

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 27th April, 2006

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### PAYMENT FOR ISSUANCE OF ID CARDS

**Mr. Bett:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Immigration and Registration of Persons the following Question by Private Notice.

Why are Kenyans being asked to pay for the issuance of national identity cards after the Government abolished the charge?

**The Assistant Minister for Immigration and Registration of Persons (Mr. Mwaboza):** Mr. Deputy Speaker, Sir, I beg to reply.

The recent announcement by His Excellency the President to the effect that Kenyans applying for initial registration for national identity cards on attainment of 18 years is being implemented fully. In this respect, the Kshs50 previously being charged has been stopped. However, the charges for replacement, duplicates and change of particulars are still in force, as follows: Duplicate or loss, Kshs100; replacement, Kshs100; change of particulars on identity card, Kshs300.

Mr. Deputy Speaker, Sir, in addition, a Gazette Notice to notice of 17th March, 2006, has been forwarded to those stations or registration officers in the country who were still collecting Kshs50 from Kenyans who had no knowledge of the notice.

**Mr. Bett:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that answer. Since the Kshs50 fee has been waived legally, could he assure the House that materials required for issuance of national identity cards are available at all registration centres in the country?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, I would like to assure the House that a Gazette Notice to that effect will be issued on Friday or next week.

**Mr. Deputy Speaker:** Mr. Mwaboza, Mr. Bett has asked you to assure the House that the materials required for issuance of identity cards are available at all registration centres in the country. Is that what you said will appear in the Gazette Notice?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, we have, in fact, already dispatched to each registration station, at least 7,000 sets of registration forms. Some hon. Members have been asking us similar questions and we have assured them that the materials are available at registration centres. In the event that the materials are not available at any given registration centre, it should be brought to our notice so that we can dispatch the materials.

**Mr. Bifwoli:** Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for assuring the House that the registration materials have been dispatched to registration centres. However, some of the officers issuing the identification cards are demanding fuel. Have you given

them fuel?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, it is obvious that there is a budget for each Ministry. As far as we are concerned, some money had been sent to the various stations to enable the officers to do their work. However, we know that most hon. Members have demanded that there should be mobile teams of registration officers. If we are given enough money in the next Budget, mobile teams of registration officers will be constituted.

**Dr. Ojiambo:** Mr. Deputy Speaker, Sir, could the Assistant Minister assure the House that, once forms have been filled, the processing of identification cards will take a shorter time? Young people who cannot afford the Kshs50 fee are sometimes made to pay more than Kshs1,000, travelling between their homes and registration centres, chasing after identification cards.

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, it is a statutory requirement that one should get an identification card within 30 days of application. I would want hon. Members to appreciate that we have a centralised system of processing identity cards. The process has not yet been decentralised. We are, therefore, doing our level best. When applying for an identity card, one is required to attach certain documents to the application forms. In most cases, when the applications reach our headquarters, we find that two or three elements of the application have not been satisfied. Such application papers are returned to the registration station of origin. We are, therefore, pleading with hon. Members to hold *barazas* and educate their constituents on the right application procedure. My Ministry's officials on the ground, in conjunction with Provincial Administration officials, are holding public *barazas* to disseminate this information.

**Mr. Kamotho:** Mr. Deputy Speaker, Sir, considering the fact that there are over 4,000 secondary schools in this country, and that quite a large number of young people mature at the end of their final year in secondary school, could the Assistant Minister consider making available application forms to every secondary school in the country, so that those who mature while in school can apply for their identity cards?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, the hon. Member's suggestion is in our reform agenda. This will be communicated to our officers through a circular.

**Mr. Deputy Speaker:** Mr. Assistant Minister, you can see that the Chair is really having difficulties because a lot of hon. Members want to ask questions on this issue. It is a very important issue. If I were there, I would also have stood up to ask a question.

**Mr. Waithaka:** Mr. Deputy Speaker, Sir, the biggest problem is that many youths have been delayed in obtaining identity cards. One of the requirements in applying for a late identity card is a sworn affidavit. You have to swear an affidavit before a magistrate or a Commissioner of Oaths to say why you did not obtain an identity card when you attained the age of 18 years. This is costing the applicants up to Kshs3,000 to travel from the rural areas to urban centres to get a magistrate or a Commissioner of Oaths to swear an affidavit. What is the Ministry doing to assist the people who are registering late in terms of swearing affidavits?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, it is unfortunate, but the Registration of Persons Act requires that a person who is applying for an identity card when he is over 18 years should swear an affidavit. Those who enacted this law knew that our country is wide. However, we cannot go against the law.

For those who come from remote areas, they should know that chiefs and assistant chiefs are registration officers under the Registration of Persons Act. The officers can collect the application forms, fill them and take them to a magistrate for signing.

**Mrs. Mwendwa:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that it costs Kshs300 to change the particulars on an identity card. Normally, most of the people who change their particulars are women when they get married. If married women do not change the particulars on their identity cards, they encounter a lot of problems when their husbands die.

Is the Government assisting women to change the particulars on their identity cards when they get married by charging them Kshs300? This is a deterrent! Is there anything wrong in a woman changing her status? Why are women being punished?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, this is not a selective application of the law against women because even men change their particulars when they change their faith, for example, from a Christian to a Muslim. They change their original names. There is no discrepancy as far as we are concerned.

**Mr. Deputy Speaker:** Hon. Members, I cannot continue with this Question any more. I know that it is important, but we have taken more than ten minutes on it.

**Capt. Nakitare:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** No!

**Capt. Nakitare:** On a point of order, Mr. Deputy Speaker, Sir. It has been reported that there is *majimbo*---

**Mr. Deputy Speaker:** Capt. Nakitare, you have this bad habit of always persisting---

**Capt. Nakitare:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Will you sit down?

**Capt. Nakitare:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Will you, please, leave the Chamber? You are being disorderly! Could you leave the Chamber as quickly as possible, so that we can continue? You should be away for the rest of the day!

*(Capt. Nakitare withdrew from the Chamber)*

**Mr. Bett:** Mr. Deputy Speaker, Sir, I wish there was ample time. Maybe the hon. Member would have got an opportunity to ask his question. Nonetheless, in his answer, the Assistant Minister has said that it costs Kshs100 to either get a duplicate identity card or replace an identity card. What does that mean?

**Mr. Mwaboza:** Mr. Deputy Speaker, Sir, once an identity card is lost, there are people who apply for a copy of it. The endorsement of that copy costs Kshs100. Once an identity card is lost and a person has made the necessary application, we charge Kshs100 for this and the new identity card bears the same serial number as the old one.

#### CLOSURE OF PUBLIC ROAD IN OL JOROROK

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Is the Minister aware that a road reserve between parcel Nos.1712 and 1713 in Ol Jororok Salient, which leads to Kibathi Primary School, among other places, had been closed by an individual for many years?

(b) Is he further aware that a consultative meeting attended by *wananchi*, leaders and Government officials was held at the site on Friday, 28th March, 2006, following which the road was opened and graded by the Government?

(c) Why has the said individual closed the road again and what steps is the Minister taking to ensure that the road remains open for use by *wananchi*?

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

(a) I am not aware that the road reserve between parcel Nos.1712 and 1713 in Ol Jororok

Salient had been closed.

(b) I am not aware of a consultative meeting which was attended by *wananchi*, leaders and Government officials that was held at the site on 28th March, 2006.

(c) I am not aware that the said individual closed the road again. However, I have instructed my officers on the ground to investigate and take the necessary action to ensure that the road remains open for use by *wananchi*.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, this is a very sad day for the people of Ol'Kalou. On 28th March, 2006, we had a meeting which was attended by the District Officer (DO), the District Surveyor, the District Education Officer (DEO), the chief, myself and over 1,000 people, but the Assistant Minister says that he is not aware of all that.

Nonetheless, he has said that he has instructed his officers on the ground to investigate the matter. Could he tell the House what the investigations have revealed? As recent as yesterday, the road was still closed.

**Mr. Kamama:** Mr. Deputy Speaker, Sir, our investigation shows that the road between plot Nos.1712 and 1713 was surveyed to cadastral standards and beacons have been erected to show the extent of the road in question. This road measures about nine metres in width.

However, Mr. John Ngumo Murere, the owner of plot No.1713 has encroached on the road leaving a portion measuring about three feet. We have given our officers firm instructions to take action against this person.

**Mr. Gitau:** Thank you, Mr. Deputy Speaker, Sir, for letting me catch your eye, which is a rare occasion.

You will notice that, all over the country, roads and road reserves have been grabbed by private developers and they have started construction works on them. What policy does the Government have to ensure that roads and road reserves are used for their intended purpose?

**Mr. Kamama:** Mr. Deputy Speaker, Sir, in most district offices, we have District Surveyors and District Land Registrars. Whenever there is a problem to do with boundaries and checking of beacons, they are available to solve it.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, now that the Assistant Minister has promised to take action on that particular road, could he also promise to open a number of roads along the beach in my constituency?

**Mr. Kamama:** Mr. Deputy Speaker, Sir, we will definitely take action. I also want to remind you that we are having a meeting with all hon. Members from Coast Province this weekend. I know that most of those issues will come up. As soon as we establish the correct position, we will take action.

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

**Mr. Deputy Speaker:** Some hon. Members have been standing!

Mr. Mwandawiro, what is it?

**Mr. Mwandawiro:** Ahsante sana, Bw. Naibu Spika. Waziri Msaidizi amesema kwamba atachukua hatua kukabiliana na suala hilo. Tumekuwa na Tume ya Ndung'u kuhusu hayo matatizo. Watu binafsi wamenyakua barabara na sehemu nyingine za matumizi ya umma. Je, mapendekezo ya Tume yatatekelezwa lini? Hiyo ndio hatua kamili!

**Mr. Kamama:** Mr. Deputy Speaker, Sir, that is a purely different Question. But, be that as it may, I want to confirm to the hon. Member that our Ministry is liaising with Kenya Anti-Corruption Commission (KACC) to address the question of land that was acquired by individuals illegally. So, that matter is being addressed.

Again, a tribunal will be formed. Before that, the matter will be brought before Parliament for approval. Once Parliament approves it, we will take action on the basis of that tribunal.

**Mr. Deputy Speaker:** Last question, Eng. Muriuki!

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, the Assistant Minister has confirmed that the road is there and he is going to take action. The same surveyor who showed us the beacons must be the one who showed him the same. Could the Assistant Minister be specific on what the Government will do to open that road? The road is closed as we are speaking today!

**Mr. Kimeto:** On a point of order, Mr. Deputy Speaker, Sir. Could the Assistant Minister inform us what action is taken against a person who encroaches on a road?

