that the Corporation has them. If you so order, I will ensure that the letters are tabled here. Secondly, there were several cases of gross misconduct by Mr. Ayub. One of the examples of gross misconduct by Mr. Ayub was a case where he fraudulently claimed leave allowance and reimbursement of travel expenses for himself and his family. That constituted gross misconduct, which warranted summary dismissal.

Mr. Shill: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead us by on the one hand, saying that he does not have the letters by which the Corporation management warned Mr. Ayub and on the other hand saying that he believes that the letters are available?

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

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, I believe that, sometime back, a similar matter was raised before this House. It was the question of employers trying to get around court decisions. A court of law would make a decision in a certain case, but employers would go and find some flimsy excuses to terminate people's services to their organisations. I believe that we did get an undertaking from Mr. Sunkuli that the Government would make sure that such practice stopped. The Assistant Minister has used words such as "misdemeanour" and "misconduct"; he is being very generous with words.

If we were to ask him to define these terms and give us actual evidence, he would not. However, could he tell us whether the so-called "gross misconduct" happened before or after the case? If it happened before the court case, it should have been covered in the case. If it happened after the court case, that is a different matter. So, could he tell us whether this happened before the court case or not?

Mr. Keah: Mr. Temporary Deputy Speaker, Sir, let me put the record straight. Mr. Ayub was interdicted by the Corporation on 25th October, 1994. So, when the case was determined in 1996, he was under interdiction.

Mr. Temporary Deputy Speaker, Sir, I have descriptions of the misdemeanours I am referring to. If you wish, I can read them out.

The Temporary Deputy Speaker (Mr. Imanyara): No! No! No! You do not have to!

The misdemeanours were committed before the interdiction which took place on 25th of October, 1994.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, obviously, you can see that this is a case of victimisation and vendetta. Even if you pump sense into this Government, they cannot listen. However, since I respect this Assistant Minister - as you know he is a professional colleague - could he order for this employee to be paid his final dues?

Mr. Keah: Mr. Temporary Deputy Speaker, Sir, if it was a dismissal case - I am not saying this was a dismissal case - the rule is that dues are not payable.

Question No.118

MAINTENANCE OF NZOIA DYKES

The Temporary Deputy Speaker (Mr. Imanyara): Is Mr. Wanjala not here? We will come back to his Question!

Question No.078

REPAIR OF KIAMBOGO-CORNER MBAYA ROAD

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

- (a) whether he is aware that the road to Kiambogo shopping centre from Corner Mbaya in Kipipiri Constituency is impassable; and,
- (b) what emergency remedial measures he is taking to repair the road.

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

(a) I am not aware that the road to Kiambogo shopping centre from Corner Mbaya in Kipipiri Constituency is impassable.

(b) The whole 18.3 kilometres of the referenced road have been graded while spot improvement of the road section between Kiambogo-Corner Mbaya is on-going and culvert rings have been delivered and laying of them is to commence as soon as possible. Ditch cleaning of 200 metres of blocked beach is also supposed to commence immediately.

Mr. Githiomi: Mr. Temporary Deputy Speaker, Sir, if the Assistant Minister is not aware, then, I will make him aware. We have spent Kshs1.4 million from the kitty of the District Roads Committee (DRC) on this road. The road is 18.3 kilometres long as the Assistant Minister said. In fact, Kshs1.4 million is nothing in repairing the road. When is the Assistant Minister going to pump in more money to make the road passable? It requires more than Kshs30 million!

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, Corner Mbaya-Ndiara Road; L3772, is also 4 kilometres long and Ndiara-Kiambogo-Geta Road, Rural Access Road(RAR), is 14.3 kilometres. The total is 18.3 kilometres. This road falls under the DRC, and the Ministry has released Kshs4 million to Kipipiri for the same.

Mr. Waithaka: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has said that this road is under repair, and he has enumerated what is being done. Could he tell this House how much has been used specifically for these roads under this Question? How much has the Ministry used to repair these roads? This is because he said that he is not aware and that it is not impassable. He is saying that it is being repaired. How much has the Ministry used to repair Corner Mbaya-Kiambogo Road?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, during the DRC meeting held on 2nd November, 2001, this particular road was included in this year's works plan for repair and Kshs2 million was budgeted for it. I said that the Ministry has released Kshs4 million under the DRC for this particular road. Already, Kshs1.6 million has already been used for improvement of this particular road.

Mr. Githiomi: Mr. Temporary Deputy Speaker, Sir, I chaired that DRC meeting he is talking about. So, I know more about this DRC meeting than the Assistant Minister. It is true that there is Kshs4 million from DRC for Kipipiri roads and not for this particular road. We could only allocate Kshs1.4 million. The road requires more than Kshs30 million. What is the Assistant Minister going to do to ensure that this road is made motorable and passable? How is he going to source other funds to make the road passable and motorable?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, Mr. Githiomi is a friend of mine. It is true that the Ministry has not yet assigned any money for this road apart from the Kshs4 million I had earlier mentioned. I would like Mr. Githiomi to continue using the little money he has got from the DRC and the Ministry will put more efforts in looking for some more money to assist him.

*Question No.093*SURVEY REPORT FOR CONDEMNED
GOVERNMENT HOUSE

Eng. Toro asked the Minister for Roads and Public Works:-

- (a) whether he could inform the House why the Government house No.KAND/L.G./2A-B in Kandara Town was condemned for demolition; and,
- (b) whether he could table the survey report.

The Assistant Minister for Roads and Public Works (Mr. Mokku): Mr. Temporary Deputy Speaker, Sir, I

beg to reply.

(a) I am not aware that Government House No.KAND/L.G./2A-B in Kandara Town was surveyed and condemned for demolition.

(b) There was no board of survey convened to deliberate on the possibility of condemning the above house.

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I expected a more elaborate answer than that. I brought a Question to this House last year which was answered by the Minister for Local Government because this is one of the houses that were grabbed and given to what are now called private developers. It was demolished at night and since the Minister for Local Government could not answer matters related to the Government houses, that is why I brought this Question. Could the Assistant Minister tell this House whether that house existed according to the Ministry or it does not exist? If it existed, is it there now?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, I did not say that, that house did not exist. It exists. On 31st October, 2000, a private developer put materials on site at this particular plot. The officer in charge of works who was based at Kandara reported the matter to the District Works Officer (DWO) Maragwa. The DWO wrote to the District Commissioner, Maragwa, on that particular date, 31st October, 2000 asking for intervention. The DC wrote back to the District Officer, Kandara, instructing him to ensure that no development took place on the said plot. The developer was stopped, and the fence was pulled down.

On January, 2001, the same developer resurfaced, demolished the toilet block of the said house, fenced off the plot again and delivered some more materials on site. The DO again wrote to the DC on 6th February, 2001, asking him to intervene. There was a meeting held in January, 2001, which included the DO, Kigumo, Maragwa County Council officials, led by the Clerk to Council, the DO in charge and the officer in charge of the building in Kandara. The Kandara Town Council claimed that they had the right to allocate the property. The Ministry never surrendered the plot nor the Government house to the Kandara County Council.

In addition, the plot was never surveyed nor was the building boarded. It was condemned for the purpose of demolition. In order to establish the true status of the property, this Ministry has taken up the issue with the PS, Ministry of Local Government, so that investigations are launched to establish with whose authority the Clerk to Kandara County Council alienated a Government house together with the plot thereon.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, Kandara is my rural home and so, I know about the house in question. This is a clear case of corruption, where Government officers connived with a particular private developer in order to be allocated that plot. The private developer demolished the said Government house, and has put up a new structure on the same plot. Those are the issues that come up in Public Investments Committee and Public Accounts Committee meetings every year! If the Assistant Minister wants to save his face, could he order that the house be returned to the Government, so that it remains Government property for the sake of the Government officers in Kandara, who have been living in that house? If the Assistant Minister does not order that the house be returned to the Government, the people of Kandara will go to court!

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, I think the hon. Member must have listened to me very carefully. According to the Ministry of Roads and Public Works, the house in question has not been given out to anybody, and we are not ready to give it to anybody. As to whether we can order that the house be returned to the Government, we have asked the Ministry of Local Government to investigate and give us the status of that house; and why the Town Clerk, Maragwa, has taken that stand!

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to relegate his duty to the Ministry of Local Government?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, we have not relegated our duty. That is as it should be!

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, that is the reason why I asked the Minister for Roads and Public Works this Question and not the Minister for Local Government. Last year, when I asked the Minister for Local Government the same Question, he could not cover his own officers! When the Minister for Roads and Public Works says that the Minister for Local Government is going to investigate, he is not going to give us any answer because he is going to cover his officer!

Mr. Temporary Deputy Speaker, Sir, jcould the Assistant Minister order that the developer, whose name is Mr. Mwangi Hiti, I do not know what powers he has to disobey the District Officer, Kandara, and the District Commissioner, Maragwa, who have ordered him to stop developing that plot? He has already put up a structure on the plot. Could the Assistant Minister order that he stops further construction of that building, and that the plot should

actually revert to the Government with immediate effect?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, I am not in a position to give orders to officers in other Ministries. But I promise this House that I will ask the Minister for Local Government to speed up the matter so that, that Government house is not grabbed by that private developer.

Question No.116

COMPLETION OF KITHIMANI-MAKUTANO ROAD

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

- (a) whether he is aware that Road C100 (Kithimani-Kabaa-Makutano) was not done as per the contract specifications and is now in a bad state;
- (b) what the total sum of the contract was and how much the contractor has been paid; and,
- (c) what urgent measures he is taking to ensure that the road is completed.

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

(a) I am not aware that Road C100 (Kithimani-Kabaa-Makutano) was not done as per the contract specifications.

(b) The total sum of the contract is Kshs60,572,041. To date, the contractor has not been paid Kshs34,910,186.

(c) The road was completed last year. However, we have noted that some sections of the road have since deteriorated due to overloaded sand-harvesting trucks. Arrangements are under way to repair those sections.

Mr. Katuku: Mr. Temporary Deputy Speaker, Sir, the answer given by the Assistant Minister leaves a lot to be desired. I visited the same road in the company of the Provincial Roads Engineer, the District Roads Engineer, the District Commissioner, Machakos and the contractor in 1999. We established that the drainage works and culverts were not part of the contract. The quality of murrum used was not worth it. That is why the contractor has been paid Kshs34 million only, and not Kshs60 million. The said contractor has refused to go back to site because she is a sister to a Cabinet Minister! Could the Assistant Minister, with all honesty, tell us why the contractor has not been paid the remaining money if the work was completed a year ago?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, it is true that the contractor has not been paid all the money. We have not paid the contractor retention money because the law says we cannot pay that money until she completes her job. After the contract was awarded, inspectors from the Ministry of Roads and Public Works were sent to value the work done and from the report of the inspectors, it was found that the whole project was not worth Kshs60 million, and that was brought to the attention of the contractor. We have agreed, as a Ministry, that we shall engage another contractor to gravel sections of the road which are not in good condition as of now.

Mr. Muchiri: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell us whether it is the Government which breached the contract or the contractor?

Mr. Mokku: It is none of those!

Mr. Katuku: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is misleading this House. On one hand, he admits that the contractor did not do the work as per the specifications. On the other hand, he is saying she has done well. Which is which? Why are they looking for somebody else to do that work? I think the Assistant Minister is not being honest and is not telling this House what the true position is. Could he tell us clearly how much money they want to spend to repair the road and what the position is?

Mr. Mokku: Mr. Temporary Deputy Speaker, Sir, I am honest and the answer I have given is correct. The hon. Member has not denied that work was done on that road. If I understood him well, some sections of the same road were not done to the satisfaction of the hon. Member. The cause of the wearing out on that road is the overloaded sand-harvesting trucks. The Ministry will take the responsibility of re-doing those sections of the road that are worn-out.

Question No.168

REHABILITATION OF DONHOLM ESTATE ROADS

Mr. Mwenje asked the Minister for Local Government:-

(a) when the roads in Donholm Estate will be repaired; and,

(b) when the street lights in the estate will be repaired.

Mr. Temporary Deputy Speaker, Sir, I have repeated the Question because the Assistant Minister for Local Government seems to be sleeping.

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Temporary Deputy Speaker, Sir, you must have seen me having some consultations with Mr. Obure and definitely I was not sleeping. I do not sleep, like Mr. Mwenje, in this House!

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

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the Assistant Minister for Local Government say that, because he was consulting with the Minister for Finance, he does not sleep like me in this House? I have never slept in this House like him, and he must withdraw that remark and apologise. I repeated the Question because he never stood up to answer it. Could he, first of all, withdraw that remark and apologise?

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Temporary Deputy Speaker, Sir, the short history of this incident is that Mr. Mwenje started by saying that I was sleeping. I was just trying to tell him that I do not sleep in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Please answer the Question!

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The roads in Donholm Estate of Nairobi will be repaired when the contractor resumes work on the suspended contract for the repair and rehabilitation of the roads in Dandora, Kayole, Umoja, Embakasi and Gigiri areas of Nairobi. This will be done as soon as the Ministry gets the funds to pay the contractor.

(b) The street lighting in Donholm Estate was supposed to be installed by the private developer who developed the estate in 1978. The developer has to date not satisfactorily completed installation of the street lighting, and as a result, the City Council of Nairobi has not adopted the entire street lighting in the estate. In order to force the developer to complete the infrastructural services in the estate, the Nairobi Physical Planning Liaison Committee has put an embargo on further sub-division in the scheme until such a time when the developer fulfils all the City Council sub-division conditions.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, this is a contradictory reply. On the one hand the Assistant Minister has said that the contractor has not done the work because he has not been paid, and on the other hand, in part "b" of his answer, he has said that the contractor has not completed the work because the estate has not been adopted by the City Council of Nairobi. Which is which? Could he tell us?

As far as I am concerned, no contract was awarded for roads in Donholm Estate. If a contract was awarded, could he tell us which one it is and to which contractor it was awarded? When was the contract awarded and for how much? If repair work on roads in Donholm Estate was contracted, then it means that the estate had already been adopted by the City Council of Nairobi.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mwenje, ask your question!

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell us which contractor was awarded this contract and when was it awarded? There is a contradiction in the Assistant Minister's answer because on the one hand, he has said that the contract was suspended and on the other hand, he has said that the estate was not adopted by the Nairobi City Council.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mwenje, ask one question at a time!

Mr. Kiangoi: Mr. Temporary Deputy Speaker, Sir, a few weeks ago, I answered a similar Question which I believe was asked by the same hon. Member, and I said that roads in Donholm Estate were part of the many roads whose repair work was contracted to M/s Put Sarajevo General Engineering Company, in March 1999, for a sum Kshs887,415,403.59. That is the matter which is now being made an issue.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, there seems to be a problem between the Ministry of Local Government and the contractors who are looting money from the Local Government Transfer Fund (LATF) and Kenya Urban Transport and Infrastructure Project (KUTIP). Roads repaired and street lights installed by these contractors are all worn out after six months. Last year, in Thika Municipality, money from LATF and KUTIP was used to repair roads and right now, all these roads are worn out. What will the Ministry do about these contractors who are doing sub-

standard work? They repair roads and hardly after a year, these roads are worn out. This is happening in Nairobi, Kisumu, Thika, Nyeri and Mombasa and the same contractors are involved. What action will the Assistant Minister take against these people because they are doing very shoddy work?

Mr. Kiangoi: Mr. Temporary Deputy Speaker, Sir, the Ministry and the Government as a whole are concerned about sub-standard work. We in the Government are out to ensure that any work that is contracted to any contractor, be it roads repair or any other contract, is done to the specifications of the contract. In future, my Ministry will take punitive measures against any contractor who does sub-standard work.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, this is the second time the Assistant Minister has replied to my Question by saying that the job is not being done because the contractor has not been fully paid. The same contractor, M/s Put Sarajevo General Engineering Company, has not been paid for roads repaired in Embakasi, Kayole and Umoja estates and now in Donholm Estate. This is what the Assistant Minister has told us. We cannot continue getting the same answer from the Assistant Minister while the job is not being done, yet people are still paying levies. Could he state categorically here when the Ministry will pay this contractor so that he can complete the job? We know that this work has a lot to do with KUTIP, but it is for the Ministry to push and follow up the issue to ensure that the contractor is paid so that he can complete the job. Could he now state categorically when this contractor will be paid his dues so that he can complete the job?

Mr. Kiangoi: Mr. Temporary Deputy Speaker, Sir, when I answered the Question Mr. Mwenje has referred to last time, I said that the Ministry of Local Government had not been appointed an agency of the Kenya Roads Board. Last time I told the House that we were negotiating, and we are at an advanced stage of negotiations with the relevant Ministries and the KRB. We used to get 21 per cent of the funds available for the construction of roads. So as our negotiations are successful, we shall pay the contractor and work will proceed.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. If the issue is left at that, I will not be satisfied.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mwenje, if you are not satisfied, then you know what the Standing Orders provide.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I will go by Standing Order No.18.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mwenje, you can invoke Standing Order No.18 if you are not satisfied.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I will do that.

