

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 26th April, 2006

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of the Non-Governmental Organizations Co-ordination Board for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the Minister
of State for National Heritage)*

Annual Report and Accounts of the Postal Corporation of Kenya for the year ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Telkom Kenya Limited for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the Minister
for Information and Communications)*

Annual Report and Accounts of the Tana and Athi Rivers Development Authority for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the Minister
for Regional Development Authorities)*

Annual Report and Accounts of the Investment Promotion Centre for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the
Minister for Trade and Industry)*

Annual Report and Accounts of the Kenya Medical Laboratory Technicians and Technologists Board for the year ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Kenya Medical Laboratory Technicians and Technologists Board for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the
Minister for Health)*

Annual Report and Accounts of the Kenya National Examinations Council for the year ended 30th June, 2005 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the University of Nairobi for the year ended 30th June, 2000 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of University of Nairobi for the year ended 30th June, 2002 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the University of Nairobi for the year ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the University of Nairobi for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the
Minister for Education)*

Annual Report and Accounts of Utalii College for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the
Minister for Wildlife and Tourism)*

Annual Report and Accounts of Western Kenya Rice Mills for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Nyayo Tea Zones Development Corporation for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Education
(Dr. Mwiria) on behalf of the
Minister for Agriculture)*

NOTICES OF MOTIONS

Mr. G.G. Kariuki: Mr. Speaker, Sir, I beg to give notice of the following Motions:-

ADOPTION OF COMMITTEE REPORT ON STUDY TOUR TO THE DRC

THAT, this House adopts the Report on the Departmental Committee on

Defence and Foreign Relations on the study tour to the Democratic Republic of Congo, on 15th to 18th September, 2005 laid on the Table of House on Wednesday, 26th April, 2006.

ADOPTION OF COMMITTEE REPORT
ON STUDY TOUR TO DJIBOUTI

THAT, the House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the study tour to the Republic of Djibouti on 6th to 8th September, 2005, laid on the Table of the House on Wednesday, 26th April, 2006.

Mr. Speaker: Did you lay those reports on the Table this morning?

Mr. G.G. Kariuki: Yes, Mr. Speaker, Sir.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

INTRODUCTION OF FREEDOM
OF INFORMATION BILL

THAT, this House do grant leave for the introduction of a Bill for an Act of Parliament entitled the Freedom of Information Bill for the purposes of nurturing information resources as a tool for development.

Mr. Midiwo: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

INTRODUCTION OF CONSUMER
PROTECTION BILL

THAT, in order to ensure comprehensive protection of the Kenyan consumer, this House do grant leave for the introduction of a Bill entitled the Consumer Protection Bill to establish a Consumer Protection Board that will contribute towards the improvement of consumer welfare and for matters incidental thereto and connected therewith.

Mr. Sungu: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

ADOPTION OF SELECT COMMITTEE REPORT
ON THE DEATH OF DR. OUKO

THAT, this House adopts the Report of the Select Committee on the death of the late Dr. Robert Ouko, laid on the Table of the House on 12th May, 2005.

Mr. Khamisi: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

ESTABLISHMENT OF SELECT COMMITTEE
TO INQUIRE INTO COLLAPSE
OF KILIFI CASHEWNUT FACTORY

THAT, recognizing that cashewnut farming has the potential of generating more than Kshs2 billion in foreign currency annually if properly exploited; noting that the Kenya Cashewnut Factory in Kilifi was closed down under mysterious circumstances in 1999 and its machinery and equipment sold off, thus depriving thousands of farmers and workers of their livelihood and completely ruining the industry, this House resolves to establish a Select Committee to investigate the circumstances that led to the collapse of the Kenya Cashewnut Factory Limited, and to determine whether or not corruption was involved in its closure and disposal, and that the Committee reports its findings to Parliament within 8 months of its formation, and that the following be Members of the Committee:

The Hon. Joe Khamisi, M.P.

The Hon. Lucas Maitha, M.P.

The Hon. (Dr.) E. Keino, M.P.

The Hon. Eric Gor Sungu, M.P.

The Hon. A.A. Bahari, M.P.

The Hon. (Dr.) Julia Ojiambo, M.P.

The Hon. (Dr.) N.N. Shaban, M.P.

The Hon. Zaddock Syongoh, M.P.

The Hon. J. Kihara, M.P.

The Hon. M.K. Cheboi, M.P.

The Hon. J.W. Nyagah, M.P.

Mr. Speaker: Mr. G.G. Kariuki, do you have another notice of Motion?

Mr. G.G. Kariuki: Yes, Mr. Speaker, Sir.

Mr. Speaker: Go on!

INTRODUCTION OF SQUATTERS SETTLEMENT SCHEME BILL

Mr. G.G. Kariuki: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, noting with concern the plight of scores of Kenyans who are landless across the country and whose earnings are barely enough to sustain them; noting further that there is no clear land use policy and aware that thousands of hectares of land belonging to the Government or private individuals lie idle, this House do grant leave to introduce a Bill entitled The Squatters Settlement Scheme Bill for purposes of settling all genuine landless people in the country.

COMMUNICATION FROM THE CHAIR

PRESENCE OF DELEGATION FROM PARLIAMENT OF GHANA IN SPEAKER'S ROW

Mr. Speaker: Hon. Members, the following Members of the Committee on Land and Forestry from the Parliament of Ghana, who are seated on the Speaker's Row, are currently visiting Kenya: The Hon. Ofusu Asamoah, Chairman of the Committee; the Hon. Osei K. Mensa Bonsu, Chief Whip; the Hon. Collins Dauda, Ranking Member; the Hon. Francis Osei Sarpou; Mr. Kamilo Pwama, Clerk to the Committee; and Miss Victoria Yafe from FRR, Ghana.

We wish the hon. Members and their staff a fruitful stay in Kenya.

Thank you.

(Applause)

Order! Order! Hon. Members, as you notice, we have taken quite a bit of time. There are Members, including the Minister for Information and Communications, who have sought a little time on a matter sought out in this Chamber this morning. Therefore, I want to finish all Questions by 3.30 p.m., so that we can finish these other matters, hopefully, by 4.00 p.m. and proceed with the Business of the House.

So, let us proceed to the Next Order.

QUESTIONS BY PRIVATE NOTICE

DEATH OF MR. BAARIU MICHUBU IN POLICE CUSTODY

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

(a) Is the Minister aware that Mr. Stephen Baariu Michubu, who was arrested on false allegations on 29th January, 2006 and locked in Mikinduri Police Station, died on 31st January, 2006 of bleeding from a bullet wound inflicted by the police while arresting him?

(b) Is he further aware that Mr. Michubu's life could have been saved had the police rushed him or allowed his relatives to rush him to hospital on the day he was shot?

(c) What has the Minister done to stop the impunity of the police department in Meru North and, in particular, apprehend the perpetrator of this heinous crime?

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

(a) I am not aware that Mr. Michubu was arrested on false allegations on 29th January, 2006 and locked in Mikinduri Police Station. However, I am aware that Mr. Michubu was arrested following complaints against him by one Mary Mwari Mungathia and Julius Mungathia Muiriera.

(b) I am also aware that Mr. Michubu died on the night of 30th/31st January, 2006. The circumstances under which Mr. Michubu died are the subject of an inquest that we have established vide File No.4/2006.

I undertake to bring a full report on the circumstances under which Mr. Michubu lost his life as soon as this inquest is completed.

Mr. Munya: Mr. Speaker, Sir, the Assistant Minister has not answered Part "c" of the Question. In any case, Mr. Michubu was shot by the police when they were effecting arrest in his employer's compound when he went to see the employer to get his pay for work he had done. The police shot him, fatally wounding him, arrested and locked him in the cells. They never took him to hospital until he died.

Mr. Speaker, Sir, a police inquest is undertaken only when the circumstances of the death are not known.

Mr. Speaker: That is right!

Mr. Munya: Mr. Speaker, Sir, in this case, the circumstances are very clear. I have a postmortem report, clearly indicating that he died from bullet wounds. There were two policemen who went to arrest the deceased. They are the ones who shot him. So, what is the inquest for? The circumstances are known. The police officers involved are known. Why has the Assistant Minister not arrested them up to now?

Mr. Kingi: Mr. Speaker, Sir, I want to assure the hon. Member that when the inquest is complete, and anyone is found to have participated in the death of Mr. Michubu, we will, definitely

take the necessary action.

Mr. Speaker, Sir, in Part "c" of the Question, the hon. Member talks of "impunity of the police." If the inquest reveals that there was any impunity in the Police Department, we will also take the necessary action. That is why I undertook to bring a full report to the House in a month's time.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. We all know that inquests are carried out where there is no clear evidence. What is it that is going to be found by the inquest?

Mr. Speaker: That is a question!

Mr. Angwenyi: Is the Assistant Minister in order---

Mr. Speaker: Order! Order, Mr. Angwenyi! It does not make it a point of order simply because you say: "Is he in order?" That is not a point of order!

Mr. Mwandawiro!

Mr. Mwandawiro: Bw. Spika, Swali hili ni muhimu sana, na ni lazima lipewe uzito unaostahili. Hivi ninavyozungumza, kuna watu zaidi ya 30 katika mtaa wa Dandora ambao wamekufa mikononi mwa polisi. Je, Serikali inafanya nini kurekebisha hali hii ambapo wananchi wanazidi kupoteza maisha yao mikononi mwa polisi, akizingatia matukio ya mtaa wa Dandora?

Mr. Kingi: Bw. Spika, ninalichukua swala hili kwa uzito sana na ndio maana sikutaka kuleta ripoti ambayo haijathibitishwa. Nimeliahidi Bunge kwamba nitaleta ripoti kuhusu swala hili baada ya mwezi mmoja.

Bw. Spika, iwapo kuna mwananchi ambaye amepoteza maisha yake, ripoti ikiletwa kwetu tunafanya uchunguzi unaostahili na tunachukua hatua. Iwapo Mbunge wa Wundanyi ana jambo lo lote ambalo linamatiza, anafaa kupiga ripoti kwa polisi na tutachukua hatua.

Mr. Mwandawiro: Jambo la nidhamu, Bw. Spika.

Mr. Speaker: Order! I think we are misusing points of order. The fact that you are not satisfied with an answer does not automatically attract a point of order. So, please, relax!

Mr. Angwenyi: Bw. Spika, itachukua muda gani kukamilisha huo uchunguzi?

Mr. Kingi: Bw. Spika, nimesema kwamba ninahitaji mwezi mmoja kufanya hiyo kazi.

Mr. Munya: Mr. Speaker, Sir, this is a very serious Question. Two police officers went to the house where this person was working and shot him. Instead of rushing him to hospital, they took him to the cells where he died. We are talking of conducting an inquest when we know who shot this person and killed him. What are we investigating? We should arrest the two police officers who are still serving in Mikinduri Police Station. What kind of an inquest are we going to conduct?

On 13th October, 2005, I asked a similar Question here about some police officers who had shot somebody dead. The Assistant Minister promised to arrest the policeman who had shot that person dead. That officer has never been arrested to date. What is the use of asking Questions here if Ministers promise to do something and they do not do it? These are matters that involve the lives of our citizens.

Mr. Speaker: Order, Mr. Munya! You are not also helping matters. You will take the whole of Questions Time!

Mr. Munya: Mr. Speaker, Sir, why is the Assistant Minister not immediately arresting the two police officers who shot this man dead? What is the use of an inquest? This matter does not require an inquest!

Mr. Kingi: Mr. Speaker, Sir, we want to establish the circumstances under which this citizen lost his life. We are conducting an inquest into those circumstances. I want to assure the hon. Member that should we find that anybody, be it a police officer or any other person, was responsible for the death of this citizen, we will definitely take action against him. I have

undertaken to bring a report about this matter in a month's time.

INTERDICTION OF MR. AMOS PANDE

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I would like to ask the---

Mr. Speaker: "You would like to ask" or "you beg to ask?" There is a difference between a desire and an actual request!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

Given the debilitating shortage of teachers in Nyanza, could the Minister explain why Mr. Amos Pande, former headmaster of Majiwa Secondary School in Bondo District, continues to be interdicted for an alleged misappropriation of school funds after he has clearly shown that the allegation was due to errors of omission in the cash book entries.

The Assistant Minister for Education (Dr. Mwiria): Mr. Speaker, Sir, I beg to answer.

Mr. Amos Pande, former headmaster of Majiwa Secondary School in Bondo District, unfortunately will remain interdicted until his case is heard and determined by the Teachers Service Commission (TSC). Action was taken against the headmaster on the basis of findings of an audit inspection report which was conducted in September, 2004, by a team of auditors from the Ministry of Education Headquarters.

The school's books of account then showed that the headmaster could not account for Kshs329,000, which is reflected as a cash shortage and Kshs23,700, which was income from the school's farm.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. However, you will notice that the audit inspection was done in September, 2004. We are now in April, 2006. All this time, the former headmaster has provided the Board of Governors (BOG) with all the information that is necessary to clarify those two issues. Why has the TSC and the Ministry not taken the advice of the BOG and reinstated the former headmaster? The local community needs the service of the former headmaster, who to my knowledge, has cleared himself.

Dr. Mwiria: Mr. Speaker, Sir, I was also concerned when I got the answer about the duration it has taken to take action. The TSC disciplinary committee has said that it will prioritise this matter. Unfortunately, the TSC cannot reinstate a teacher until the due process is followed and that involves a number of steps. This includes what the former headmaster has already done. He wrote a letter at the beginning of this year explaining his case to the TSC.

On the basis of that, he will be listened to by the disciplinary committee. If he is found innocent, he will be reinstated and compensated. It is unfortunate, but the TSC disciplinary committee is going to prioritise the matter according to discussions I had with the committee this morning.

Mr. Sambu: Mr. Speaker, Sir, the shortage of teachers in primary and secondary schools is very serious. Cap.211 of the District Education Boards Act clearly states that the function of DEBs is to superintend the functioning of schools. Would the Ministry allow the DEBs to employ teachers to replace those who die, retire or are interdicted? There is a serious shortage of teachers.

Dr. Mwiria: Mr. Speaker, Sir, this matter came up last week and we agreed that we are recommending to the TSC that following interviews of candidates who are available in every district, the DEB would then have the authority to recruit teachers, so that we do not have to do it every year. So, we are in agreement.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, would the Assistant Minister be prepared to go on record in this House and state what action the BOG has taken since September 2004 regarding this case? Has the TSC received both the BOG's report as well as the former headmaster's report

for action? What do those reports say?

Dr. Mwiria: Mr. Speaker, Sir, indeed, I asked for the minutes of the BOG meeting because I was concerned. It is quite clear that the BOG is exonerating the former headmaster. Unfortunately, that is not enough because the BOG and the headmaster could collaborate. The only step is for the actual procedure to be followed and the teacher will be listened to. The minutes of the BOG meeting will form part of the evidence. On the basis of that, if the former headmaster is found innocent, he will be reinstated.

Mr. Speaker, Sir, I am willing to go on record.

Mr. Speaker: We will begin with Mr. Muiruri's Question.

Mr. Khaniri: On a point of order, Mr. Speaker, Sir. My Question appears before Mr. Muiruri's on the Order Paper.

Mr. Speaker: Yes, you are right. I am sorry, Mr. Muiruri. Proceed, Mr. Khaniri!

ORAL ANSWERS TO QUESTIONS

Question No.253

ELECTRIFICATION OF SCHOOLS IN HAMISI CONSTITUENCY

Mr. Khaniri asked the Minister for Energy when he will supply electricity to Muhudu and Makuchi Secondary schools in Shaviringa Location in Hamisi Constituency.

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

Implementation work for the extension of electricity supply to Muhudu and Makuchi Secondary schools in Shaviringa Location in Hamisi Constituency is programmed to commence in mid 2006 and it is expected that the two schools will get electricity by December, 2006, at an estimated cost of Kshs8 million, which will also include Muhudu and Makuchi market centres.

Mr. Khaniri: Thank you, Mr. Speaker, Sir. I wish to thank the Assistant Minister for the positive answer. But while appreciating the positive answer, I would like to know from the Minister why it is taking more than one-and-a-half years to implement this project. I am aware that this project was approved early last year by the Ministry.

Mr. Kiunjuri: Mr. Speaker, Sir, it is the same prevailing condition that delayed us; that is the lack of designers and materials. I am assuring the House that we now have enough materials and the designers are already doing their work. From next month up to December, all those projects will be completed.