**Mr. Deputy Speaker:** Order, Mr. Kimeto!

**Mr. Kimeto:** I am sorry---

**Mr. Deputy Speaker:** Mr. Kimeto, that is a question! It is not a point of order! Mr. Assistant Minister, you can respond to Eng. Muriuki's question!

**Mr. Kamama:** Mr. Deputy Speaker, Sir, I can confirm to this House that Mr. John Ngumo Murere actually encroached on plot No.1712. Our job is to make sure that, that gentleman reverts back to his original boundaries. I want to assure this House that, that is going to be done. If the officers fail to address this matter, the hon. Member is at liberty to come to our office.

LIST OF REGISTERED COMPANIES  
LICENSED TO IMPORT SUGAR

**Prof. Olweny:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Which companies are currently licensed to import sugar?

(b) How much sugar has each company imported since January 2006, and what measures are in place to safeguard the local sugar industry?

(c) Could the Minister apprise the House on the rules that govern exportation of agricultural commodities from one COMESA country to another?

**The Minister for Agriculture (Mr. Kirwa):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) The list of registered companies currently licensed to import to sugar is appended herewith as Annex One. There are 63 companies that are registered to import raw mill sugar, and 33 companies that are registered as importers of white refined sugar.

(b) The amount of sugar imported from January, 2006 to March, 2006, is 45,000 metric tonnes, as per Appendix Two that I will lay before the House.

(c) The following measures have been taken to safeguard the local sugar industry:-

(i) The COMESA safeguard measures allowing only 200,000 metric tonnes of sugar access to Kenyan market per year is one of the safeguard measures. The measures were arrived at during the COMESA Council of Ministers at its meeting in December, 2003.

(ii) The Sugar (2003) Regulations administered by the Kenya Sugar Board (KSB) and amended by Legal Notice No.2 (2006), set the rules for importation.

(c) The rules that govern exportation of agricultural commodities from one COMESA country to the other are as follows:-

(i) The products must satisfy vito-sanitary and vito-sadinary regulations that have been internationally accepted.

(ii) The commodity must be wholly produced by the Member country to attract duty-free status.

(iii) No trans-shipment from one country to another.

(iv) Any value added to the commodity must attract 35 per cent duty. An example is wheat

flour.

**Prof. Olweny:** Mr. Deputy Speaker, Sir, I wish to lodge a complaint that I have not received the list that the Minister has talked about.

However, of late, there have been complaints about sugar coming from Egypt. I wish to know from the Minister whether Egypt is a net importer or net exporter of sugar. From those regulations, I suppose that a net importer for a particular commodity may not export to another COMESA country.

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, the said complaints have not been officially lodged. If they are lodged properly, we shall be able to respond.

**Mr. Mwanicha:** Mr. Deputy Speaker, Sir, I do not know whether the Minister is aware that the sugar industry in Kenya will soon collapse, once we open the gates for sugar from outside. Other countries produce up to ten other products from sugar-cane, including gasohol, material for board and coal generation, alcohol and other products. What is the Minister doing to make the production of sugar competitive, so that, that industry is not wiped out as we watch?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, at the outset, I want to erase the erroneous impression that the sugar industry in Kenya is going to collapse next year, or the year after. For the last three years, we have been more competitive than ever before. The net effect of that is that this year, instead of 200,000 metric tonnes of sugar getting into Kenya, there is a threat that our sugar is getting cheaper. The net outflow is going to be exportation of the said commodity. Nonetheless, we have a number of challenges in the industry. One is the need for us to improve our domestic production, so as to cope with the demand that is likely to escalate to one million metric tonnes in the next four years. We have put measures in place to address the said challenges for the purposes of allowing the sugar subsector to be more profitable.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, the Minister said very clearly that one of the safeguard measures put by COMESA is to preclude those countries that do not produce sugar from exporting to other COMESA countries. The second measure was that no trans-shipment is allowed. It is common knowledge - and the Minister knows - that Egypt is not a producer of sugar. Yet, it exports sugar to Kenya. Is he right? Could the Minister accept that he does not need any official explanation from anybody because he has been given enough powers by the Government to stop sugar exports to Kenya? The sugar from Egypt is ruining our industry!

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, the fact of the matter is that Egypt produces more sugar than us. The odd situation is that Egypt also consumes slightly more sugar than us and, therefore, the net effect is that we import the balance of the sugar. Under the Common Market for Eastern and Southern Africa (COMESA), rules, if I am importing sugar and exporting as much as I produce, then there is no contradiction whatsoever.

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, the best way to safeguard the sugar industry is to expand the existing factories particularly South Nyanza (SONY), Muhoroni, Chemelil and to construct Busia Sugar Factory. What is the Minister doing to ensure that this is achieved?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, as the House may be aware, I gave an indication last week that through the Sessional Paper that we are about to lay before the House in due course, we have looked at a number of measures to revitalise the sugar subsector. One of these measures is to clean the balance sheets of all the ailing institutions in the sugar industry and in the process allow for the expansion of factories such as SONY and setting up of new factories when the applications come.

**Prof. Olweny:** Mr. Deputy Speaker, Sir, the rate of importation of sugar can lead to a glut at any given time. It, therefore, interferes with the sales of the local sugar produced. Is there an official staggering approach which the Ministry has so that the rate at which the sugar is imported

does not interfere with our local sales?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, we have taken care of that in two ways. One, the importation is done between the months of March and September, a period which logistically does not allow for ease of movement of sugar-cane from the fields to the factories. Two, under the gazetted rules for the imports of last year, we have ensured that there is some staggering effect between the months of March and September.

**Mr. Deputy Speaker:** Next Question by Private Notice, by Mr. ole Metito!

#### GRACE PERIOD FOR AFC LOAN DEFAULTERS

**Mr. ole Metito:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that the Agricultural Finance Corporation (AFC) advanced seasonal and development credit to farmers in Loitokitok and other parts of the country?

(b) Is he further aware that the AFC has written demand letters as most of the farmers have defaulted due to the prevailing drought in the country?

(c) Could the Minister consider giving these farmers a grace period of one season to enable them recover from the effects of the drought?

**The Minister for Agriculture (Mr. Kirwa):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that AFC advanced seasonal and development credit to farmers in Loitokitok and other parts of the country.

(b) I am also aware that AFC has written demand letters and reminders to farmers who have defaulted in payments.

(c) I will consider giving farmers a grace period when they present their cases to my Ministry. Each case will be considered on its own merit.

**Mr. ole Metito:** Mr. Deputy Speaker, Sir, I would also want to thank the Minister for that good answer. However, in light of the fact that the drought was declared a national disaster by His Excellency the President, could the Minister consider writing a circular to the AFC to allow these farmers a grace period without repaying these loans so as to recover from the effects of the drought without necessarily waiting for them to present their own cases?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, in a majority of cases, the loans that we are demanding or writing reminders to farmers, are the ones that we advanced in the year 2003 and that is not the year when there was a ravaging drought. However, for the loans for this year, we shall be able to assess district by district; those who are not able to harvest anything because of drought. However, while the drought affected 26 districts, a number of districts had even better harvests than in the last two years.

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, some of these AFC loans were granted to these farmers 20 years back and I happen to meet some of my constituents who had received demand letters. Some have died. Could the Minister consider writing off some of the loans because they were given a long time ago when the country was very corrupt and also considering that some of the people who were awarded these loans have since died?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, on the old loans, we have given a general policy directive that we are giving concessions to all farmers. When it comes to the cases of those clients who might have passed on, we shall be able to consider that issue on merit.

**Mr. ole Metito:** Mr. Deputy Speaker, Sir, could the Minister consider instructing the AFC to stop accruing interest on these loans that were given over this drought period?

**Mr. Kirwa:** Mr. Deputy Speaker, Sir, let me not give a blanket commitment but I commit

myself before the House to look at areas where the drought affected farmers and discuss with other arms of the Government with a view to ameliorating the situation.

### ORAL ANSWERS TO QUESTIONS

**Mr. Deputy Speaker:** Hon. Members, you will recall that yesterday the Chair deferred two Questions and ordered that they will be given priority today. Therefore, let us move onto Question No.236 on page 91 by Mr. Osundwa!

#### *Question No.236*

#### COMPLETION OF RENOVATIONS AT MAKUNGA HEALTH CENTRE

**Mr. Deputy Speaker:** Is Mr. Osundwa not here? He is not here and, therefore, his Question is dropped.

*(Question dropped)*

Next Question by Mr. Ndolo!

#### *Question No.047*

#### DETAILS OF REVENUE COLLECTED BY NCC IN 2005

**Mr. Ndolo** asked the Minister for Local Government:-

- (a) whether he could give the details of the City Council of Nairobi total revenue collection from January to March 2005;
- (b) whether he could also elaborate on the Council's monthly wage bill; and,
- (c) how much is outstanding in form of salary arrears owed to council workers to date.

**The Assistant Minister for Local Government** (Mr. Tarus): Mr. Deputy Speaker, Sir, I beg to answer.

(a) The total revenue collection of the City Council of Nairobi as from January to March 2005 amounts to Kshs1,166,815,879.

(b) The council's monthly wage bill is Kshs222,205,782. This is the payroll for March 2006.

(c) Currently there are no salary arrears. However, there are salary deductions to statutory creditors amounting to Kshs3,844,000.

*(Mr. Tuju was applauded as he  
entered the Chamber)*

**Mr. Deputy Speaker:** Hon. Members, the Chair also wants to join hon. Members in welcoming Mr. Tuju back to the House.

*(Applause)*



**Mr. Ndolo:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that answer. That debt of Kshs3 billion is massive. Could the Assistant Minister tell this House how that huge debt was incurred?

**Mr. Tarus:** Mr. Deputy Speaker, Sir, the debt arose as a result of under-collection of revenue that would have allowed the council to meet that particular obligation.

Secondly, the debt arose as a result of the council's inability to meet its statutory requirements for remission of the statutory deductions to the various units involved.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, you will realise that the kind of receipts most councils use can easily be forged. What action is this Minister going to take, like the Department of Immigration has done at the airports, to ensure that the receipts that councils issue are not forged, and they can be properly accounted for?

**Mr. Tarus:** Mr. Deputy Speaker, Sir, first, I am not "this Minister." I am an Assistant Minister for Local Government.

Two, we have put plans---

**Mr. Deputy Speaker:** Sorry, Mr. Tarus, what did you say? You said you are not what?

**Mr. Tarus:** Mr. Deputy Speaker, Sir, I said I am not "this Minister", but the Assistant Minister for Local Government.

**Mr. Deputy Speaker:** All right, just proceed!

**Mr. Tarus:** Mr. Deputy Speaker, Sir, we recognise that some of the councils have had problems such as raised by the hon. Member. However, we have taken cognisance of the fact that councils have to make sure that those who print documents for use in their councils do so through the proper methods required by law.