Question No.085

UNLAWFUL PROSECUTION OF MR. MSAFARI

Mr. Muchiri asked the Attorney-General:-

- (a) whether he is aware that his office entered a *nolle prosequi* against Mr. John Msafari and others on 24th July, 1998, who were arrested by the former Anti-Corruption Authority and charged before the Chief Magistrate's Court, Nairobi, with various offences involving corruption activities; and,
- (b) whether he will compensate the arrested persons for the unlawful arrest and prosecution.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Attorney-General is aware that a *nolle prosequi* was entered on his behalf by the Director of Public Prosecutions, against Mr. John Msafari and others, on 24th July, 1998. However, the said Mr. John Msafari and others were never arrested and charged before the Chief Magistrate's Court.

(b) Arising out of the answer to part "a" above, the question of compensation does not arise.

Mr. Muchiri: Mr. Temporary Deputy Speaker, Sir, I am not a lawyer, but the Chair is aware that *nolle prosequi* cannot be entered in a case unless the accused person has been charged or a charge sheet has been presented before the court. However, this is a case in which the Government was losing over Kshs180 million. Could the Attorney-General tell this House what public interest was involved in this case for the Government to have entered a *nolle prosequi*?

Mr. Wako: Mr. Temporary Deputy Speaker, Sir, the *nolle prosequi* was properly entered by the Director of Public Prosecutions because I was out of the country at that time. This was because the law had not been followed in

taking these people to court. If I may add, subsequently, this issue was the subject matter of a tribunal duly appointed by the President, under the Prevention of Corruption Act, to inquire into the conduct of the then Director. This meant that, in entering the *nolle prosequi*, the Director of Public Prosecutions was right because that was an abuse of the powers of the Director.

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, the Attorney-General says that there was no necessity for compensation because there was no prosecution. Obviously, this issue has been that, even after having been in custody for one year,

at Kamiti; if the consent to prosecute has not been given, that is not prosecution! That is miscarriage of justice! But the point is, there is the second part of the Question asking about the unlawful arrest and confinement of Mr. John Msafari. Was the Attorney-General not going to pay compensation for that unlawful arrest and confinement?

Mr. Wako: Mr. Temporary Deputy Speaker, Sir, my answer was very clear; that Mr. John Msafari and others were neither arrested nor charged before the Chief Magistrate's Court; and consequently, part "b" of the Question asks whether the Government could compensate the arrested persons for the unlawful arrest and prosecution. That does not arise!

Mr. Wamae: Mr. Temporary Deputy Speaker, Sir, the Attorney-General seems to be contradicting himself. First of all, he said that his Director entered a *nolle prosequi* on this case. You cannot enter a *nolle prosequi* if there is no case before a court!

Mr. Wako: Mr. Temporary Deputy Speaker, Sir, there was a case in court and the court issued a warrant of arrest, but before the warrant of arrest was executed, a *nolle prosequi* was entered.

Mr. Muchiri: Mr. Temporary Deputy Speaker, Sir, the entering of the *nolle prosequi* by the Director of Public Prosecutions, contravenes Section 26(6) of the Constitution. It is the Attorney-General who is vested with the powers of prosecuting a person, but the Director entered the *nolle prosequi* on behalf of the Attorney-General, and that was illegal! However, thousands of Kenyans have been charged before courts and they are acquitted daily by ordinary courts. Could the Attorney-General inform this House why those people who are acquitted from courts are not compensated directly by the courts, rather than informing them to go and institute civil proceedings which are very expensive to the ordinary *mwananchi* in this country?

Mr. Wako: Sorry, Mr. Temporary Deputy Speaker, Sir, I would ask the hon. Member to repeat the second part of his question. But with regard to his first question, Section 26(6) of the Constitution, the powers of the Attorney-General---

An hon. Member: That is covered under subsection (5)!

Mr. Wako: Sorry, that is under Subsection (5). The powers of the Attorney-General under Sections (3) and (4), may be exercised by him in person or by officers subordinate to him, acting in accordance with the general special instructions. The Director of Public Prosecutions is my most senior officer in matters of criminal prosecutions. Therefore, he properly exercised his powers to enter a *nolle prosequi*.

The Temporary Deputy Speaker (Mr. Manyara): Mr. Wanjala's Question for the second time.

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, I apologise for coming late to the House.

Question No.118

MAINTENANCE OF NZOIA DYKES

Mr. Wanjala asked the Minister for Environment:-

(a) whether he is aware that non-maintenance of the Nzoia dykes by the Government causes depreciation of the dykes resulting in frequent breakages whenever the river swells; and,

(b) whether he could ensure regular maintenance of the dykes.

The Assistant Minister for Environment and Natural Resources (Mr. Kofa): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the condition of the dykes has deteriorated mainly due to siltation of the river beds in the flood plain zones, thereby reducing the water carrying capacity of the river within its course and also because of the changing of river course making dykes to act as river banks. It is these factors that have led to breaching and eroding of dykes.

(b) During the Financial Year, 2000/2001, my Ministry allocated Kshs7 million for the rehabilitation of Nzoia dykes. However, due to the freezing of development funds in February 2001, no work was implemented.

During this Financial Year, 2001/2002, my Ministry has allocated Kshs14 million for the rehabilitation of Nzoia dykes and the contract has already been awarded. The contractor is now mobilising to start the work.

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, flooding is such a serious issue in this country that the Government must come out in full force to assist reduce its effects. The Chair knows very well that when there are floods, the lives of people and that of domestic and wild animals is threatened; Kenya being a country that has invested so much in tourism. Floods have eroded houses of people and have impoverished Kenyans.

The Temporary Deputy Speaker (Mr. Imanyara): What is your question?

Mr. Wanjala: Mr. Temporary Deputy Speaker, Sir, since dykes need to be maintained every year, could the Assistant Minister consider taking the personnel from the National Youth Service, and even from the Kenya Army, to Budalang'i, to maintain the dykes instead of waiting for money from the Government, which seems not to be there?

Mr. Kofa: Mr. Temporary Deputy Speaker, Sir, the Ministry of Environment and Natural Resources has nothing to do with the National Youth Service. Could the hon. Member direct his question to the Office of the President?

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, we voted funds for that Ministry way back in July and, lastly, in October last year. The Assistant Minister is telling us that towards the end of this financial year, they have contracted someone to rehabilitate the dykes. Why has it taken so long to get the contractor on site to start the work? Who is this contractor and why has it taken him so long to start the work?

Mr. Kofa: Mr. Temporary Deputy Speaker, Sir, I do not have those details which the hon. Member is asking about. But should the House demand that I bring those details, I will do so next time.

The Temporary Deputy Speaker (Mr. Imanyara): Order! I order that you bring them on Tuesday next week because we have only ten minutes left, and we have four Questions by Private Notice. So, the Assistant Minister will bring the details on Tuesday next week, Mr. Wanjala!

Let us move on to Questions by Private Notice!

QUESTIONS BY PRIVATE NOTICE

LOSS OF LIVES DUE TO MILITARY EXERCISES

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

(a) Is the Minister aware that several pastoralists have lost their lives and property due to military exercises in Laikipia, Isiolo and Samburu Districts?

(b) What action is he taking to ensure the safety of property and lives in these areas during such exercises?

(c) What measures is he taking to ensure that the affected people are compensated?

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

(a) The Minister is not aware of the pastoralists who lost their lives and property due to military exercises in Laikipia, Isiolo and Samburu Districts.

(b) Procedures and regulations have been in existence on the conduct of military exercises. Military exercises are carried out in designated and protected areas which are normally cleared by the Provincial Administration long before the exercises commence. In addition, at each military range, there are range safety officers who ensure that the areas are completely safe before and after the exercise.

(c) Since no lives have been lost during the military exercises, the issue of compensation does not arise. In case it arises, the procedure to be followed is for the police to investigate and any claims for compensation forwarded to the Attorney-General.

Mr. Leshore: Mr. Temporary Deputy Speaker, Sir, it is a big shame that this Assistant Minister has said that he is not aware of those deaths or loss of property in Laikipia, Isiolo and Samburu Districts. Even the British citizens know very well that so many lives have been lost in that area because of military exercises carried out by Kenya, Britain and other foreign countries.

Could the Assistant Minister tell this House why he is misleading it and Kenyans?

Mr. Moroto: Mr. Temporary Deputy Speaker, Sir, I am not misleading this House. I have said that we are not aware of this. There is a way of contacting the Government. So, I am not aware of this.

Mr. Parpai: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister lives in Kenya like we do and he is a pastoralist. All of us in this country know that there is a case in the United Kingdom (UK) which was lodged by pastoralists to pursue compensation for the lives that have been lost. It is also in their domain that you want the matter to be tried in Kenya. Could the Assistant Minister tell us whether he wants to discourage the Kenyans who are pursuing for compensation, or whether he has an alternative way of compensating them? What is he talking about?

Mr. Moroto: Mr. Temporary Deputy Speaker, Sir, I would like to maintain that the Government is not aware of this. Even if the case has been mentioned elsewhere, it has not been brought to our attention. I am one of the pastoralists in Kenya, and I feel bitter when we lose one of the pastoralists.

So, let the police investigate the case and we will be in a position to respond to it here rather than rushing to other countries.

Mr. Leshore: Mr. Temporary Deputy Speaker, Sir, I think this Assistant Minister is joking, and I would like to appeal to you to reprimand him! This is because deaths have been reported at the Archers Post Police Station. The District Development Committees (DDCs) and Sub-District Development Committees are aware of these cases. Why is he saying that the Government is not aware of them? Could the Chair reprimand him?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, you are not serious about the Government not being aware of the cases!

Mr. Moroto: Mr. Temporary Deputy Speaker, Sir, personally, I am not aware of these cases and neither is the Government aware of them.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Speaker, Sir. First of all, the Assistant Minister has used the word "personally". There is nothing personal about this that we are asking the Government of Kenya. In any case, sometime last year, this Question came up and Mr. Sunkuli said that he was aware of it and assured this House that the Government will do everything to ensure that life is protected and where compensation is due, the matter will be put in process. If he is personally not aware, could Parliament take that as an answer from the Government? Is he in order to say that?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Anyona, the Chair has ruled that the Assistant Minister goes back and finds out whether the Government is aware. He will come back to give us an answer next Tuesday. Is that all right, Mr. Leshore?

Mr. Leshore: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): That Question is deferred until next Tuesday!

(Question deferred)

FINANCIAL ALLOCATION TO KISII-CHEMOSIT ROAD

(Mr. Anyona) to ask the Minister for Finance:-

(a) Is the Minister aware that Kshs200 million in the Development Printed Estimates for the 2001/2002 Financial Year approved towards the completion of the stalled Kisii-Chemosit Road (C21) has been reduced to Kshs100 million in the Supplementary Estimates (Development Expenditure) for the 2001/2002 Financial Year?

(b) Why were the Printed Estimates for the Kisii-Chemosit Road reduced despite earlier assurances to the contrary?

(c) Could the Minister make full budgetary and financial provisions in the 2002/2003 Financial Year for the completion of the Kisii-Chemosit Road?

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, looking at the clock, I have got about one minute and yet this is a very---

The Temporary Deputy Speaker (Mr. Imanyara): Would you like us to defer this Question?

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, I would request that the Question be deferred to Tuesday next week.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister for Finance, could this Question be deferred until next week because there is no time? It is only one minute before the end of Question Time!

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, we will be prepared to answer the Question on Tuesday next week.

The Temporary Deputy Speaker (Mr. Imanyara): Very well! This Question is deferred until Tuesday next week!

(Question deferred)

MARKETING OF LOCAL SUGAR

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that sugar worth Kshs2.7 billion is in the warehouses of various sugar companies because the market is flooded with cheap sugar imports?

(b) Is he further aware that sugar factories are unable to pay farmers as a consequence of "a" above?

(c) What action is he taking to ensure that locally-produced sugar has a market?

The Assistant Minister for Agriculture and Rural Development (Mr. J.D. Lotodo): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware.

(b) I am aware.

(c) In order to ensure that locally-produced sugar has a market, the following steps have been taken.

(i) The Government has invoked Article 61 of the COMESA Treaty and implemented the sugar import quota from the COMESA FTA countries through Gazette Legal Notice No.29 of 28th February, 2002.

(ii) Any imports above the set quota of 200,000 metric tonnes of sugar from the COMESA FTA states will be subjected to full duty after 31st December, 2002.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell this House why sugar-cane farmers cannot be treated the same way maize farmers are treated; by being given Kshs1 billion for payments that are in arrears?

Mr. J.D. Lotodo: Mr. Temporary Deputy Speaker, Sir, the Kenya Sugar Authority has to take up that matter with the Ministry so that the problem of the farmers can be looked into.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has said that they will take action on sugar from the COMESA region. The sugar which is flooding the market is not only from the COMESA region. There are storage ships floating in the Indian Ocean with Brazilian sugar, which the Nakuru merchants order. These traders do not pay duty, the VAT and the Sugar Development Levy. What will the Government do to control sugar from any source so that we can sell our local sugar?

Mr. J.D. Lotodo: Mr. Temporary Deputy Speaker, Sir, my Ministry and the Ministry of Finance and Planning will ensure that no more import licence is issued out until we exhaust all our stocks in the country.

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

The Temporary Deputy Speaker (Mr. Imanyara): I am sorry I will give a chance to Dr. Kituyi to ask the last question!

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, the question that Mr. Sambu has raised---

(Dr. Kituyi was wearing a Nigerian Agbada)

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is wearing a different attire. Is he wearing---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Mwenje!

Mr. Mwenje: But he looks strange in the House!

Mr. Wanjala: On a point of order, Mr. Temporary Deputy Speaker, Sir. I can see that the style of dressing in this House has changed. Since I am used to wearing *Kaunda* suits, would I be in order to start coming to this House in

them?

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

The Temporary Deputy Speaker (Mr. Imanyara): Order!

Proceed, Dr. Kituyi!

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, the crisis of uncustomed sugar entering the Kenyan market is the cry of lack of strong rules and procedures of assessing rules of origin. When the Assistant Minister says that they will work with the Ministry of Finance and Planning, and the question was manipulation of documents, such as bill of lading and other rules of origin on the high seas which make sugar particularly from Brazil to get into our domestic market, what have they discovered now which will enable them to do what they have been unable to do all this time?

Mr. J.D. Lotodo: Mr. Temporary Deputy Speaker, Sir, I do not know whether I should answer the question by the hon. Member who is well dressed. Nevertheless, I will answer it.

Dr. Kituyi: You should not discuss the way I am dressed!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Dr. Kituyi!

Mr. J.D. Lotodo: Mr. Temporary Deputy Speaker, Sir, I do not take that threat lightly. As I said previously, there has been a lot of sugar coming into the market through unscrupulous ways. I said the Kenya Sugar Authority, the Ministry of Agriculture and Rural Development, and the Ministry of Finance have tightened the regulations to make sure that no more sugar is imported into this country apart from the 200,000 metric tonnes allowed.

Mr. Ochilo-Ayacko: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister admitted that sugar has been imported into this country. Could he table the list of importers and the quantity of imports that have found their way into this country since June last year?

Mr. J.D. Lotodo: Mr. Temporary Deputy Speaker, Sir, the sugar imported between January and April 2002 is as follow: This list shows the country of origin----

The Temporary Deputy Speaker (Mr. Imanyara): Could you table it?

Mr. J. Lotodo: Mr. Temporary Deputy Speaker, Sir, I beg to lay this document on the Table.

(Mr. J.D. Lotodo laid the document on the Table)

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mbela, I am requesting that we defer your Question because we have passed Question Time. Is that okay with you?

Mr. Mbela: Yes, Mr. Temporary Deputy Speaker, Sir. But I notice that the answer is not even ready.

The Temporary Deputy Speaker (Mr. Imanyara): I do not know. But even if it was ready, I am saying that we do not have time! Dr. Galgalo, when would you like to answer this Question.

The Assistant Minister for Health (Dr. Galgalo): Mr. Temporary Deputy Speaker, Sir, I want to answer it now.

The Temporary Deputy Speaker (Mr. Imanyara): No, there is no time. You will answer it tomorrow afternoon.

The Assistant Minister for Health (Dr. Galgalo): Mr. Deputy Temporary Deputy Speaker, Sir, I oblige.

MEDICAL SUPPLIES TO WESU HOSPITAL

(Mr. Mbela) to ask the Minister for Medical Services:-

(a) What measures is the Minister taking to ensure that drugs and dressings are regularly supplied to the Wesu District Hospital?

(b) Why has a private pharmacy been opened in one of the hospital buildings to sell drugs and syringes to the patients?

(Question deferred)

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Haji, I believe you had a Ministerial Statement to make.

Mr. Muiruri: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise to seek guidance from the Chair because on 11th March, 2002, I raised a very important Question---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muiruri, let us hear the Ministerial Statement first then I will allow you to raise your question.