Mr. Rotino: Mr. Speaker, Sir, that is not the only project that has been delayed by the Ministry. Last year, the Minister promised that by September, 2006, there will be electricity in Sigor. It is almost four months to September and nothing has been done.

Mr. Kiunjuri: Mr. Speaker, Sir, it is not true that nothing has been done. Most of the hon. Members will confess that they can already see activities taking place in their constituencies. Secondly, appropriate measures and actions have been taken to ensure that these projects will be completed.

Mr. Speaker: Very well! Next Question, Mr. Muiruri!

Question No.090

PAYMENT OF COMPENSATION TO

MESSRS. KOMU AND GACHEKE

Mr. Muiruri asked the Minister for Lands and Housing:

(a) whether he is aware that the Ministry acquired the use of land title No. 1402402 Ndarugu Gakoe, owned and registered jointly by Mr. Ngugi Komu and Mr. Watari Gacheke and has continued to utilize the same land since 1975 without compensation;

(b) whether he is further aware that the Ministry has put up permanent structures on the said land; and,

(c) if the answers to (a) and (b) above are in the affirmative, if he could now proceed to pay for the current value of the land, loss of use since 1975 and other cash crop plantations in place at the time when the land was acquired by the Ministry.

The Minister for Environment and Natural Resources, on behalf of the **Ministry of Lands and Housing** (Prof. Kibwana): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware. However, I am aware that the Ministry of Water and Irrigation is in occupation of the said land, title No. 1402402 Ndarugu Gakoe.

(b) I am not aware. However, I am aware that the Ministry of Water and Irrigation has a water intake infrastructure on the said land.

(c) Given the answers (a) and (b) above, the issue of my Ministry paying compensation does not arise.

Mr. Muiruri: Mr. Speaker, Sir, it is good that this Ministry has admitted grabbing land from its own citizens. However, this Question came here last week on 19th April, 2006, and the Chair directed that it be re-directed to the Ministry of Water and Irrigation, which is occupying the land.

(Mr. Speaker consulted with Mr. Awori)

Mr. Speaker, Sir, I am addressing you! Will you listen to me?

(Applause)

Mr. Speaker: Mr. Muiruri, you are being contemptuous of the Chair!

Hon. Members: Yes!

Mr. Muiruri: Mr. Speaker, Sir, I am not.

Mr. Speaker: Mr. Muiruri, you are disorderly. Will you now sit down?

Next Question!

(Applause)

Proceed, Capt. Nakitare!

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

Mr. Speaker: Order, Mr. Muiruri! You will sit down now. Order! You must learn not to play around with the Chair.

Hon. Members: Yes!

Mr. Speaker: Please, this is a serious House. You are taking too many liberties and those liberties will not be extended by the Chair.

(Applause)

Proceed, Capt. Nakitare!

The Minister for Environment and Natural Resources, on behalf of the **Ministry of Lands and Housing** (Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to allege that a Government Ministry can grab land from a citizen? Could hon. Muiruri withdraw that allegation?

Mr. Speaker: Order! The Chair has decided that he will not hear the hon. Member. He thought that I was not listening to him.

(Laughter)

Proceed, Capt. Nakitare!

Question No.109

RESETTLEMENT OF TRIBAL CLASHES
VICTIMS IN TRANS NZOIA

Capt. Nakitare asked the Minister of State, Office of the President:

- (a) whether he is aware that people from Gitwamba, Timboroa, Teldet, Kisawai, Makhele, Kinyoro, Birunda, Matisi, Muroki, Lukhuna, Nalulingo, Sikhendu, Kiminini and Bondeni in Saboti Constituency, who were displaced during the tribal clashes of 1992, have not been resettled on their farms to date;
- (b) whether he is further aware that the displaced people now live under severe poverty in market centres, while those who displaced them occupy their farms;
- (c) what urgent measures he is taking to ensure that all the displaced people in Trans Nzoia District are resettled on their farms; and,
- (d) what plans the Government has to compensate the affected people for loss of life and property.

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

(a) I am aware that there are people from Trans Nzoia who were displaced during the tribal clashes of 1992, and some of them have not been resettled on their farms to date.

(b) I am also aware that those people now live in poverty and that is why the Government has been assisting them with relief food from time to time.

(c) The Government appointed a task force which visited all areas that were affected during the tribal clashes. Their main terms of reference were to ascertain the genuine number of victims and loss of land and make recommendations on modalities of resettlement of the genuine victims. The report is expected to be handed over to the Government in the next one month.

(d) Compensation to the affected people will depend on what kind of recommendations we will get from the task force.

Capt. Nakitare: Asante sana, Bw. Spika. Kutoka mwaka wa 1992 hadi sasa ni miaka 14, na Serikali haifahamu kwamba watu hawa ambao walifukuzwa kutoka mashamba yao na kunyang'anywa mali yao wanaishi sokoni, watoto wao wanazaliwa sokoni na wengine barabarani na wengine waliuawa. Serikali inajikokota ilhali watu hawa wanaendelea kuumia. Watu hawa walikuwa na mali yao---

Mr. Speaker: Order, Capt. Nakitare! This is not debating time.

Capt. Nakitare: Nauliza swali, Bw. Spika.

Mr. Speaker: Order, Capt. Nakitare! Order! I think it is about time hon. Members complied with the directions from the Chair. When you are given an opportunity to ask a question, ask a question! I am asking you to ask your question now.

Capt. Nakitare: Asante sana, Bw. Spika, kwa kunijulisha. Naomba Wizara hii ituambie kama itaweza kulipa ridhaa kwa watu ambao walipoteza mali yao ama watawasilisha kesi yao katika Mahakama ya Kimataifa huko Hague ambapo kesi yao itaamuliwa na mahakama kuu.

Mr. Kingi: Bw. Spika, kuna kamati ambayo iliundwa na Serikali, kama nilivyotangulia kusema hapo awali, na ilianza kazi yake Novemba, 2004. Kamati hii imekamilisha kazi yake na wakati huu inatayarisha ripoti tunayotarajia itapewa Serikali.

Nina hakika kuwa ripoti hii itaisaidia Serikali ili iweze kuwasaidia wananchi wote wa Kenya walioathiriwa na vita vya kikabila vya mwaka wa 1992.

Mr. Mukiri: Thank you, Mr. Speaker, Sir. This Question has come before this House several times and the same answer which the Assistant Minister has given us is the same which was given in the previous Question. The issue of this committee, whose report was finalized in 2004---

Mr. Speaker, Sir, it is obvious that there is nothing that was done in 2005 about it. Could the Assistant Minister now tell us how much money has been set aside in the Budget of 2006/2007 to resettle the clash victims?

Mr. Kingi: Bw. Spika, nafikiri kuwa swala hilo la Bajeti na kiwango kilichotengwa kugharamia watu hao ni Swali lingine tofauti. Nimesema kwamba ripoti inatayarishwa na kamati tuliyoiteua na kwamba masilahi ya wananchi wote walioathiriwa na vita vya kikabila vya mwaka wa 1992 yataangaliwa.

Mr. Raila: Mr. Speaker, Sir, the Question refers to those who were displaced in 1992. We are now in the year 2006. When this Government took over in 2003, it promised to resettle those people immediately.

In football terms, this Government is living on injury time and yet, it is talking about a committee that was set up in 2004. Does the Assistant Minister believe that this Government will be able to resettle those people before its time is up? The referee is actually carrying the whistle right now!

(Applause)

Mr. Kingi: Bw. Spika, nataka kumhakikishia Mbunge mwenzangu kwamba tuko na uwezo wa kuwasaidia walioadhiwa na vita vya kikabila katika mwaka wa 1992. Tuliamua kuunda Kamati hiyo ili ituletee mapendekezo ya kutekeleza. Imefanya kazi yake vizuri. Kwa hivyo, Mbunge mwenzangu asiwe na wasiwasi.

Mr. Speaker: Last question, Capt. Nakitare!

Capt. Nakitare: Bw. Spika, watu hao wamezaa watoto nje ya mashamba yao. Je, tunapowashungulikia mayatima wa wazazi waliokufa kutokana na ukimwi, Serikali ina mipango gani ya kuwaelimisha, kuwalisha na kuwavalisha watoto waliozaliwa barabarani?

Mr. Kingi: Bw. Spika, swala lililopo mbele yetu ni la Wakenya waliopoteza mashamba yao kutokana na vita vya 1992. Tutakapoangalia masilahi ya wazazi hao, tutashughulikia pia watoto wao wote.

Mr. Speaker: Next Question by the hon. Member for Eldoret East Constituency!

Question No.256

SALE OF NSSF SHARES IN KPLC

Mr. Kipchumba asked the Minister for Finance:-

- (a) why and how the NSSF shares at the Kenya Power and Lighting Company (KPLC) were sold;
- (b) what the current shareholding of KPLC per major shareholder is; and,
- (c) whether the Government intends to restore the said shares.

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

(a) The NSSF sold its shareholding in KPLC in order to lock in profit and re-balance its portfolio, so as to reduce risks. The shares were sold through the Nairobi Stock Exchange (NSE). Since the shares were sold as a block, they were advertised for sale and listed on the Exchange Board for five days, so as to allow potential investors, both local and foreign, to bid for the block and, thereby, enable the Fund to get the best price for its shares.

(b) The following is the current shareholding of KPLC per major shareholder:-

Permanent Secretary, Treasury	-	32,853,268
Permanent Secretary, Energy	-	1,035
NSSF	-	6,418,101
Kenya Reinsurance	-	66,156
Kenyan Residents	-	39,811,683
Non-residents	-	2,127,757

(c) The answer is no. However, the NSSF or any other public-sector-control Fund can purchase and hold additional KPLC shares for the benefit of its members.

Mr. Kipchumba: Mr Speaker, Sir, could the Assistant Minister tell this House which broker handled the sale of the shares? Were any tenders floated for selecting that broker?

Mr. Kenneth: Mr. Speaker, Sir, the broker who handled the sale was Dyer and Blair Investment Bank, which is one of the brokers in the panel of NSSF.

Mr. Keter: Mr. Speaker, Sir, could the Assistant Minister give the name of the company which bought the shares?

Mr. Kenneth: Mr. Speaker, Sir, I did not come with the name. However, from what I read in the newspapers - I do not know whether I can quote them - it was Trans-Century Ltd.

Mr. Speaker: Order! I thought hon. Members ask Questions from Ministers because they would be in a position to give authoritative answers! How do you ask the hon. Member to rely on newspaper reports which are outlawed in the House, anyway? Is the newspaper the Minister or you?

Mr. Kenneth: Mr. Speaker, Sir, I had not been asked who bought them. I did not want to give a blank response. I was just using my memory of what I read. I would, of course, go and find out who bought the shares.

Mr. Weya: On a point of order, Mr. Speaker, Sir. Would I be in order to ask the Assistant Minister to go back to his office and come with proper information to answer this Question properly?

(Applause)

Mr. Speaker: I am inclined to do that! These are public funds. This House and the nation needs to know that there was transparency in the dealings! I will give you two weeks! This Question is deferred for two weeks!

Next Question by Mr. Otieno Kajwang!

(Question deferred)

Question No.269

MEASURES TO LOWER COST OF
ACCESS TO INTERNET

Mr. Kajwang asked the Minister for Information and Communications:-

(a) what steps the Government is taking to lower the cost of access to the internet; and,

(b) whether he is aware that the high cost of access to the internet deprives Kenyans of the benefits of the information highway.

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, I beg to reply.

(a) In the year 2004, the Government of Kenya de-gazetted Section 5(v) of the Kenya Communications Act (1998), thereby liberalising the communication sector and removing all monopoly held by Telkom (K) Ltd and, allowing more players in the market. It is true that a population that has access to affordable Information Communication Technology (ICT) services has more benefits than the one that does not.

(b) Mr. Speaker, Sir, in lowering the cost, internet backbone gateway access operators, commercial VSAT operators and public data operators have been allowed to establish and operate international gateways. With all that competition, the prices are expected to drop, especially when all of them are operational.

Mr. Speaker, Sir, the Government recently adopted a new ICT policy which aims at ensuring that the services are more accessible and affordable to majority of Kenyans. In that policy, we have provisions for universal access, which should enable rural folks to have access to affordable internet. Since liberalisation of the internet world, internet usage has steadily been rising in Kenya and more mechanisms are being put in place to ensure increase access to the internet. It is worth noting that, the number of internet users has increased from 100 in 1996 to about 2 million in 2005.

Mr. Kajwang: Mr. Speaker, Sir, I thank the Minister for that good answer. I also thank the Government for removing the monopoly of Telkom (K) Ltd, which was a bottle-neck to internet access. However, the critical question is: Is it not the case that, when you are in Kenya, except for a few points in this City, internet access is too slow? One takes too much time trying to down-load information. That can be corrected by high-speed access which is called broad-band in other developed countries? How much money has the Ministry set aside to develop broad-band infrastructure, so that Kenyans can down-load information quickly? We do not want to spend too much time on the internet?

Mr. Kagwe: Mr. Speaker, Sir, what the hon. Member is referring to is called optical cables. Those optical cables provide broad-band and bandwidth that is required for proper internet connectivity. I agree with the hon. Member that internet connectivity in this country is very slow. One of the reasons for that is the use of very small bandwidth. Indeed, we are using about 126 kilobytes in Kenya. That is against the world's usage of, at least, one megabyte.

However, we are putting some measures in place. Currently, Kenya shares in a project known as the Easy Cable. It is a marine cable from Durban, South Africa, to the port of Mombasa. From there, it will be linking us in the inter-land.

Mr. Speaker, Sir, currently, Telkom Kenya has finalised the laying of the cable from Durban to Nairobi. We have gone to tender on that issue and we are also similarly looking at redundancies via a marine cable from Djibouti down the Somali coast into Kenya.

Prof. Olweny: Mr. Speaker, Sir, Telkom Kenya has telephone booths in all post offices.

Could the Minister ensure Telkom Kenya has such outlets for internet service to *wananchi* in order to make life easy for them instead of them travelling to major towns to access this service?

Mr. Kagwe: Mr. Speaker, Sir, I appreciate the spirit the professor has had in asking his question. Telephone booths as you know, are subject to vandalism and all sorts of security concerns. Therefore, the policy that the Government took is that instead of having internet facilities in telephone booths, we have provided the same facilities in post offices because the Communications Commission of Kenya (CCK) has via Very Small Aperture Terminal (VSAT) provided internet facilities even in far-flung rural areas. However, we know that the best way of doing all this is not to have internet facilities in telephone booths. The aim is to have internet facilities in every home and office.

Mr. Keter: Mr. Speaker, Sir, could the Minister consider lowering the licence fee of Kshs15 million for the international gateway and wireless loop because an ordinary Kenyan cannot afford it?

Mr. Kagwe: Mr. Speaker, Sir, we are always looking at liberalising the economy and indeed lowering the rates all over including other rates the process of liberalisation. They are under consideration.

Mr. Kajwang: Mr. Speaker, Sir, I want to thank the Minister for the effort the Government is making to connect us with an optical cable from Durban up to Djibouti although it is a very expensive infrastructure. However, how will this Ministry reach the villages with broadband unless it goes wireless? Secondly, what amounts of investments are you putting so that our schools, markets and villages can have access to the broadband?

Mr Kagwe: Mr. Speaker, Sir, we are talking about two different technologies here which we are trying to unify into one. Telkom Kenya is going to roll out broadband wireless technology by the end of this year and that is going to be available in all areas. Indeed, we have advertised for dealers. We want to sell the facility because Telkom Kenya is going to put base stations in rural areas. So, wireless is the way we are going. However, wireless on its own without the backbone and that is the optical cable cannot have sufficient band and for that reason we have still got to spend money on fibre optical cable technology.

(Applause)

Mr. Speaker: Very well. Next Question by Maj-Gen. Nkaisserry!

Question No.212

LACK OF SCHOOL FEES FOR
STUDENTS IN KAJIADO DISTRICT

Maj-Gen. Nkaisserry asked the Minister for Education:-

(a) whether he is aware that most secondary school and college students from Kajiado District have dropped from school for lack of school fees due to the current drought and famine; and,

(b) what measures the Government has put in place to ensure that these students' learning is not interrupted.

The Assistant Minister for Education (Dr. Mwiria): Mr. Speaker, Sir, I beg to reply.

(a) Although we have no official records regarding the actual dropouts from Kajiado District, we are aware as a Ministry that there are problems of dropouts across the country due to famine.