**Mr. Deputy Speaker:** Last question, Mr. Ndolo!

**Mr. Ndolo:** Mr. Deputy Speaker, Sir, workers of the Nairobi City Council (NCC) do not get medical benefits. Since the NCC is currently collecting enough revenue, could the Assistant Minister tell this House when the NCC will make sure that workers benefit from the money they are now collecting?

**Mr. Tarus:** Mr. Deputy Speaker, Sir, the fact that the NCC is collecting enough money does not mean that we spend all the money on personal emoluments or benefits to the employees. While I recognise the importance of improvement of the welfare of the workforce, we also take cognisance of the fact that the NCC must live up to its obligation of provision of services to the residents of Nairobi.

**Mr. Deputy Speaker:** Hon. Members, let us now move back to Mr. Lesrima's Question.

*Question No.052*

RE-OPENING OF MARALAL AFC OFFICE

**Mr. Lesrima** asked the Minister for Agriculture:-

- (a) when the Agricultural Finance Corporation (AFC) office in Maralal will be re-opened; and,
- (b) if he could increase equipment and machinery facilities, for example, tractors and bulldozers in the district.

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): Mr. Deputy Speaker, Sir, I beg to reply.

- (a) The Ministry of Agriculture, in conjunction with the Agricultural Finance Corporation,

will consider re-opening the Maralal office by the end of the Fiscal Year 2006/2007, once a detailed business survey and farmer-sensitisation exercise currently being carried out is finalised.

(b) The Ministry will continue to increase equipment and machinery service facilities as budgetary allocations are enhanced. For instance, in March this year, the district was given one rehabilitated Hanomag bulldozer (D7).

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, on part "a" of the Question, the Assistant Minister has indicated that he will not re-open the AFC office in Mararal District. The nearest AFC office accessible to the people of Samburu District is in Nyahururu Town, which is 150 kilometres away. The people of Marsabit, Isiolo, Moyale, Wajir and Mandera districts all go to the AFC office in Meru District. Could the Assistant Minister consider decentralizing these services so that pastoralists can also benefit?

**Mr. Kembi-Gitura:** Mr. Deputy Speaker, Sir, that is the essence of the answer that I have given. I have said that, in the Fiscal Year, 2006/2007, we shall re-open the AFC office in Mararal District once the sensitisation programme, which is currently on-going, is finalised. The reason why the AFC office in Mararal was closed in the 1990s was because there was no sufficient business at that time. The AFC had also ceased lending because they had no funds. From 2003, the AFC started lending money after it was bailed out by the Government. As a result, it is now building up funds. The AFC will soon re-open several branches as the need for re-opening them arises.

**Mr. Mukiri:** Mr. Deputy Speaker, Sir, apart from the AFC offices being too far from the farmers, there is also the issue of processing of loans. This process is too expensive to the farmers. Could I know from the Assistant Minister what his Ministry is doing to bring down the cost of processing loans?

**Mr. Kembi-Gitura:** Mr. Deputy Speaker, Sir, that is a completely different Question and not related to this Question. I would like to deal with a specific question once an hon. Member brings a specific issue on that question.

**Eng. Okundi:** Mr. Deputy Speaker, Sir, the opening of the AFC offices in various districts has promoted farming substantially and many farmers have benefited. Would I be in order to ask the Assistant Minister when his Ministry will re-open the AFC office in Homa Bay District, where farmers have requested its re-opening for years now? Could he tell us when he will open---

**Mr. Deputy Speaker:** Order, Eng. Okundi! You have already asked the question. Could you let the Assistant Minister respond?

**Mr. Kembi-Gitura:** Mr. Deputy Speaker, Sir, I would like to thank the hon. Member for that question because it is on policy. The policy of the Government, realising the central role that the Ministry of Agriculture is playing in conjunction with parastatals like the AFC, is to rationalise all the offices for branches that were closed down in the late 1990s when the AFC stopped lending. Once the branches are re-opened, we appreciate that this will re-vitalise agriculture in all those areas, including Samburu District. So, the policy of the Government is to re-open as many offices as possible, as the AFC continues to build its capital base, as it is doing at the moment.

**Mr. Deputy Speaker:** Hon. Members, I am obliged to go to the last question. Anyway, let me hear Mr. Poghisio!

**Mr. Poghisio:** Mr. Deputy Speaker, Sir, the Kapenguria District AFC office has not been re-opened. Could the Assistant Minister confirm or deny that when AFC started lending out money, pastoralists were given the last priority after everyone else was attended to?

**Mr. Kembi-Gitura:** Mr. Deputy Speaker, Sir, I do not wish to confirm or deny that. However, the reason the AFC went on its knees in the first instance was because the collection rates of funds was not very high. The AFC was unable to collect money because of the issue of lack of payment. Of course the AFC is a financial institution; it lends money for profit, to benefit the

farmers. So, naturally, the areas where branches were closed were where the AFC was unable to collect funds as was expected. However, that is now being worked out as a policy of the Government; to see to it that the branches are re-opened as soon as possible.

**Mr. Deputy Speaker:** last Question, Mr. Lesrima!

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, there is an African Development Bank (ADB) project worth Kshs3 billion. Could the Assistant Minister consider giving grants to livestock farmers under this project? Could he also consider supporting the AFC to carry out extension services as he prepares to open offices all over the country?

**Mr. Kembi-Getura:** I would like to assure the hon. Member that we shall consider that. I would like to invite him to see me so that we can sit down and discuss what needs to be done.

*Question No. 009*

MONEY COLLECTED/DONATED BY  
KENYA CHARITY SWEEPSTAKE

**Mr. Salat** asked the Vice-President and Minister for Home Affairs:-

(a) how much money the Kenya Charity Sweepstake has collected in the last four year;

(b) whether he could give a breakdown on how much each constituency has received in form of donations over the same period; and,

(c) what he is doing to ensure transparency and accountability in the operations of the Kenya Charity Sweepstake and other lottery organisations in the country.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Deputy Speaker, Sir, I answered parts "a" and "c" of the Question. What was required from me was for me to give the breakdown of the distribution of funding to various constituencies. Given that the constituencies are very many, I wish to table the breakdown before the House.

*(Mr. Awori laid the document  
on the Table)*

**Mr. Salat:** Mr. Deputy Speaker, Sir, in part "c" of the Question I asked what the Minister was doing to ensure transparency and accountability not only in the Kenya Charity Sweepstake but also in other lottery organisations. Could the Minister tell the House how many other lottery organisations have been licensed by the Government?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I answered that question but I will repeat my answer. The licensing and control of lotteries is governed by the Betting, Lotteries and Gaming Act, Cap 131, of the Laws of Kenya. The Act empowers the Betting Control and Licensing Board to impose such conditions as it may deem necessary to ensure that lotteries are promoted and conducted efficiently.

**Mr. Salat:** On a point of order, Mr. Deputy Speaker, Sir. My question was how many other lottery organisations exist besides the Kenya Charity Sweepstake and not about the law governing them!

**Mr. Awori:** Mr. Deputy Speaker, Sir, the equivalent of the Kenya Charity Sweepstake is only one and it is called Lotto. The others are promotional lotteries, which are undertaken by industrial and commercial organisations as and when they want to promote their business.

**Mr. Deputy Speaker:** By the way, I have looked at the HANSARD of the day when this

Question was dealt with, and seen that His Excellency the Vice-President and Minister for Home Affairs has done what was necessary. Hon. Members can access the information he laid on the Table of the House.

*Question No. 277*

INITIATION OF IRRIGATION SCHEMES  
ALONG ATHI/THIKA RIVERS

**Mr. C. Kilonzo** asked the Minister for Water and Irrigation:-

(a) whether he is aware that two permanent rivers, namely Athi and Thika Rivers, serve a big part of Yatta Constituency;

(b) whether he is further aware that these two rivers offer immense potential for canals that can be used for small-scale irrigation schemes; and,

(c) whether he could consider initiating small scale irrigation schemes for poverty reduction along the two rivers.

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

(a) Yes, I am aware that Athi and Thika Rivers serve a big part of Yatta Constituency.

(b) Yes, I am also aware that the two rivers offer great potential not only for canals for small scale irrigation but also for pump-fed-piped irrigation systems. The irrigation potential for the two rivers is estimated at 3,740 hectares. Out of this potential, 1,633 hectares have been developed for irrigation. The number of farmers involved is 1,548. Construction of the proposed Munyu Dam will further increase the potential once technical and environmental evaluations are carried out and funds sourced for it.

(c) My Ministry has been carrying out irrigation development along the two rivers. Already, Kayatta Irrigation Scheme, that covers 128 hectares and serves 320 households, is currently under construction. Kabaa Irrigation Scheme, with an area of 160 hectares and 225 households, has been designed and is awaiting construction. These two schemes draw their irrigation water directly from the Athi River. During the next Financial Year, 2006/2007, two small holder irrigation schemes, namely Kithendu A and Kithendu B, will be targeted for development. My Ministry, in conjunction with farmers, will continue identifying new irrigation schemes in the area for development.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members! Could you consult in lower tones, please?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, Yatta is among constituencies hard hit by famine because of continued failure of rains. The project, which is known as Yatta Canal, was done by the colonial government. The proposed Kayatta and Kabaa Irrigation Schemes are in Mwala and Kangundo respectively. My interest is my constituency. When is the Government going to start implementing irrigation projects in my constituency and other drought-prone areas with potential for irrigation?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I understand the predicament of the hon. Members. But I would like to remind the hon. Member that, as a Ministry, we have to develop the whole of Machakos District. That is why in all the divisions of the district we have proposed several irrigation schemes. Some of them are already operational while others will be implemented in the next financial year.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, could the Assistant Minister confirm or deny

that there is no water irrigation project in Yatta Constituency?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I have said that we have several development and irrigation projects being undertaken in Yatta Constituency. We have Yatta Furrow, a scheme which draws its water from Thika River. The total area to be covered is 1,800 hectares. Already 900 hectares are under irrigation.

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

**Mr. Deputy Speaker:** What is your point of order, Mr. K. Kilonzo?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, the Assistant Minister is not addressing the specific question that I have asked him. I have asked him whether there is a specific irrigation project in Yatta Constituency undertaken by the NARC Government other than the one started by the colonial government.

**Mr. Wanjala:** Mr. Speaker, Sir, I have been very clear that Yatta Furrow, which draws its water from Thika River, is irrigating 850 hectares.