MINISTERIAL STATEMENT

CIRCUMSTANCES SURROUNDING MR. KAMAU'S DEATH

The Assistant Minister, Office the President (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, the Ministerial Statement is in response to the request made by Mr. Mwenje to my Ministry to clarify the circumstances under which Mr. Stephen Muturi Kamau was killed. On 24th March, 2002, at around 10.00 p.m. at Dandora Phase III, a gang of six men armed with pistols stormed into Mr. Stephen Kahindi's plot and ordered everybody to lie down. The gangsters went straight and broke into Christ Soul Harvest Church situated within the vicinity of Kahindi's plot. After stealing assorted electronic goods, they ordered the young man to carry an amplifier, but he sneaked out and sounded an alarm. There were three police officers on night patrol duty within the area who responded to the alarm. The officers challenged the gangsters to stop, but the latter started firing at the police officers who in turn returned fire. During the shoot-out, one male adult who was later identified as Mr. Stephen Muturi Kamau was shot dead. An amplifier, one microphone and a keyboard were recovered. The body of the deceased, together with the stolen items, were photographed and later, the body of Mr. Kamau was taken to City Mortuary. An inquest file No.712002 was opened and investigations are still on.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I do not know where we are heading to. If an Assistant Minister can come here and tell what is not true, I do not know what will happen in the future. The truth of the matter is that Mr. Kamau was shot by the police officers. There was no crossfire. This was a man who was going home. He was shot by the police officers. The police officers tried to conceal this matter. When the mother went to the police station, the police officers were not ready to record her statement until I had intervened and asked the Minister to make sure that the statement was written. This is a case of trigger-happy police officers. These incidents are happening quite often in Dandora. Could the Assistant Minister order police officers not to shoot innocent Kenyans? Could this matter be investigated and the officer involved charged with murder?

The Assistant Minister, Office of the President (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, I think the hon. Member is being general in his statement, which is very unfortunate. Police officers are not trigger-happy as alleged by the hon. Member. They do not just shoot people on sight. The hon. Member has confirmed that, on that fateful day, there was a shoot-out in the area. I actually believe what I said is the correct position.

The Temporary Deputy Speaker (Mr. Imanyara): We have run out of time! In fact, we are eating into the Government's time. However, there was a point of order by Mr. Muiruri. What was it?

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I rise to seek your guidance because on 11th this month, I raised a very important Question about the construction of Gachege Tea Factory in my constituency---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muiruri, are you referring to an answer to a Question?

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, I am referring to the answer. The Minister for Agriculture---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muiruri, are you raising an issue related to an answer given to a Question.?

Mr. Muiruri: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): In that case, I will not allow you to do so because you gave me the impression that you were raising an issue relating to a Ministerial Statement. That is why I allowed you.

Mr. Muiruri: No! No!

The Temporary Deputy Speaker (Mr. Imanyara): Then you are out of order! You know what to do. If you are not satisfied, you can invoke the provisions of Standing Order No.18.

Next Order!

BILL

*Second Reading*THE DOMESTIC VIOLENCE
(FAMILY PROTECTION) BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Domestic (Family Protection) Bill be now read a Second Time.

I will probably crave your leave to refer to numerous notes as I make my remarks on this very important Bill. This is an important Bill which was undertaken in accordance with an ambitious comprehensive law reform programme that the Government embarked on since 1993. It may be recalled that in 1993, I set up a task force to review and make recommendations on all laws relating to women. As part of the burden of that task force, they were to review, not only the existing laws, but also to recommend any new laws that will ensure that women enjoy their rights on an equal footing with men. It was also the specific mandate of the task force, which was ably chaired by Justice Effie Owour, that they should also look into customs, traditions and practices which tend to violate the rights of women. That task force did visit all the provinces of Kenya, and some districts, seeking views of Kenyans on this matter. The task force was composed of mostly women, but some men who are gender sensitive were also members of that task force. That task force also undertook some trips out of the country.

Mr. Temporary Deputy Speaker, Sir, after three to four years of the exercise, they presented one of the most voluminous reports on the issue of their mandate. One of the recommendations they made was that, in this country, we should have a Domestic Violence, (Family Protection) Bill, 2002. In fact, they proceeded to make the job easier for the Government by actually drafting the Bill itself. I would like to take this opportunity to thank the Chairman and the members of that task force for the excellent work they did. I would like, in particular, as far as this Bill is concerned, to thank them in addition, because I am aware that a number of workshops were held in Nairobi and other towns in Kenya to discuss specifically this particular Bill and to refer to it and make it an excellent piece of legislation that it now is. I know that FIDA, Kenya, contributed quite much to the drafting of this Bill. I think this Bill is a good example of the collaborative consultative process that can happen between the Government and the Non-Governmental Organizations which are genuinely seriously committed to the objectives of their constitutions.

Mr. Temporary Deputy Speaker, Sir, the family, of course, as we know it, is the most basic and important unit in any society. In accordance with African customs, I am pleased to inform you that under the African Charter on Human and People's Rights, the Charter recognises the importance of the family as the basic unit of any society and makes it incumbent upon member states to seek ways and means in which the family as a unit can be protected. I think, we do all know that domestic violence is very prevalent in Kenya.

Mr. Temporary Deputy Speaker, Sir, I would like to remind hon. Members of the incidents that happen at the end and beginning of the year, particularly from 1998, we all heard of the violence that has been meted out, particularly on the womenfolk, and in most cases, they have lost their lives because of the violence perpetrated upon them by their husbands or the persons they are cohabiting with. This has formed headlines at the beginning of the year, except this year. But in all previous years, that has been the major news; domestic violence.

Mr. Temporary Deputy Speaker, Sir, I would like to state that the issue of domestic violence is not confined to Kenya alone. If you read what Maxmilla Muninzwa in an article entitled: *The D-Day that Speaks for Oppressed Women*, if what she states there is correct, then even in the United States of America, in every 15 seconds, one woman is battered by an intimate partner who could be a husband or a living partner. Whereas we may not have statistics on this issue in Kenya, we all - Mr. Muite as a lawyer would say - can take judicial notice that domestic violence is prevalent in Kenya today.

Mr. Speaker, Sir, in a study, *Domestic Violence in Kenya*, that was a report of a baseline survey amongst women in Kenya and a survey gathered and analyzed data from a cross-section of women totalling 1,067, with varying educational levels ranging from primary to college, with ages ranging between 22 and 29 years, on the average, a number of them with two children and the majority of whom were married or cohabiting with male partners, it was found in accordance with that survey, that 51 per cent of the women who responded to the survey, recorded in the affirmative. This means that 51 per cent were victims of domestic violence, according to that survey. The levels could be very much higher. When we talk about 51 per cent, it is the percentage of the educated and the elite of the professional class who are prepared and ready to come forward and report these instances to either the authorities or

survey teams of this nature. It was also found that, it is only in that class that the women go ahead and report the instances. Therefore, there is a silent majority of women who suffer in silence. If those women could speak out, most likely, it would be more than 51 per cent of the women in Kenya who suffer from domestic violence.

It was also found that, to a large extent, men are responsible for domestic violence cases. We do agree that there are a minority of men who are also subjected to domestic violence - I do not know whether to call them men or not. But the overwhelming majority are men perpetrating domestic violence on women. So, this is a survey which I think is indicative of what is going on all over the country.

Mr. Temporary Deputy Speaker, Sir, we have a number of legal aid organizations. These leading aid organizations, based in Kisumu and Nairobi, last year alone, recorded 114 cases of domestic violence. Further, 62 murders were reported in the Press. Among them, 29 involved domestic violence where the husband killed the wife, and 21 of the 29 reported assaults involved the husband assaulting the wife.

I am glad also, that at least in these issues of domestic violence, the courts are waking up to their roles, and in a recent decision by Justice Etyang' when he found that the husband was guilty of murder, and went on to state that the deceased was sexually defiled and abused. It also did not matter whether the accused was the deceased's husband or not. There was overwhelming evidence to show that the accused had little or no respect for the deceased. A sexual defilement of his wife was a matter of little or no concern. He not only violated the wife, but he went ahead and battered that wife to death after sexually committing all sorts of outrageous offences on the woman. So, I think our courts are also beginning to wake up to this particular matter which is a social ill in society.

Mr. Temporary Deputy Speaker, Sir, as you know, Kenya is also party to the various international conventions which relate to the rights of women. The most crucial of those is the convention on the elimination of all forms of discrimination against women. Article 3 of the Convention requires state parties to take all necessary measures, including legislation to ensure the full advancement and development of women for the purpose of guaranteeing them the enjoyment of human rights and fundamental freedoms on the basis of equality with men. Whereas it is true that Kenya, along with many countries, has not quite fulfilled its reporting obligation under the various international conventions on human rights, at least, I can say that this is one convention on which we have submitted our report. That shows the Kenya Government's commitment to ensuring that women do also enjoy their rights on an equal footing with men.

Mr. Temporary Deputy Speaker, Sir, we are also aware of the various customs and traditions which have, as it were, either permitted or given rise to men asserting the right to discipline their wives, where they go wrong here and there. I am told that in some communities, it is only when you discipline the wife that way, that when the food comes to the table, you appreciate. She also appreciates that the food has come on the table! Those are the customs and traditions that I am talking about. We also know and, in fact right now, there is a very strong appeal going on all over the world, on the practice of abduction. That is in relation to some societies where one does not just go and negotiate happily, pay dowry and marry in a colourful wedding either traditionally or in the church. In some communities, particularly in Ethiopia for example - it used to be here also, although I am glad that the custom has died - you forcefully marry by abducting the lady you want. Your friends would go and invade the home of the lady, abduct her and bring her to you, and you can do anything you want with her. Even when the parents complain, you make sure that she stays long enough for her to become pregnant and then, it is *fait accompli*! That used to happen in Kenya and what I know is that, there are cases to prove that it is happening today in the neighbouring country of Ethiopia.

Mr. Temporary Deputy Speaker, Sir, although under the Judicature Act it is very clear that the African customs can apply provided that such custom or tradition is not repugnant to justice---

Mr. Ndicho: And morality!

The Attorney-General (Mr. Wako): And morality! Thank you very much law student, Mr. Ndicho! It shows that the parallel programme is working! Mr. Ndicho here is a student under the parallel degree programme! He is reminding me, as a fresh mind on this issue, that morality is there. That is true. That is, if it is not repugnant to justice and morality or inconsistent with any written law. That, whereas those customs ought not to be practised because they are repugnant to justice and morality, even more important, they are repugnant to the law because what is happening there is an offence under the Penal Code and yet, it has continued to happen. But what is more critical here that the law enforcement agencies have tended to regard those issues as of private nature, so that when the matter is reported to them, maybe in good faith, they do not want the family to break down, they more or less say: "We do not want to investigate this. You go back and reconcile. It is a private matter and we do not want to be involved." That

attitude has been there. It is that attitude which must be corrected. So, as you can see, there was need to bring this Bill. In fact, in many cases, it is long overdue. I do not want to take much time on the introduction part because there are Members here who are more familiar with this subject matter. I would like to go very briefly and quickly through the provisions of the Bill.

Mr. Temporary Deputy Speaker, Sir, first of all, as you note on page 35, this Bill provides for an Act of Parliament to provide for the intervention of courts in cases of domestic violence; to provide for the grant, enforcement and variation of court orders for the protection from such violence and for connected purposes. The issue on Clause 2 is one on interpretation and the various definitions.

Mr. Temporary Deputy Speaker, Sir, there are various definitions on page 36, but I would like to refer to the definition of *de facto* spouse. *De facto*, in relation to a person, means any other person with whom the person lives or has lived in a relationship in the nature of marriage notwithstanding the fact that, the two are not legally married to each other. It was very important that we capture that aspect because one of the technical points that have arisen in courts is:- "We are not legally married!" The two persons may have lived together for a number of years and have children. A problem arises and the status of the wife is challenged. The spouse, thereby, loses his or her rights. We are saying that the two do not necessarily have to be legally married to each other.

When you look at the *East African Standard* newspaper of today, there is a whole article on the concept of "come we stay". They have written a whole article on that topic. In other countries, they have what we call trial marriages, where you enter into a contract to try to see whether it can work before you end up in a permanent relationship. The newspaper stated that "come we stay" is a popular option. It is now so common that it goes unnoticed. So, this definition will capture such situations.

Mr. Temporary Deputy Speaker, Sir, the next definition that I would like to refer to is on page 39 on who a family---

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to challenge the Principal Legal Advisor to the Government, but this provision seems to contradict other provisions of other laws where, if one lives with a woman---

The Temporary Deputy Speaker (Mr. Manyara): Do you not think that, that is not really a point of order? Why do you not wait until you get an opportunity to contribute? He is just impressing upon you with his views.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I think not! I will challenge you on this one!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I await to hear his contribution, at which point I will give him marks; either A, B, C, D or E! So, I will be listening to your contribution very carefully, to see if you can pass the test on whether you have clearly understood the purposes and conditions of this Bill.

Mr. Temporary Deputy Speaker, Sir, I will go to Clause 3 where we are referring to the definition of "domestic violence". Domestic violence includes physical abuse, sexual abuse, psychological abuse including, but not limited to intimidation, harassment, damage to property, threats of physical abuse, sexual abuse or psychological abuse or in relation to a child abuse of the kind set out in Subsection 3.

Mr. Temporary Deputy Speaker, Sir, the meaning of a domestic relationship is set out in Clause 4. I do not have to read it out except to draw your attention; that just because people are in an employer-employee relationship, it does not mean they are in a domestic relationship.

Mr. Temporary Deputy Speaker, Sir, Clause 5 is the most important clause.

It states:-

"The object of this Act shall be to reduce and prevent violence in domestic relationship by

(a) recognising that domestic violence in all its forms is unacceptable behaviour."

If one may have wanted to use the words "primitive behaviour" but "primitive behaviour" is not part of the language that normally goes into a legislation of this nature but "unacceptable" really means "primitive".

The purpose of this Bill is to ensure that where domestic violence occurs, there is an effective legal protection for its victims by empowering the court to make certain orders to protect victims of domestic violence by ensuring that access to the court is as speedy, inexpensive and simple as it is inconsistent with justice.

This point is very important because the number of cases which have come to the Press, as you will definitely have noticed are cases from the less-advantaged members of our society. It is important that the less-advantaged members of our society be enabled and protected by law and, therefore, the procedures must be speedy, inexpensive and simple. The Bill provides for persons who are victims of domestic violence, appropriate programmes because

those who are victims have suffered psychological trauma and we need to treat that so that they can become complete, whole human beings with sound minds and able to hold on their own and assert their rights with everybody else.

Mr. Temporary Deputy Speaker, Sir, Clause 5 further states:-

"Requiring respondents and associated respondents to attend programmes that have the primary objective of stopping or preventing domestic violence and providing more effective sanctions and enforcements in the event that a protection order is breached."

We are now here talking about education because we really have to change societal attitudes towards this whole issue. Okay, our customs and traditions are dying. In fact, they are almost dead, but there are still people who feel that they are bound by them and behave in a manner that requires them to behave as if they were still living in a society gone by. We need educational programmes for these behavioural societal attitudes to change.

Mr. Temporary Deputy Speaker, Sir, Clause 7 states:-

"Any person who is or has been in a domestic relationship with another person may apply to court for a protection order in respect of that person."

Subclause (2) states:-

"Where the person eligible to apply for a protection order is a child, the application shall be made by a representative in accordance with Clause 9 (2)."

If you look at Clause 9 (2), it states:-

"A child shall make an application for a protection order either through a parent, a children's officer, police officer or any other person with a written consent of a parent of the child or with leave of court."

Mr. Temporary Deputy Speaker, Sir, we will now come to Clause 19. It is an important clause because it states what are the standard conditions of protection orders. We assume they have gone to court, their case has been heard and a protection order has to be given. If that is the case, that protection order shall be a condition of every protection order that the respondent who is the abuser shall not physically or sexually abuse the protected person. The abuser or the violator, if I may use that word, shall not threaten to physically or sexually abuse the protected person.

Mr. Temporary Deputy Speaker, Sir, Clause 19 further states:-

"The violator shall not damage or threaten to damage any property of the protected person. The violator shall not engage or threaten to engage in behaviour, including intimidation or harassment which amounts to psychological abuse of the protected person and the violator shall not encourage any person to engage in behaviour against the protected person where the behaviour, is engaged in by the respondent (violator) will be prohibited by this order."

In other words, the protection order is not only to stop the violator from the acts which have been mentioned in that clause, but also to stop the violator from having an agent who will commit those acts on his behalf.

Mr. Temporary Deputy Speaker, Sir, without limiting the provisions of that Subsection 1:-

"It shall be the condition of every protection order that at any time, other than when the protected person and the respondent are with the express consent of the protected person living in the same dwelling house, the respondent in case they are still staying together, shall not:

- (a) watch, loiter near or prevent or hinder access to or from the protected persons' place of residence, business, employment, educational institutions or any other place that the protected person visits often;
- (b) follow the protected person about or stop or accost the protected person in any place;
- (c) without the protected person's express consent, shall not enter or remain on any land or building occupied by the protected person.