(b) In response to the above problem, we have done a few things but we would like to do much more than that. Firstly, we have dispatched the first tranche of the bursary which is Kshs1 million for every constituency. For Kajiado it is Kshs3 million. Two other tranches are going to be released soon. I think, in fact, by the end of this week or the beginning of next week, Kshs2 million should be released.

Mr. Speaker, Sir, secondly, there are other ways in which we are supporting schools in the country and which can make possible some savings that could go into supporting famine relief programmes including support for 20 laboratories in every district with regard to equipment, grants for arid and semi-arid areas and, of course, the overall Government programmes on famine relief for all schools and other relevant communities in the country. However, even more crucially, we have come up with an amount of money whose formula we are working out this week to ensure that some money will be available from outside the Ministry for districts that are severely affected by drought.

Maj-Gen. Nkaiserry: Mr. Speaker, Sir, let me also thank the Assistant Minister for really trying to answer my Question. However, the problem I have with his answer is that he knows quite well that Kajiado District was severely affected by the drought and, therefore, it wiped out the only livelihood of the people of that area. Therefore, the levels of poverty are very high now. The Ministry should be aware that majority of the children in Kajiado District were denied attendance to schools and consequently denied to sit for examinations because they could not afford to pay school fees. What action is the Assistant Minister going to take so that these students are allowed back to schools once they open?

Dr. Mwiria: Mr. Speaker, Sir, no child should be refused registration for examinations just because he or she cannot pay school fees. So, that is a matter that the parents and teachers can deal with. Secondly, I did indicate here that there is an amount of money that we are trying to provide as a Ministry to go to severely affected areas. I think in the next one week we will be able to support Kajiado schools along with many other schools in North Eastern Kenya and other parts of this country that are severely affected; of course, realising that the resources available to the Ministry of Education are not completely limitless.

Mr. J. K. Kilonzo: Mr. Speaker, Sir, the only money which we received this year is Kshs1 million which has been reserved for bursaries and this is a drop in the ocean compared to the number of students who are seeking bursaries. Could the Assistant Minister tell this House how much money each constituency is going to get during this term?

Dr. Mwiria: Mr. Speaker, Sir, we will do it as we have done before in that the next two allocations will be based on population, poverty index, the number of students in each of the districts but it will also depend on enrolment.

Mr. Speaker: Order, hon. Members! I think we are missing the point. The point is not the ordinary circumstances when there is normalcy. The hon. Member wants to know what measures you are going to take in these extraordinary circumstances when there was a severe drought to ensure that the students go back to school. What are you going to do to intervene to ensure students do not go home?

(Applause)

Dr. Mwiria: Thank you, Mr. Speaker, Sir. You have amplified the answer for the hon. Member. Hon. K. Kilonzo asked me about the next two allocations of the bursary funds and he further asked how much each constituency will get from what is remaining. That is why I was saying, it is going to be based on enrolment as we have done before. I did say that under these extraordinary circumstances, we have come up with a formula which is being worked on to be able

to have an idea of how much we will be able to put in those districts that are more severely affected than the others.

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

Mr. Speaker: Mr. Raila, what is it?

Mr. Raila: Mr. Speaker, Sir, the Assistant Minister is not answering the question properly. The Chair has put this issue of special circumstances very clearly. Yesterday, when we were discussing the Supplementary Estimates, we were told that part of the increase in Recurrent Expenditure was to deal with this kind of a situation. How much of that money that we voted yesterday has been earmarked to deal with a situation like this one?

Dr. Mwiria: Mr. Speaker, Sir, I can confirm that we are working on how to allocate Kshs60 million to the most severely affected districts. In time, we will come up with other resources. So, some action is being taken. The amount of money might never be as much as we would like, but something is being done. Some of this money is coming from the Supplementary Estimates that were approved yesterday.

Mr. Sambu: Mr. Speaker, Sir, in many of these areas including Kajiado District, families lost all their livestock as a result of the drought. We have seen people who owned hundreds of cattle, but have nothing now because all the animals died. Could the Assistant Minister waive the school fees for children in all the areas affected by severe drought?

Dr. Mwiria: Mr. Speaker, Sir, it will be difficult for us to quantify all those areas that were severely affected, and the specific students. Even within communities that are affected by severe drought, there are people who can afford to pay school fees. Not everybody lost livestock. Also, not everyone in those constituencies depend on livestock. We have not yet got to the point of waiving school fees. We continue to insist that education is all about cost-sharing. We will continue to cost-share, even under difficult circumstances.

Mr. Speaker: Last question, Maj-Gen. Nkaiserry!

Maj-Gen. Nkaiserry: Mr. Speaker, Sir, could the Government undertake to include in the coming budget, finances to ensure that children from poor families do not miss education?

Dr. Mwiria: Mr. Speaker, Sir, the hon. Member wants me to give an assurance about what we should do to help poor children, but I did not get the last bit of his question. Maybe, he could repeat his question.

Mr. Speaker: Order, hon. Members! It is now 3.30 p.m. This marks the end of Question Time. Mr. Osundwa's Question and Mr. Ndolo's Question will take priority tomorrow. So, those Questions will be listed on top tomorrow.

Question No.236

COMPLETION OF RENOVATIONS
AT MAKUNGA HEALTH CENTRE

(Question deferred)

Question No.047

DETAILS OF REVENUE COLLECTED
BY NCC IN 2005

(Question deferred)

POINTS OF ORDER

Mr. Speaker: Hon. Members, there are some hon. Members who want to seek Ministerial Statements. There is also a Minister who will give a Ministerial Statement. I will begin with Mr. Ochilo-Ayacko.

**REGISTRATION OF PERSONS
IN AWENDO TOWNSHIP**

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Immigration and Registration of Persons. As recently as last week, youthful persons at Awendo Township almost beat up officials of the Ministry of Immigration and Registration of Persons. The reason was that those officials were charging for issuance of identification cards. Those persons were aware that the President had issued a directive that identification cards be issued free of charge.

First, I would like to know from the Minister what the policy is, whether identification cards are being issued for free or not.

Two, he should tell us if there is any levy that is being charged. If there is, what is the amount and what is its purpose in view of the fact that youthful persons are generally unemployed and poor?

**IMPOUNDING OF MOTOR VEHICLES
BY THE POLICE DEPARTMENT**

Mr. K. Kilonzo: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Attorney-General, in respect of the illegal impounding of motor vehicles in this country by the Kenya police. If you go to the roads, there is mayhem. Kenyans who have imported cars legally, registered by the Government and duty paid, are being harassed in the streets, yet they are not being given any good reason why this is being done.

I would like the Attorney-General to tell this House and Kenyans at large, whether we are being ruled by the law of this country or the laws of another country.

I also want the Attorney-General to tell Kenyans whether they will be refunded duty and other taxes they have paid, including the inconveniences involved.

Mr. Speaker: I hope the Ministers have taken note of that.

Mr. Wako, are you ready for it?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I want to make a correction. The motor vehicles are being impounded by the Kenya Police, from what I can see from the newspapers. The Kenya Police falls under the Office of the President. They will respond to that.

Now, as to the law, I must have all the facts available to me before I can decide on the issues of the law.

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

Mr. Speaker: Order, hon. Members! We are not debating this matter!

Hon. Members, we will have the Office of the President respond to the matter and the Attorney-General give legal advice.

Mr. Konchelah, when will you be ready to respond to the Ministerial Statement that concerns your Ministry?

The Minister of State for Immigration and Registration Persons (Mr. Konchelah): Mr. Speaker, Sir, I just want to seek indulgence of the House because a similar Ministerial Statement

has been sought by the hon. Member for Bahari Constituency. Indeed, I have given him a copy of a similar Ministerial Statement. We had actually talked together on the need to draft an amendment of the Act to formalise the whole process.

Mr. Speaker: When will you give the Ministerial Statement?

The Minister of State for Immigration and Registration of Persons (Mr. Konchelah): Mr. Speaker, Sir, I wish to respond to both issues because they are similar by Thursday.

Mr. Speaker: But Thursday is tomorrow! Is that okay with you?

The Minister of State for Immigration and Registration of Persons (Mr. Konchelah): Yes, Mr. Speaker, Sir.

Mr. Speaker: All right!

Hon. Members, let us listen to the Ministerial Statement by Mr. Kagwe.

MINISTERIAL STATEMENT

DEMONISATION OF PARLIAMENT BY RADIO CITIZEN

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, this morning, Mr. Keter sought a Ministerial Statement from my Ministry regarding the airing on Radio Citizen of a broadcast on the 21st April, 2006 and 25th April, 2006 on hon. Members of Parliament.

(Applause)

Mr. Speaker: Order, hon. Members! What are you celebrating?

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, attention has been drawn to the contents of *Yaliyotendeka* Programme hosted by one, Mr. Waweru Mburu and aired by Royal Media Services, Radio Citizen, with particular reference to the programmes of 21st April, 2006 at 8.05 p.m. and 25th April, 2006 at 6.30 a.m. The contents of the two programmes centred on the approval by Parliament--

*(A Commissionaire distributed
documents to hon. Members)*

Mr. Speaker: Order! Will you, please, stop that distribution!

Proceed, Mr. Kagwe!

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, the contents of the two programmes centred on the approval by Parliament of the Supplementary Estimates. Mr. Mburu alleged in a programme, *Yaliyotendeka*, that hon. Members of Parliament declined to discuss and approve the said Estimates last week because of failure by the Government to increase their mileage allowances.

The presenter described Parliamentarians in the most despicable, demeaning and derogatory terms. The hon. Members were variously referred to as mass murderers, greedy, selfish, gluttonous, thieves, robbers, criminals and such other unpalatable tags.

Hon. Members: Shame! Shame!

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, in short, Mr. Mburu likened hon. Members in this House and its Speaker to agents of Satan and prayed to God to wipe them out from the face of the earth in the same way He did to the Biblical

Sodom and Gomorrah, and asking Him to annihilate them.

Mr. Speaker, Sir, the long and short of Mr. Mburu's vitriolic broadcasts lasting close to one hour and complete with repeats was to besmirch and cast negative aspersions on the character and standing of hon. Members of Parliament.

Mr. Speaker, Sir, may I indulge hon. Members in some of the verbatim words that were used in the programme and, I quote:-

"Kuanzia kwa Spika hadi Wabunge wake walio upande wa Serikali na Upinzani, hili ni kongamano la wezi na wakora sugu, wauaji wa halaiki na watu wasiostahili kuitwa Waheshimiwa wala viongozi."

My Kiswahili experts tell me that this translates to something akin to the fact that:-

"This is an assembly of thieves, robbers and mass murderers who do not deserve to be called either honourable or leaders."

Mr. Speaker, Sir, the presenter, in a combative tone, goes on to incite Kenyans to criminal provocation and to rise against their duly elected leaders. I quote:

"On behalf of Kenyans and for Kenyans, I would like us to prepare for battle. The battle that will take us to today's Parliament to say that we are tired of the oppression from Parliament and politicians".

To add insult to injury, the presenter further incites the citizens against their MPs, likening them to the agents of Satan, Again I quote:

"These politicians are like locusts; they are more dangerous than AIDS. My dear listener, if you look at your Member of Parliament you will see the devil, the enemy of life, livelihood and development of Kenyans".

As for the vulnerable Speaker of the National Assembly, Mr. Waweru imputes improper motive, by alleging that the Speaker was involved in corruption pertaining to the purchase of Continental House. He concludes that the Speaker, indeed, ought to be behind bars at the Kamiti Maximum Security Prison.

Mr. Speaker, Sir, at this juncture, I must indicate that I am alive to the sagacious words of the American Statesman, Thomas Jefferson, who said: If I were to choose between a government without the media and the media without a government, I would choose the latter. Mr. Jefferson's statement underscored then, as it does today, the critical role of a free Press in any civilized and democratic society. So crucial is this freedom that there can never be a free society without free media.

Mr. Speaker, Sir, it is with this hindsight that my Ministry, and I believe all hon. Members of Parliament, is cognisant of media freedom and its invaluable place in society. However, we all agree that Press freedom must have checks and balances and cannot be used to undermine other freedoms.

(Applause)

For instance, it is unthinkable that a responsible radio presenter would have the temerity to go on a live programme and liken hon. Members to prostitutes in Koinange Street, and I quote:

"There is no difference between these politicians and harlots in Koinange Street.

This is sex politics and these political harlots are men and women in Parliament."

Mr. Waweru, proceeds to maliciously and heretically beseech God to create a thunderbolt that will strike Parliament and kill all hon. Members instantly. As I quote again, Please remember this was on Friday.

"As we pray for our nation, my fellow Kenyans, I have a special prayer that God will listen to the cry of Kenyans and take action against the hon. Members of the

Ninth Parliament. This Parliament has become more than Kenyans can tolerate. The MPs do not deserve forgiveness or sympathy from anybody. This Parliament is full of people filled with the devil, and the only way is to destroy them like weeds or pests".

During the National Prayer Day, and at a time when the entire nation was engulfed in grief following the saddening and tragic demise of five of our colleagues and senior Government officials, this was the most insensitive and callous broadcast. This is, indeed, the height of media irresponsibility. To say the least, this was the broadcast stuff that, as you are aware, brought about the situation that resulted in the Rwandan genocide.

If broadcasts such as Waweru's are allowed to be entrenched, they maybe akin to the Radio Milles Collins hate broadcasts that ignited the slaughter of over one million souls in Rwanda. This must surely be stopped. One is tempted to draw parallels between Mr. Waweru's broadcast and the work of Jean Bosco Barayagwiza of Radio RTLMC of Rwanda, Ferdinand Nahimana and Hassan Ngeze of the anti-Tutsi newspaper Kangira; all were jailed for 35 for perpetrating the Rwandan genocide.

Mr. Speaker, Sir, my Ministry takes this matter with the gravity that it deserves, and has this afternoon communicated to the management of the Royal Media Services to immediately undertake a withdrawal and apologise to all hon. Members of Parliament, the Speaker and the House in general.

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! I can understand your outrage. Please, let the Minister finish.

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, it is possible to take more than one action. I have just stated the first one.

We have asked the management of the Royal Media Services to immediately undertake a withdrawal and apologise to all hon. Members of Parliament, the Speaker and the House in general.

In my demand letter, I have insisted that while broadcasting the apology, the station must not restate the injury, and that the apology, even when offered, does not stop Parliament in general, and in particular hon. Members adversely mentioned, from taking appropriate legal action. I wish to point out that hon. Members are aware that there are sufficient laws to protect the integrity of not only hon. Members but every Kenyan against libel, defamation and character assassination.

Allow me, therefore, to invite hon. Members, who have been aggrieved by this particular broadcast, to collectively and individually institute the necessary legal measures. I am told that it is actually possible for us to collectively institute a suit of 222 hon. Members.

(Applause)

Further, my Ministry is consulting with the Attorney-General with a view to fast-tracking to Parliament the long overdue Media Bill that will set the benchmark for the self-regulation of the media industry. I am appealing to hon. Members to support this Bill when it comes to this House. However, we must not lose sight of what is good, and I beg that we do not. We must not lose sight of the fact that not the entire media is guilty of this crime. The media houses which observe the tenets of journalism must be encouraged to continue doing so. Indeed, it is the expectation of the Ministry that independent media houses will also come out in the open to condemn such irresponsible practices, if the media industry is to earn the respect of all and sundry.

My Ministry is, therefore, sponsoring the Media Bill, a statutory mechanism, that will not

only set the benchmark for media practice in Kenya but will also ensure accountability by both the media and the public. The Bill will also establish a regulatory framework upon which people aggrieved by the media can seek redress.

It is a fact that this Government, more than any other, has been the focus of the media in so many ways. It is still a fact that this Government remains committed to freedom of the media. Responsibility of the media is not something we are asking. It is something that we are now demanding. As the Ministry that deals with information, communication and technology, I hereby table the hard copy of this statement, a CD of the broadcast and two floppy diskets that are basically a translation into English and Kiswahili of the same broadcast.

(Mr. Kagwe laid the items on the Table)

Mr. Speaker: I do not even think that what the Minister has given covers what other hon. Members have complained of. I guess that what was done was probably even worse than what the Minister has said. There was posthumous insult of our deceased colleagues, who died in the Marsabit plane crash. I do not know whether the Minister is aware that the same reporter actually savagely insulted the four deceased, the three late hon. Members from Marsabit and one from Moyale, just in the week when they were being buried. Mr. Minister are you aware of this?