**Mr. Deputy Speaker:** Last question, Mr. C. Kilonzo!

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, my concern is that when it comes to relief food the Government spends over Kshs10 billion on it, but when it comes to irrigation in Machakos District in general, it hardly spends over Kshs100 million. My question is, what we can do to alleviate the persistent famine problem? Could the Assistant Minister consider starting irrigation projects in Yatta Constituency in the next financial year.

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I have said that in the next Financial Year, 2006/2007, my Ministry is going to finance two schemes. These are Kithendu A and Kithendu B.

**Mr. Deputy Speaker:** Hon. Members, it is now 3.30 p.m. and that marks the end of Question Time. However, we still have two questions to defer. Question No. 101 will be deferred to Tuesday, next week. Question No.286 will be deferred generally. There is no specific date because the hon. Member will not be around next week.

*Question No.101*

VALUE OF TARDA FUNDED PROJECTS  
IN MBEERE DISTRICT

*(Question deferred)*

*Question No. 286*

IMPLEMENTATION OF SALARY  
INCREMENT FOR CHIEFS

*(Question deferred)*

**MINISTERIAL STATEMENTS**

**Mr. Deputy Speaker:** Hon. Members, we have a number of Ministerial Statements. Did I see the Minister of State for Special Programmes? Mr. Munyes was here!

*(Mr. Munyes stood up in his place)*

Mr. Minister, the Chair "ordered" and not "requested" that you issue a Ministerial

Statement today as requested by Mr. Bahari a while ago. Are you ready?

FLOODING OF EWASO NYIRO RIVER

**The Minister of State for Special Programmes** (Mr. Munyes): Mr. Deputy Speaker, Sir, I beg to give the following Ministerial Statement.

The Ewaso Nyiro River burst its banks on 4th April, 2006, following the heavy rains that hit the catchment areas. An emergency team from the District Commissioner's Office, Isiolo, was dispatched to assess the situation. Following their recommendations, my Ministry, together with the Kenya Red Cross, dispatched the following quantities of food and non-food items to 6,000 victims:-

Maize, 3,000 bags; beans, 1000 bags; rice, 1,200 bags; vegetable oil, 2,222 cartons; assorted foodstuffs, 84 metric tonnes; kitchen sets, 5,000 pieces; soaps, 200 pieces; tarpaulins, 500 pieces; blankets, 1,000; jerricans, 500 containers and 1,000 pieces of mosquito nets.

The Government will institute the following preventive measures to prevent recurrence of floods:-

- (i) Construction of earth dams and pans to store water for livestock and domestic use.
- (ii) Improvement of the catchment area by planting of trees to increase water infiltration and increase ground water discharge.
- (iii) Encourage good farming methods to ensure that soil and water is conserved as well as keeping the appropriate livestock.
- (iv) Increase roof harvesting at settled areas.
- (v) The swamp at Pesi-Marula will be opened up. It is not retaining water due to encroachment.
- (vi) Finally, we will discourage land irrigation by distribution of water at various points for pastoralists.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, I want to thank that able Minister.

**The Assistant Minister for Local Government** (Mr. Tarus): There are many able Ministers here!

*(Laughter)*

**Mr. Bahari:** That able Minister!

**Mr. Deputy Speaker:** Order, Mr. Bahari! That has been objected to by Mr. Tarus! Do not use "this" or "that" references. Could you give the Minister due respect?

**Mr. Bahari:** Mr. Deputy Speaker, Sir, since he did a good job, I want to thank Mr. Munyes, the hon. Member for Turkana North, for having responded very well at the time that we needed him to do so.

However, I would like the Minister to clarify because he brought in the issue of Red Cross and the DC yet we are talking about flooding. What kind of equipment and resources are available to the Emergency Disaster Centre in Nairobi for them to make rapid response to this matter? On that particular day, I went to the Emergency Disaster Centre and it is like everybody is confused. This is an important matter. Could the Minister tell us what kind of facilities and materials are available at the Emergency Disaster Centre?

**Mr. Deputy Speaker:** Order, Mr. Bahari! You are making a speech yet you are seeking clarification. You have already done it. Let the Minister clarify!

**The Minister of State for Special Programmes** (Mr. Munyes): Mr. Deputy Speaker, Sir,

the centre is equipped with high technology and professionals who are able to collect, collate and analyze information that comes from the field for response. The centre gets information and sends it to the various stakeholders for responses. We use the Kenya Red Cross to implement for us matters of flooding. Therefore, we just provide information to the Kenya Red Cross and other Non-Governmental organizations which operate in those areas. With some little resources here and there, we respond together with them.

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

**Mr. Deputy Speaker:** I am sorry, hon. Members, we have to go to the next Ministerial Statement by the Minister of State for Immigration and Registration of Persons.

#### PAYMENT FOR ISSUANCE OF ID CARDS

**The Minister of State for Immigration and Registration of Persons (Mr. Konchelah):** Mr. Deputy Speaker, Sir, I have a Ministerial Statement to make which I was requested yesterday by Mr. Ochilo-Ayacko. However, if it is agreeable to Mr. Khamisi, I will dispose of both issues because they refer to the same thing.

The National Registration Bureau (NRB) is mandated by the Registration of Persons Act, Cap.107, to identify, register and issue identity cards (IDs) to Kenyans who have attained 18 years and above and have been charging fees for the service provided. The fees vary depending on the type of application and the amount payable is announced through the various legal notices. All eligible *bona fide* Kenyans are, therefore, subjected to such payments regardless of their social or economic backgrounds. Following the recent Presidential directive, the department has now waived the payment of Kshs50. The fee was chargeable to persons applying for initial registration and those who attain the mandatory 18 years of age and above.

Consequently, I have signed a legal notice effective from 17th March, 2006, which amends Rule (IV) of the Registration of Persons Act Paragraph 2 (a) by deleting the words:-

"And such a person shall pay to the registration officer a fee of Kshs50 in case of initial registration."

I have notified all registrars of persons countrywide to stop any further charges on non-previous registered persons.

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, the word of the President was that people who were applying for IDs for the first time should not incur any expenses, I presume, because they are regarded as jobless or wealthless. It is a well known fact that if you are above the age of 18, you will be enjoined to bring an affidavit. Could the Minister, therefore, give us more information as to how people who are above 18 years are not going to incur additional charges because they will have to pay for the affidavit?

Secondly, there were people who had been charged even after the Presidential directive. Is the Minister going to ensure that there is refund for these erroneous charges?

Lastly, registration officials are saying that they do not have vehicles or fuel to assist them to register the youth in their areas of jurisdiction. How much money has the Minister set aside to facilitate the activities of these officers?

**The Minister of State for Immigration and Registration of Persons (Mr. Konchelah):** Mr. Deputy Speaker, Sir, I wish to thank the hon. Member for those questions because they will further clarify what we have done. The Ministry is being allocated its own Budget in the next Financial Year, 2006/2007. This will help us to plan on a roll-out programme to register all

Kenyans before the next General Election. Part of the money will be used to buy vehicles so that we can send them to the various districts, particularly the vast ones which require mobile registration to be effected. This will be done within the course of the next financial year. For now, we urge the registrars to work with other Government departments to register Kenyans where they are. I, therefore, want to ask this House to also support that programme.

Mr. Deputy Speaker, Sir, I know over-age applicants are required to pay for an affidavit. As for the districts that are within the border areas, the vetting committee must satisfy itself that the people asking for identity cards are Kenyans, so that we do not give out Kenyan documents to people who are not Kenyans. They may not be of any good to us. I am afraid those people have to satisfy the requirements of the law, so that they can get the documents if they qualify.

**Mr. Deputy Speaker:** You will not answer more questions, Mr. Minister. Before you came in, your able Assistant Minister had dealt with the question of identity cards. I think you have seen how the issue of identity cards has occupied a lot of time in this House. I want to urge you, as the Chair, that you ensure that whatever you have said, because it is the concern of hon. Members, identity cards are given out properly in their respective areas. I think that will ensure that the matter is corrected.

*(Mr. Khamisi stood up in his place)*

**Mr. Deputy Speaker:** We will not take more questions regarding that issue.  
Mr. Ojaamong, proceed!

## POINTS OF ORDER

### CASES OF CORRUPTION IN BUSIA MUNICIPALITY

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Local Government, regarding Busia Municipality.

**Mr. Deputy Speaker:** Mr. Tarus, where are you? A statement is being sought from you.

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, I have raised the issue of corruption regarding Busia Municipality in this House before. However, the Ministry of Local Government has failed to act upon it. Busia Municipality has become a den of corruption. I would like to get some answers from the Minister for Local Government on the following matters: What were the findings of the audit reports that were carried out in October and March this year? Secondly, how were the LAFT funds amounting to Kshs13 million allocated to Busia Municipality in the financial year 2005/2006 utilised, because we have not seen any projects going on? I want to find out from the Minister how he will contain the rampant corruption in the municipality and what action he will take on the chief officers who have embarked on a "free for all" attitude in relation to corruption in the municipality?

**The Assistant Minister for Local Government (Mr. Tarus):** Mr. Deputy Speaker, Sir, I will undertake to bring the ministerial statement on Wednesday afternoon.

### IMPOUNDING OF STOLEN VEHICLES BY THE POLICE

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, yesterday, I requested for a ministerial statement from the Attorney-General, on the illegal impounding of vehicles. The Speaker requested that the statement be brought here today, yet that has not been done.



**Mr. Deputy Speaker:** Yes, I remember that. The Attorney-General was asked to make a ministerial statement on that matter. What is the position Mr. Vice-President?

**The Vice-President and Minister for Home Affairs (Mr. Awori):** Mr. Deputy Speaker, Sir, the Attorney-General said that the Police Department is the one dealing with that matter. The department is under the Minister of State for Administration and National Security. He is the one who can advise on the legality of the matter.

**Mr. Sambu:** On a point of order, Mr. Deputy Speaker, Sir. This is a matter that requires urgent attention because police officers are stopping motorists on the road and declaring their vehicles had been previously stolen. What were the officers doing when the vehicles were on display in Dubai?

**Mr. Deputy Speaker:** Mr. Sambu, you want this matter to be dealt with urgently?

**Mr. Sambu:** Yes, Mr. Deputy Speaker, Sir! May I also request that police officers be barred from harassing people until the Government gives a clear policy regarding the matter?

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. I would like to seek the guidance of the Chair. The Leader of Government Business has told this House that the Attorney-General said that police officers fall under the Minister of State for Administration and National Security. Under the Constitution, the Attorney-General is the chief legal adviser. This is a legal matter. So, the House should demand that the Attorney-General comes to this House to clarify what the law says on this matter.