It then goes on and on.

Mr. Temporary Deputy Speaker, Sir, there are detailed provisions there on how to deal with the protected person and the respondent when they are staying together and I am quite sure hon. Members will be commenting on that. I do not have to comment on everything at this stage.

Mr. Temporary Deputy Speaker, Sir, let me now turn to Clause 21. It states:-

"Where, after making a protection order, the court is satisfied that the respondent (the violator) is likely to cause actual physical injury to the protected person or persons, the court may attach a power of arrest to the protection order."

So, he can immediately be arrested when that happens. The protection order will remain in force for such period as may be specified by the court.

Mr. Temporary Deputy Speaker, Sir, under Clause 23, any violation of the protection order is an offence under our laws and the violator will be liable, on conviction, to a fine not exceeding Kshs100,000, or to imprisonment for a term not exceeding 12 months, or both.

Mr. Temporary Deputy Speaker, Sir, Clause 24 sets out the circumstances under which the police can arrest a person without a warrant. It states:-

"A police officer may, without warrant, if he believes on reasonable grounds that any person has committed an offence under Section 23, arrest and detain such person."

Section 23 is the one I have just referred to and it relates to the violation of the protection order. If a police officer knows that there has been a protection order against a particular person, and that person is about to violate it, then the police has the power to arrest that person without a warrant. That bar is necessary because, unless such a person is arrested on the spot, a person could be killed or maimed or a building set on fire as the police officer goes to court to get a warrant to arrest the person. So, timeous intervention in such circumstances is important.

Mr. Temporary Deputy Speaker, Sir, the Chief Justice shall prescribe the rules of procedure in the conduct of any proceedings under this Act. So, on enactment of this Bill, the Chief Justice will now make regulations and rules on how the court will deal with the matters that arise under this Bill.

It is also important that, when the court has made or is about to make the order, it explains to the violator the purpose, the terms and effects of the proposed order, so that the violator is in no doubt at all as to what the protection order is all about. The court must also explain to the violator the consequences that may follow if he fails to comply with the terms of the proposed order. The court must also explain to the violator the means by which the proposed order may be varied or revoked. In other words, if the violator wants to vary the order, or revoke it, he must be told how he can go about it.

Mr. Temporary Deputy Speaker, Sir, Clause 34 (1) states:-

"A police officer again may, without warrant, enter and search the premises and arrest any person who:-

- (a) the officer reasonably believes has assaulted or threatened to assault a family member; or
- (b) the officer reasonably believes is on the premises in breach of a protection order---

Mr. Temporary Deputy Speaker, Sir, the proceedings before the court will be in camera. I think it is important that they be in camera because these are family matters. We do not want every Tom, Dick and Harry to know what the family is going through, particularly given the fact that the victim can be subjected to further psychological torture just by headlines in the newspapers saying this is happening.

On Clause 39, appeals can be made from the orders made by the court.

Part IV provides for the Domestic Violence (Family Protection) Fund. Clause 46(1) talks about the usual procedures relating to the setting up of the Fund. Clause 46(1) states:-

"There shall be paid out of the Fund such monies as are necessary to assist victims of domestic violence in :-

- (a) the procurement of basic necessities;
- (b) securing medical treatment and care;
- (c) the procurement of counselling and legal services in such amounts as may, in each case, be approved by the Advisory Committee."

Mr. Temporary Deputy Speaker, Sir, in the survey that I referred to earlier, it was quite clear that many women choose to suffer in silence, because they have no alternative at all. They just have to stay with the spouse because it is the husband who is providing the means of livelihood. They decide to stay with the spouse for the sake of their children and so on. When they continue to do that, at the end of the day, something happens and the husband kills the wife. If you read the history of all these people who have been killed, you will find that it has been a long history of suffering in silence. Sometimes the husband kills a wife, but sometimes also, the wives become very annoyed. They cut off the vital parts of the man, because they have been suffering for quite sometime. We know that this has happened.

(Laughter)

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought every part of the anatomy of a human being is a vital part. What particular part is the Attorney-General referring to as a vital part of a man?

Hon. Member: Table it!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I did say the vital part of a man. That means that which distinguishes a man from a woman. For a person, every part is vital, but as a man, it is that which distinguishes you as a man! I think he knows it and that is why he has put on a tie, because he knows he is a man!

Mr. Temporary Deputy Speaker, Sir, this Fund will be able to help, at least, alleviate some of the sufferings that people in those situations go through.

Mr. Temporary Deputy Speaker, Sir, I do not want to take much time. It is my pleasure to have moved this Bill and I am glad that my Task Force worked very hard to produce this Bill. Very soon, again, as you can see on the Order Paper, there is another Bill coming, which was as a result of that Task Force that was appointed by the Government to look into all laws relating to women.

With those few remarks, I beg to move, and I will request, Mr. Osundwa, the Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports, which is charged with the responsibilities of gender issues, to second this Bill.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. Osundwa): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to second this Bill. This is a very important Bill. The Mover has taken close to 45 minutes moving it and, in so doing, he has explained a lot of provisions in it. I, therefore, intend to take very little time.

As he said, correctly, this Bill emanates from the Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports. It is, therefore, our wish and intention to give as many Members as possible time to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, as I said, this is a very important Bill as it seeks to protect the vulnerable groups, especially women, children, the aged and the disabled, from some wayward members of our society, who violate their rights with impunity.

Mr. Temporary Deputy Speaker, Sir, issues of domestic violence touch on all aspects of our Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports] daily lives; for example how we relate to our spouses, children, immediate relatives and distant relatives. Therefore, the main object of this Bill, as spelt out in the Memorandum of Objects and Reasons - you will permit me to refer to them, if only to re-emphasize what the Attorney-General has been enumerating here--- This Bill seeks to recognise domestic violence in all its forms as unacceptable behaviour. It also seeks to provide for the intervention of the courts to reduce and prevent violence in domestic relationships and to ensure that there is effective legal protection and relief for the victims of domestic violence.

Mr. Temporary Deputy Speaker, Sir, as the Attorney-General correctly pointed out, Clause 7(2) of the Bill provides that any person who has been in a domestic relationship with another person may apply to a court for a protection order in respect of that other person. What are the root causes of this violence? We live in a fast-moving world. We live in weak economies where both man and wife, and sometimes a child, are forced to go out to look for means of survival. In our case, we are spending a lot of time working on our maize or sugar plantations. In this case, the majority of the workforce in this country comprises of women. A woman will wake up in the morning and toil all day. Most families grow cash crops. However, once the crop has been sold, who collects the money? It is the man. When this man collects this money he leaves the home and does not return. Perhaps when he comes back he does not have a cent on him. When the wife asks for money to provide for essential domestic needs, like paying school fees or for medical attention, she is battered by this husband.

Mr. Temporary Deputy Speaker, Sir, some of these women have gone to report these cases of battery to police stations and they have been told: "Just go and take good care of your husband and this matter will end." That is not good enough. Domestic violence is rampant not just in Kenya, but the world over. Kenya is only trying to join the civilised society by bringing such legislation to take care of these people who are wont to violate human rights. Women's, children's and disabled people's rights are human rights. Therefore, I want to commend the Government for taking the lead in curbing the violation of human rights. We have read in the Press that somebody from a neighbouring country admitted that he only slapped his wife twice and yet his wife is a high ranking woman. What a shame! This

man said: "I only gave her two slaps." This is what we are trying to curb!

Mr. Wanjala: He did not marry a Vice-President; he married a woman!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. Osundwa): Mr. Temporary Deputy Speaker, Sir, I have heard some comments from a chauvinist but I do not go by that. I wanted to suggest that, in order to curb this vice, all police stations should set aside a desk to be manned - or is it to be "womaned" - by a policewoman so that whenever a violated woman goes to report her complaint, it will be taken seriously. This desk should also be set up at the chief's office because some of these police stations are far removed from the people. This will ensure that such cases are speeded up. We have read in the Press that a child had his fingers burned just because he stole Kshs5. Is this the society that we want? That is one of the main reasons why we are saying that we should have a legal framework to protect such vulnerable cases.

Mr. Temporary Deputy Speaker, Sir, as the Attorney-General pointed out, the Bill provides for a Domestic Violence Protection Fund out of which those members of society, who are not financially able, can be assisted. This is a good move and I hope anybody who is violated can seek immediate redress hoping that she will be assisted since there will be budgetary provisions for these kinds of cases. Some cases of domestic violence go unreported because people do not want to identify themselves. They do not want to come out and say that they have been violated either by their wives or husbands because of shame.

Clause 41 of this Bill proposes a fine of Kshs50,000 for any individual who identifies a victim of domestic violence in the print or electronic media. It also provides for a fine of Kshs500,000 for a body corporate which violates this law and goes ahead to identify the victim. I think that this fine of Kshs500,000 is too lenient because it takes time to build a good name and character. Any mischievous Press coming out to besmirch one's name should be heavily punished. I suggest a fine of not less than Kshs1 million for an individual who violates this law and not less than Kshs10 million for any newspaper or radio station which directly goes against this provision. After all, we have seen people winning defamation cases in our law courts and those concerned are fined Kshs20 million or even Kshs50 million. I suggest that these fines be enhanced.

As I promised, my Ministry would like to give more time to the people's representatives here to speak on this very important Bill.

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

(Question proposed)

The Temporary Deputy Speaker (Mr. Imanyara): The Official Shadow Attorney-General!

Mr. Murungi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to support this very important Bill. I do not think that in this day and age we should have Members in this House who are truly opposed to a Bill of this nature. The issue of domestic violence raises serious legal, human rights, moral, psychological and health problems in this country which I think this Bill will go a long way to alleviate.

These days we talk about human rights and we have said that women's rights are human rights. This Bill is trying to translate that into reality. The most famous person to talk about domestic violence in this country for years was Professor Maria Nzomo. Some years back, she was in the news for saying that rapists should be castrated. She should be disappointed that this Bill does not provide for the castration of husbands who rape their wives, but I think we have gone far enough to provide criminal penalties for this domestic vice. For the first time in the legal history of this country, this Bill has defined "domestic violence". It is defined in such a broad way that it covers all forms of physical, sexual and psychological abuse. In this Bill, we are not just talking about wife beating but also about husband beating and child abuse. The Bill is about violence by men towards women, women towards men, and both men and women to children. It is that broad based.

Mr. Temporary Deputy Speaker, Sir, sometimes, when we talk about women, we tend to think about distant people out there. As a matter of fact, you cannot talk about men without talking about women in very intimate terms, because the woman could be your mother, or your wife, or your daughter, or your daughter-in-law. So, as we talk about women in the context of this Bill, let us think about a woman as a person is who close to us, and not as a person we do not know and who is out there. When we talk about women in abstract terms, that is when we commit all these abuses against them. I am sure that if you found a man beating up your own mother or your daughter, you would not just stand by. You will intervene even if it means risking your life. So, that is the approach I would like Members of

Parliament to adopt when they talk about domestic violence in the context of this Bill.

Mr. Temporary Deputy Speaker, Sir, I must say that we are grateful to the Attorney-General, who, about some ten years ago, thought about this idea and appointed a task force to look into the whole area of controlling domestic violence through criminal law. He also thought that we should provide safe houses for victims of domestic violence. If you beat up your wife and she runs away from your house at 3.00 a.m., would you have an idea of where she would spend the night or what dangers she would encounter out there? It happens that this Bill is seeking to take care of such a situation through the provision for a safe house where she can go and sleep, have some tea the following day and be accorded some dignified treatment. If she runs away at night, she might meet with robbers or other criminals who might take advantage of her position. So, I think that is an important provision contained in this Bill. There is also a Fund, which is going to support the victims of domestic violence.

Mr. Temporary Deputy Speaker, Sir, for a long time, domestic violence has been outside the province of criminal law. It is not that we have not provided for it in the Penal Code; we have. When we talk about assault, we do not talk about excluding husbands and wives from it. We talk about any person who assaults another person. So, even a husband and a wife are included. However, the way we have interpreted and implemented this law has excluded domestic violence. When a lady goes to a police station to report that her husband has assaulted her, to whom does she report? She reports to a person who has no idea about human rights or women's rights. So, he looks at his colleague and asks amid laughter: "*Huyu mwanamke anasema nini?*" and then he turns back to the lady and tells her: "*Mama, nenda nyumbani ukasikilizane na bwana yako*", and that marks the end of the story. Therefore, if enacted, this Bill will change this situation, because it also seeks to provide a basis for education of policemen, so that when a lady reports such a case to them, she is not told to go back home and sort out her problems with her husband. We are making this a matter for the State.

If a man beats up a woman who is a stranger to him, or even a woman who is his own enemy, out there in the street, he faces the full consequences of the law. However, if the same man goes home and beats up his own wife, with whom he has been friends for many years, the law cannot enter into his bedroom. If this is the same man who is being imprisoned for beating up a woman he does not know, why should the law be shy to deal with the same man if he beats up a woman who has been so kind to him? This debate has been there for a long time. When I was in secondary school, one of the hottest topics of debate was: "Wife beating is an old art; true or false?", and then the students would then debate it. I do not remember how the debate used to be concluded, but it was a theoretical and an abstract debate. Today, we are having a practical debate in this House, and we are going to have a practical result, which I think will put an end to the school debate, which speculates on what would happen. The law which we are going to enact here will be the answer to that question.

Mr. Temporary Deputy Speaker, Sir, the Kenya Government has signed a lot of international conventions for the protection of human rights. I think the major convention addressing women's rights is the Convention on Elimination of all Forms of Discrimination Against Women (CEFDAAW). Article 3 of CEFDAAW provides that the parties to the Convention shall take all the necessary measures, including registration, for the purposes of guaranteeing women the enjoyment of human rights on equal basis as men. Kenya is a signatory to CEFDAAW. We are very happy that the Attorney-General is today incorporating into our domestic law certain aspects of CEFDAAW, especially Articles 3 and 5. Article 5 of CEFDAAW also provides that state parties to that Convention will take all the necessary measures to eradicate customary practices which discriminate against women. After the passage of this Bill, there will be no man who will try to justify wife beating, for example, on the ground that the Maasai or Meru customs allow him to do so. That custom will be contrary to our written law. A custom which is contrary to a written law is now devoid. So, we are changing a whole set of our customary laws, which discriminate against women and treat them as less human beings compared to men.

Also, we recently signed the United Nations Convention Against Torture, Cruelty and Inhuman Treatment. When we talk about torture, people only think about police torture and the prison warders who batter prisoners. We do not think about the torture that happens in our households. A man who holds a club and beats up his wife is as much a torturer as the policeman who beats up a suspect.

Mr. Temporary Deputy Speaker, Sir, we should also deal with aspects of torture in our homes. This law will prevent torture of men, women and children. We are making our homes more civilised and democratic, and a peaceful environment in which human beings are going to live. That is why we should not rely on outdated customary laws in order to violate the rights of half of the population of this country.

I would also want to pay tribute to the International Federation of Women Lawyers (FIDA), because they have taken time to educate, not only Members of Parliament, but also the public, on issues relating to women's rights and domestic violence. I know that they took hon. Members to a seminar. We were there with hon. Kittony, in Naivasha, and there was a heated debate as to whether men would pass a law which could prevent them from beating their own wives. FIDA officials argued: "This is a new age. Modern husbands should not beat their wives."

In fact, analysis has shown that men who beat women have certain characteristics. First of all, at personal level, they feel inadequate. So, when they are out there and are confronted by other stronger men, and they are unable to fight their battles, the only way of proving their manhood is by beating somebody at home. They go home to vent out their frustrations. One way of proving their manhood is by overpowering a woman. Then, the other characteristic, apart from this personal inadequacy, is related to jealousy, suspicion, especially as far as men-women relations are concerned. Men feel that their wives are unfaithful. So, some of these beatings are unnecessary because they are based on mere suspicion; that, your wife has come late, and you do not know whether it is a *matutu* which broke down somewhere. You do not know whether some circumstances arose, but even before you get an answer, it is *makofi tu!* Why? This is because you think that she has been with a man somewhere. This is the primary cause of domestic violence.

So, these views are also outdated. This problem of beating a woman because you suspect that she was with another man is also very outdated because it is treating women as property; that, women are your "fruits," and they were "eaten" by other men. Therefore, you feel very bad. You are reducing them to the level of chattels. Even our own matrimonial law is discriminative. I am talking about the common law which is applicable in this country; the matrimonial law which says that a man is entitled to damages for adultery so that if your wife illegally sleeps with another man, then, you are entitled to be paid compensation as a man. What happened to you for you to be paid compensation?

(Laughter)

What damage has been caused to you as a person? So, we are treating women as objects. That, somebody has hurt your dog and, therefore, you should be paid compensation.

Prof. Anyang'-Nyong'o: On a point of information, Mr. Temporary Deputy Speaker, Sir. I do not mean to interrupt the very good argument by my friend, the Shadow Attorney-General, but somewhere in the Bible, it is said that "what God has put together no man shall put asunder." A woman can put it asunder, but no man shall put it asunder!