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, there are circumstances when words are not enough to describe some actions that are taken by some people. Indeed, one really wonders when you listen to that broadcast whether the individual should not be examined by a doctor because he cannot possibly be sane. This is not the first time these broadcasts of insults to hon. Members are happening. It has continued to be the case. However, this is the worst. It is the apex or the height of insults that hon. Members have suffered from. Therefore, I am suggesting that the way forward lest we lose sight is to bring legislation to this House so that we can create mechanisms that can stop this kind of thing.

Mr. Speaker: Very well! I will hear a few more hon. Members. I will begin with Mr. Musila! However, at the end of the day, we will have to find a way forward. I know when you read Erskine May, there is a crime of contempt of Parliament. A lot of things are going on in my head right now, not particularly because of what they may have referred against me but because of the demeaning of the institution that I have spent half of my working life to develop, which is Parliament.

Please, proceed, Mr. Musila!

Mr. Musila: Mr. Speaker, Sir, the Radio Citizen and, indeed, the sister company's vernacular stations have made it a habit to insult, not only hon. Members but also Kenyans. They even incite communities against each other in this country. Mr. Mburu is just a messenger! The real culprit here is Mr. S.K. Macharia, the owner of the media house, whom we know very well why he has a grudge against hon. Members. However, the most surprising thing with the Government is that they continue and have given M/s The Royal Media Services so many frequencies in this country which are solely used for inciting the various communities and leaders of this country. Would I be in order to ask the Minister whether he will consider cancelling these frequencies? This will ensure that it is a lesson to others that they will not use the media to incite or insult leaders of this country.

(Applause)

Mr. Speaker: Who is the shadow Minister for Information and Communications?

(Mr. Keter moved to the Dispatch Box)

Please, be honest!

Mr. Keter: I am, Mr. Speaker, Sir. I would like to thank the Minister for that good Ministerial Statement he has given us. However, I would like to add one point. Apart from what Mr. Musila has said that Radio Citizen or M/s Royal Media Services has been given a lot of frequencies which I doubt whether they pay for, I would like to request the Government through the Communications Commission of Kenya (CCK) to cancel all those frequencies.

Secondly, since Mr. Waweru Mburu has abused the institution of Parliament, I think as an example, Radio Citizen should be barred from covering the proceedings of Parliament until such a time when we think they have apologised. This will set an example to other media houses.

(Applause)

Mr. Speaker: Order, hon. Members! This matter is sufficiently grave to demand a decision of the House. As we do this, we must always follow the law. The only way this House can express itself is through a structured Motion. However, we are late for that. We are late for any Motion for today and any hon. Member is at liberty to bring a relevant Motion to the Chair to discuss this grave matter. We will do that!

In the meantime, I am shocked, not as Mr. ole Kaparo, but as the Speaker of this House, that an individual rightly described by the Minister as requiring psychiatric attention should be allowed by the Government to go anywhere near any radio station. As the Minister says, the Rwanda Genocide was out of a radio station. It could have been a Waweru Mburu!

(Loud consultations)

I will not pre-empt what you want to say. I do not want to pre-empt what action you want to take. However, I want to register in the strongest terms possible the disgust of this House and of the Chair in the reckless behaviour continuously being emanated by Mr. Waweru Mburu and Radio Citizen against this House and the various communities of this country. I know that during the referendum he tried a lot to incite Kenyans to fight. However, to their eternal credit, the Kenyan people refused to be incited by Radio Citizen. I am afraid if the Government does not do anything, Parliament will.

(Applause)

I am going to look at the law of contempt of the Whole House and see whether or not it is attached or whether or not we may as well deal with that situation collectively and individually. However, as a national institution, I want to say from this Chair, first to the Minister, the Government and all the arms of Government responsible that they must ensure that the integrity of this House is not brought to disrepute through organisations licensed by it and to the organisation itself. You play with Parliament at your own peril! To the reporters of Radio Citizen, if they are accredited to this Parliament, until this Parliament decides, I direct from the Chair that the privileges conferred to them by me on behalf of the House are hereby and now withdrawn!

(Applause)

Order, hon. Members! The Serjeant-at-Arms is hereby instructed to implement that

decision by ensuring that those strangers are removed from the premises of this House and the cards of accreditation given under my hand or authority be withdrawn immediately.

(Applause)

*(The Radio Citizen journalists
withdrew from the Press Gallery)*

Order, hon. Members! I think this matter is grave enough. I am saddened by it. I want to say this for the record; I had the utter misfortune of listening to the character assault of our departed colleagues, just a few days after they died. I listened with bitterness, just as we were coming from Marsabit after burying the late Dr. Godana, to Mr. Waweru Mburu calling him unmentionable names just after the hon. Member's death. The same thing happened in regard to Dr. Galgalo, Mr. Sasura and Mr. Ngoyoni. Dead people! Mr. Mburu did so without sensitivity as to the feelings of their families, their communities and of Kenyans. I will ask the Government, because it is the one responsible for the whole issue; What is so special about Royal Media Services?

(Applause)

The Minister for Information and Communications (Mr. Kagwe): Mr. Speaker, Sir, I am sure all hon. Members in this House share the sentiments you have expressed. Indeed, we are all particularly outraged. Regarding the issue of licences, this afternoon, before coming to this House, I asked our Permanent Secretary, to go to the Communications Commission of Kenya (CCK) office and look at the contractual performance, licence obligations and the licence issued, to see where we legally stand.

As we have said, it is absolutely necessary that we follow the law as it stands, and ensure that any action we take is within the law. I would also like to say that it is not Mr. Waweru only who has been insulting hon. Members of this House. There are other broadcasters in other media houses as well.

When it comes to insulting, it is not only the Royal Media Services which has been insulting hon. Members. There are other media houses which have been doing so. That is why I said that the way forward is to ensure that the law is made tough, as far as the abuse of licences and broadcasting obligations is concerned. We need to make the law tough so that one is bound by the duty obligations to ensure that he follows the law and exhibits modesty as far as broadcasting is concerned.

Therefore, I beseech this House that as much as we feel bad about this issue, let us remember that we are the ones who make the laws. While the media is powerful, this House is even more powerful. We do not have to act in a manner that brings us to their level. We can act in a manner that keeps the name of this House high by ensuring that everything we do is within the law.

Thank you.

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

Mr. Speaker: Is that not enough? Order, order, hon. Members! Why can we not proceed in the manner I suggested? I suggest you proceed, if you please, in the way I suggested.

Let us move to the next Order!

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir.

Would this House be in order to take drastic and tough measures, which is okay because I have also been offended by the Press, and forget our brothers outside there who cannot come here and defend themselves? Our brothers have also been suffering in courts of law because of the same media, yet they are not vindicated? Those groups are really suffering out there. What action will this House take to vindicate our brothers who cannot come here and defend themselves?

Mr. Speaker: Who are those brothers?

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Speaker, Sir, we have our priests and farmers who have been offended by the media. We have been accused several times of being selfish. So, it is only fair that as we take action, the House also considers, on behalf of other Kenyans, what can be done to vindicate them.

(Loud consultations)

Mr. Speaker: Order, hon. Members! I think the Assistant Minister's point should not arise. This House is the representative of all people. Whatever action it takes will be for all Kenyans. It may be that the outrage here culminated with the direct assault of this House; the institution of Parliament. If the institution of Parliament collapses, then this country collapses too. Therefore, we must guard this institution vigorously and with all the force we can muster.

I lead from the front to safeguard Parliamentary integrity and the respect of this House. It is okay to insult individuals. However, to insult the whole House, the institution of Parliament, is another issue altogether. In whatever you do, obviously, all the grievances of the Kenyan society should be considered. The Assistant Minister happens to be my local Member of Parliament. For the interest of this House, the particular individual we are discussing claims to also come from the area of my local Member of Parliament, which is my area too. He comes from our district and I know that maybe, the insults to the House were perpetuated by that fact. However, that is irrelevant. The relevant bit is; the effect of not only the uncontrolled utterances of this individual and others, as the Minister says, but also instances where some media houses have specialised on publishing lies which, actually, amount to inciting the public. It is not one individual who does this. I think when you address this issue, you must make it general and fit the individual concerned to that generality.

Thank you. We will now leave it at that.

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

Order, hon. Members! There must be an end to something. The end of that discussion is now! The Chair has declared so.

Next Order!

Eng. Muriuki: On a point of order, Mr. Speaker, Sir. With all humility, I wish to bring to the attention of the Chair the fact that many hon. Members had asked me to request that the Adoption of the CDF Committee Report be given priority.

(Applause)

Mr. Speaker: Order, hon. Members! Eng. Muriuki, I know of no special position you hold to direct the business of the House. I decline and the business of the House will be conducted as stated in the Order Paper. That is finished!

Next Order!

BILL

Second Reading

THE SEXUAL OFFENCES BILL

(Loud consultations)

Mr. Speaker: Order, Members! Order! I cannot say from one side of my mouth that the integrity of this House will not be assaulted by outsiders and from the other side of my mouth allow you to assault the integrity of this House. You will not assault the integrity of this House and I am saying that from both sides of my mouth.

(Laughter)

Ms. Ndung'u: Mr. Speaker, Sir, I beg to move that the Sexual Offences Bill be now read a Second Time.

Kenya as a country is at war. However, it is not a war in the conventional sense. This country is faced with a much more serious problem that touches on the wellbeing of its nationals in the context of insecurity at home. We are at war with sexual violence. This violence is pervasive. In fact, it is affecting both private and public space.

(Several Members withdrew from the Chamber)

Mr. Speaker: Order, Members! Order! Hon. Members, the matter before this House is of the gravest nature. Those of you who live in Kenya and care about the children, grandmothers and women of Kenya should be seated still and listening to the debate on this Bill.

Ms. Ndung'u: Thank you, Mr. Speaker, Sir. The problem of sexual violence is much more difficult to address because of the stigma that it carries. Firstly, most people tend to see it as an issue touching on sex. In many of our traditions sex or speaking about it is seen as a taboo. Rape is seen as shameful and, therefore, not spoken about or reported. So many members of the society discourage individuals from reporting rape cases in fear that their children will miss out marriage prospects or the reputation of the family itself will be affected. Women feel ashamed to admit to their husbands that they have been raped. Nowadays, even men feel ashamed to admit that something has happened to their wives. The stigma of HIV/AIDS has only made this much worse.

Mr. Speaker, Sir, there is need to set the record straight. Sexual violence and rape are not about sex.

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

Mr. Speaker: What is it, Mr. Nderitu?

Mr. Nderitu: Mr. Speaker, Sir, given the gravity of the matter being discussed in this Bill, could you, please, allow hon. Ndung'u to come to the front and address this House from the Dispatch Box so that what she is saying is heard clearly?

Mr. Speaker: Very well, with reference to Standing Order No.1, in exceptional circumstances, I will allow the hon. Member.

(Ms. Ndung'u moved to the Dispatch Box)

Ms. Ndung'u: Thank you, Mr. Speaker, Sir. As I was saying, it is now time to put the

record straight. Sexual violence and rape are not about sex. They are about violence and power and that is why rape and sex crimes are internationally recognised as crimes against humanity. Rape is a tool that is used to humiliate, torture and conquer. It is a crime that knows no class, tribe, gender, religion or affiliation. It is an extremely painful experience and it is intended to have far-reaching effects not only to the victim, but also to his or her family and community as a whole. In Rwanda, it was extended to one's ethnicity and nationality.

Mr. Speaker, Sir, most of us have experienced some kind of criminal attack. We have either been mugged, pick-pocketed or robbed. We have more than often complained about the loss of money, an Identity Card (ID) or a passport. As years go by, we tend to forget because we can get back the items or money that were stolen from us. However, this is not the case with sexual violence because one feels physically and integrally violated. One is robbed of something that one can never get back. It is an indelible mark left on your private person, in fact, the most private part of you. It affects your family too. It is true that rape and sexual violence have destroyed marriages.

Sexual violence also has a very big impact on economic and education prospects of many citizens. Today, many girls and women cannot go to nice schools. They also cannot stay late at work. Can you imagine the impact of this on our economy and education system over, say, the last ten years? What about the future?

Mr. Speaker, Sir, what about the medical costs? According to Dr. Thenya of the Nairobi Women's Hospital, it is estimated that it costs Kshs15,000 to treat one rape victim. The many cases they have treated cost between Kshs4,000 and Kshs600,000. If the statistics by the Steadman Group are anything to go by, over 1,000 Kenyans are sexually assaulted everyday, and if we were we to imagine that all those victims go for medical treatment, we shall be talking about billions of shillings being spent in terms of health and medical treatment.

Sometimes the problem we are addressing today seems to be very far away. The media has done a great deal in bringing out the extent of this scourge in this country. The women organisations such as FIDA, CREW, CRADLE, COVAW and so on have also done a great job. We all listen to them. We watch our television sets and read news and feel that sexual violence is terrible. We feel angry when we see young boys and girls being sexually assaulted, but we never think that this can happen to a member of our family. We wake up in the morning, go to work and carry on. But what about them? What happens to them?

Mr. Speaker, Sir, two years ago, the Members of the Kenya Women Parliamentary Association (KWPA) visited the Nairobi Women's Hospital to see two young girls who had been raped; a four-year old and a nine-year old. It was part of our public duty to go and visit these young victims and their families. We wanted to empathise and support them. Nothing could have repelled us than what we found there. In my whole life, I have never been confronted with the horror of the physical damage done to those children. I realised that these young girls were so destroyed that they will never experience the joy of motherhood or have a normal reproductive life as adults because their organs had been stitched, re-stitched, moved and joined to the extent that you could not tell which part was what. On top of that, these girls, like other rape victims, were exposed to so many other things such as infection of HIV/AIDS, hepatitis, syphilis and other Sexually Transmitted Diseases (STIs). They were too young to get pregnant although many rape victims suffer from that consequence too. These are children who need counselling and their families need to go through therapy. One cannot even begin to imagine the psychological trauma that they will have to go through the rest of their lives. If I was traumatised myself, what about them? Since that day, I have visited the Nairobi Women's Hospital frequently to discuss with Dr. Thenya, the Chief Administrator, about how we can help the hospital to provide better services to such victims. However, I have never gone back to the ward. I am willing to go back to the hospital, but I am unwilling to go back to the ward.

I am willing to go back to the hospitals but I will never absorb or understand what kind of beasts do this to these children.

Mr. Speaker, Sir, Nairobi Women Hospital is providing a wonderful service and it receives about 15 to 20 cases a day. It is only one hospital among over 70 hospitals in Nairobi. So, you just need to do the mathematics yourself. This is just in Nairobi; we are not even talking about the rest of the country. At the Nairobi Women Hospital, I have talked to many survivors and their counsellors. The survivors come from all walks of life. They are housegirls, factory workers, students, office clerks, housewives and professional women.

I have also met male survivors of rape. These are men who have been carjacked or were just walking home from work. There are men who have been raped in cinema hall toilets and shopping mall toilets. These are what we consider safe areas. So, who is really safe?

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, the issue of sexual violence in this country came home to me when I talked to one survivor. Initially, I did not think she was a survivor. I thought she was just like me; an interested individual who had come to the hospital wanting to help. I learnt that she is a professional banker who lives in a gated community in one of the safer areas of Nairobi where many of us hon. Members live. She was abducted outside her house. She had just parked her car and had gone to greet her neighbour. A car kept moving up and down in the compound. Since it is a gated community, she thought it was safe. The next thing she knew she was asked to enter the car at gunpoint. There were three men in the car. They took her to Ngong Forest where they repeatedly raped her. After that they took her mobile phone and dropped her at the bus stop. They gave her Kshs200 and told her: "Go home. We only just wanted to taste what a woman of your social class is like." That woman was unable to leave her house for three weeks after that. She was too scared to go out in her own compound in the gated community. In the end, she resigned from her job.

Mr. Deputy Speaker, Sir, to me, the story was such an overwhelming shock because she was like me. In fact, she was me. I did not sleep for many nights after that because it had come home to me. I want to inform Members of Parliament that it can happen to any one of us. At that point, it became necessary to interrogate what is happening to this country. Why is it happening? That thought was the genesis of this Bill which is before the House.

Mr. Deputy Speaker, Sir, my research into why this is happening in Kenya is based on various reasons. One, there is excessive consumption of alcohol and drugs in this country. There is great abuse of drugs because they are very cheap. A stick of *bhang* is retailed for Kshs5. We also have institutions such as pharmacists and chemists that are now giving drugs which should not be sold over the counter and which are being used to spike drinks and initiate drug rape.