**Mr. Deputy Speaker:** I believe that when the Attorney-General made that statement, the Chair must have directed someone to bring the ministerial Statement. I believe in this case, it was directed to the Minister of State for Administration and National Security. I now order the Clerk to ensure that the matter raised by Mr. K. Kilonzo is brought to this House by the Minister of State for Administration and National Security on Tuesday. That should settle the matter!

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, is the Leader of Government Business in order to tell us that the Attorney-General directed that the ministerial statement be brought by the Minister of State for Administration and National Security? In fact, what was sought by the hon. Member is a legal position.

**Mr. Deputy Speaker:** I did not hear the Vice-President and Minister for Home Affairs say that the Attorney-General directed that the statement be brought by the Minister of State for Administration and National Security. If he did, then that is definitely out of order. That having been said, I think the Chair has already ruled on who will bring the ministerial statement on Tuesday. That is the end of that matter.

*(Mr. Omingo stood up in his place)*

Mr. Omingo, please, sit down.

Under Standing Order No.69, hon. Mwiraria with the indulgence of the House, will make a statement to explain a matter of a personal nature.

### PERSONAL STATEMENT

MALICIOUS PUBLICATION BY  
*THE STANDARD* NEWSPAPER

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, my attention was drawn to today's issue of *The Standard* newspaper which carried the headline; "Kibaki meets Kiraitu and Mwiraria at State House." I wish to state categorically, that I did not go to State House yesterday as alleged by the

newspaper. Furthermore, I did not request State House or his Excellency the President for any meeting, nor did His Excellency at State House, invite me to any such meeting as alleged by the newspaper. The whole story is a complete fabrication by the Standard Group, with the intention of defaming me and driving me away from His Excellency the President.

The newspaper has over the last two months, carried out a malicious campaign to tarnish my name and has *inter alia*, made the following false accusations: The first one was made in February. The newspaper published a headline saying that Mwiraria resigned from his Ministerial Office because he was afraid that the US Embassy would deny him a visa to go to America. The newspaper also said that the US Ambassador had written to His Excellency the President and copied the letter to me, informing me of that fact. I checked with the USA ambassador who confirmed that they had done nothing of the sort. So, that was a story without any truth in it. On Tuesday, there was another headline that the people of Meru would not support President Kibaki unless Mr. Kiraitu and I are returned to the Cabinet. It would appear to be a kind of blackmail for His Excellency the President to re-appoint us to the Cabinet.

Once again, for avoidance of any doubt, since I resigned my position as Minister for Finance, I have not solicited re-appointment to the Cabinet. I am fully aware that under the Constitution, it is only the President who has the prerogative to appoint Cabinet Ministers and he does not require any prompting from anyone. So, I really want to take this opportunity to request the management of *The Standard* Newspaper to desist from writing false stories about me for purposes of, perhaps, boosting their sales.

Mr. Deputy Speaker, Sir, in view of the far-fetched and defamatory stories about me which have been fuelled by the Standard Newspaper in the recent past, I have, today, instructed my advocate to take appropriate legal action against *The Standard* Newspaper.

(Applause)

**Mr. Deputy Speaker:** Very well. As hon. Members are aware, under Standing Order No.69, that is a personal statement and it is not open to debate.

Hon. Members, before we move on to the next order of business, I wish to make a short communication from the Chair.

### COMMUNICATION FROM THE CHAIR

#### DISRUPTION OF HOUSE PROCEEDINGS

**Mr. Deputy Speaker:** Hon. Members, yesterday, during the debate on the Sexual Offences Bill, an altercation between Members of Parliament occurred where honourable lady Members walked out in anger and later came back to the House protesting against remarks made during the debate by the hon. Member for Kasipul Kabondo. Even though remarks made by one Member of Parliament may offend another, the Chair wants to appeal to all hon. Members to conduct the business of the House with honour and dignity that is required in the House.

Let me warn all Members of Parliament, including the lady Members who attempted to disrupt the proceedings of the House yesterday that unbecoming behaviour and unparliamentary conduct will be dealt with seriously in the future and all should take note.

Next Order!

**The Assistant Minister for Roads and Public Works** (Eng. Toro): On a point of order, Mr. Deputy Speaker, Sir. You have issued a Communication from the Chair regarding the lady Members of Parliament who walked out in protest. However, I wish to seek your guidance with

regard to the behaviour of the members of the public seated in the public gallery. Yesterday, when the lady Members of Parliament walked out, all the ladies in the galleries also walked out in protest.

**Mr. Deputy Speaker, Sir,** you cannot see from where you are seated, but we saw what happened. So, the question is this: Are the members of public seated in the galleries supposed to protest at what is happening during deliberations in this House? Are they not supposed to behave well by listening quietly and holding their horses regardless of whatever is going on in the House? I need the guidance of the Chair on that matter.

**Mr. Deputy Speaker:** Well, I do not know what all these is about because I have already issued a Communication from the Chair. The point raised by hon. Eng. Toro is pertinent. As he rightly put it, I did not see who walked out. However, if they walked out in an orderly manner without making any noise, I really see no offence as far as I am concerned. That matter now is not open to debate. A Communication from the Chair is not open to debate.

**The Assistant Minister for Education (Mrs. Mugo):** On a point of order, Mr. Deputy Speaker, Sir. You are not being fair!

**Mr. Deputy Speaker:** Order! Order, Mrs. Mugo! I have just said that we expect Members of Parliament to behave in an orderly manner and for you to stand up and say that I am not fair, I do not know what is not fair. I have made a Communication from the Chair and I expect you and all others to obey that Communication.

## BILL

### *Second Reading*

#### THE SEXUAL OFFENCES BILL

*(By Ms. Ndung'u on 26.4.2006)*

*(Resumption of Debate  
interrupted on 26.4.2006)*

**Mr. Deputy Speaker:** Mr. Angwenyi, you were on the Floor and you have 27 minutes to debate.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, as I said yesterday, this is a very important matter that affects us all as Kenyans. I also thank hon. Ndung'u for bringing forth this Bill.

Whereas this Bill contains important information and ways of making decisions about rape, it also contains a whole baggage of cobwebs which tend to confuse some of us. We are wondering whether this Bill was meant for Kenya or some foreign country.

When we gave leave to Ms. Ndung'u to go and prepare a Bill, we were essentially focused on rape. All of us are at risk of rape. Your grandmother, mother, wife, sister, child or grandchild can all be raped. This will affect you the same way it would affect any other person. That is what we wanted to tackle. All these other offences are addressed in the Penal Code. If it was to enhance punishment for those other offences, all we needed to do is to amend the Penal Code.

Mr. Deputy Speaker, Sir, this Bill contains very important ideas. For example, it defines rape in the correct way. However, if you look at page 348 at the end where there is the definition; and I will read in part:

"part of a body of an animal".

How can an animal commit rape? Does this happen in Kenya? I understand that in Western

countries animals commit sexual offences against human beings, but this does not happen in Kenya. I would like to be told clearly what part of this animal or what kind of animal there is whose body part could be used in rape.

**Mr. Muite:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you want information, Mr. Angwenyi?

**Mr. Angwenyi:** Yes, I do, Mr. Deputy Speaker, Sir.

**Mr. Muite:** Mr. Deputy Speaker, Sir, I wanted to inform hon. Angwenyi that the Departmental Committee on the Administration of Justice and Legal Affairs is taking very seriously the contribution and concerns of Members of Parliament. We have received a great deal of representation as a Committee, including the concerns which were expressed at Safari Park. The Committee is in the process of drafting comprehensive amendments so that when this Bill comes back to this House before it is concluded, these concerns will have been factored in the amendments that the Committee is working on.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, I hope that ladies can understand what I am saying today. I hope that the amendments being proposed by Mr. Muite will be put into consideration so that this can become a very good Bill. Take for example, Page 350, where the offence of rape has been defined. In the African society, it is a man who can rape a woman. A woman cannot rape a man. That is why I was saying that this Bill seems to have been plucked out from some western countries where women rape men. Be that as it may, the Bill only prescribes a minimum jail term of ten years and a maximum of life imprisonment. Whereas, if somebody commits robbery with violence or if he or she is found with a gun while committing robbery, he is sentenced to death. I thought the Bill would have proposed that somebody found guilty of rape be sentenced to death.

Mr. Deputy Speaker, Sir, I am saying this because two years ago, a friend of mine who is a retired police officer was having his retirement party in his house in the neighbourhood of Kisii Town. After they had concluded their party a gang of intruders broke into the house, held this man and went to his bedroom where his wife had gone to prepare the bed. They dragged this woman out where the husband was and gang-raped her. When they finished raping her, they inserted a broken bottle into her private parts. Those are the people that this Bill is proposing to be imprisoned for a period of between ten years and life imprisonment. They should be committed to death. If such a penalty were to be prescribed, then we would know that the Mover of this Bill is actually serious in tackling rape.

Rape is a very bad offence. It is worse than robbery with violence. Therefore, rapists should be given maximum sentences.

**Ms. Abdallah:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Angwenyi, there is a point of information here.

**Mr. Angwenyi:** Let me have it, Mr. Deputy Speaker, Sir.

**Ms. Abdallah:** I would like to inform Mr. Angwenyi that Members of our Committee considered putting capital offence under defilement and gang rape. But we have been informed that there is a moratorium by this Government to abolish the death penalty and that the Attorney-General has signed an international instrument that does not allow us to put in our new legislation any capital punishment.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, as you know that was not a point of information. I am sorry I did not know that, that was why the hon. Member was standing on her feet.

**Mr. Deputy Speaker:** You asked for it!

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, you cannot legislate on the basis of a private opinion. If the Government wants to prohibit death sentences in this country, they should bring a policy paper and legislation to this House and we will outlaw the death penalty.

I have got a granddaughter who is underage. Just imagine if she were raped by a huge person - I do not know who is the most huge Member in this House - then that person is sentenced to only ten years in jail. Just imagine that! That person should be hanged! Our objection to defilement and rape should be shown by the punishment we mete out to these animals that commit this crime.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, let me talk of gang rape. Imagine if your wife were to be gang-raped. I just do not want to imagine it in my head. Imagine ten people going over my wife. Will I lead a normal life thereafter? And yet this Bill is proposing that we sentence rapists to ten or 15 years. Those people should be hanged with a rope on the closest tree that can be found. This Bill can be improved by meting much more severe sentences to the people who commit these offences.

This could have been a very good Bill if other matters would not have been included. It is stated in this Bill that:-

"If a juristic person commits an offence---"

I understand that a juristic person is a corporate body. They do show pornographic material on our television stations at night before the children go to bed. Is it possible to hang this particular corporate body for 10 years?