(Laughter)

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, you know Prof. Anyang'-Nyong'o is a son of a Bishop, and I am a son of a peasant. So, I cannot contradict him on matters of that nature. But I am saying that---

The Temporary Deputy Speaker (Mr. Imanyara): He should have told you which verse of the Bible says that!

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, we should treat women as human beings, and not as property. All these laws whose basis is that women are property of men should be reviewed so that we respect the human dignity and human rights of women on equal basis as men.

I do know that some men have a problem with modern women. When Mr. Kamwithi Munyi used to be a Member of Parliament - I do not remember whether it was during the last Parliament, but it was during the Beijing Conference - I heard him say: "You know, these fast-talking Beijing women!" He was talking with a lot of bitterness! One feels that there is a class of men who feel challenged by women who are seen to be aggressive; they are seen to be difficult. But these women are not aggressive or difficult or impossible. What is happening is that our society has changed and that old image of a woman has changed. If you look at the KANU manifesto, you will find that there is a woman there who is knitting and with a *kitambaa*. That is the traditional concept of the woman; a submissive person who is looking for firewood, after babies and knitting.

I was reading a book about Maasais - I am sorry my friend Mr. ole Ntimama is here - and it says that when a Maasai man wakes up, he goes and sits outside the *manyatta*. Then, he washes his hands with cow urine and starts

shouting orders: "Woman do that! Woman do this!" He does that from sunrise until sunset. All the difficult tasks, of course, apart from hunting lions, are performed by women. So, in fact, although we are talking about women as a weaker sex, what this book was saying was that the Maasai woman, considering the number of activities involved in a day, could be a stronger sex. I do not want to challenge the Minister, but I think there is something like that. I know that he is very gender-sensitive, and he will agree with that analysis.

I think we have to accept that our women are getting educated. If you go to the Kenya School of Law, you will find that half of the number of students are women. They are reading the same books as men, and they are standing up for their rights, just in the same way men are doing. Let us not be afraid of women as a society; let us not be scared. Let us allow opportunities to go to our women because those women who are said to be "fast-talking Beijing women" are just like the *Mau Mau* freedom fighters during the struggle for Independence, but who were called very derogatory names by the *Wazungus*. This is because they were fighting for freedom and Independence.

So, I would like the ladies fighting for women's rights to be seen as freedom fighters instead of us using derogatory terms against them. We are very happy that they have made great impact and, as a matter of fact, without groups like FIDA, the Kenya Human Rights Commission, the Collaborative Gender Centre and the National Commission on Status of Women, this Bill would not be before this House today. Let us pay tribute to them.

Mr. Temporary Deputy Speaker, Sir, I would also like to mention that it is true that a lot of domestic violence goes unreported because the victims themselves are not empowered. I have a report here of cases of domestic violence in Kenya which show that only about a quarter of those cases are reported either to relatives, the Press or friends. The reason is because most of the women who tolerate domestic violence are those without means. They are totally dependent on the men who are perpetrating those acts of violence against them. They are not sure if they can economically survive if they leave that environment, dangerous as it may be. They do not know how they can economically survive outside that environment. So, in addition to this law, we should think of how we can economically empower our women so that they do not have to live in such oppressive conditions.

Mr. Temporary Deputy Speaker, Sir, we should also support civic education programmes for women's rights in this country. I am happy that groups like *Maendeleo ya Wanawake* are changing roles a bit. In the past, they were just part of the structures of oppressing women. But now, we can see a lot of programmes out there, including civic education. In the past, *Maendeleo ya Wanawake* was controlled by men but we are happy that it is now being liberated and it is providing civic education to women. So, in addition to the law, we would be very happy if some money could be set aside for creating awareness on women's rights, especially awareness about this law on domestic violence in the country.

With those remarks, I beg to support this important Bill.

Mrs. Kittony: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. Today, is a great day in this august House, and the Attorney-General will be a very likeable man in this country because of what he has done.

Mr. Temporary Deputy Speaker, Sir, we have come a long way in formulating this Bill. When the Task Force was formed immediately after the World Conference of the United Nations Decade for Women in 1985 in Nairobi, and it went around the country to seek views from women on this issue, it took a very long time for them to come up with tangible recommendations. That is why I am saying it is edifying to see a Bill before this House today, whose objective is to outlaw domestic violence. I want to take this opportunity to thank the Attorney-General for being so brave. He should work very closely with the people that have been mentioned in the Bill. I concur with Mr. Murungi that women have been disadvantaged for a very long time in this country. I want to thank the men who have supported this Bill, and those who will support it. We shall treat them as our friends. You can see that the House is not full today because we are discussing issues touching on women.

Mr. Temporary Deputy Speaker, Sir, women in this country are your mothers, sisters, wives and daughters. We do not understand why there is a lot of violence in our society, to the extent that women are taken to be enemies of men. As a matter of fact, some men can even use very crude weapons to attack women! It should be borne in mind that violence breeds violence, and retards development. It also affects the proper upbringing of children in the society. Violence has been perpetrated by men because tradition confers a lot of authority on them. I am happy, and I believe that all Kenyan women are happy today, because this Bill is being debated in Parliament. This Bill should be debated thoroughly and the laws that go with it should be put in place.

Mr. Temporary Deputy Speaker, Sir, the Bill has touched on everything that is of importance in the

promotion of the rights of women. My colleague, Mr. Murungi, talked about civic education and human rights. That is important because, recently, when the Children's Bill was passed by this House, we went to Maasailand to educate women about female genital mutilation (FGM). But the Maasai women told us that their culture was more superior than the laws we pass in this House. Similarly, our men will always discard laws for cultural supremacy. So, we still need civic education and human rights education when it comes to some of those issues. The men should be educated because they will play down the importance of this Bill when it is enacted into law. We should educate our men so that they can appreciate the importance of the law. Prof. Anyang'-Nyong'o said that the Bible says: "Whatever God has put together, no man shall put assunder." Therefore, it is always the men who abandon their families but not the women! Women only leave their husbands through frustration. So, let us not fight among ourselves. God created all of us and, therefore, what we are looking for as Kenyan women is to be loved and to be given the chance in life to participate fully in development.

Mr. Temporary Deputy Speaker, Sir, recently, in South Nyanza, a man chopped off the head and the hands of his wife and when the police came, he asked to be allowed to have his tea first while sitting on his dead wife's body. That is not love! That is cruelty of the highest order! Therefore, I call upon men to practise the love that God gave us. Violence is retarding development and that is why our economy is in tatters. A woman, as has been said here, is a very hard working person. The woman will work from morning until everybody has gone to bed. She is always the last one to sleep and the first one to wake up in order to fend for her family, and at the end of it all, she will have to satisfy the desires of her husband who sometimes beats her. Why is it that the man cannot beat his children? Women should be left alone, so that they can participate fully in the development of this country.

It is important that we are discussing this Bill after ratifying a lot of international conventions, since the meeting in Mexico, up to now. It is good that we are now engaged in this process and we are looking forward to a better country.

With those few remarks, I support the Bill.

Mr. Ndicho: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I wish to spend very few minutes, so that I can give my colleagues some time to contribute to this important and interesting Bill.

I would like to declare from the outset that I support the cause of women in this country. In the Kingdom of God, there is no man or woman. All are equal before the eyes of God. That is what the Bible says. I would also like to bring to the attention of the House the fact that the Lord Jesus Christ had very cordial relationships with the ladies of his time. After his death, when everybody else was asleep, it was the three women; Mary Magdalene, Mary mother of James, and Salome, who woke up early in the morning and went to the tomb. As they approached the tomb, they kept wondering who was going to roll the stone for them so that they could see their Lord. I would like to enjoin myself with the Lord Jesus Christ in that special relationship with women.

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Do you want information, Mr. Ndicho?

Mr. Ndicho: Yes, of course!

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. The hon. Member is moving too fast to the period after the death of Jesus Christ. But I just want to inform him that even before that, there was a lady who gave Jesus some perfume whose value was one year's labour wages for a workman, and Jesus said that whenever the Gospel is preached, her name would be remembered.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I was about to enumerate these ladies. In fact, it was Mary Magdalene who gave Jesus Christ the expensive perfume. But I also want to remember women in the Bible who contributed to the wellbeing of humankind.

I would like to start with a woman such as Esther who saved the nation of Israel when it was attacked by its enemies. It was also a woman called "Deborah" who prayed to God, raised her hands up in the air and stopped the movement of the sun so that God could give the nation of Israel time for victory. So, if you read the Bible, you will find that women played a very important role in the cause of humankind.

Mr. Temporary Deputy Speaker, Sir, I have no problem with this Bill as a whole, but there are a few areas that I have some problems with. But even before I come to that, I would like to tell the Attorney-General that he has brought so many Bills to this House when so many Acts of Parliament have been enacted here and they have not been implemented. Let us not make this House a House for making laws that are not implemented. Today, we have so many

things going on, both in the public and the private sectors, including corruption and stealing of public money, and relevant laws are there, both in the Penal Code and the Criminal Procedure Code (CPC), to deal with them. There is nothing that goes on in our country that has not been provided for in our laws, including wife battering and killing. This has all been provided for in our laws. So, the Attorney-General should not bring so many Bills to this House, which will not be implemented.

Today as I was coming to Parliament Buildings, I found a Mercedes Benz parked right in the middle of the road near the High Court, and the vehicle's driver was speaking with somebody else by the road side. Other drivers behind him were hooting but this driver did not care, yet we have traffic rules. So, it is not a matter of who should introduce here good laws for Kenyans to adhere to, operate within and obey, but it is the moral will that is not there. We have even a Constitution which nobody cares about. We now talk about the Constitution of Kenya Review Commission (CKRC) under the chairmanship of Prof. Ghai everyday as if Kenyans are expecting to receive a constitution the way Moses received the Ten Commandments from God at Mount Sinai. Even if we came up with a beautiful Constitution and there was no moral will to follow its provisions, we would find that, after all this hullabaloo, there was no need of having a constitutional review.

So, I would like to say that domestic violence is catered for in our laws. I would like to remind the Attorney-General of the provisions of the Penal Code and offences to the person. This is provided for in Section 251 of the Penal Code, Cap.263, which states:

"Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years, with or without corporal punishment".

So, we are talking here about men who batter their wives, occasioning them actual bodily harm. I agree with hon. Murungi's sentiments that when a wife is battered by her husband, she goes to the police station and the policeman does not know what to do. But if the police officer was serious, and the lady was at the report office with a lot of bruises, he would invoke the provisions of the Penal Code and ask the lady who injured her. It would not matter whether the person who occasioned bodily harm was a husband or a brother of the victim, but the law provides that if some injuries have been occasioned to a person, the policeman should go for the attacker even if it is the husband or the brother, and charge him. We are seeing the creation of so many laws while we already have in place laws that can take care of these issues.

Mr. Temporary Deputy Speaker, Sir, before the Attorney-General even brought this Domestic Violence (Family Protection) Bill to the House, it was important for him to understand the cause of violence in the family. The cause of violence in the family is the problem. There are various causes of violence in the family and one of them is, of course, infidelity. As one hon. Member, who is a lawyer, argued here so ably, if there is infidelity in a family, there will be violence in that family. Poverty is another cause of domestic violence, and unless the Government, under the able guidance of the Attorney-General, addresses the issue of poverty, it will not solve the issue of domestic violence. When a man cannot provide for the family, the wife goes out to look for food and comes back late, and the husband thinks that she was out on funny business and beats her up.

I am also apprehensive about this Bill, like my friend, Mr. Murungi. If we allow this Bill to be passed the way it is, then it will give women a lot of room to do whatever they want. It will create lawlessness in that a woman will feel that she can come home at midnight or early in the morning because there is a law protecting her against domestic violence. I can imagine a wife coming home at 3.00 a.m., referring the husband to this Bill and telling him: "Touch me and you will see". I said that there are some parts of the Bill that I have problems with. As much as we are in a modern society, where women should not be battered, I can also envisage a situation where we will formulate a law and bring more problems in the family than there are currently. If women now know that there is a Bill being enacted by Parliament to protect them from being beaten up by their husbands, we will be creating more problems in the country than we are addressing.

So, we must take care, and especially in respect of this Bill. I remember Mr. Speaker once said that the laws that are being enacted and the Motions that are being brought to this House must take cognisance of the expenditure aspect. In the Memorandum of Objects and Reasons, the last item says that the enactment of this Bill will occasion additional expenditure of public funds, which shall be provided for through the Estimates. So, you will see that we are trying to formulate laws which will eat more into our kitty, which is already depleted, yet the laws we are formulating are about matters that are already provided for. Therefore, this Bill is a duplication of the provisions of both the Penal Code and the CPC, and if the provisions of other Bills are not respected, how do we expect the provisions of this one to

be respected?

I would like to refer to page 36. When the Attorney-General was moving the Bill, I rose on a point of order because he was bringing in something very interesting. I would like to ask him to relate this "*de facto* spouse" to what is found in Section 170 of the Penal Code. The Attorney-General is introducing something very funny in law, when he says a *de facto* spouse in relation to a person means any other person with whom the person lives with or has lived with in a marriage relationship, notwithstanding that the two are not legally married to each other. Mr. Temporary Deputy Speaker, Sir, listen to what the law says, and which we have already in Section 170:-

"Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and cohabits or has sexual intercourse with him in that belief, is guilty of a felony and is liable to imprisonment for 10 years."

I would like the Attorney-General to show how these are going to relate and work together. If he is bringing a new person called a "*de facto* spouse", and the law provides that if you live with a woman, making her to believe that you are her husband, and you do all that pertains to the relationship between a woman and a man; then all at once she realises that you have been defrauding her, conning or cheating her; you as a man shall be liable to imprisonment for 10 years, and there is no option of a fine. The Attorney-General is now trying to contradict that section because, if he brings a *de facto* spouse whom you live with and you try to imagine that she is your wife while she is not, then, if in the course of that relationship you beat her, this law says that she should be compensated. So, all I am trying to say is that the Attorney-General is bringing a Bill that is duplicating what is already there. I think we should not spend Parliament's time bringing in laws that contradict others.

Mr. Temporary Deputy Speaker, Sir, the other point that I would like to touch on is that, this law is more or less talking about protecting women. But there are so many men who are battered by their wives but they do not report the matter because of shame and the stigma in society. Imagine my friend hon. Haji going to Buru Buru Police Station to say: "*Bwana ofisa, bibi yangu alinipiga leo, nataka unipatie Fomu P3---*"

(Laughter)

Or even myself! A man will never go to a police station to ask for a P3 Form to go to hospital because the wife has battered him. So, you can see that this Bill is discriminatory and it is against our Constitution which is here and which forbids discrimination.

Mr. Temporary Deputy Speaker, Sir, when going through this Bill, you will find that the Attorney-General seems to have been invaded by women in his office and intimidated. They told him that: "If you do not bring this Bill before the House for discussion, then we are going to do whatever we want with you." This Bill should be redrafted to include men so that they are also taken care of.

Mr. Murungi also introduced something which we were looking at, at the university, called "spousal rape." We were asking ourselves whether there is anything called "spousal rape", and we concluded that there is nothing like spousal rape. There is no way you can rape your wife in the legal context of a wife and a husband! It will only occur that there is rape if you are separated from your spouse or when you are divorced. That is the only time that the definition of the term "rape" will make sense. But the usage of the term "raping" one's wife does not occur in law! So, we must understand that the issues we are trying to bring about are contradicting other sections of the law. So, in a quick one, I would like to conclude by saying that in Clause 19, for example, the Bill sets out standards or conditions of Protection Order as follows:

"The respondent may, in special circumstances, and in a temporary measure, be excluded from shared residence or a specified part thereof."

What the Attorney-General is saying in Clause 19 is also covered under the family law. When you say that "the respondent should be excluded from the shared residence---" That is why I am saying that this Bill is going to bring more problems to families than relief. When the wife goes to report, she automatically becomes the plaintiff or the complainant, and the husband becomes the respondent.

I want men to listen to what the law says about them. If your wife reports to the police station and you are the respondent to that claim, the law says that you shall be excluded from the shared residence. It means, therefore, that, once she becomes a resident, you go out and leave her in the house. Is that what we are going to legislate? The man will be excluded from the shared residence or from a specified part thereof. That means, therefore, that the man cannot

even live in the servant quarter because this is a specified part thereof of the shared residence. You are excluded from the bedroom, sitting room, the whole house, the servant quarter and then the compound!

(Applause)

This is what the Bill the Attorney-General is telling us to pass today says. The hon. Member for Juja will not be party to that. If the court is satisfied that there is no other way of securing personal safety of any protected person at the time being---

Mr. Temporary Deputy Speaker, Sir, if hon. Members can take time and go through this Bill, they are going to see the animal in it, and they are going to tell the Attorney-General that much more than we---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is a little confusing now that the hon. Member for Juja Constituency made it very clear that he was supporting the Bill. Is he now retracting from his support of the Bill?