The other reason why we are having this problem is because there is increasing insubordination and disrespect of women. Women are treated as sex objects. There is increase in domestic violence within homes and sexual violence is one of them. There are also the issues of early marriages and unequal status of women. Thirdly, one of the reasons for this problem is the raging poverty which is increasing insecurity. People are being forced to live in slum areas. They live in congested areas with poor infrastructure and poor lighting. These are areas where rapists will prey.

There is also the glaring impunity of criminals with regard to existing laws. There is lack of deterrence, interference with investigations and intimidation of witnesses. The fifth reason is the laxity of the Judiciary in terms of punishing offenders. The abuse of discretion that magistrates use

where they do not punish adequately is also a reason why we have this problem.

Mr. Deputy Speaker, Sir, the increase of rape and sexual violence in this country is also due to the insensitivity and cultural and social biases of law enforcement officers in the handling of victims and prosecution of suspects. Many victims are humiliated at police stations and the police have failed to recognise that rape is a serious crime. The stigma and embarrassment of victims and their families has also resulted in under-reporting of these cases to the police. People are afraid of HIV/AIDS and of diminishing their future prospects of marriage. They are also afraid to expose abusive relatives.

Lack of professional medical handling and understanding of victims is also a problem. Hospitals are very ill-equipped to deal with these kinds of cases. Another reason is the inefficacy of the prison system. Prisons are supposed to rehabilitate offenders but they are actually churning out very hardened criminals who come out and repeat the offence.

Mr. Deputy Speaker, Sir, the other reason why we are facing sexual violence has to do with the loss of family values and the dynamics of moving from a traditional to modern society particularly where 72 per cent of the population comprises of persons under the age of 40 years. They are young, different and do not have the same cultural norms. It is a problem we need to address. We also have a poorly-structured legal framework within which to address the problem at hand and this must be addressed.

We are lawmakers and policymakers. The country looks to us as national leaders to begin unravelling this situation. The fact that this Bill is before this House is a message to Kenyans that we do know that there is a problem and that we can do something about it. I am happy to see that we have decided, as a House, that through a Private Member's Bill we are addressing this issue. This Bill was initially brought to the House through a Motion which was seconded by the late Mr. Sasura. The public are well aware of how hon. Members were enthusiastic about bringing this Bill and addressing the issues at hand. I hope that, in the memory of the late Mr. Sasura, we will pass this Bill into law. May God bless his soul.

Mr. Deputy Speaker, Sir, after the Motion was passed, I found myself in the complex, fairly unexplored world of developing a Private Member's Bill. Hon. Members, it is a very labour-intensive and expensive process. I would like to appeal to the Parliamentary Service Commission to take into account terms of support, in future, that will allow other hon. Members the independence and ability to bring more private Members' Bills if only the capacity can be provided for.

I would like to thank the Embassy of the Netherlands, USAID, the Urgent Action Fund and Women in Law in Development in Africa for lending support towards the drafting of this Bill.

Mr. Deputy Speaker, Sir, I must say I have enjoyed the support of the Law Reform Commission and the National Commission on Human Rights in terms of technical drafting. In particular, I have received enormous support from the office in charge of the implementation of this Bill. The Attorney-General allowed me to utilise his office in terms of technical support with regard to the specialised art of drafting legislation. I would like to pay tribute to Senior State Counsel, Tom Mark Mboya, who was the Chief Draftsman of this Bill. Sadly, I deeply regret that Tom Mark Mboya passed away last week and is not here to see his work being debated. May God rest his soul in peace.

As I thank the Attorney-General for his support, I would like to appeal that, in the future, Ministers in the Executive should be more supportive in the same way so that we are able to generate more legislation not only through Government-sponsored Bills but through a partnership with private Members. Private Members have had an unfortunate history of their Bills either being killed by the Executive or being taken over in the most aggressive way by Ministers. I am happy to report that the support I have received was not only necessary but augurs well in terms of the

relationship between the Front Bench and the Back Bench. We in the Back Bench also have ideas and we will be looking for your support.

Mr. Deputy Speaker, Sir, what does the Sexual Offences Bill seek in a nutshell?

Mr. Deputy Speaker, Sir, the general objective of this Bill is to define such issues as the crime of rape, attempted rape and defilement. The Bill also introduces 21 new sexual offences. The Bill is going to make it easier for victims to report and get medical treatment. It will also be introducing stricter penalties for sexual offenders by introducing minimum sentences in legislation. The question has been asked: "What is the difference between the laws that we have and the proposed Bill?" Currently, the law relating to sexual offences is spread through four different legislations. It is spread in The Penal Code; The Criminal Procedure Code; The Criminal (Amendment) Act and The Evidence Act. That makes it very difficult for ordinary *wananchi* to access the laws and punishments for those offences. In this new Bill, all those laws are going to be consolidated and, therefore, it will be easier to access justice. The current law has a very limited definition of the crime of rape. It does not recognise that men and boys could be victims of sexual violence. The current legislation categorises rape as an offence and an issue of morality. The character and moral standing of victims can be adduced as evidence in a court of law. We have said that, that is unconstitutional. In fact, there is a Court of Appeal that has ruled it is unconstitutional to treat men and women differently, and to bring in the character of victims without focusing on the issue at hand.

Mr. Deputy Speaker, Sir, the new laws introduced by the Sexual Offences Bill include the following:-

Laws that protect children from trafficking, sex tourism, prostitution and pornography. There are laws that protect mentally-impaired persons from prostitution, provisions that punish incest by female persons, laws that punish the deliberate transmission of HIV/AIDS to others. There are also laws to determine who the courts should consider as a vulnerable witness. There are laws on administration of a substance with the intent to offend a person sexually, among others.

Mr. Deputy Speaker, Sir, the Bill is arranged in the following manner. First, there is the title and the arrangement of clauses. Secondly, there is the short title which is an Act of Parliament to make provisions about sexual offences, the definition, prevention and protection of all persons from harm from other sexual acts. After the title, it follows the interpretation. The drafters, and myself, have tried to expand and to be as detailed as possible in terms of determining or defining issues such as genital organs, DNA and law-enforcement.

The first offence that is dealt with under this Bill is the offence of rape. It has a clear definition, unlike in our current law. The proposal is that it shall hold a minimum sentence of ten years, and which may be enhanced to life. The crime of rape is thereafter followed by the crime of sexual assault which, like rape, is a crime whose critical ingredient is penetration, but which provides for other areas; for example, in situations where objects, bottles or sticks may be used in a sexual assault.

Mr. Deputy Speaker, Sir, Clause 8 provides for the offence of defilement. It is the rape of a child. In terms of punishment, there are three categories. Where a child is 11 years or less, a person will be convicted to imprisonment for life. Where a child is between the age of 12 years and 15 years, a person convicted will be liable to imprisonment for a term of not less than 20 years. Where the child is between 16 years and 18 years, the person will be imprisoned for a term of not less than 15 years. I would like to point out that, originally, when the Bill was published, the punishment for defilement was one. But having listened to Members' concerns, I broke it down to those three categories when I re-published the Bill.

Mr. Deputy Speaker, Sir, the other crimes which have been provided for under this law include gang-rape under Clause 10. We have taken that to be so important because gang-rape is

typical of the rapes that we are addressing today. Those are rapes that are incidental to other crimes. Somebody breaks into your house and proceeds to rape your wife and children in front of you. That, in itself, should also be punished. At this stage, I would like to point out that it will also be a separate offence where a sexual offence is committed in front of one's family members. That is in recognition of the incidences that we are seeing nowadays. They are punitive. They are deliberately done in front of one's family members thus affecting the whole family - husband, wife and children for the rest of their lives.

Mr. Deputy Speaker, Sir, Section 11 provides for the crime of indecent act to a child. I would like to point out that, after the discussions at Safari Park, Members pointed out to us that what was missing was the provisions for indecent acts against adults. At the time of the Committee of the Whole House, we will bring an amendment and include that.

Mr. Deputy Speaker, Sir, the crimes of child trafficking, child sex tourism, child prostitution and child pornography speak for themselves. One of the new offences that have been introduced is the exploitation of prostitution. It is intended to target pimps and persons who force others into prostitution and working in brothels, as is common in urban centres.

Mr. Deputy Speaker, Sir, Clause 18 introduces trafficking for sexual exploitation. Clause 19 deals with prostitution involving persons with mental disabilities. Clause 20, 21 and 22 focus on the issue of incest. I do not need to go into that because it is very clearly defined in the Bill. Clause 23 introduces a new sexual offence known as sexual harassment. When you look at that particular Section, it is important for hon. Members to read the Section as a whole. They should not read just a Subsection 1. They should read Subsection 2 to know that unlawful and unsolicited sexual advances spoken of in Subsection 23 mean those that happen in an environment of employment where rejection of such sexual offers can affect one's career, where rejection of such advances can result in an interference of an individual's work or educational performance. I think hon. Members would be satisfied because we know cases in offices, universities and institutions of learning where that happens. It is time that it became a crime punishable under the law.

Mr. Deputy Speaker, Sir, of interest to hon. Members would be Clause 24. It talks about sexual offences in relation to positions of authority. This section intends that anyone who is a superintendent or manager of a jail, a remand home, a children's home or any person who is a law-enforcement officer and has somebody in their custody, a manager or staff of a hospital who takes advantage of a patient, any person being a headteacher, teacher, employee in a primary, secondary school or special institution of learning, who takes advantage of a person in his care like a student. This section states that, that person should be punished and be sentenced to an imprisonment of not less than ten years.

The new offence that is introduced in Clause 27 should be of interest because it directly addresses some of the issues with regard to the HIV/AIDS scourge in this country. This clause criminalises the deliberate transmission of HIV/AIDS or any other life-threatening disease to another person, whether or not one is married. I am emphasising the word "deliberate" because there have been issues about what would happen where there is accidental infection either sexually or through contraceptives. But in this case, we are only talking about the "deliberate" transmission of a disease.

Mr. Deputy Speaker, Sir, Clause 28 talks about drug rape. If you look at it together with Clause 29, not only will the person who actually gives the drug be punished, but the person or company or pharmacy or chemist or hospital that provides that drug to be used in that manner will also be punished either by a jail term or a fine.

In Clause 30, it will become an offence for managers in any institution to knowingly conduct the affairs of their institutions knowing that sexual offenses have been taking place in their

premises and have done nothing to prevent them. So, managers will face a minimum sentence of ten years or a fine of not less than Kshs1 million or both.

Clause 31 provides for forced female circumcision. This clause is not addressing circumcision of children. The circumcision of children, that is those who are under 18, is already addressed in the Children's Act. This clause addresses female circumcision which is forced upon women in their adult life.

Similar intentions are carried in Clause 32 where we are outlawing cultural or religious offenses. This is to address traditions such as the belief that you are cleansing yourself of HIV/AIDS by sleeping with children or forcing people to sleep with corpses.

Clause 33 addresses an offence that can be committed by persons who have left jail; people who have been convicted of sexual violence. The thrust of this clause is ensure that once convicted offenders leave jail, they cannot work in places where there are children or vulnerable persons. If they do so without stating that they are previous offenders, they will be charged and fined in court.

Mr. Deputy Speaker, Sir, from Clause 34 onwards, we are dealing with issues of evidence. We have provided for vulnerable witnesses. We have also provided for protection of witnesses, including from the media in as far as their identity is concerned. We have talked about how complainants should be treated, if they need to testify in court or if they need somebody to guide them in court.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! We want to hear hon. Ndung'u. Will you please, consult in low tones!

Proceed, Ms. Ndung'u.

Ms. Ndung'u: Mr. Deputy Speaker, Sir, Clause 35 provides for protective measures for vulnerable witnesses. In Clause 36, there is a provision that the court may not draw an inference solely on the account of the fact that there has been a delay in reporting the alleged commission of the offence. One of the reasons why we have introduced this clause is because there is no other crime in Kenya in which the length of any delay between when the crime is committed and when it is reported, affects the proceedings of the case. Basically, we are trying to apply the same standards to sexual offenses as applied to other offenses.

Mr. Deputy Speaker, Sir, Clauses 37 and 38 talk about some of the requirements around evidence, including the requirement for corroboration. Once again, we are just trying to standardise the law. Currently, the law provides that children are not required to provide for corroboration and we want that to apply that to all victims.

Clause 39 is intended to provide protection against humiliation of the complainant or the victim by stating that any evidence of any previous sexual experience or conduct of that person should not be brought into a court of law unless it directly relates to the complaints before the court.

Mr. Deputy Speaker, Sir, Clause 40 talks about the provision of medical treatment ordered both for offenders and victims. All the costs of this treatment will be borne by the State through public hospitals. I can see the Minister for Health is here. I hope that in her contribution, she will tell us how we should, as Parliament, help her so that this treatment can be done at a professional level in all hospitals.

(Loud consultations)

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. This is a very important matter but, unfortunately, Members are consulting loudly. If they are not interested, they can actually go out!

Mr. Deputy Speaker: Order, hon. Members! Please consult in lower tones. I know there are many important things you want to consult on, particularly in relation to this Bill. Proceed, Ms. Ndung'u!

Ms. Ndung'u: Mr. Deputy Speaker, Sir, Clause 41 provides for evidence of a medical or forensic nature. This provision brings us up to date with the rest of the world where we are able to introduce formally the issue of DNA in sampling DNA from suspects. Science has shown that DNA is a much better piece of evidence than even fingerprints. In sexual offenses, DNA is very important evidence. That is why it has been introduced here.

Mr. Deputy Speaker, Sir, Clause 42 introduces an offenses where one tampers with the scene of crime, interferes or intimidates witnesses or obstructs investigations in any way. As we think about making amendments, it is true that some Members have raised the issue of malicious prosecution and we may want to think about amending this clause to take care of that concern.

Clause 43 talks about dangerous sexual offenders and explains how a court can declare a person a dangerous sexual offender. This would be a person who is a repeat offender; a person who has been convicted of a sexual offence accompanied with some other offence or one who has been convicted of a sexual offence against a child. This clause intends to provide a register of dangerous sexual offenders which will be kept at the High Court so that we are able to locate them and so that communities are able to protect their children against such persons.

Mr. Deputy Speaker, Sir, Clause 44 introduces a rule where it will be the Attorney-General who will decide whether the police investigations should be discontinued or not. Currently, sexual offences cases may be discontinued by the police. We would like to raise the standards and say that rape and sexual offences should be treated like murder, manslaughter and robbery with violence cases, all of which are discontinued only by the Attorney-General.

Mr. Deputy Speaker, Sir, Clauses 46, 47, 48 and 49 are all about consent. The reason that they are such lengthy and detailed clauses, is because they are the basis of this Bill. These offences become offences where there is no consent. Therefore, it is very important to define precisely what consent is. I would encourage hon. Members to have a good look at the framing and definitions of consent, so that we can agree that we are satisfied or we may want to add to or amend the Bill. But I think that this is the body of the Bill in terms of determining what consent is. I am hoping that my Seconder, and the Attorney-General, who will be responding to the Bill, will be able to delve a little bit more into the issues of consent.

Mr. Deputy Speaker, Sir, the Bill concludes with a national policy framework. There is no point of us passing this Bill if we cannot make this law work. This law can only work if we have a proper policy framework which the Attorney-General will be setting up. It will be reviewed every five years. But the Attorney-General will be consulting with an inter-sectoral number of Ministries.

It is clear that sexual offences touch on many things. Therefore, under Section 51, the proposal is that the Attorney-General will be making regulations to implement this Bill together with the Minister in charge of internal security, the Minister in charge of prisons, the Minister in charge of social services, the Minister in charge of education and the Minister in charge of health. I would appeal and hope that these particular Ministers, as they contribute to this debate on the Bill, will be able to assure the House of a time frame and their commitment in terms of their own Ministries working together to implement this Bill.

Mr. Deputy Speaker, Sir, the Bill ends at Clause 53. There is then the First Schedule; on transitional provisions. The Second Schedule is on the consequential amendments and repeal. Then there is the Memorandum of Objects and Reasons, which is signed by myself. Finally, there is an annexure to the Bill, which is required, under Standing Order No.96, for any laws that are to be amended to be listed. They are here as an annexure together with the texts that were distributed to hon. Members this afternoon.