**An hon. Member:** They show these programmes at midnight!

**Mr. Angwenyi:** No! They air them at 10.00 p.m., and sometimes at 8.00 p.m.

They usually show men fondling women in dances and moving closer to each other. They also show people making advances, fondling bodies and kissing when kids are watching television at 8.00 p.m. What are we going to do to those people? Are we saying that we will prohibit this or we will jail them? Some of these ideas are Western. I hate to bring societal matters from western countries. Western countries are the ones which have implemented some of these laws to the extent that they have now embraced homosexuality and lesbianism. In those countries, a man cannot look at a woman and admire her because he will be accused of sexually molesting the woman with his eyes. Therefore, he turns to a fellow man. Is that what we want to develop in this country?

Mr. Temporary Deputy Speaker, Sir, if I dance with a lady whom I like or love, what is wrong if I fondled her while dancing? She can also fondle me without any bad intentions. This is enjoyment and pleasure. More than 40 per cent of the male population have moved out of Norway because they are not allowed to appreciate women. If a man looks at a woman he is taken to jail. Therefore, they either move out of that country if they want to look for women or remain in the country and look for men. I saw those people here yesterday. Those are the same people telling us that we are primitive when they are more primitive than we are. When you engage in homosexuality, you are more primitive than the most primitive man in the world because homosexuality is not derived in any---

**Mr. Kajwang':** On a point of information, Mr. Temporary Deputy Speaker, Sir. I just want to inform Mr. Angwenyi that men ran away from Norway because in that country, if you request your wife to allow you to enjoy your conjugal rights and she refuses, then you try harder, you will be jailed for ten years. That is why the men from Norway have fled to Portugal and Spain. Now women are suffering there. There is a lot of lesbianism in that country because of these bad laws.

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, I was coming to that.

**The Temporary Deputy Speaker (Mr. Poghisio):** Mr. Angwenyi, you have just said that

you saw them around here. Where particularly did you see them?

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, yesterday, I saw people here who did not look African.

**The Temporary Deputy Speaker** (Mr. Poghisio): Where?

**Mr. Angwenyi:** In the galleries, Mr. Temporary Deputy Speaker, Sir. The one who walked out when our ladies---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! You are actually not allowed to address the galleries. I hope you were not referring to the Chamber when you said that you saw them here.

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, I meant that they were in the precincts of Parliament. That is a very serious matter. As Mr. Kajwang said, that is why there is lesbianism in the United States of America (USA), Norway, Sweden and other countries. That is because women cannot find men. God had a purpose to create a man with his implements and a woman with her implements. If those rims are not serviced, you can be wild! If you want to test what I am saying here today, go and stay for two years. When you come out, you will be wild. You can even rape the first lady you meet. God has created our system in such a way that these things must work at particular times.

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir, I stand to seek your guidance! Is the word "servicing" parliamentary?

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, we use the word "servicing" all the time here. We service our vehicles. We have un-serviceable roads and so on. We use it all the time.

Since the ladies in those countries cannot get what God created, they use fingers or animals as described here. Therefore, we must give to our society what God gave them, and prohibit what God forbids. I know that God does not allow rape and defilement. But God allowed us to appreciate and look at beauty! That is why he gave us eyes to see and nostrils to smell the scent! He gave us saliva so that you can swallow it when you see something good.

Mr. Temporary Deputy Speaker, Sir, I am saying that when this Bill is referred to the relevant Departmental Committee, make it an African Bill that accommodates all the cultures of Kenya that improve the atmosphere of marriage between man and woman. I can imagine the scenario. I go at home at night and, maybe, I have taken one or two glasses of wine. By the way, I take them around here. I feel that I am in a good mood. Then my beloved partner says: "No!" I try to attempt a little more. Then she says I have raped her! She runs out crying: "He is trying to rape me!" I will be imprisoned for five years! Would you countenance that in this House? Would you countenance the idea that you can rape your wife? I have paid dowry for my wife and we are formally married. I cannot rape her by any chance.

**The Assistant Minister for Housing** (Mrs. Tett): On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Angwenyi!

**Mr. Angwenyi:** I do not want any information. What I want to say is---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Was it a point of order or a point of information?

**Mr. Angwenyi:** Which is which?

**The Assistant Minister for Housing** (Mrs. Tett): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to dramatise this Bill and trivialise it so much? We have just said that, if there are any amendments, they should be brought in the House. He is misleading this House and the public as a whole because this Bill---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order!

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, drama is a way of expression. Before I came here, I was a teacher. When I was teaching accounts or integral calculus, I could do the integral sign! The students would like it. They would become calculus orientated. I do not want more interruptions!

**The Assistant Minister for Education** (Dr. Mwiria): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to talk about drama! But I just want to contest the point that, once you get married, you cannot rape your wife. I think marriage is no licence---

*(Loud consultations)*

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, you can see the damage that western indoctrination has done to us. I cannot rape my wife! I do not think there is one man here who can rape his wife! If there is a man here who can rape his wife, raise your hand! You cannot rape your wife! You can rape somebody else! What I am saying is that we can enhance this Bill and make it more effective.

**The Assistant Minister for Gender, Sports, Culture and Social Services** (Mrs. Chelaite): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that when the Bill passes, it will have something to do with his wife? The Bill is not suggesting that marriage---

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, you must protect me! The biggest opponent of this Bill, as it stands now, are the lady Members of Parliament, except Ms. Karua and Ms. Ndung'u. The others ran out yesterday. Suppose we all went out? Could we be having this Bill today? They are the biggest opponents of this Bill! So, they cannot give us information.

Mr. Temporary Deputy Speaker, Sir, in conclusion, this Bill needs to be worked over again. I am glad that Mr. Muite said so. Before I finish, let me attend to the issue of culture. If Section 31 is approved by this House, we shall be approving an illegality against the cultures of this country, and against 50 per cent of the people of Kenya. How can circumcision be rape? Can you call circumcision rape? How? Women pierce their ears. Can you call that rape?

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! I do not suppose anybody has said that. Has it been written in the Bill? Are you saying that the Bill labels circumcision rape?

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, if you heard me from the onset, I said that I want to address the issue of rape and defilement. I am saying that Section 31 should be removed because it goes against my culture. It also goes against the culture of many other hon. Members. Let us address that elsewhere.

**The Assistant Minister for Education** (Mrs. Mugo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that the Bill against circumcision is about culture, while this House passed an Act on children protection which criminalises circumcision? Was the hon. Member not in the House at that time?

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, if it is in the laws of Kenya, why bring it here to contaminate your Bill? You are spoiling your Bill!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Do not personalise this matter.

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, let me finish because my time is almost up. There is a Section here which says that a suspected person must have the burden of proof that he is innocent. There is a case which happened in Meru sometimes back. A person who hated his neighbour alleged to the police that his neighbour had defiled his 10 year old daughter. He colluded with a doctor who wrote a report saying that the young girl had been raped. When the blood sample was taken to the Government Chemist, it was found out that the blood which was alleged to have belonged to that person actually belonged to a chicken. So, the proof should not be

on the suspect. Otherwise, that would be unconstitutional. I am embarrassed that this House can allow a Bill that wants to commit unconstitutional acts into the Floor of the House. It should have been removed before. We should have all these cobwebs cleaned and removed.

With those remarks, I beg to support but with amendments.

**The Temporary Deputy Speaker** (Mr. Poghio): Order, Mr. Angwenyi! There are no amendments yet. So, you either support or oppose it.

**Mr. Angwenyi:** If there are no amendments, then I oppose it.

*(Laughter)*

**Mr. Keter:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute to this Bill. I want to thank hon. Ndung'u for bringing this Bill. I have taken time to go through the entire Bill. As my colleague, hon. Angwenyi has put it, I support the Bill in principle. However, there are very many things that have been inserted in this Bill which will make me not to support it.

The preamble reads, "An Act of Parliament to make provisions about sexual offences, their definitions, prevention and protection of all persons from harm from other sexual acts and for connected purposes." I have gone through the Bill and there is nowhere the offence of rape has been defined. Instead, the Bill seeks to repeal Section 139 of the Penal Code which describes rape. I propose to the Mover that instead of repealing this section, it is better to enjoin it to the Bill so that it can define rape.

Secondly, gang-rape has been defined in this Bill. But you cannot use the same definition. There is also the definition of genital organs. With my little knowledge of biology which I did--- I am not a lawyer or a doctor, but I am ready to be corrected if I am wrong.

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

**Mr. Keter:** Mr. Temporary Deputy Speaker, Sir, I do not want to be informed. Can I proceed and be informed later?

**The Temporary Deputy Speaker** (Mr. Poghio): Order, both of you! You are actually out of order. You do not ask for permission from the hon. Member himself and begin to negotiate. That is not allowed.

**The Assistant Minister for Transport** (Ms. Mbarire): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House that this Bill does not define the term "rape" when it is properly defined in Clause 3?

**Mr. Keter:** Mr. Temporary Deputy Speaker, Sir, Clause 3 says: "A person commits the offence called rape---" Where is the definition? Rape is well defined under Section 139 of the Penal Code, but not in this Bill.

**Mr. Kajwang:** On a point of information, Mr. Temporary Deputy Speaker, Sir. The definition in that Clause 3 says, "A person commits an offence termed "rape" if he or she, intentionally and unlawfully commits an act which causes penetration with his or her genital organ." Which are "her" genital organs which can cause penetration?

*(Laughter)*

**Mr. Keter:** Mr. Temporary Deputy Speaker, Sir, I wanted to speak on genital organs here which are defined as "includes the whole or part of the male or female genital organs and for the purposes of this Act, includes the anus." Are we trying to bring homosexuality through the backdoor? I thought the current Constitution outlaws homosexuality. So, why are we bringing an



issue here which does not form part of the genital organs? When did the anus become a genital organ? I am conscious that we do not introduce homosexuality through the backdoor by allowing this definition which is outlawed by the Constitution.

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! May I just inform the House that there are no sections under the proposed Bill; these are clauses. So, refer to them as such.

*(Applause)*

**Mr. Keter:** Thank you for that correction, Mr. Temporary Deputy Speaker, Sir. I will use the page numbers to make it easier. I will now move to the consequential amendments. On page 414, Section 2 of the Matrimonial Act is proposed to be amended. This section defines marriage thus: "Marriage means the voluntary union of one man and one woman for life to the exclusion of all others." Why are we trying to remove the definition of marriage? I know that when they removed the definition of marriage in Britain some time back, it created room for homosexuality and lesbianism. So, unless this is withdrawn, I will not support that proposed amendment.

Mr. Temporary Deputy Speaker, Sir, still, on consequential amendments, on pages 398 and 399, there are proposals to amend the Evidence Act.