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I did not say that I support the Bill; I said that I support women, not the Bill! There is a whole world of difference between supporting women and the Bill! I said that I was going to extra areas---

The Temporary Deputy Speaker (Mr. Imanyara): But you did mislead the Chair! I was going to give opposing views because you told me you were opposing the Bill.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, since the former speaker supported the Bill, I am opposing it. So, you are within your own right.

Clause 41 of the Bill also affects the freedom of the Press. This is because it says that Clause 41 imposes restrictions on the reporting of proceedings under the Act. The Attorney-General says that when this matter goes to court, it is only the parties, the advocates or any other person or the parties that would like to be there. That one also **[Mr. Ndicho]**

contradicts another set of laws which makes our law courts. Unless the Attorney-General brings another Bill to make sure that family courts will not be public courts, then it will be contradicting that section of the law. But when he says that there are restrictions on reporting of the proceedings under this Act, this is definitely muzzling the Press. It is telling the Press that this matter is private, keep off!

Part IV of the Bill is most interesting, and this is what I believe would be misused by parties. It proposes to establish a fund; some money from the monies appropriated by Parliament, to be known as domestic violence fund.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. Osundwa): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is misleading the House! This Bill also concerns children and he can remember very well that we passed the Children's Bill here, and among the provisions of that Act is that you cannot hear children's cases in the open; you have to include them---

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, hon. Osundwa! You can respond to that one in your reply!

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, we have passed the Children's Bill and I have no problem with it. The problem is here and not with the children. "The object of which shall be to provide financial assistance to victims of domestic violence". Such assistance is proposed for purposes of assisting the victims of domestic violence to procure basic necessities, counselling, legal services and medical treatment and care. Now, if we are not careful, because of the rampant poverty in this country, there will be some people who will connive and create a mock violence in the family so that they can access these funds. The Chair can see that there is no point of getting money from the Exchequer which is already depleted. People will pretend that they have been battered by their husbands so that they can access these funds, and because the law is in place, you cannot deny them the money. You can see the kind of Bill that the Attorney-General has brought before this House, and I am happy that men can now wake up, read it in its totality and understand the many bad things in it.

I will not propose that we reject this Bill in total, but I will ask this House to let the Attorney-General go back and look into this Bill. First of all, he should consider the plight of men and remove those obnoxious issues, like telling the respondent to be excluded from the shared residence. These things should be excluded from this Bill. I hope that my colleagues will tell the Attorney-General to go back and draft another Bill, which we shall support.

Mr. Temporary Deputy Speaker, Sir, with those very many words, I oppose the Bill.

The Assistant Minister, Office of the President (Mr. Haji): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. Before I say that I support this Bill or oppose it, I think we are moving very fast in this country. We are moving very fast in the sense that we are trying to copy foreign ideologies and way of life which is not conducive in this country.

(Applause)

I am saying this because too many legislations that are out to restrict people to a certain way of life will not help in any way. If anything, this will increase violence in homes. This is because if one cannot sort out problems in the easiest way possible, definitely, he or she will resort to a more serious way. We are now talking about violence. Legislation of this kind will replace violence with death, because we rarely find people committing suicide in Kenya because they have disagreed in marriage. We have seen in Asia, ladies burning themselves simply because they have disagreed with their husbands.

On the question of circumcision of women, I think it is wrong for us, as a nation, to force people to follow foreign cultures. If the people want their girls to be circumcised and that is their way of life, I think we will infringe on their human rights if we tell them not to do that.

Today, we know that in Europe or the Western World, women--- I believe in speaking the truth. If you do not speak the truth, you are likely to be misunderstood. We see in pictures ladies who have pierced their private parts and put rings in them in the Western World. If they can do that, why should we be forced to live like them?

The Temporary Deputy Speaker (Mr. Imanyara): Have you seen that or you have read it?

(Laughter)

The Assistant Minister, Office of the President (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, I have read and seen photographs of those ladies. Nobody should deny this because it happens. Some of the ladies even put these rings in their tongues. If you watch the CNN or any television, you will see a lady with--- You will feel [**The Assistant Minister, Office of the President**] disgusted and like vomiting. We do not even know how they eat. Are we supposed to go and ape that culture?

Time has come when we should use our brains and think, instead of copying what other people do. I am saying this because the other day, we passed the Children's Bill. We have lived in this country since time immemorial in a harmonious and peaceful manner. We have taught our children good behaviour and cared for them. That is the reason why, in and out of this House, we have many learned people. Their parents used everything at their disposal to care for those children. When a father or a mother is instructed on how he or she should bring up his or her children, we are not helping the situation at all.

Mrs. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House by equating children with grown-ups? Grown-ups can choose to either get circumcised or not, but children cannot.

The Temporary Deputy Speaker (Mr. Imanyara): Mrs. Mugo, that is not a point of order!

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, it is because he is misleading the House.

The Temporary Deputy Speaker (Mr. Imanyara): You will get an opportunity to respond, but that is not a point of order!

The Assistant Minister, Office of the President (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, when we are denied the right to control our children, we are saying that we will bring up a nation with no discipline, moral obligation and culture. This is not a healthy situation.

Now, coming back to the life of a husband and wife, we have no obligation at all to tell them how they should live. All of us here are married and we have lived with our spouses harmoniously. There is a Somali saying which goes: "There is nothing more closer than the tongue and the teeth, but sometimes you bite your tongue." This is not intentionally, but by accident, but you co-exist. Similarly, a wife and a husband who live together will occasionally disagree. First of all, let me say how we live today. If you disagree for one or two hours, you do not laugh and speak with each other, but in the evening, you will sit together and reason. In the process, you will laugh and forget your differences. For heaven's sake, if your wife goes and reports her problems to a police officer at a police station, and,

maybe, the officer is a rogue, are we really helping the situation? There is no way I will reconcile with a woman who leaves my house to go and complain to a foreign person in a police station.

(Applause)

This is the naked truth, and the truth must be said. We are not against women, unless the women who are advocating for this kind of thing know how their mothers and grandmothers lived. They lived with their grandfathers and fathers harmoniously; that is how they were brought up, and some of them are today in leadership positions. We cannot afford to ape the white people. They have so many broken homes and we cannot copy their way of life.

Mr. Temporary Deputy Speaker, Sir, I will not support this Bill on the basis of principle and my religious conviction. This kind of law will bring a lot of conflicts and even courts will not be able to solve them. Like my brother Ndicho said here, if we pass this Bill, it will create a lot of contradictions. So, I beg to oppose.

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to contribute to this very important Bill. At the moment, this debate is like a bitter-sweet mixture, because, on the one hand, I am so proud and happy with the Attorney-General and the Seconder of this Bill because they are real men. I thank them for that. On the other hand, those who are not real men are so scared of this Bill. They stand here to preach to us about taking away the human rights of women, who are their daughters and wives. They want to give themselves those rights. They think that, somehow, somebody gave them the ownership of women. I am sorry to tell them that they do not own other human beings. According to the Book of Genesis, God created both men and women.

The Assistant Minister, Office of the President (Mr. Haji): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say we do not own each other when we swear, during the marriage ceremony, to live together because we belong to each other?

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, there is a difference between "belonging to each other" and "owning somebody". If you belong to each other, you cannot discipline the other.

The Assistant Minister, Office of the President (Mr. Haji): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mrs. Mugo: Mr. Haji, you had your chance and we let you contribute!

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Haji, let the hon. Member finish her contribution.

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, as I was saying before I was rudely interrupted by the hon. Member, the Book of Genesis says God created man and woman in His image. He gave them authority to rule over the animals and plants---

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. What I know from the Bible is that God created man in His own image. But Mrs. Mugo says God created man and woman in His own image. Could she tell us which particular chapter of the Bible says God created both man and woman in His own image?

Mrs. Mugo: Mr. Temporary Deputy Speaker, Sir, I said, according to the Book of Genesis, chapter 2, verse 28. I read it all the time.

The Government is a signatory to many international instruments. Those international instruments are not owned by foreigners. The Government participated in drawing up those international instruments, unless they want to tell us that our Ministers go there only to spend our money without participating in the drawing up of those international instruments. If they oppose them there, then they should not sign them. They should not come here and tell us that we are aping foreign culture when they are part and parcel of those instruments. Our Government is signatory to those instruments. The least they can do is to come to this House and be brave enough to domesticate those laws.

Mr. Temporary Deputy Speaker, Sir, in 1995, in Vienna, it was declared that women's rights are human rights, as was ably quoted by the Assistant Minister who seconded this Bill. The Kenya Government is signatory to that convention. Are these hon. Members telling us what the Government has signed there is null and void? It is very sad to hear hon. Ministers saying that they do not support what our Government has already signed because it does not suit them. They want to oppress somebody somewhere. As I said, it is those men with an inferiority complex who must always look for somebody to oppress.

Mr. Temporary Deputy Speaker, Sir, references have been made here to female genital mutilation (FGM). I

am amazed because we passed a law here outlawing that practice. It is common knowledge that FGM affects the girl child even in her motherhood when she grows up. Whose rights are they protecting? Are we protecting the rights of parents or children? We are in this House to protect all citizens of Kenya, including women and children. The fact that man has more muscle does not give him the right to oppress a child or a woman.

Mr. Temporary Deputy Speaker, Sir, many hon. Members referred to what they call "my home". Some hon. Members say "if a woman runs away from my home, I will not allow her back". That is not what this Bill is all about. This Bill is about ownership of property rights. I hope the Attorney-General will soon bring other Bills which are geared towards achieving equality between men and women, including ownership of resources acquired by both husband and wife in partnership. If those Members were really civilized, they would be referring to "our home" and "our farm", and not "my home." Action should be taken against whoever goes against that partnership. I hope even our Muslim brothers and sisters subscribe to the principle that "all that I have, I will give it to you." The Christian marriage subscribes to this. They say "everything I own, I will give it to you". There is no marriage covenant that allows men to acquire women as part of their property. That is a man-made notion. It is not God's plan. Otherwise, we should not be sharing the churches and mosques together.

I hope families of Juja Constituency have heard what my hon. colleague, Mr. Ndicho, had to say about them. I hope he will never see the inside of this House again. I am amazed. I thought we were dealing with civilised men of the 21st Century. But we are being taken back to the dark ages. We should be talking of harmony and dialogue in our families, and not battering of wives. It is the whole mentality about the status of women in this country that contributes to wife battering. It is a pity to hear leaders in this House belittling the status of women. If leaders in this House cannot help us, God help us! You can imagine what they preach out there.

Until some men do away with that kind of mentality, there will be no harmony in our families. Not all men are bad. After all, the Bill was moved by the Attorney-General and seconded by another man. You can see there are some men who are very different. Until men change their thinking, maybe, through civic education and embrace dialogue in families, then I do not know where we are heading to. Dialogue in families will work elsewhere where there is equality. It is that equality that differentiates the modern man from the primitive man, who could not reason with his wife.

Mr. Temporary Deputy Speaker, Sir, poverty has been cited as one of the causes of violence. I agree that poverty contributes to violence in our families. I feel very sad to see a man who cannot fend for himself and his family. Sometimes this causes jealousy if it is the woman who toils out there in order to support her family. As soon as she gets home she is accused of not respecting the man. Violence starts from there. In most cases, it is men who start violence in our homes. Most men have nothing to do in the houses. They go to market places to gossip, while women toil in the garden and in the evening they go to the market to buy food for the family. When she comes home a little late, she is asked where she was and with whom, and the man demands food. Men should realise that they cannot eat if they just stay at home. Why do men not start doing something worthwhile? I do not mean men in this House who talk negatively about women issues. I mean the men who are out there, who stay in market places all the time. Idle minds always find something to do. This may translate into violence against their wives.

This Bill comes at a very opportune time; a time when we have just passed a Bill on human rights. I would like hon. Members to look at this Bill in the context of human rights. Whatever we were passing is to do with human rights. In fact, I think this Bill is very shallow considering our African kind of families, where the family sometimes includes the brothers-in-law, the sisters-in-law and mothers-in-law. There are very many wives who have been deprived of their property and chased from their own homes because their husbands have died. I think the Attorney-General should extend this law to the family concept of the African family so that, that wife and the children have a right to the property that their father left. A wife of a late hon. Member of Parliament called me the other day and told me that she and her children cannot even settle where her husband was buried. I hope that will not happen to families of some hon. Members who are objecting to this Bill when they die before their wives. After all, men are known to die before the women most of the time. They leave their wives who are subjected to hell by the in-laws. I propose that this Bill includes widows and children protection from the in-laws.

Mr. Temporary Deputy Speaker, Sir, this Bill should also include shelter homes. This Fund should also provide shelter homes for the battered wives and husbands. I do not know why men are so scared to go and report. If they fear, how will they be protected anyway? As Mr. Ndicho said, men who are battered should own up. Women should not batter their husbands either, although most of the time, ladies have been battered for so long, until they

become tired and sick and resort to violence. But two wrongs do not make a right.

Mr. Temporary Deputy Speaker, Sir, apart from the Advisory Committee deciding on how the money will be used, it should engage a lot in civic education. We should educate the men and women to know their rights. At times, men have no shame. For example, a man can beat a whole Vice-President of a country and say that he only slapped her twice. What kind of men are we dealing with? It is so primitive! Apart from giving whoever is battered financial support for legal fees and many other things, we should have shelter homes where they can be assisted. Whoever is the aggressor should not remain in the house, because he has ceased to be a man, but an animal. It is only an animal that will batter the weaker animal. Even animals are sometimes kinder than human beings. For the protection of the victims, the aggressor should be barred from the home. The wife should be left in that home to look after children. If it is the wife who is battering the husband, she should also get the same treatment. This is not the husband's home, but for both spouses. During matrimony, people vow to give everything that they have, and that it belongs to both of them. Why can they not live to their vows?

Mr. Temporary Deputy Speaker, Sir, to simplify this Bill, I think there are certain sections which should be combined. There should be a connection between the family courtspast the police force and the Family Protection Advisory Committee. They should work in harmony. We should not have open courts because family matters are always held in private courts in order to encourage people to go and report. The police should be trained and retrained to know that women rights are human rights. There is nothing like domestic violence. In the past, they had been schooled and socialised to think that domestic violence is not criminal. There should be education more than anything else for court officers and the police to be involved in bringing harmony to the family. There is nothing as important as the family unit. When the family unit breaks, the country also breaks. I have had the chance to bury a mother who was battered and killed in Kawangware by the husband. It is very sad because the husband is in prison and the children have been left alone. The children saw the killing of the mother, which they narrate even today. Their minds have been destabilised. We must sort out this drug problem. Most of all, I blame the State for corruption, because that is what has destabilised the family. Giving women more rights does not destabilise the families. In fact, they need protection.

Mr. Temporary Deputy Speaker, Sir, I would like to thank all those lobby groups, for example, FIDA and the rest, including men who have lobbied for this Bill, as much as the men would like to think that they were only women groups. There were very many men who were involved in the lobbying for this Bill because they have realised that if this Bill is passed, it is going to knit this State together. The men should not be afraid of their wives getting more salaries. Men become violent when their wives come home late, because they think they have become proud. Think of your wife as your daughter who is going to also be a wife tomorrow. Many men complain of their daughters being beaten, forgetting that the wives they beat are daughters of other men. When a young man finds the father beating his mother, war erupts. We have poor mothers and sons because of selfish husbands. Family members ape their behaviour from the father. I hope that this House will rise to this occasion and prove that it is full of real men. We might even stop craving for many women hon. Members in the House. This is why we need them in the House.

I beg to support.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, like Mr. Ndicho said, I pick quarrel with the Bill as drafted. The spirit of the Bill is good, but the workmanship that has gone into the crafting of this Bill, unfortunately, earns my wrath. For example, it states:-

"A *de facto* spouse in relation to a person means, any other person with whom the person lives or has lived in a relationship in the nature of marriage, notwithstanding that the two are not legally married".

I do not know what led the Attorney-General to craft something like this when he knows very well that there exists an offence known as bigamy in our Penal Code. So, I do not know whether the Attorney-General now wants this House to pass a law that permits people to commit bigamy out there, so that they may not be arrested, or for purposes of only conforming to the provisions of this Bill. I will be dishonest with myself to support this Bill in this form.

Mr. Temporary Deputy Speaker, Sir, we already also have an unconstitutional provision existing - which Mr. Ndicho read out - Section 170 of the Penal Code, which also talks of:-

"Any person who misleads a woman into believing---"

It starts with "any person", but somewhere along the way, you discover it is the man who is targeted. Surely, the Attorney-General should be worried about some of these contradictions, because when he brings yet another one like this, surely, we are just going to have chaos all over.

Mr. Temporary Deputy Speaker, Sir, we do know for sure that in this country, we have accepted the English maxim that ignorance of the law is not a defence. But surely, I find greater logic in the thinking that you cannot be accused of being ignorant of that which you have no capacity of knowing. If you go to Turkana, how many people know that there is an offence of bigamy? Because there are Catholic priests littered all over the villages, they will all assume to be converted or become Christians, and they will undergo marriage ceremonies under the African Christian Marriage and Divorce Act, little knowing that if they undergo another ceremony of marriage under their customs, they will be committing a crime. Here again, the Attorney-General brings something else which adds to further crime! The Attorney-General is not being fair to this country. He may well have been influenced by the spirit to show that the country should have no room for domestic violence, but, surely, he should have done it in a more organised manner.