Mr. Deputy Speaker, Sir, this Bill was first published in August, 2005. After its First Reading it was committed to the Departmental Committee on the Administration of Justice and

Legal Affairs. It was to come back for the Second Reading in October, 2005, but this did not materialise because we went home for the Referendum. When the President prorogued Parliament in December, all the Bills that were before the House lapsed. Therefore, the Bill was republished in January, 2006. I am very grateful to the Departmental Committee on Administration of Justice and Legal Affairs, for engaging me as the Mover of the Bill. We started informally going through the Bill. It was clear from the discussions among the Committee Members and other hon. Members that many amendments needed to be made. Therefore, in March, I wrote to Mr. Speaker and withdrew the Bill. I then republished it with the amendments.

Mr. Deputy Speaker, Sir, on Monday this week, the Committee on Administration of Justice and Legal Affairs held a meeting for all hon. Members to go through the Bill as now republished and find out what their concerns are. I wish to appeal to all hon. Members to continue consulting with the Departmental Committee, so that all the amendments can be put together in a comprehensive manner before we reach the Committee of the Whole House Stage.

I would like to share with the hon. Members that already I am aware that the Committee is making amendments with regard to the issue of bail. This is because the provision which is currently in the Bill with regard to defilement is unconstitutional. We, therefore, cannot deny bail to perpetrators of the crime of defilement until we change the Constitution. Another amendment which is definitely going to come, and has been considered by the Committee, is the inclusion of indecent assault for adults and the issue of compensation.

Mr. Deputy Speaker, Sir, since I have the right of reply at the end of this debate, I do not want to go any further. I would like to now hand over to the Seconder of the Bill. Many hon. Members have asked me why, as a Government Backbencher, I have asked a Member of the Opposition to Second this Bill. First, it is a sign of healing in this House. I think from the time of the Referendum we have not really come together. So, I think that this is an opportunity for us to show the country that we can join hands on a solid national problem.

Secondly, it is the Attorney-General who will be charged with the responsibility of implementing this Bill, if it is translated into law. Therefore, it is only right that the Shadow Attorney-General in the Opposition be allowed to have his say. We, as Backbenchers, hold both of them accountable for the implementation and success of this law.

My Seconder is also a Member of the Opposition, who truly has had first-hand experience in dealing with clients who have been victims of sexual violence. He was also my teacher. It, therefore, gives me great pleasure to show how a student and a teacher can work as a team.

So, as I end my introductory remarks on the Sexual Offences Bill, I beg to move and ask my Seconder, Mr. M. Kilonzo, to speak.

(Applause)

Mr. M. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. I must say from the very outset that the fact that Ms. Ndung'u and myself are dressed in similar stripped suits, white shirts and almost similar scarfs and ties, is purely coincidental.

(Laughter)

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that their mode of dress is purely coincidental when I intend to dress in a similar manner when I am responding to this Bill?

(Laughter)

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, I am very grateful for that remark from my colleague and Senior Counsel, the Attorney-General. I must say that the House is very lucky this week in debating this Bill, because the Chair of the Departmental Committee on the Administration of Justice and Legal Affairs, Mr. Muite, is also a Senior Counsel. It is fair that I say this because they will agree that when lawyers want to be taken very seriously, they dress the way Ms. Ndung'u and I are dressed. Therefore, I will not be surprised if the Attorney-General is in this sort of deportment when he comes to contribute to the Bill.

Mr. Deputy Speaker, Sir, the reason I opened my contribution with a light note is because what I am going to say is extremely serious. It is important that we take this Bill very seriously, indeed.

Mr. Deputy Speaker, Sir, I want to start by giving you the statistics that have come to light in the processing of this Bill and through research. Surprisingly, between January, 2005 and now, a period of only 16 months, no less than 651 children aged between one and 15 years have been victims of rape. In fact, for the period from 2002 to 2005, the total is 996. The question I will continue asking as I second this Bill is: If this Parliament and this country cannot defend and protect those children, who else will?

(Applause)

Mr. Deputy Speaker, Sir, I will be demonstrating that the Bill before the House is the sort of law that will protect these children. Above all, between the ages of 16 years and 20 years, for the period January, from 2004 to April, 2005, a total of 441 young women have been victims of rape. You will be shocked to know that among these people, one of them is a Kenyan woman aged 86 years.

Hon. Members: Shame! Shame!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, you will be shocked to know that the youngest victim of rape in this list was a child of five months. Among them are 729 pupils of schools who were lured and enticed with sweets and other so-called "goodies" by sugar daddies. The situation calls for prayers, in addition to law.

Mr. Deputy Speaker, Sir, let me tell you something else. The statistics show that 41 per cent of sexually violated people say that the perpetrators were persons they did not know. However, 32 per cent of sexually violated persons know the perpetrators, meaning that there is a serious breakdown of the principle of trust in our society. Twenty seven per cent of sexually violated persons were violated by gangs.

The moment of truth has come to recognise Ms. Njoki Ndung'u as the Esther of the Bible, with Mordecai, who stood up to protect and defend their society. She dared to go before the king. Although the king usually used to kill those who walked in without permission, Esther stood her ground and saved her community.

Male hon. Members, can you hear this? Out of the statistics I have, 102 male sexual violence survivors were treated at the Nairobi Women's Hospital alone. So, very soon, if you are a man and good looking, you will be scared of walking the streets of Nairobi because you are also going to be gang-raped.

(Laughter)

Mr. Deputy Speaker, Sir, the law that is supposed to govern this very sad situation was, in fact, enacted in 1930. It is Chapter 63 of the Penal Code. It came into force on 1st August, 1930. That law, my good friend, Senior Counsel, the Attorney-General, will confirm, covers all the

offences referred to as rape, abduction, indecent assault, defilement, incest and so the so-called "unnatural offences".

The amazing thing, and the Attorney-General will confirm, is that these are offences called "offences against morality". That means, the colonial administration that was passing this law in 1930 was not, in fact, addressing the grave situation this country is facing today. They were talking about immorality. As you know, "immorality" includes lying, or taking a sweet from Nakumatt Supermarket without paying for it.

Are we going to compare the morality of 2006 with that of 1930? I say with conviction that we cannot afford to do so. The moment of truth has come. It is time for this country to seize the moment and create a law that addresses the problems that are bedeviling us.

Mr. Deputy Speaker, Sir, as you very well know, August 1930 was between the two great wars. The nations of the world had fought in 1914. In fact, Adolf Hitler had not even come to power in 1933. Even the Second World War, which broke out in 1939, had not been fought. If you are getting frightened about the law that will govern the violation of our women and some of our men, then it is understandable because, the legal theory that existed in 1930 can no longer hold water in this country. The punishment philosophy cannot be found to hold any water in a country like this one.

The time to change the practices envisaged by Chapter 15 of our Penal Code is now. As I will be demonstrating, there are people in the country who are frightened by this Bill, thinking that we are going to introduce a law that will interfere with marriage or one which permits things like sodomy, *et cetera*. I would like to persuade them that this is hardly the case. We are introducing a law that will cover and protect people, as I will be demonstrating.

Mr. Deputy Speaker, Sir, the law that we have under Chapter 15 of the Penal Code was borrowed from England as well as India in 1930. If you remember, at that time, it was said that the British Empire was such that the sun never set. Obviously, as people have said, this is because God could not trust the British in the darkness. Unfortunately, I dare say, the British and the Indians have since amended their law to make it possible to deal with the problems we are facing.

Only this morning, in England, a man called Steven Air, before a jury, was convicted and jailed for life for raping a ten-year-old boy. My challenge to this House is to create the sort of law that would make it possible for a ten-year-old boy to complain of rape, and the man is convicted and sentenced to life imprisonment. I am afraid to say that, looking at the current law the way it is, this is easier said than done.

Mr. Deputy Speaker, Sir, therefore, the country is crying out to us. Let us take the example of women. I was taught criminal and procedural law by the late Otton Chirwa, the first African Queen's Counsel in Africa and a former Attorney-General of Malawi. At the time, he was practising law in Dar-es-Salaam, in exile. Our Attorney-General here will confirm that. I do not know whether he was the late Chirwa's student. Perhaps he was.

The fact of the matter is that, in the course of his practice, which I used to attend, it was clear that he was also defending people charged with sexual offences. The experience that I went through, seeing the trauma facing these young people because of being subjected to the judicial criminal law system was such that since that day, I have refused to accept to defend any person charged with a sexual offence because the trauma is dramatic.

Mr. Deputy Speaker, Sir, you only need to meet a person who has been raped to understand the gravity of this act. In your hands will be a person who can very easily commit suicide. That person's human dignity and prospects are shattered. As a matter of fact, a lot of rape victims - it has been shown by psychiatrists - end up more or less becoming prostitutes, or taking sex very casually, or not trusting men, or not even getting married.

Mr. Deputy Speaker, Sir, the trouble is that in 1930, the sexual organs of human beings

were not instruments of mass destruction. As I speak here, they are. You only need to make a visit, not just to the Nairobi Women's Hospital, but to Kenyatta National Hospital and all provincial general hospitals to see the space that is occupied by persons suffering from HIV/AIDS. As a country, we are relying on donors for assistance in this particular damaging area.

Those who read widely, particularly those who read magazines like the *Economist*, will have seen that this week's edition of the *Economist* has reported that the greatest contributors to any Gross Domestic Product (GDP) growth for now and for the future are women. In a country like Kenya, because of subjecting women to weapons of mass destruction, they are going to end up in our hospital beds and they are going to be abused. In rape circumstances, the victim has no way of verifying whether the attacker is suffering from HIV/AIDS.

As a matter of fact, if you go to universities and schools in Europe, you will find that children are now encouraged to have condom dispensers in the compound, so that in case they are on a blind date and the boy turns sexually-oriented, they can, at least, offer him a condom in order to avoid this weapon of mass destruction. The fact is that to even argue about the need to modernise our law is to me, very surprising. Having been passed in 1930, this law is 76 years old. Therefore, if you look at it, you will be surprised that we have barely touched it. There were minor amendments to it before Independence in 1955 and 1961. There were also extremely minor amendments in 1967, 1968 and 1969. In 2002, and I must salute the Government for this, the Attorney-General introduced certain amendments which as you all know, in this House and they were passed. I am afraid because looking at Chapter 15, that was only scratching the surface. It was purely trying to stop haemorrhage. The actual operation had to come. As I said, we had to wait for "Esther" in the form of hon. Ms. Njoki Ndung'u to bring this forward for us.

Mr. Deputy Speaker, Sir, we have the opportunity now in a non-political atmosphere, because nobody is going to say that this Bill has been introduced for politics or in order to favour on section. HIV/AIDS does not care whether you are a NARC or KANU hon. Member. It does not care whether you are a Catholic, Protestant or a Muslim. It strikes across the board. The most staggering form of HIV/AIDS is that which is conveyed to children under 18 years old because of sexual violation. Those people are defenceless.

The second worst form of HIV/AIDS is that which is conveyed to women and men because of rape. The only way we can address this situation is to say: "Thank Chapter 15 of the Penal Code." Although old is gold, the law has served the country, but it is time for it to go into retirement, so that the Independent Kenya can demonstrate to the rest of the world that we care about our people.

Mr. Deputy Speaker, Sir, in 1930, the population of Kenya was barely four million people. We are now dealing with 33 million people. At that time, we were being governed by a colonial administration. We have had an Independent Government since 1963. The year 1930 was the golden age of African culture where the concept of HIV/AIDS was hardly known. There were elders in the village, for example, the *King'ole* in Ukambani and the *Kiama* in Meru. We do not have those structures any more. Urbanisation has made it impossible to resolve issues of this nature at the local level. Therefore, even as hon. Members consider that some of the punishments in this proposed law are severe, you must also understand that we have lost the social framework that we enjoyed in 1930; that made it impossible for somebody to go and attack a woman as she was walking home. As a matter of fact, in 1930, Nairobi was not even a city, it was just a collection of shanties. I am giving these figures to demonstrate the urgency that is required in considering this law. As a matter of fact, the limited commercial sex that there was in the country was limited to the introduction of those who had been engaged 30 years earlier in the construction of the railway line. Moreover, there was no HIV/AIDS. Although the statistics are not there, the African population was not taking drugs. It is drugs that have created the biggest problem. Drugs have

made people not to make the choices that they need to make in sexual encounters.

In this proposed law, we have introduced a clause whereby if a person walks into a bus, travelling from Kampala to Mombasa, and then uses Chloroform or other substances to make a woman lose her senses and engages her in sex, consent is deemed to have been denied. We have, in fact, suggested some element of burden be placed on the man to show that he did not use such substances.

Mr. Deputy Speaker, Sir, in 1930, there were only brothels. If you look at Chapter 15, you will find that they talk about brothels. Nowadays, we have escort services. They even come in limousines. You should ignore what you hear about Koinange Street. That is only a scratch on the surface. The real action is in escort services. As you know, I respect the Media quite a lot. I was surprised last week to learn that the *Daily Nation* has introduced some sort of communication and when I read it, I could not believe it. Somebody was saying that she is beautiful, 31 years old, and she wants contacts. That is what we call escort services. This is a crime that is transforming itself. In the Bible, there are what used to be called "temple prostitutes". Now, it has changed so dramatically that you cannot afford to rely on a law that was passed in 1930.

Above all, there was no internet. As you heard during debate on a Question that was brought to the Floor of this House by hon. Kajwang, and I salute him for bringing up this thing, the internet has become one of the biggest problems in fighting a crime of this nature. Right now, as we debate this Bill, if you talk to people from foreign countries, they have gone a step further. They are no longer talking about rape. They are talking about paedophile. They are talking about internet pornography.

In 1930, pornography was limited to buying magazines. I do not know whether the *Playboy* magazine was under publication. Any time you opened it, in the middle, you would find a picture of a beautiful girl. When you went home you would dream over that picture. Things have changed! The Minister for Information and Communications has said that he is going to introduce broadband. That broadband comes with the ability to be able to access pornography from across the world.

Therefore, even as we pass this Bill, and I speak with certainty and I am sure the Attorney-General will confirm that there will be a next step within the next one to two years, maybe even sooner, to amend this law to take account of pornography on the internet--- Hon. Wamwere, who is in America, has told me that he has seen in the streets of Nairobi foreigners with video cameras hiring our girls, and those girls are taken to rooms and are subjected to sex with animals, including dogs.

Mr. Deputy Speaker, Sir, I do not want to remind the House of the story of Prophet Noah. God ended up bringing up the floods because He was tired of the evil. We do not want that to happen to us. We want to use this House to stop these activities and these people on their tracks. We want to make sure that our women are not abused because they are as important as you can get.

Mr. Deputy Speaker, Sir, you can remember the story of Adam and Eve and the concept of the original sin, which has been used for centuries to suppress and oppress women, because everybody said that she is the one who went and picked the apple. We can no longer subject our women to this sort of thing. The time has come to recognize that a woman has a right to make a choice or decision to say yes, if she wants to engage in sexual activities. If a person crosses that boundary, we want to say it firmly, that Kenya has said "No". You must persuade that woman using your technique of persuasion. If you do not know how to do that and you cross that line, you will go to jail. The time has come for that because we need to liberate our women to be able to walk around freely.

Mr. Deputy Speaker, Sir, only recently, an illegal organization in this country was confronting our women in the streets, threatening them that they are badly dressed and, sometimes,

undressing them and forcing them into female genital mutilation. We cannot accept this sort of thing. Speaking to my good friend, the Attorney-General, I dare say again that, this Bill is only a first step. I am totally convinced that the time to bring Kenya, with regard to sexual offences, within the realm of the international community, is now. As soon as we pass "Esther's Bill", we will start looking at it so that we can modernise it with regard to the dignity and humanity of women, their Gross Domestic Product (GDP) role and their cultural and religious development.

Mr. Deputy Speaker, Sir, may I remind the House that it has been shown that Kenya, among other African countries, is among those countries in which religion is growing at the fastest pace than anywhere else in the world other than South Korea. Therefore, it is a contradiction for this House to embrace religion the way we did last Friday; to embrace the Bible, the Qur'an and the Hindu Gita, but at the same time, refuse to modernise the law to block those things that the Bible, Qur'an and the Gita automatically outlaw. Rape is outlawed in the Bible and the Qur'an.

On the issue of education, Mr. Deputy Speaker, Sir---

Mr. Salat: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate the valuable contribution being made by the speaker on the Floor, would I be in order to ask him not to refer to the Mover as "Esther" because most definitely, that is what is going to appear in the HANSARD?

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, I apologise for that. "Esther" is a very good name, but there you are.