Mr. Temporary Deputy Speaker, Sir, according to Standing Order No.96, any clause which has an impact on the Constitution has to be reproduced in this Bill. If you look at the consequential amendments, you will notice that this has not been done. I have been told that there is a copy which should have accompanied the Bill, but I have not seen it. That is the copy which may be containing the consequential amendments. The Chairman of the Departmental Committee on Administration of Justice and Legal Affairs has said the Bill will be looked at, so that the amendments can be incorporated. This must be done.

This Bill seeks to make sexual offences a capital offence, which is not bailable, which is contrary to Section 72(5) of the Constitution. So, what we are discussing is against the Constitution. If I were the Mover, I would have this clause removed or corrected.

Mr. Temporary Deputy Speaker, Sir, this Bill seeks to repeal Section 163(1)(d) of the Evidence Act, which says:-

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

This provision has also been left out of this Bill. If, today, a prostitute comes and says: "So and so raped me", how do we protect such man if we remove this provision? There must be proof to that effect. Therefore, this provision should also have been included. I do not know whether it was left out intentionally or by mistake.

Mr. Temporary Deputy Speaker, Sir, another issue I want to raise is the time of reporting rape, which is found on page 381 of the Bill. Clause 36(b) says:-

"---the length of any delay between the alleged commission of such offence and the reporting of the offence".

If this Bill becomes law, somebody you knew 20 years back can come today and claim that you sexually assaulted her. The accused person will not even have a chance of knowing who the complainant is, or who is giving evidence against him. The Bill allows even lawyers to give evidence against you.

Therefore, the way I see it, many people will become victims of this Bill if we pass it into law. You may have had a friend 20 years back. That person can come up today and say that you sexually assaulted her. Since this Bill does not provide for one to be released even on cash bail, the accused person will be locked in for five years for a crime you did not commit. Therefore, this is an area which has to be looked at.

Mr. Temporary Deputy Speaker, Sir, another issue I want to raise is found on page 399 of the Bill, Clause 4(2), which says:-

"Section 19 of the Marriage Act is amended by repealing the words "twenty-one years" and substituting therefor the words "eighteen years".

How does marriage become a sexual offence? Why are we lowering the age from 21 years to 18 years? I thought 21 is a good age. Therefore, I propose that the current age of 21 years should remain. Lowering the age limit will encourage people to marry young people. I hope that the Mover will look at this Section.

Mr. Temporary Deputy Speaker, Sir, another issue I would like to raise concerns prostitution. This is captured on page 361, under the heading "Exploitation of Prostitution". Clause 17 seeks to provide as follows:-

"Any person who (a) intentionally causes or incites another person to become a prostitute; or (b) intentionally controls any of the activities of another person relating to that person's prostitution; and does so for or in expectation of gain for him or herself or a third person, is guilty of an offence and is liable upon conviction---"

Where has prostitution been outlawed in this Bill? Under transitional provisions, on page 397, the Bill goes on to say as follows:-

"For greater certainty, the provisions of this Act shall supersede any existing provisions of any other law with respect to sexual related offences."

We know that prostitution is outlawed by the Constitution. This Bill only seeks to punish the agents of prostitution but it does not seek to punish the people who are directly engaged in the actual job. So, I hope that the Mover will take this aspect into consideration.

Mr. Temporary Deputy Speaker, Sir, I do not want to continue raising any more issues. My colleagues will, definitely, raise other issues. I have a list of 15 issues, which I will pass over to the Mover. If they are incorporated in the Bill, I will have no objection to it because rape and defilement affect all of us. We do not feel happy when people as young as four years are raped. Such people are mad and must be excluded from society.

**The Temporary Deputy Speaker** (Mr. Poghisio): Mr. Keter, you know, you are also implying or imputing that there are amendments that have been made. You are facing the Bill squarely as it is. That is what we are debating now. There would be no wishful thinking until amendments are made. You need to decide which side of the Bill you are on.

**Mr. Keter:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I said right at the beginning that I support the principle of punishing rapists. However, this Bill, as it is currently, I will oppose it for the reasons I have given. In order for this Bill to go through, we need to dialogue. My colleagues will raise other issues. If they are incorporated into the Bill, we will support and pass it.

With those few remarks, I thank you.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I would like to note with appreciation that this Bill spells a new re-awakening in this Parliament. The interest that I have seen all hon. Members placing on this Bill, clause by clause, can only spell a new beginning for this country. I am hoping that it is not only this Bill that we shall be combing clause by clause, but also any other Bill, so that we can effectively carry out our mandate as legislators, so that we do not pass Bills that have any short-comings and that may later be referred back to Parliament for amendments.

Mr. Temporary Deputy Speaker, Sir, may I also congratulate the Mover. Sexual offences have become so prevalent in this country now more than any other time. We are hearing of atrocities on grandmothers, young boys and girls and babies. The level of depravation in our

society is at an all time high and it definitely needs to be curbed.

This is a Bill for Kenyans, both men and women. It is a Bill that requires the support of all responsible members of our society. It is my hope that the vigour with which hon. Members have pointed out what they believe are short-comings in this Bill will be the same vigour that they will employ to strengthen this Bill, so that we can expedite its passing for the good of our society.

Mr. Temporary Deputy Speaker, Sir, I am a mother of both a girl and a boy. I want a Bill that looks after the interests of both my daughter and my son; a Bill that takes care of the interests of all members of the family. I, therefore, align myself with the Mover who welcomed any proposals for amendments that serve to strengthen this Bill. I am appealing to hon. Members that we carry on with this spirit. We all have a role to play. The Mover has done her part in Moving this Bill. It is our duty as hon. Members, to take this Bill because it is owned by the House, so that we can mould it in a way that we can pass it to protect our society from these atrocities and put the depraved among us behind bars where they belong. If we fail to do that, we shall have failed Kenyans. We shall have failed to protect our children, mothers and voters.

I am, therefore, appealing to each one of the hon. Members to play their role in strengthening this Bill, so that we can pass it and have a good legislation.

I have heard the immediate hon. Member who was on the Floor talking about the transitional arrangements of the Bill. I would want to tell him that when a Bill states that it supersedes all other laws, and when that Bill is not the Constitution, it is talking of superseding all other legislations except the presumption. The obvious presumption is that it supersedes all other laws except the Constitution. The Constitution is not just another law. It is the supreme law. It cannot be amended by another law, but the procedure is that other laws can be amended by an Act of Parliament. Always, the later legislation carries the weight. So, this Bill does not attempt at all, to amend the Constitution.

Mr. Temporary Deputy Speaker, Sir, it is a good suggestion that has come from the immediate hon. Member who was on the Floor that the language of the Bill be strengthened for the avoidance of doubt. Obviously, this Bill is not advocating for anything that is not within the law. But if it gives hon. Members comfort and it brings clarity, it may do well to separate the offence of rape from the offence of sodomy, so that this Bill is clear. Even though they may attract equal penalties, it may be a good idea to clearly spell out in terms the two different offences. However, it is not right to presume that anything mischievous was being introduced by this Bill.

If you look at the sections of the Matrimonial Causes Act and other matrimonial laws that are being referred to in the Schedule to this Bill, you will find that they are in relation to the ages of the parties to marriage. Previously in 1950s and 1960s, in most societies, it may have been permissible to marry a child of 13 years old with the consent of the parents. In some societies, a child of 16 years old was regarded as an adult for purposes of marriage. This Bill is seeking to harmonise the thinking of legislation and modern thinking that a child of 16 years is not old enough to be anyone's bride, whether she is an African or a Hindu. I have seen the Bill referring to Hindu law and African/Christian Marriage and Divorce Act.

Mr. Temporary Deputy Speaker, Sir, this Bill is seeking to harmonise marriage laws with modern thinking and also with the Penal Code. The Penal Code today sets the age of consent as 16 years. It also states that unless the person believed that the minor was his wife. So, it was necessary to go back to the marriage laws to eliminate any chance that any person can claim that a 13 years old child is his wife. I know, for a fact, that the Mover of the Bill held several workshops with the hon. Members. I am urging her not to tire and all of us not to tire in our efforts. Let us utilise the forums that we have here, get together, craft amendments that will strengthen this Bill and take care of all concerns.

On the issue of cultural rights, and if I were to drop the euphemism "female circumcision or

female genital mutilation", this has already been outlawed by the Children's Act which we passed in 2001. However, there are legitimate concerns about minimum sentence for this particular offence. Let the hon. Members come up with suggestions. The intention is noble. We still must protect the girl child from being disfigured, maimed for life unnecessarily and having health complications imposed on her. We must let the girl child develop to the full. However, we can cast it in terms similar to what is in the Children's Act, although better clarity is required. It can be cast in a way that takes concerns of those who feel that because of those who may still be clinging to culture, a softer-landing is required other than a minimum sentence approach.

Mr. Temporary Deputy Speaker, Sir, I have gone through the Bill and it is a noble Bill. Each of the proposed sections are good for the entire society. However, I want to admit that we will require to strengthen some, so that we can carry everybody with us. I would like to appeal to hon. Members that we should not contribute as though this is a tug-of-war between one gender and the other. I want to believe that all the legislators here are related to either genders. If you are a man, you have a mother, a wife, a sister and a daughter or one of them. If you are a woman, you have a father, a husband, a friend and a son. We are all related to one another. There is no tug-of-war.

Let this Bill also spell a new dawn of gender relations in this House. Let it not escape our notice that we set the standards in our society and sometimes we distort those standards. If we take to talking about any one gender in derogatory terms, we are telling our children out there, our supporters and those to whom we are role models that it is all right to speak in derogatory terms. May I implore our male colleagues that, any time they speak about a woman, they see the image of their mothers. To us female hon. Members, any time you speak about a man, may you see the image of your fathers. That will help you to relate better to the opposite gender.

Mr. Temporary Deputy Speaker, Sir, let us think of what we want the society to read from us. What leadership are we providing in gender relations? Are we telling our children that we uphold the respect of everyone? Are we telling them that even when we differ, we do so with respect?

I have heard many hon. Members, in and out of this House, say that they support the Bill, "but" "but" "but". Shall we utilise this weekend to sort out our "buts", so that we can craft it and come with unequivocal support of a legislation to fill in a glaring gap. Let us not wait until a member of our families becomes a victim and then say: "I wish I had supported the Bill!" Let us act now to prevent other victims. We may not prevent the trauma to those who have already been assailed by the depraved. Let us prevent that from occurring to anybody else. Let us also put safeguards to safeguard the innocent. Where there is language such as "request for sexual favour", we may want to change that to "forced sexual favours". "Request" is not necessarily criminal.

Mr. Temporary Deputy Speaker, Sir, let us embark on that duty. After all, why else are we called legislators? It is because we legislate. Let us join hands and put together a beautiful legislation that we can be proud of. Let us also mark the coming of age of gender relations in this House. We can help this country come up with new and better gender relations.