Mr. Temporary Deputy Speaker, Sir, further on, you will also note some definitions that I find very strange, about what constitutes domestic violence. They are contained on page 39. Among others, it says: "Domestic violence in relation to any person means violence against that person by any other person, with whom that person is, or has been in a domestic relationship." Now, among the things that are included there, though not limited, is psychological and physical abuse, sexual abuse, psychological abuse including but not limited to intimidation, harassment or damage to property. Now, I have a problem with this definition, particularly what you find in Subsection 3. For clarity, it reads as follows:- "That without prejudice to the provisions of Subsection 2 above, a person psychologically abuses a child if that person causes or allows the child to see or hear the physical, sexual or psychological abuse of a person with whom the child has a domestic relationship."

Mr. Temporary Deputy Speaker, Sir, as much as I admire the ingenuity of the draftsman, you can see in logical terms that this is something that is borrowed from elsewhere. It does not take cognisance of our real situations. If you were to follow this closely, many of our people living in Mathare slums, policemen in the police lines and the people living in Kibera will have to--- I do not know! It is going to be very difficult! Many of them will find themselves in jail! That is why I am saying that I have a problem with reconciling the reality in this country with this extremely exotic thinking that appears to have gone into the crafting of these provisions.

Mr. Temporary Deputy Speaker, Sir, regardless of our level of economic and social development, when you impose a penalty of Kshs100,000, or, in default, 12 months imprisonment or both, for somebody who commits a crime under this Act, I am seeing the whole of Mathare--- Most of them will not afford it! Many of them may end up committing crimes if this Bill is passed in its present form; not so much because they wish to do it, but because, first of all, they are not aware, and secondly, even if they are aware, they are unlikely to do anything with regard to their children. Indeed, Mrs. Mugo talked about civic education. I agree with her. We need to educate our people a little more on various issues, especially with regard to people's rights. What are we going to do about our policemen and policewomen? We know the conditions under which they live. We may have to start by arresting them because by not allowing them to live with their spouses in the situations that they find themselves in, we will also be denying them their other rights! Indeed, some of them are very basic; some of which people are not expected to live without. Indeed, such rights would include the right to matrimony and conjugal rights. So, what shall we do? We will find our policemen in a lot of trouble. So, do we start by having the law with an ignorant population which does not know it? Even if it knew it, they have nothing to do, to escape being caught by its provisions. Do we start by, first of all, improving the lot of Kenyans, so that they are in a position to make reasonable attempts to observe the law as enacted?

Mr. Temporary Deputy Speaker, Sir, I am saying that, first of all, the penalties are too high, and, secondly, the various provisions contained in this Bill are in direct conflict with other existing laws. I have specifically stated some of them. Indeed, we do appreciate that in this country, if you undergo a ceremony of marriage under the provisions of the African Christian Marriage and Divorce Act, or under the Marriage Act, which is basically a Western civil marriage, then you are implied to have allowed yourself to be tied by the Western Christian culture, which defines marriage as a union of one man and one woman for life, to the exclusion of all others! So, now, the others that the Attorney-General is introducing here will also be--- Now, there is a lot of trouble in this Bill in its present form. As much as we abhor domestic violence, we need to make serious attempts not to be seen to be passing laws at the spur of the moment. I am unlikely to be moved by emotions. A lot of pleas have been made, but it is not that the people who may be opposed to this Bill in its present form are not real men! Indeed, we may have to refer to biology to define what real men are. It is not a question of emotions here. I imagine that many of us here are real men and women!

Mr. Temporary Deputy Speaker, Sir, I find further contradiction in this Bill, in its present form. On pages 54 and 55, with regard to the standard conditions of the protection order, it states as follows:-

"It shall be a condition of every protection order that the respondent shall not -

- (a) physically or sexually abuse the protected person; or
- (b) threaten to physically or sexually abuse the protected person; or
- (c) damage, or threaten to damage any property of the protected person; or
- (d) engage, or threaten to engage, in behaviour, including intimidation or harassment, which amounts to psychological abuse of the protected persons; or
- (e) encourage any person to engage in behaviour against the protected person, where the behaviour, if engaged in by the respondent would be prohibited by the order.

Sub-section (2), states as follows:-

"Without limiting the provisions of Sub-section (1), but subject to Section 20, it shall be a condition of every protection order that at any time other than when the protected person and the respondent are, with the express consent of the protected person, living in the same dwelling house, the respondent shall not watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or any other place that the protected person visits often."

Mr. Temporary Deputy Speaker, Sir, I find this very strange. In fact, I cannot understand the logic behind it. There could be an order made against a certain respondent and the order is to protect a child or a young person that attends, say, Alliance High School. That protected person attends school, maybe, alongside other brothers and sisters. So, if an order is made against you, it really even restricts you from going to visit those other children. You cannot go about your own issues.

If an order is made that you should not even be seen loitering or even watching the place where the protected person does business and it happens to be at KICC and you are seen hovering around Harambee House there, you will be arrested since you have breached the order. The protected person could be on the 16th Floor and you have business to do on the first floor.

Mr. Temporary Deputy Speaker, Sir, I am saying that this is not reasonable. How can you be prevented from watching? Surely, we are opening floodgates for a lot of oppression by the police. Some capricious protected people will also say that they saw you loitering around and watching their place of business. Now, how is this going to be proved? Surely, the Attorney-General's team must be living outside this place to imagine that they can put something like this into legislation. It is just opening floodgates for a lot of misuse of the law by one, the police, and the so-called protected people.

Mr. Temporary Deputy Speaker, Sir, you will notice that the insinuation and the general thrust of the legislation is to protect mainly the women and the children. If already an order will be made, you may have to wear dark glasses and not to watch. I cannot imagine it. If the protected person is a Member of Parliament and you are passing by here and you watch this place, and the fellow could be in the parking lot, then you have committed a crime. Surely, is this what we want? Since the penalties and fines are so high, and we are still crying that our prisons are congested - we are still saying an offender will be fined Kshs100,000 or get 12 months' imprisonment or both - I can see our prisons more than trebling the population with the passage of this Bill in its present form.

Mr. Temporary Deputy Speaker, Sir, so that I do not become selfish, and in order to give my colleagues who may wish to contribute time to do so, with these few remarks, I wish to say that I oppose the enactment of this Bill in its present form.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I stand up to very, very strongly support this Bill and to state how much I regret, really, with a lot of sadness that the signs I am reading from the contributions coming particularly from that side of the House, is that this Bill may not pass. That will be a tragedy; that will be tragic. I appeal to all of us not to allow our male chauvinism to dominate rationality and reason. Let us remember we have got our daughters and that we are moving this country forward from where our forefathers left it.

Mr. Temporary Deputy Speaker, Sir, the time has come when we actually brought the legal framework that recognises domestic violence as a special type of crime and violence. It is not adequate to punish a man who has battered his wife under assault or causing grievous bodily harm. There are other forms of violence which are very well defined in this Bill that need to have a legal institutional framework in order for the law to be effective in protecting women and children. I do concede that it is not just women because there are some men who are actually battered.

There are cases that we read about in the papers, where the wife will be wailing at the top of her voice when

she is actually physically battering her husband. When the neighbours go in to find out, thinking that it is the woman who is being beaten, they find the man is being sat on and being battered. However, as the men are willingly conceding here, the man dares not to wail or cry out because of the shame that he would feel if the neighbours who are men came and found out that it is him who is being battered.

Mr. Temporary Deputy Speaker, Sir, I witnessed the other day when we went to plant trees with Prof. Wangari Maathai at Freedom Corner here with hon. Orengo, a whole platoon of GSU came marching, "hu, hu, hu", with their rungus and guns, and they descended on us. Some of us were able to run away, get into our cars and escape. However, one unfortunate person called hon. Orengo, was not lucky, believe me, because there was this hefty lady, who I thought was one of us because she was not in uniform, but she was a police officer wearing civilian clothes I saw her chasing hon. Orengo and actually crossing his path; she must have been very well trained because the way she put her leg across hon. Orengo's path and the next minute I saw hon. Orengo, he was on the ground.

(Laughter)

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very unkind to hon. Orengo for the House to be told that he was clobbered and floored by a woman. He might object to this later. Could hon. Muite be asked to withdraw that reference to hon. Orengo being floored by a woman?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, but I witnessed this with my eyes since I was there. Not only was he floored, but, first of all, this police lady was very generously endowed, particularly because she proceeded to sit on hon. Orengo until the other officers arrived.

(Laughter)

Mrs. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order, because that was a policewoman and not an ordinary woman who was trying to act like the policemen? Why should she perform any less?

Mr. Muite: First of all, hon. Mrs. Mugo shall realise that I am supporting this Motion. I am saying that there is a minority of men who are also battered. I remember the thought that was crossing through my mind; imagine if that lady was somebody's wife, what would she do with her husband? This is the point that I was making. I am supporting the Bill because, contrary to what Mr. Ndicho said, the Bill does not distinguish between men and women. It gives adequate---

Mr. Murungi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to remind my learned friend, Mr. Muite, that as a matter of fact we did this divorce case in the High Court, where an army colonel had filed a divorce on the grounds of cruelty, alleging that he had on several occasions been beaten up by his wife. The judge said from his chambers: "Are we safe in this country, if the colonel himself is in trouble?"

(Laughter)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, if men are battered, it is up to them to have the courage not just to go to the police station, but actually to make a complaint to the tribunal or the court which is being set up here.

But on a serious note, Mr. Temporary Deputy Speaker, Sir, I do want to say that this Bill is drafted in a very good manner. We have got diseases, including HIV/AIDS, and we have got husbands who would disappear from homes for a couple of days. They disappear for two to three days from home, and on the third day, the same man goes home in the middle of the night drunk. The first thing he wants to do is to jump on the wife. The wife has got the right to close her legs and keep them tightly closed, because she does not know where the husband was. She should not lay herself open to being infected with diseases, like HIV/AIDS. That is why the definition of domestic violence includes sexual harassment. If you are not going to be a faithful husband and stay home so that you can have your conjugal rights, do not expect that you can go and spend two to three nights with various mistresses, and on the fourth night, you go home and you want to jump on your wife. That wife has got the right to apply for a protection order in order to save her life. Sexual harassment is one of the definitions of domestic violence. She can report and get a protection order.

I am happy that this is now being institutionalised so that these special tribunals can investigate these complaints. As Mr. Murungi said, many women have been battered and subjected to all sorts of things because they dare not go to report to the police stations. When they go to report to the police stations, their complaints are taken as jokes. The police officers at the report office summon their colleagues and actually humiliate the lady trying to report, by making her repeat all the intimate details of what is going on. While going to police stations on other matters, I have witnessed women crying. They go for assistance, but they end up being even more subjected to a lot of humiliation. Now that they can go and report to these special courts and tribunals for the matter to be investigated, we will be beginning to contain domestic violence. Domestic violence is analogous, for example, to the issue of torture. You cannot contain the offence of torture through prosecuting for assault. Torture needs to be criminalised as a special offence of torture. This is analogous because it is recognising the need to criminalise certain aspects of conduct.

Therefore, Mr. Temporary Deputy Speaker, Sir, I do wish to appeal very strongly that we should support this Bill. Many women who have been killed in domestic violence, the man does not rise up one day and kill them. There would be a long history of abuses and battering. That is why, in the definition of domestic violence, even threat of violence is defined now as domestic violence. So, we do not have to wait until the woman is battered or until the woman is killed before she can go for protection. She should be protected from threats or sexual harassment, including rape, because if you were to have sexual relationship with your wife without her consent, that is sexual harassment or domestic violence. Therefore, the woman is entitled to go and get this protection, which is good, before it develops into murder. There is no use prosecuting a husband who has already killed his wife, like the case Mrs. Mugo was talking about; the woman is killed and then you prosecute the husband for murder and send him to prison or hang him. You leave the children without either parent. The intention of this law is to prevent that from happening.

Mr. Temporary Deputy Speaker, Sir, I hope we will truly enact this Bill into law. When we enact it into law, I will urge the Minister to discuss the issue with his counterpart in the Ministry of Tourism and Information, so that the Kenya Broadcasting Corporation (KBC) can mount a special educational broadcast on the contents of this Act of Parliament. It is no use passing such a beautiful piece of legislation when the women, particularly in the countryside, who bear the brunt of domestic violence, are not aware that there is protection being afforded under this new law.

So, he should discuss it with the Minister for Tourism and Information, and let the KBC carry the message loud and clear to every village, so that women in the countryside can now know that there is light at the end of the tunnel and they can get protection. They do not have to endure beatings. They can lodge a complaint and they can get these protection orders.

With regard to the maintenance, Mr. Temporary Deputy Speaker, Sir, in addition to the fund which is going to be provided for here from the taxpayers' money, if the husband has got means, why do we have to load the taxpayer with the maintenance of the abused spouse or her children, including giving her money to live on, while the husband goes scot-free? The Attorney-General should consider introducing an amendment during the Committee Stage to give the court power in a case where the husband has got the means. I accept the principle of the State setting up this fund, but let the husband be ordered to pay an amount of money to that fund that will go to the support of his wife and the family. If the court is going to give a protection order and even to order the husband out of the matrimonial home, let the court have, simultaneously, power to order the abusive husband in that sort of situation to pay some money and even to have his salary attached, so that he can be made to support the children. Therefore, that particular aspect should be looked at during the Committee Stage.

I have dealt with domestic violence, the spouse, sexual relationship, and the offence which is really not outrageous; the twelve months' jail term, if it is going to prevent the death of another human being, is fine. It does not mean that you must go in for twelve months. It says not exceeding twelve months. So, in appropriate cases, perhaps, the husband could be sent to prison for one or two weeks. I do not find that to be excessive at all. So, my appeal is that let us reason together. Let us use our rationality and not emotions or male chauvinism. Let us enact this Bill. I do appeal to women to clearly identify Members of Parliament who do not support this Bill because they do not deserve to be re-elected.

I beg to support.

The Assistant Minister, Office of the President (Mr. Gumo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to say something about this Bill.

I stand here to oppose this Bill. Today, in fact, there are very few men who batter their wives. This Bill should have been brought in the House, maybe, in 1940. It is very rare for wife battering to occur. Unless a woman is big

mouthed, she is hardly beaten. In a case where there is violence, it is always the woman who starts it. If you have a good wife---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Our Standing Orders prohibit hon. Members who are contributing from using abusive language. Is it not really abusive to talk about "big-mouthed women"?

The Assistant Minister, Office of the President (Mr. Gumo): Mr. Temporary Deputy Speaker, Sir, that is not abusive language. There is no way you will have domestic violence unless the wife starts it, because in most families women are taken as the weaker sex. I do not expect a man to get home and start fighting a woman. It does not happen unless the woman starts it. In fact, in some cases there are women who start fighting their husbands and in return because the husband has to defend himself, he fights back. If we pass a Bill like this one, we will have divorce cases everyday and the majority of the men and women will live single. As a result, this country will suffer most because if we have single men and women, there will be no production or labour and we will incur some economic losses.

A Bill like this one seeks to interfere with people's welfare. The moment you start interfering with people's homes, you are in fact, interfering with their human rights. You need to let people live freely. People should be able to do what they want. If you go to some of these slums, it is mostly women who take care of their husbands. They are the ones who look for food, look after the children and make sure that the family is taken care of.

A majority of the men are at work most of the time because most of the women there do not work. When a man comes back late and asks for food, we do not expect his wife to tell him: "Sorry, there is no food. You go back to where you have been." If you answer her back, you are taken to the police station. What sort of life is this?

Mrs. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member for Westlands in order to mislead this House by saying that a woman will say there is no food when the man, who has been working, has not even brought food home? That is what causes the fight. Is he in order to mislead the House?

The Assistant Minister, Office of the President (Mr. Gumo): Mr. Temporary Deputy Speaker, Sir, in most cases, food is there. You will find that it is the wife who is difficult; she does not want to prepare it.

Mr. Katuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard Mr. Gumo talk about bringing food. What kind of food are they talking about? Are they talking about food for the stomach or the other "food"? Maybe, that is where they are not understanding each other.

The Assistant Minister, Office of the President (Mr. Gumo): Mr. Temporary Deputy Speaker, Sir, Mr. Katuku knows what food is always there. The majority of the hon. Members in this House are married and are living happily. All these problems that the Attorney-General has mentioned here are understood. I am sure that if you went out there and read this Bill to the majority of the women, they would not accept it.

Mr. Temporary Deputy Speaker, Sir, I am sure that the majority of the women who participated in the preparation of this Bill have no husbands and they do not care. They want to create more trouble and chaos in people's homes.

Mrs. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Will you sit there and allow this hon. Member to abuse respected women who are trying to protect the welfare of other women in this country? It is the men who beat up and chase away the women because of an inferiority complex.