The other achievement that this country has attained is education. Hon. Ndung'u described a situation where a sophisticated and educated lady was confronted by a gang which raped her. The gang then told her that they wanted to know what a woman of her status feels like. We cannot accept this! As far as I am concerned, this law must be unanimously adopted subject to those amendments that the Committee is going to recommend for bringing it within the Constitution and eliminating those areas about which people are complaining.

Mr. Deputy Speaker, Sir, what are the principal objectives to be achieved in this Bill? One of them is the concept of social responsibility while the other one is modernization or bringing our women into the 21st Century. But let me address the issue of punishment. There are some of us who are going to complain about this draft law thinking that we have imposed very serious high sentences. I have just told you of a decision of a court in England this morning. A person was sentenced to life imprisonment for raping a 10-year-old boy. The purpose of the law we pass here is never to punish, but to define the boundaries of acceptable behaviour. Therefore, I urge hon. Members not to be overwhelmed by the sentences we are imposing in some of the situations. Our argument is that those sentences can only be imposed if you are found guilty of crime. If you behave well, respect our girls and women, approach them nicely while dressed very well and convince them, we have no problem with you.

Therefore, we will protect the issues of presumption of innocence through amendments by the Committee. The corroboration must go because if you are not asking a boy to corroborate that he has been raped, why are you asking a girl to corroborate? Are we saying that in Kenya, we believe men but we cannot believe women? I am afraid that law must go!

Mr. Deputy Speaker, Sir, let me turn to the question of consent itself. One of the most striking cases, as the Attorney-General and hon. Ndung'u would say, is that famous case which was reported in our laws where the woman was confronted by a boy who was holding a knife who demanded: "Give it to me." Then, the boy forced that girl to have sex with him. The issue that went all the way to the Court of Appeal for East Africa was whether consent was given, because the woman did not ask: "Give you what?"

(Laughter)

Mr. Deputy Speaker, Sir, the time to remove those doubts is now. We are saying: Not any more! There will be a judge telling this woman: "I am sorry, I cannot believe you because nobody else has come forward", or "I cannot believe you because it has taken you ten years to report the rape". What happens if it is a five-month-old child? An hon. Member has asked me: "Mutula, are you saying that if I go and have intercourse with a woman, she can go and complain after a year?" At what point will you put the deadline for a five-month-old child? When will she know that her life was altered irreparably such as to be able to report to a police officer and thereafter to a magistrate? This is something we must address very soon to make sure that our country overcomes this enormous problem of having a modern country but with a totally outdated law.

Mr. Deputy Speaker, Sir, let me talk about compensation and vulnerable witnesses. I know that there are a lot of Christians and Muslims here. They know about the confessions, particularly in the Catholic Church. It is very difficult, at best of times, for a human being to go and confess to another person that they have been subjected to forced sex. It becomes even more difficult in a public hearing for a woman who has been subjected to this treatment to speak publicly in the eyes of the media and everyone else. For the first time, we want to create a window for those people who feel intimidated by the court process and all the people around them so that they can give that evidence in a calm manner and also ensure that, that evidence is taken and they are protected. We are also introducing a system whereby they are subject to counselling. A country that forgets that victims of crime need to be looked after is a country that does not serve the people. Therefore, we are introducing counselling. Similarly, we would require training of the magistrates, the Judiciary and the police force. When we were having this seminar in one of the hotels, we were told that this woman was asked---

Mr. Deputy Speaker: Your time is up!

Mr. M. Kilonzo: With those few remarks, I beg to second.

(Question proposed)

The Assistant Minister for East African Community (Dr. Khalwale): Thank you, Mr. Deputy Speaker, Sir. I would like to pass my compliments to the owner of this Bill, Ms. Ndung'u, for the good effort she has put in the work. I hope that because of this, the anger that has built in the hearts and minds of most people will go down.

Mr. Deputy Speaker, Sir, I have a different form of experience, unlike Mr. Mutula Kilonzo who says that he knows rape. I know rape in a different way. In villages where I come from, I have seen rape victims. In my clinic, I have handled rape victims. In the wards, I see rape victims on ward rounds in the morning. More importantly, in theatre, I have witnessed attempts by senior colleagues and myself to do something to correct the consequences of rape.

Mr. Deputy Speaker, Sir, my anger is such that I am forced to accept that when I am brought here, I do not come here to represent my personal interests and biases. We are supposed to make law. I am, therefore, supporting this Bill very strongly, more than 100 per cent. However, I am wondering where the Departmental Committee on Administration of Justice and Legal Affairs is.

When you go through this Motion, you are forced to remember what Michael Kijana Wamalwa said. He once said, "a good idea must yield ground to a better one". We hoped that this good idea by Ms. Ndung'u, when taken to the Departmental Committee, would yield ground to a better idea. But because they did not do this, I am begging hon. Member to support this Bill but make sure that it goes back to the Committee so that they come up with---

Mr. Deputy Speaker: Order, Dr. Khalwale! Just for your information, this Bill was referred to the Committee. It is still under discussion because the chair of the Committee has not

reported! So, there is no question of taking it back. They are still dealing with it. I can see the Chair of the Committee sitting there. There is no question of returning it to the Committee! It is with the Committee. I am sure, at an appropriate time, the Committee will be speaking on their findings.

So, please, continue!

The Assistant Minister for East African Community (Dr. Khalwale): Most obliged, Mr. Deputy Speaker, Sir, for the clarification.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. I just want to inform Dr. Khalwale---

Mr. Deputy Speaker: That is a point of information!

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, I do not wish to be informed!

(Laughter)

Mr. Deputy Speaker: You do not want to be informed? Fine!

Please, proceed!

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, Mr. Muite is going to have a whole 30 minutes on which to inform me. Allow me to inform the hon. Senior counsel as follows.

(Laughter)

If we joke around with this law and not challenge the Committee to come out with the best, we will have opened a pandoras box of court cases, false accusations, blackmail; name it!

(Applause)

Mr. Deputy Speaker, Sir, I want to start by referring hon. Members to the Bill. If you look at page 348, Section 2(a), you are told that:

"An indecent act refers to direct or indirect contact between the genital organs of a person or in the case of a female, her breasts and buttocks or any other part of the body with that of another person".

The danger of this is that, a mischievous person who wants to nail you--- And some of our people live under very tricky conditions. They do not use those limousines which some of you use. They travel in *matatus*. When somebody is malicious and a *matatu* driver applies emergency brakes and you bump into her buttocks, she will take you to jail. You will go to jail for ever!

Hon. Members: Ten years!

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, you will go to jail for ten years! Imagine a set-up where there is rivalry in the registry where clerks work together; one is female and another male; they travel on the same *matatu*. This man is the sole breadwinner for his family, and the lady does this to him. He goes to jail for ten years, that family is killed economically. We have to be sober!

Mr. Deputy Speaker, Sir, on the same note, look at Section 2(b) on the same page. We are told that:

"Indecent act also includes exposure or display of genital organs of a person to another person without the consent of that person".

Look at the danger of this. This law aims to control social behaviour among teenagers. Now, boys of 14 years who normally pass urine pointing upwards when they are with girls, will be construed

to be showing their genitals. If such a girl goes to report to a knowledgeable and influential mother, and she complains in court; the young boy of 14 years has to answer by going to jail. We have to improve on this. Yes, even in our gymnasium here, you will be crossing like this--- We have to be serious!

(Laughter)

Mr. Deputy Speaker, Sir, I want to refer hon. Members to Clause 4 on page 350. It tells us that:

"Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organ is guilty of the offence of attempted rape and is liable, upon conviction, for imprisonment for a term which shall not be less than five years but which can go on up to life imprisonment".

I am hoping that this Committee will consider deleting this clause. If you leave this clause there, all you are doing is abolishing courtship. This is because when you court a girl, at the back of your mind you want to penetrate her one day. You are, therefore, "attempting". We have to address this clearly!

(Laughter)

Mr. Deputy Speaker, Sir, if we do not do this, blackmail will be the order of the day. This is law. It is not about emotions. It is a law that will take people to jail for life!

I would like to make a comment on Section 8 on page 353---

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. We are debating very serious issues. Is it in order for Dr. Khalwale to mislead this House on clause 4? The clause says:

"Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs---

You heard the hon. Member talking about what, in his mind, he is planning to do. Is he suggesting that his mind is part of his sexual organ?

(Laughter)

The Assistant Minister for East African Community (Dr. Khalwale): Thank you, Mr. Deputy Speaker, Sir. With due respect to the hon. Member who is a senior counsel; if he makes just a little effort, and remember that I am a qualified medical practitioner, he will acknowledge the fact, that sexual process is 100 per cent in the mind for it to---

(Applause)

Mr. Deputy Speaker, Sir, I had referred the House to page 353. Clause 8, Subsection 5 is very important. It attempts to cushion somebody appearing in court on the charge of defilement.

Clause 8(1) states:-

"A person who commits an act which causes penetration with a child is guilty of an offence termed defilement".

Clause 8(5) goes on to state:-

"It is a defence to a child under this section if-

(a) it is proved that such child deceived the accused person into believing that she was over the age of eighteen years at the time of the alleged commission of the

offence; and

(b) the accused reasonably believed that the child was over the age of eighteen years".

Mr. Deputy Speaker, Sir, I am requesting this Committee to consider adding an additional Clause 5(c) to cushion another group of people.

Mr. Deputy Speaker: Dr. Khalwale, by the way, just for information, the amendment is not for the Committee alone. As an hon. Member, you will be entitled to propose any amendments you want to make on the Bill at the Committee Stage.

Proceed!

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, I am most obliged. If during that time I see that the new Bill that they will have brought will not have done the amendment, I will bring it. However, all I wanted to say is that Clause 5(c) should be inserted to cushion this special group of people; they will then have to add that:- "If the accused was a person carrying out a scientific, ethical or a medical figure". This is because if we do not do that, the medical practitioners on many occasions perform procedures which, just for the lack of the right word in science, is actually defilement.

The Assistant Minister for Water (Mr. Wanjala): How?

The Assistant Minister for East African Community (Dr. Khalwale): Deputy Speaker, Sir, may I give an example because hon. Wanjala seems to be getting lost?

Mr. Deputy Speaker: Proceed!

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, some of these professionals are called upon as a life-saving measure to do what is tantamount to defilement. For example, we have children who are born with a very tight hymen and, therefore, when they start menstruating the parents come to the doctors complaining that their child is pregnant, the abdomen is distended and when we examine, we find that the menstrual flow has been coming every month and accumulating because there is no let out. So, the doctor aggressively takes a knife and actually "opens" the child. If you do not protect him, an ignorant and mischievous mother who finds that the child is not reported to be a virgin by the bridegroom would accuse you for having actually defiled that child, and this is why my thoughts are provoked on this one.

Mr. Deputy Speaker, Sir, I want to mention something about Clause 16 which is on page 359. It talks about child pornography. On this issue of child pornography, we must have at the back of our minds our performing artistes. You know that in this country, unless the law states otherwise, we have special shows where the performing artistes actually deliberately expose themselves. So, if a child, for example, who is truant, finds himself or herself in a discotheque, for example, where there is a striptease, the person who is performing a striptease is likely to go to jail if this child reports to the police. The owner of a media house who runs a television show, and you see them in your houses like on East Africa Television (EATV), where young girls gyrate their hips and what-have-you, will go to court and end up in jail if this law is passed.

Mr. Deputy Speaker, Sir, I want to mention something about Clause 20 which is on page 364, and it talks about incest by male persons and subsequently by female persons. My fear about this Clause is that what we call incest in Ukambani, Luyialand, Luoland, if I may be allowed to use ethnic names since they have not been outlawed, might not necessarily mean the same thing as what you call incest among the Somalis.

(Applause)

Mr. Deputy Speaker, Sir, amongst the Luyias, the daughter of your brother is the sister of

your son. In English, they call it cousin, but in Luo, Kamba and Luyia, we do not have the word "cousin". Now, in this booklet, we are referring to cousin. What do you find among the Somalis? In Somali, the daughter of your brother and your son are relatives which, in their culture, relative means they can actually be encouraged to marry so as for the family to stay together.

(Applause)

So, hon Muite, if you do not address this issue of culture, you will end up taking Somalis to jail when actually to them it is not supposed to be the case, unless culture has been changed in this country.

Mr. Deputy Speaker, Sir, on this same Clause 20, I want to talk about a very interesting thing. The daughter of the sister of your wife is your niece according to the Kambas. In English, the daughter of your wife's sister is your niece, just like in Kamba, but the difference obtains in the sense that amongst the Luos and Luyias, you can marry the sister of your wife.

(Applause)

So, if you can marry the sister of your wife and her daughter is your niece---

Ms. Ndung'u: On a point of order, Mr. Deputy Speaker, Sir. As the Mover of the Bill, I am trying to follow the argument. Is it in order for the hon. Member to talk about things which are not actually in the Bill? He has talked about cousins and relationships which are not in this Bill. So, is it in order for him to talk about things which are not in the Bill?

Mr. Deputy Speaker: Order, hon. Members! He is addressing incest. Let us be open and hear all views.

Proceed!

Ms. Mwau: What is incest?

Mr. Deputy Speaker: What is it, Ms. Mwau? This is a point of argument. You will get an opportunity to speak at any time.

Proceed, Dr. Khalwale!

The Assistant Minister for East African Community (Dr. Khalwale): Thank you, Mr. Deputy Speaker, Sir. With all due respect to hon. Ms. Ndung'u, I support this Bill more than you because I have more daughters than you!

(Applause)

Mr. Deputy Speaker, Sir, it is the absence of sensitivity to the reality of culture that the hon. Member, who is an urbanite, thinks that this is a light matter.

(Applause)

May I remind hon. Members that when we stepped into this House a few months ago and attempted to make amendments on the proposed Constitution on the issue of giving girls land in some parts of this country being removed, we were told we were not gender sensitive. It is the same reason why the same women who we wanted to give land voted against the proposed Constitution.

(Applause)

So, you can see the negative consequences!

Mr. Deputy Speaker, Sir, I do not want to lose the argument that I was talking about. The sister of your wife, if you are a Luo or Luyia, is your wife because you can marry her.

According to the English, her daughter is your niece. So, if culture allows a Luo man in Ugenya Constituency who has never been to school or to Parliament, and then you take him to court when his wife has left or they divorce and he has met the niece; that is the daughter of his wife's sister, who he would have married if she was around, you will confuse this person. So many Luos and Luhyas will end up in jail and they will say: "Where was Dr. Khalwale when this law was being passed?"

Mr. Deputy Speaker, Sir, Section 22(e) on page 366 defines the meaning of relatives. This part says:-

"adoptive brother" means a brother who is related to another through adoption and

"adoptive sister" has corresponding meaning."

What they are saying is that if a girl in a home where a boy was adopted has a sexual relationship with the adopted son of that home, and this girl complains or the mother discovers; usually it is the mother or the father who discovers; they would then arrest this adopted boy and get him jailed for ten years over incest. We learn from the Bible--- I am not an authority in biblical issues, but we learnt from Sunday school that when Jacob was adopted in a particular home, he found two girls there, one called Rachel and another Leah. He actually got a wife. So, to support this, you are actually opposing God. With all due respect, I would like us to state that an adopted child is a visitor in the family. He or she is not a blood relative. If he or she chooses to establish a family, he or she can marry one of the girls or boys and settle elsewhere. We cannot prepare a minefield for these young people to go to jail.

Mr. Deputy Speaker, Sir, I want to refer to Section 24 on page 368. This section talks about sexual offences relating to positions of authority. How I want this Bill to pass quickly so that those teachers and other professionals who make young girls under them pregnant can be dealt with! However, we should not allow this section to pass blindly. If it does, how about young lecturers at the universities who do not have wives? These are people who teach students in their 20s. What is wrong with those young lecturers going into courtship with those young adult women and making wives out of them? We have to carve the law to protect those young lecturers.

The Assistant Minister for Transport (Ms. Mbarire): On a point of order, Mr. Deputy Speaker, Sir.

The Assistant Minister for East African Community (Dr. Khalwale): Mr. Deputy Speaker, Sir, I want to refer to Section 28---

Mr. Deputy Speaker: Order, Dr. Khalwale! There is a point of order from Ms. Mbarire. Give her a chance!

The Assistant Minister for Transport (Ms. Mbarire): Mr. Deputy Speaker, Sir, the hon. Member is misleading this House. We know in the universities that there are some lecturers who tell female students that if they want to get "As" they have to sleep with them. That is an offence. That is what we are talking about. However, we have no problem with lecturers getting wives from the students. We have a problem with them pegging examination results to sex.