The Assistant Minister, Office of the President (Mr. Gumo): Mr. Temporary Deputy Speaker, Sir, that is not a point of order. The majority of the women in FIDA have no husbands. It is a fact and I am sure they are the ones who are pushing this Bill. We do not want to put our women into a similar situation because no woman wants to live without a husband. If you create any situation which will make that woman also lose her husband---

Mr. Munyasia: On a point of information, Mr. Temporary Deputy Speaker, Sir. I just want to inform Mr. Gumo, who was not here when the Attorney-General was presenting the Bill, that he actually admitted that it is FIDA who drew up the first draft of this particular Bill.

The Assistant Minister, Office of the President (Mr. Gumo): Do you see this, Mr. Temporary Deputy Speaker, Sir?

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): Order! As you will have noticed from your Order Papers, there is a Notice of Motion for Adjournment. So, the Business of the House continues, but I will interrupt Mr. Gumo's

contribution to tomorrow, when he will have an extra 20 minutes to complete his contribution.

**MOTION FOR ADJOURNMENT
UNDER STANDING ORDER NO.18**

RATIFICATION OF EU/ACP COTONOU AGREEMENT

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House do now adjourn.

Mr. Kombo: Mr. Temporary Deputy Speaker, Sir, I do second the Motion.

Last week I did ask Question No.149 in the House which was:-

"(a) When did the Kenya Government ratify the Cotonou Agreement between the EU and ACP countries?

(b) What benefits have accrued so far from this agreement?"

The Minister for Finance who was replying at the time gave an answer which I found to be very unsatisfactory, particularly when I asked a supplementary question on why the Kenya Government found it necessary to ratify such an important agreement without bringing it to Parliament. I did say then that international agreements and conventions require to be brought before Parliament for ratification, but the Kenya Government is in the habit of ignoring the people's representatives completely and, through bureaucracy, going ahead with the ratification.

Mr. Temporary Deputy Speaker, Sir, the Cotonou Agreement is the successor to the Lome IV Convention. I was embarrassed when some of my colleagues asked me what the Cotonou Agreement is. That question stressed the fact that it is the Government's responsibility to ensure that the people's representatives are made aware of what affects their lives. As we know, we had the Lome Convention, which established the partnership between the European Union and the African Caribbean and Pacific nations (ACP); there are 77 ACP countries, which have entered into a partnership with the EU. Under the Lome Conventions, there were supposed to be certain benefits. We have, for example, the STABEX funds from the EU, and the sugar quota that has been allocated to our countries, among other benefits.

However, 25 years down the road, it was found that, really, the ACP countries were hardly benefitting from this agreement. As we entered into agreements, it was decided that the system would change from preferential treatment to trade approach, which would be in line with the World Trade Organisation (WTO) rules. All these are completely complex issues. If the people's representatives are not involved, and we just leave it solely to the bureaucrats, we will find that we get a raw deal. Developed countries go to such negotiations well-prepared after their positions are endorsed by their respective parliaments. They are given the way forward in respect of negotiations. In our case, the bureaucrats go to such negotiations, totally ignoring us.

In the case of the Cotonou Agreement, for example, the arrangement is that trade will be on regional blocks, which are called Regional Economic Partnerships (REPAs). Kenya is grouped together with Uganda and Tanzania. The agreement went further and classified the countries into the least developed and developed countries. Kenya does not fall within the least developed countries category, while Uganda and Tanzania fall within the least developed category. Ironically, Kenya is expected to negotiate jointly with Uganda and Tanzania, a trade approach with the EU. How is Kenya going to negotiate trade deals with the EU on the same footing with Uganda and Tanzania, which still enjoy some preferential treatment due to their least developed countries categorisation? These are issues I would have liked the Minister to explain to this House, and say how the Government is addressing them, what it intends to do, and ask for this House's input.

If you look at the bilateral rules, you will realise that they are very complex. We cannot afford to leave them solely for the bureaucrats to tackle. So, these are issues I would have liked the Minister to bring up. Because we are running out of time, I would like to leave the matter at that, so that my colleagues can also debate it.

(Question proposed)

The Temporary Deputy Speaker (Mr. Manyara): Mr. Kihoro, I will allow you five minutes.

Mr. Kihoro: Thank you, Mr. Temporary Deputy Speaker, Sir. I also stand to support the Motion of

Adjournment and also point out that there are very many other agreements in which the Government had been involved, especially in connection with the ACP, but this House has not been given an opportunity of getting involved in them, or, at least, debating them. It is a great embarrassment if we allow the bureaucrats to just take over the bill and bid this country when we are aware that, eventually, it is us who will pick the pieces when things go wrong.

I am saying that in respect of the STABEX funds which were given to this country in 1990, 1991, 1992, 1993 and 1999, today, the funds relating to STABEX go beyond Kshs15 billion, and a lot of that money is still kept outside the country. There is a lot of money relating to STABEX that is in Forties(?) Bank, Brussels, the Standard Chartered Bank, London, the Central Bank of Kenya and the Kenya Commercial Bank. I do now understand that about Kshs2 billion is in the Co-operative Bank of Kenya.

It is very important that when our country signs these agreements with other overseas countries, hon. Members are informed so that they know what is of benefit to the people of this country. A lot of money in respect of STABEX has now been taken to other institutions, or spent in a way that the Government cannot account. A lot of that money belonged to the coffee farmers. Today, it has gone to the Kenya Wildlife Service (KWS), and a lot of it has gone to the Kenya Tourist Board (KTB). Some of it has been sidetracked to other areas.

It is important that this House is informed at the right time about what is happening. The Kshs2 billion in the Co-operative Bank of Kenya is now being lent to the farmers; some of it at 5 per cent, and the other amount at 15 per cent. All this money belongs to the STABEX. It is important that our Government plays an honest broker when it is signing agreements in respect of Lome, Cotonou Agreement and COMESA. If you asked hon. Members in this House what COMESA is about, and what benefits Kenya will get out of it, many will never be able to tell you. Mr. Kombo has spoken about the World Trade Organisation (WTO).

But I am saying that these agreements - especially economic agreements relating to farmers and people in the lower levels of this country who have become poorer by the day; 55 per cent of them living below the poverty line - should benefit all. It is very important that these agreements are not exploited by a few people who are able to sign them for their own benefits, and, maybe, also sidetrack that money elsewhere.

I beg to support. Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, Mr. Kibicho!

The Minister for Agriculture (Dr. Godana): The same side!

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, this Question was not properly answered. If the Minister told Kenyans the benefits that they got, then, perhaps, this matter would not have been raised. When this agreement was signed, Parliament ought to have been involved. You will realise that this agreement shifted from earlier arrangements between African, Caribbean and Pacific Ocean Nations and the OAU; the European Union had agreed to give some assistance to these countries for compensation for loss of earnings to their exports and also some line of credit. Why did we change under this Cotonou Agreement and place emphasis on trade, and the nations were to operate under one trade organisation rules?

The Minister ought to have brought that issue to this House - it was very important - so that Kenyans would have known how these rules would affect their trade. You will realise that under the WTO rules--- It is when we opened our trade under these rules - when we liberalised our economy - that a lot of commodities flooded this country at the expense of our commodities. It is time that Kenyans are informed through this House as to how this agreement is affecting their lives.

Mr. Temporary Deputy Speaker, Sir, farmers are complaining because milk is being imported from New Zealand into this country, because of the World Trade Organisation (WTO) rules. Rice farmers in Mwea are also complaining because rice is being imported into Kenya from other countries. The Minister concerned was unfair to this nation. The people of this nation ought to have known how that agreement was going to affect their lives. That agreement was signed without involving policy makers and Members of Parliament, and that is why it is affecting us in this manner. Subsidised commodities find their way into this country and as a result, our own industries are closing down. Our locally manufactured goods cannot compete effectively with those imported commodities. So, we must condemn the signing of such agreements by the Government. It is only through this House that Kenyans will have information that will be useful to them when conducting their business.

With those remarks, I beg to support.

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, I take the Floor to make three simple points. Firstly, much as the hon. Member is in order to ask for this time to debate a Question which was

not properly answered, and I take it that the Minister will be responding, I think the tenure of the debate is clearly misguided. Under our constitutional set-up, the negotiation, conclusion and ratification of international agreements, such as the Cotonou Agreement, is the prerogative of the Chief Executive! That is the constitutional system which we adopted! The only time when Parliament has a role as the Constitution is today, is when, in fact, that agreement, by its very nature, demands internal application as in the case of the East African Community Treaty. So, when we will be overhauling our Constitution, we should debate the pros and cons of giving a greater role to Parliament. I will be arguing against that, for reasons which I will advance then.

Mr. Temporary Deputy Speaker, Sir, secondly, I would like to comment on the application of the STABEX Funds. I want to state, as the Minister responsible, that the application of STABEX Funds is perfectly within the legal limits set both by the Lome Convention, and its current successor instrument, the Cotonou Agreement. The fact is, under the current agreement, it is quite in order to apply STABEX Funds--I emphasise the fact that STABEX Funds are now available not just for coffee or the few commodities to which they traditionally applied to, but to all commodities and service industries whose performance can have an impact on export earnings. That is how the Kenya Wildlife Service was covered, and that is how we intend to cover cotton and many other agricultural commodities.

Finally, there was the criticism about the implications of the WTO rules. I would like to say that we are a part of the larger world. But with regard to rice, the problem in Mwea has nothing to do with the importation of rice or with the WTO rules. The problems in Mwea were caused by misguided and spurious attempts aimed at solving problems, but which ended creating more problems. Last week, I was travelling from Embu and my car had a problem at Mwea. One Member of Parliament from the northern part of Embu drew the attention of the farmers to my presence. They all gathered around me and I started buying rice from them. In the process, I asked them whether they were happy with the present Mwea irrigation system or they wanted the Government back. They all shouted: "We want the Government back!" I asked them why they chased the Government away, and they said they were misled by politicians.

Thank you.

Mr. Keriri: Thank you, Mr. Temporary Deputy Speaker, Sir. I am happy the Minister for Agriculture has told us about the legal position regarding the Cotonou Agreement. We know about that. We know that the President has got the powers to do these things. We know that it is provided in the law that the Government can ratify these matters. The point we are trying to make is that it is unfortunate that an hon. Member of Parliament will ask another hon. Member outside that door what Cotonou Agreement is about. This actually demonstrates the way in which the Government wants to make others ignorant.

All these agreements that we sign have implications. Many Bills that are brought into this House are meant to try and ratify these agreements and other things that the Government happens to have done. The problem that this Government has, in many cases, is that hon. Members of Parliament do not know what it is trying to do. It is this selfishness by the Government to keep things to itself that is causing the problems. For example, if you take the African Growth and Opportunity Act (AGOA), of the United States of America, which is benefitting this country, you will find that the Government did not come to inform this House about its implications and benefits.

The Assistant Minister for Trade and Industry (Mr. Ekirapa): On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to correct Mr. Keriri's statement. On behalf of my Minister and my Ministry, I stood here and explained about the AGOA and I laid documents before this House to this effect. So, hon. Members ought to know that there are documents which were laid before the House on AGOA.

Mr. Keriri: Mr. Temporary Deputy Speaker, Sir, that is not what I am saying. The Government only comes here to explain issues when we ask Questions. We have three arms of the Government in this country, namely, the Executive, the Legislature and the Judiciary, which interprets laws. Parliament makes laws and then the Executive implements them. We want to discuss issues here before the Government goes ahead and implements them. We should discuss issues in this House; the Press reports them and people outside there know what they will benefit from.

If we had discussed the AGOA at length here, Kenyans would have known how to benefit from it. If we had discussed the procurement procedure in this House, which is being drawn up by the Minister for Finance, Kenyans would have known what procurement system we will use. The only people who know about this are Government officers in the field because they get circulars. Kenyans do not know about the procurement system. They are supposed to know about these things through their representatives in this House. Every time we have an important issue, it is important that the Government brings it to this House so that we can discuss it. We are not quarrelling about the legal position of the Cotonou Agreement, but we are saying that Kenyans have a right to know about it.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, I want to make a few comments. We are not complaining about the legal position in relation to ratification of the Cotonou Agreement, but it is time that Parliament knew what is happening in the Republic of Kenya.

The Kenya Government is a signatory to many agreements. It ratifies some of them, but at what stage does this nation know what is happening? The other day we took over a debt of Kshs6 billion. We have never seen a Paper in this House which is meant to ratify those laws. In our statutes which we have here, if the Kenya Government guarantees loans for parastatals and other bodies, they are supposed to bring that Paper to Parliament so that Parliament agrees that the Government should guarantee those loans. Many of those Papers have never seen the Floor of this House. How many of the 222 hon. Members plus two *ex-officio* Members, totalling to 224, know about the Lome Agreements I to IV, and now the successor, the Cotonou Agreement? I was asking Mr. Kombo to tell hon. Members what we are going to talk about when he moves a Motion of Adjournment to discuss the Cotonou Agreement, especially those hon. Members who have not read Economics. As the people's representatives, we should know what the Motion is all about so that we are able to say that, such and such thing is happening.

Our external debt is approximately Kshs400 billion and the internal debt is now Kshs260 billion. We are talking about a debt which is between Kshs660 billion to Kshs700 billion! Does the common man in this country and these legislators know how much was acquired, and whether it had the approval of this House, or Kenyans? There is no information about this! So, what we are saying is that, even where the ratification is a normal Government undertaking, this House demands that we know what is happening so that we can tell our people that we are being auctioned!

With those remarks, I want to support.

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, there is a situation which even is more worse. The Minister for Agriculture and the Departmental Committee on Agriculture, Lands, and Natural Resources went all round supporting cotton growers and ginneries. We have got 24 ginneries in this country.

Kenyans have grown cotton in order to reduce poverty. When we have constructed all those ginneries and farmers have already grown cotton; the Government has gone ahead and allowed cotton products to be imported into this country with lesser duty, without minding about cotton farmers in this country. The Minister may shake his head, but this arrogance will never get us anywhere! But they have allowed the cotton sector to come back to normal. The ginneries cannot sell cotton; where are we---

The Temporary Deputy Speaker (Mr. Imanyara): Whom are you addressing?

Mr. Munyao: I am addressing the Chair! Do I need to have glasses to look at the Chair? It is important that when some of these things are done, both agreements and actions on some issues should be done with a lot of consultations. That will take us somewhere, particularly at this time when we want to alleviate poverty in this country.

The Temporary Deputy Speaker (Mr. Imanyara): It is time for the Minister to respond. Unfortunately, that is the time we have.

The Minister for Foreign Affairs and International Co-operation (Maj. Madoka): Thank you, Mr. Temporary Deputy Speaker, Sir. I think the Motion basically aims at stating that the Government has contravened the Constitution. But my colleague clearly stated that the Government has not contravened the Constitution in ratifying the various treaties, agreements or conventions which have been brought before it. As it is, the Government has three arms; that is the executive, the Legislature and the Judiciary. The executive authority of the Government is vested in the Executive.

Mr. Temporary Deputy Speaker, Sir, I would like to assure hon. Members here that, before we ratify a treaty, an agreement or a convention, we submit a detailed Paper to the Cabinet, which thoroughly discusses it and consults before it ratifies that treaty. So, we are acting within the authority vested by the Constitution of this country. I think some of the points raised by hon. Members are valid. I agree that, maybe, hon. Members need to know what some of these conventions, agreements and treaties are stating. I think we have a wonderful opportunity now that we have the Constitution of Kenya Review Commission, which can bring in the necessary amendments, maybe to create room for that provision.

Mr. Temporary Deputy Speaker, Sir, in countries where civil law is in operation, such treaties must be approved by Parliament; like in the French system, where the Paper is brought before Parliament before the treaty or agreement is ratified. But in common law, as it has been practised in this country, it is the executive authority of the Government to execute this, and in this particular case, it is the Cabinet which does it.

Mr. Temporary Deputy Speaker, Sir, where we have had treaties which require certain sections of the country's law or other laws to be amended, the Attorney-General would normally bring that amendment to the necessary Act in order to comply with what is required in the treaty. As mentioned by my colleague, the East African Community Treaty was ratified by the Cabinet before it was even brought here. This is because there was no requirement that it must be ratified by Parliament. What was required was done but there are certain amendments needed in the Act. So, the Attorney-General will always take the responsibility to ensure that if there is any treaty which touches on any Act of the country, then he should come up with the required amendments.

So, the Motion is clear, and the Government has not done anything in contravention of the Constitution. What is required of hon. Members is for them to be adequately informed. Again, as pointed out by Mr. Ekirapa, when we discussed certain treaties, like the African Growth and Opportunity Act (AGOA) and the World Trade Organisation (WTO), the Minister came here and explained them. If we want to develop a new system where we inform the hon. Members, then we should bring it forward. But the Government has acted within the provisions of the Constitution in ratifying the various conventions, agreements and treaties.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 25th April, at 2.30 p.m.

The House rose at 7.00 p.m.