Mr. Deputy Speaker: Order, hon. Mbarire! I understand what you are saying, but it is not a point of order. It is a point of argument.

The Assistant Minister for East African Community (Dr. Khalwale): Thank you, Mr. Deputy Speaker, Sir, for your clarification.

For hon. Mbarire's information I have two daughters in universities. One is at Moi University and the other is at Kenyatta University, and I do not want them to get marks for sex. I am saying that my daughters at the

university are very important. But there are lecturers who should also be protected by the law. Some of the students may accuse lecturers falsely. I hope that you will soon give hon. Mbarire a chance to express her arguments.

I want hon. Members to refer to Section 28(2) on page 374. In this subsection we are told that in the proceedings on an offence under this section, it is for the accused person to prove that he or she did not distribute, administer or cause any substance to be taken with a view to engaging in sexual activity with another person. When you look at this section critically, you will see that there are two loopholes. The first loophole is that my professional colleagues who run chemists will be affected. Doctors who sell drugs will fall prey to this section. Once these doctors sell a drug, the law does not require them to follow clients to make sure that it is used according to the prescription. This subsection says that somebody who sells drugs must prove that he did not sell the drug with the intention of luring a young girl or a woman to rape.

I am begging this House to change this clause to protect doctors who run chemists. I know hon. Muite is very good in law. He and hon. Kajwang should look for good English in which to express this provision. We should say that the person who sold the drug will be held responsible only if he failed to dispense drugs on a prescription. But once he or she dispenses drugs on a prescription, he or she should be left alone. It is up to the person using that drug to know how to use it.

Mr. Deputy Speaker, Sir, the other hidden thing in this clause is, why should the accused person be asked to prove anything? I am not a lawyer, but I hear lawyers say that the burden of proof lies with the prosecutor. Why does this clause make it so easy for the prosecutor, so that someone who is framed would be easily jailed. Let the law be such that the burden of proof remains with the prosecutor. A learned hon. Member from my political party is reminding me that it is a constitutional issue.

I would also want to refer hon. Members to Section 29, which attempts to criminalise trade in certain drugs. This matter must be addressed very seriously. As we talk about drugs that cause sedation, I remind hon. Members who think it is a joke that the thing we take in the evening after 4.30 p.m or 6.30 p.m. called alcohol is actually a drug. So, the day you will appear in court accused by your partner of buying her Tusker or Smirnoff, you will realise its seriousness. In court they will not be talking about alcohol. They will talk about a drug. Hon. M. Kilonzo will refer to it as a drug called alcohol. I assure you hon. Members that when you appear in court accused by your girlfriend, you will be jailed because of luring her to take a drug called alcohol. Who will defend you unless this law is good.

Lastly, I want to refer to Section 31, which talks about circumcision. I believe in culture, and for God's sake, do not use this House to regulate culture. We should not use this House to criminalise culture. To ask certain people in this country to stop circumcising girls is like asking Luhya to stop circumcising boys, and they will not accept it.

An hon. Member: (Inaudible)

(Applause)

Mr. Deputy Speaker: Order, Ms. Mwau! May I ask that you be sober! Listen and debate objectively! I think it is a lively debate.

Mr. Ahenda: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I am one of those people who have gone through this Bill, chapter by chapter, and I have some few remarks to make, that I need to be re-looked and amended, if possible.

You know as much I do that these creatures are somehow shy. They are not as open as men are.

(Laughter)

*(Prof. Oniang'o stood in front
of Mr. Ahenda)*

An hon. Member: They want to fight!

Mr. Deputy Speaker: Order, hon. Members!

Prof. Oniang'o: On a point of order, Mr. Deputy Speaker, Sir. Did you hear Mr. Ahenda use the word "creatures" in reference to women?

An hon. Member: He did not say that!

Prof. Oniang'o: Is that in order, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: Mr. Ahenda, what did you do? I did not hear what you said.

An hon. Member: He should apologise!

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

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Please, sit down! What was the offending word?

The Assistant Minister for Education (Mrs. Mugo): "Creatures"!

Mr. Deputy Speaker: Is that so? Mr. Ahenda, did you say that?

Mr. Ahenda: Mr. Deputy Speaker, Sir, I was referring to God's creation.

(Applause)

Prof. Oniang'o: On a point of order, Mr. Deputy Speaker, Sir. He must withdraw and apologise.

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

Mr. Deputy Speaker: Order, hon. Members! We do not understand what is going on. What is it, Mr. Muite?

The Assistant Minister for Water and Irrigation (Mr. Wanjala): Mr. Muite did not hear it!

Mr. Muite: Mr. Deputy Speaker, Sir, please, protect me from Mr. Wanjala so that I can address the Chair.

Our Standing Orders prohibit use of offensive language. To use the word "creature" when we have hon. Members who are women is to violate our Standing Orders. Could Mr. Ahenda withdraw that word and apologise?

Mr. Deputy Speaker: Mr. Ahenda, maybe you are not familiar with the rules of the House. You have used a word that is offensive. Would you, therefore, withdraw the word and proceed?

(Loud consultations)

Mr. Ahenda: Mr. Deputy Speaker, Sir, I never implied any ill motive on hon. Members.

(Applause)

What I was referring to was God's creation. When I speak of our sexes, we are all God's creation, anyway. That is where my reference was. However, I never intended any ill motive.

I have a problem with Section 23 of this Bill. You know as well as I do that---

(Mr. Wanjala stood up in his place)

Mr. Deputy Speaker: Order, Mr. Wanjala! Will you sit down! Please, stop interrupting the hon. Member on the Floor. Let him finish a sentence!

The Assistant Minister for Water and Irrigation (Mr. Wanjala): On a point of order, Mr. Deputy Speaker, Sir. Since Mr. Ahenda is not a shadow Minister, is he in order to speak from the Dispatch Box?

Mr. Deputy Speaker: He is quite in order. He is not on the Dispatch Box!

Mr. Ahenda: That is just wasting my time.

Section 23(1) says: "Any person who undertakes any unlawful, unsolicited and unwelcome sexual advances or requests for sexual favours is guilty of the offence of sexual harassment."

That section prohibits any male person to marry because before you marry, you must make advances.

(Applause)

You know very well, as much as I do, that ladies---

(Loud consultations)

Mr. Deputy Speaker: Could you, please, listen! I know you will benefit from his contribution.

Mr. Ahenda: Mr. Deputy Speaker, Sir, you know very well, as much as I do, that an African lady says "no" when she means "yes".

(Applause and loud consultations)

(Some female hon. Members started withdrawing from the Chamber)

Mr. Deputy Speaker: Ladies, you must respect the dignity of this House. If you wish to withdraw, please, do so quietly.

Mr. Ahenda, continue!

Mr. Ahenda: Mr. Deputy Speaker, Sir---

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Ahenda, who has never been a woman, to mislead the House that when a woman says "no" she actually means "yes", yet he has never been a woman?

(Mr. Angwenyi stood up in his place)

Mr. Deputy Speaker: Order, hon. Members! Mr. Angwenyi and Mr. Muite, please, maintain order! That point of order is irrelevant.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, is it in order for this debate to be trivialised? We are discussing very serious issues. If any hon. Member feels that what has been cast should be cast differently, he or she should know that is

expected to happen during contributions.

Mr. Deputy Speaker, Sir, sexual offences can be visited on anyone, including the families of hon. Members who are here. Is it in order to request the Chair to ask the House to treat this matter with the seriousness it deserves?

Mr. Deputy Speaker: Indeed, the Minister is right. That is why I have been asking hon. Members to maintain silence and listen to the debate. This is a very important Bill. Please, let us give hon. Members the freedom to express themselves without trying to interrupt debate. Let hon. Members be free to express themselves. After all, that is the idea of the debate.

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

Mr. Deputy Speaker: What is it, Mr. Raila?

Mr. Raila: Thank you very much for that ruling that this matter should be treated with the seriousness that it deserves. Subclause 1 must be read together with Subclause 2. Subclause 1 spells out the offences. If only the hon. Member had read Sub-clause 2, he would not have made the offensive remark against our colleagues. This Bill has nothing to do with marriage and the offences are clearly specified.

(Loud consultations)

Mr. Deputy Speaker: You see, Mr. Raila, that is your opinion. Let us allow other hon. Members to express themselves. We will be debating this matter and every one will have an opportunity to correct what he or she heard another hon. Member say.

*(Female hon. Members consulted loudly
at the Chamber's entrance)*

Mr. Deputy Speaker: Order, Members! Order! I declare you disorderly and you may leave. Serjeant-at-Arms, please, make sure that they leave.

*(Several female hon. Members withdrew
from the Chamber)*

Order, Members! The House will maintain order. I do not want points of order for the sake of it.

Again, I want to emphasise that this is a serious matter and the hon. Members debating it must be sensitive to the feelings [Mr. Deputy Speaker] of their colleagues. Therefore, any offensive words must be left out of this debate.

Proceed, Mr. Ahenda!

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. A lot of us actually support this Bill and we want to appeal that there prevails a sense of sobriety on the Floor of the House. Any hon. Member who is speaking is allowed to advance his or her argument. Other hon. Members will have the opportunity to rebut if they so wish. These people are spoiling this Bill for no reason. I would like to appeal to this House that we debate this matter sensibly.

Mr. Deputy Speaker: Mr. Sungu, you are just repeating what I said. So, please, will you sit down?

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

Mr. Deputy Speaker: I rule all of you out of order. I have already said enough. I have already cautioned hon. Members that they must take this debate seriously and respect each other's views. I do not really think Mr. Ahenda is obviously out of the way. He is perfectly in order because he is debating and everybody else will have a chance to debate. I do not really understand why our lady hon. Members should have behaved in the manner they have just displayed. If you

want the Bill to be passed, you must persuade and convince your colleagues. The lady hon. Members ought not to have behaved the way they have just done.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, I want to appeal to the Chair to bring sobriety to this House. This Bill is not about women or men. It is about all of us. It is wrong for any gender in this House to pretend that this Bill belongs to them. It belongs to all of us.

I want to appeal to all of us that everybody has an opinion. You do not have to agree with it. You will have an opportunity to give yours. Let us listen to one another.

Mr. Deputy Speaker: I agree with you, but you are just repeating what I have said.

Mr. Ochilo-Ayacko: On a point of order, Mr. Deputy Speaker, Sir. What is offending most hon. Members is the assertion that African women do not say "no". Would I be in order to ask Mr. Ahenda to withdraw that specific remark before he proceeds?

(Loud consultations)

Mr. Deputy Speaker: Order! From now onwards, anyone who is disorderly will go out of the House.

Let Mr. Ahenda continue without interruption.

Mr. Ahenda: Thank you, Mr. Deputy Speaker, Sir. I have been interrupted so many times, but I must admit that I take this Bill very seriously. It is not a joking matter. What I was talking about is my personal experience in dealing with women.

(Laughter)

This Bill has got a lot of chapters that are very important and good for the benefit of this country. In all these chapters, I had only picked one chapter which I wanted to expound on. What I was talking about had nothing to do with a particular gender.

Mr. Deputy Speaker, Sir, if anything, I was defending women more than men. What I had in mind regarding this section, is that it should be looked at again. This is Section 23 on page 367. It states as follows:-

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

My question is: Before you marry any lady, you must make advances. According to this section of the Bill, the moment you make such an advance you are already guilty and will be sentenced to ten years imprisonment. This should be amended. As most of us know, African women are very shy. They do not make advances to men. It is for the man to make advances. I was trying to protect those of us who are fast in making advances because we do not want to go to jail for making advances to ladies that we intend to marry.

Before I marry a lady, I must make sexual advances to her.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. You made a ruling that we should approach this debate with a lot of sobriety. But is it in order for the hon. Member to continue to mislead this House by misreading Section 23(1) alone, without reading it with Section 23(2)? Those advances that the hon. Member is talking about are not criminalised or prohibited. Is it in order to continue to mislead the House?

Mr. Ahenda: Mr. Deputy Speaker, Sir, there is a lot of cultural conflict in this Bill that needs to be looked into. If you look at--

(Loud consultations)

Mr. Deputy Speaker: Order! Continue, Mr. Ahenda.

Mr. Ahenda: Mr. Deputy Speaker, Sir, if you look at Section 23(1) that the hon. Member is talking about, it refers to submission. The submission he is talking about comes after.

(Loud consultations)

Could I get protection from the Chair?

Mr. Deputy Speaker: Order, hon. Members. Please, listen!

Mr. Ahenda: Mr. Deputy Speaker, Sir, Section 23(2)(a) says:- "Submission to or rejection of such conduct by an individual is made either explicitly or implicitly a basis of employment or of a career decision affecting such an individual's employment or career advancement."

Mr. Deputy Speaker, Sir, you know as much as I do that, in this country, there are company executives who have been wrongly accused. Now, it is going to be legalised through this Bill. Any person who seeks employment in any office can go to court and accuse you. You will go in for ten years because you never gave him or her that job.

Indeed, in a country like ours where jobs are very scarce, that part of the Bill can be used and misused to jail many innocent people who sit at the tower of employment. I am not talking about men or women. I am protecting both sexes. That is why I do not know why my female colleagues decided to walk out. In fact, I am protecting them. That section of the Bill needs a total overhaul, so that both of us could be protected when people seek employment.

Mr. Deputy Speaker, Sir, Section 23(2)(b) of the same chapter states:

"Such conduct has the purpose or effect of interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working or learning environment."

This is rather ambiguous. How would one know that where he or she is seeking employment is a hostile environment sexually? It is very difficult to know that. When you are seeking employment, you assume that the environment will not be hostile to you sexually. Therefore, that part contradicts the African culture and social behaviour in our places of work.

Mr. Deputy Speaker, Sir, it is very difficult to prove if somebody comes to look for employment with an intent to have sexual relationship either with the employer or with the person seeking employment. Some people will think even before getting employment, that sexual advances---

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. This Bill does not refer to men or women, but to all sexes. Is the hon. Member in order to mislead the House that this is directed at men?

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, the point of order is addressed to the Chair! Let him finish.

Mr. Raila: Mr. Deputy Speaker, Sir, the inference here is that if the employer is a woman and she demands sex, she is equally guilty. Is the hon. Member in order to mislead the House that this is only referring to men when he knows that, in fact, it applies to women?

(Applause)

Mr. Ahenda: Mr. Deputy Speaker, Sir, as I stated when I began my contribution, I support this Bill in many aspects except for the few sections that I haven't mentioned.

With those remarks, I beg to support.

Mr. Angwenyi: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this very important Bill.

Mr. Deputy Speaker, Sir, as you have said, this is a very important Bill, but this Bill has also got a lot of rubbish.

(Applause)

Mr. Deputy Speaker: Order, Mr. Angwenyi. That word "rubbish" is unparliamentary.

Mr. Angwenyi: Sorry, Mr. Deputy Speaker, Sir. I will withdraw that word. It was a direct translation of my language. I mean this Bill has "weaknesses".

(Laughter)

Mr. Deputy Speaker, Sir, if I were the Mover, I would have withdrawn this Bill, take it back to the Committee and let it be cleaned up. But I am not the Mover and, therefore, I will talk about it.

There is the clause that says if you make sexual advances you will be imprisoned for ten years. If we enact this Bill the way it is, then we will imprison about 1.5 million Kisiiis!

(Laughter)

Mr. Deputy Speaker, Sir, in the Kisii community culture, if you approach a girl the first time and she says yes, you leave her because she is a prostitute. She has to pretend that she does not agree with your request. Then you make more advances. You even tell her that you will buy her a Mercedes Benz even if you do not have a vehicle yourself. That is the way we seduce our women. She might even refuse completely. Then you send somebody; her age mates, to go and talk to her. You can even touch her a little but not go too far. I do not condone rape. But I am saying that this Bill must be in tandem with the cultures of this country.

Mr. Deputy Speaker, Sir, some of the provisions in this Bill are unconstitutional. What does the Constitution say about somebody who has committed a crime? Who is supposed to prove that he has committed a crime? The person is presumed innocent until proved guilty by a court of law.

Mr. Deputy Speaker, Sir, when this Bill was being drafted, did they refer to Section 77 of the Constitution?

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members! Mr. Angwenyi, you will continue tomorrow. I think you have just taken about three minutes. So, you still have quite a lot of time.

Hon. Members, it is now time to interrupt our business. The House is, therefore, adjourned until tomorrow, Thursday, 27th April, 2006 at 2.30 p.m.

The House rose at 6.30 p.m.