Sometimes we may not realise it, but what happens between hon. Members here--- I may wish to hurt an hon. Member on this or the other side of the House, whom I disagree with! I may refer to them in certain terms, but I will be doing more damage. That is because whatever we do, we do it on the glare of the country.

Mr. Temporary Deputy Speaker, Sir, I am urging that we reflect and contribute in a manner--- We can acquaint ourselves with maturity in carrying out our duties, upholding respect and showing the way in gender relations.

I beg to support and call upon all my colleagues to support and help refine this Bill.

*(Applause)*

**Mr. Kajwang:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to say a few things about this very important Bill. This is a very revolutionary Bill.

First of all, I want to thank the Mover and those who put this Bill together for their resourcefulness, creativity and imagination. They have done that very well!

*(Laughter)*

This Bill has also been promoted very well. It has been promoted by hon. Members in conjunction with very able lobbyists and pressure groups. They were properly focused and passionate. In fact, when I looked at the photos on the front page of the newspapers today, I saw one of the very indefatigable campaigners of this Bill, who is my constituent. She was passionate and intensive!

Mr. Temporary Deputy Speaker, Sir, let us not, for a moment, think that the people who put this Bill together and campaigned for it were doing a "hazy hazy job". I watched somebody on a television station the other day saying: "We are not doing a kissy kissy job!" I looked for that word in the dictionary, but could not find it. I think they meant they were serious on the job they were doing.

The Bill was also packaged very well. It was packaged as a panacea to all sexual offences. That, if this Bill passes, then sexual offences will be history. That is because we will deal with them firmly and seriously.

But this Bill committed two very serious wrongs which, in fact, make it suspicious! That is why some of us are saying they are opposing it, unless there are amendments. I am not saying that! I am saying, "I am opposing this Bill!" The intention behind some of what we see in this Bill - and I can mention it, is to show you that it was not a Sexual Offences Bill. That is the name it has been given. It is a Bill against sexual offences. But sexual offences are not even defined in this Bill. They did not start by telling us: "This Bill is about sexual offences! Sexual offences mean the following---" That way, all of us who read the Bill, will find out whether it conforms with the definition.

This Bill became a kind of bandwagon for bringing all sorts of frustrations, which the campaigners and designers of the Bill wanted to put in!

*(Applause)*

If you want to deal with circumcision, and we have dealt with it in the Children Bill, why do you bring it in the Sexual Offences Bill? Whatever it is, circumcision is not a sexual offence! It can be injury to a body, assault or anything else. But it is definitely not a sexual offence!

*(Applause)*

It can even be bodily harm to a genital organ. But, definitely, it is not a sexual offence! So, when you bring a Bill to address a particular matter, and you actually say: "This is a Sexual Offences Bill", you must have fidelity to the meaning of what you want to do. Immediately you bring in something else, we become suspicious! This Bill is being opposed because some people see it as a gender campaign to deal with men.

*(Applause)*

**Mrs. Kilimo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to say that Female Genital Mutilation (FGM) is not a sexual offence? It seems he does not know the meaning of FGM. It denies a woman enjoyment!

**Mr. Kajwang:** Oh! *Pole sana!* I would like to thank the hon. Member, who is a very good friend for the observation---

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Members! Much as that may have excited anybody, it is basically an argument and not a point of order.

Mr. Kajwang, please, proceed!

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, I did not say that an injury caused to a sexual organ cannot do all those things that my sister is complaining about. It can injure you in such a way that you may not enjoy sex. That is fine. But "cutting you" is not a sexual offence!

Mr. Temporary Deputy Speaker, Sir, circumcision for men also cuts a portion of their genital organs. So, you must see the difference of what I am talking about. We are not saying that it is bad; it is good. In fact, even female genital mutilation is good but I am not saying so. We have already dealt with it.

**Ms. Mwau:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform the hon. Member that the difference between male and female circumcision is that female circumcision denies women the pleasure to enjoy sex. It controls their sexuality!

*(Applause)*

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, I did not know that, but even if it does that, still it is not a sexual offence. This Bill is extensive. On sexual offences alone is a very small part.

**Mr. Mwanicha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Some of us come from communities that circumcise ladies. Is hon. Ms. Mwau in order to mislead the House that those circumcised women do not enjoy sex when we actually have no problem with them?

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Members! Now, all these are just arguments not points of order.

Proceed, Mr. Kajwang!

**Mr. Kajwang:** Thank you, Mr. Temporary Deputy Speaker, Sir. Those who oppose this Bill have been depicted by the media and publicly over radio stations and wherever as "rape mongers" and rapist lovers, for we support rape, if we oppose this Bill. That is how it has been packaged. That is why all men have fled and gone into holes. This is because if you oppose this Bill, they will flash your photo and say: "This is a rapist supporter". They have brought this Bill as if it is so urgent that unless it is brought today with quick amendments over the weekend, this country is coming down. That is how it has been packaged.

Mr. Temporary Deputy Speaker, Sir, but let us just examine some of the things that the Mover has put together. Is it true really that this country does not have a sexual offences law? Is it true that today we are experiencing so many rape cases because there is no law to deal with it? If that was true, then I dismiss it through the Penal Code. This is because the Penal Code does not call

them sexual offences but offences against morality. However, which ones are they? In fact, offences against morality on Section 139 of the Penal Code starts with the definition of rape and states:-

"Any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent, if the consent is obtained by force or by the use of threats or intimidation of any kind or by fear of bodily harm or by use of false representation as to the nature of the act or in the case of a married woman by impersonating the husband, is guilty of a felony termed rape".

What definition can be more exhaustive than the definition we have in the Penal Code?

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, so why should somebody package this proposed Bill which does not even define rape or a sexual offence as the law which will now deal with this monster called "rape" and unless it is passed today we are doomed? Look at the sentence for it in Section 14 of the Penal Code. It states:-

"Any person who commits the offence of rape is liable to be punished with imprisonment with hard labour for life with or without corporal punishment".

*Kwanza, viboko ishirini na nne!*

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Poghio): Order, hon. Kajwang! By the way, you have already made a choice of your language.

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir. I was just using Kiswahili for emphasis.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, who can be punished harder than this unless you are executing? The only other thing which is not here is the death penalty.

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

*[Mr. Deputy Speaker resumed the Chair]*

Mr. Deputy Speaker, Sir, you are being punished by being jailed for life, on top of it, hard labour and *viboko ishirini na nne*, or as many as the magistrate may be pleased to give you. So, what kind of punishment do you want? This Bill which is being proposed does not propose hanging either. It does not even propose hanging, hard labour or corporal punishment. So, what is it that makes this proposed Bill more severe and serious than this Penal Code? Why are we packaging it as if unless we pass this law, we are done with it since people are raping everywhere because there is no law? There must be another reason why people are raping. We would rather look at that rather than cheat us that there is no law.

Mr. Deputy Speaker, Sir, it is not even just rape. There is also attempted rape. Section 141 of the Penal Code states:-

"Any person who attempts to commit rape is guilty of a felony and is liable to

imprisonment with hard labour for life".

Even attempting to rape as we are now without this NGO-sponsored proposed Bill, any attempted rape leads to life imprisonment with hard labour. *Pia kuchapwa na viboko!* So, why are we packaging this proposed Bill as if, if we passed it today, rapists will die tomorrow? If the problem is with our courts, we do not run them. The Minister for Justice and Constitutional Affairs runs courts and maybe the Attorney-General. Maybe they are independent.

Mr. Deputy Speaker, Sir, so what do we do? Do we make law and then tell the magistrate that: "You know, you must deal with rapists or we sack you or we appoint a tribunal to deal with you?" However, definitely, it is not lack of law. This is a House which makes laws; it is not a House which plays politics. There is already a very clear law like this Penal Code with clear definitions which has been with us for many years, they want to repeal it and replace it with this proposed Bill---. I am just going through it and you will see why we cannot just do that.

Mr. Deputy Speaker, Sir, look at page 350 of the proposed Bill which talks about rape. The definition of rape is not shown. It is just written rape on the side there. Clause 3(1)(a) states:-

"A person commits the offence termed rape if-

(a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs".

This is supposedly a gender-blind law. We must let a law and a definition which also covers women because women can also rape. Why do we not define it properly? If women can rape, show how they can. Do not suggest that women can penetrate men because they cannot!

*(Laughter)*

And that is also repeated in "attempted rape".

Mr. Deputy Speaker, Sir, when you come to the issue of sexual assault, it is not as if we do not have a law on sexual assault. In fact, if you look at the section on Indecent Assault, this is a very serious offence. Indecent Assault has been defined so comprehensively in the Penal Code. As it is, we do not need this section on the Sexual Offences Bill. In fact, Section 144(1) of the Penal Code says:

"Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment with hard labour for five years, with or without corporal punishment."

It is not even a defence to a charge for indecent assault on a girl under the age of 14 to prove that she consented to the act of indecency. Indecent assault can even mean winking at a young girl in the streets. The charge for this is five years with or without corporal punishment. So, this is already provided for. What is the hurry? I will now tell you the hurry!

**Hon. Members:** Tell us!

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, the hurry is not the issue of sexual offences; it is the bandwagon; the omnibus, which we want to create to bring things, which should not be brought under and have nothing to do with sexual offences.

One of them is the issue of age. When we dealt with the Children's Act, for example, the mischief, which we wanted to address at that time was that you have, for example, given birth to a child with a woman who is not your wife, but you do not want to take responsibility over that child. So, we defined this law with a meaning that the father should be made to look after the child until he or she finishes secondary school education because that is the primary responsibility of a father. I was in it, I was asked to go to Mombasa and we advised accordingly. They had proposed the age of 21, but we said if you call a girl at that age a child, you are joking. That is why we put the age of 18 because at that age, the child would have maybe, finished secondary school.



However, we did not put that meaning there as to suggest that a child who is 16 years old is not a woman. We knew that internationally at the age of 16, a child can be married if she finds a man. In the whole of the Russian Continent, China and India, immediately a girl-child reaches the age of 16 she is free to be married. That is the recognised age of maturity into womanhood. It is not our responsibility to stop our girls if they want to get married, when they are ready; otherwise, they will rebel and become bad people. If a girl is lucky to find a boy, because they are very few now; they are not willing to take responsibility, allow her to get married. So, when you raise that age of sexual offences and take a woman who is 18 years old as a child; if you do this, a girl-child of 17 years will not go for a dance.

If my 17 year old son, for example, was to go out with somebody's daughter who is also 17, and they dance at the Carnivore, and my son touches the girl, he will go in for ten years. The sentence will be ten years, irrespective of whether the girl said: "Yes, touch me". How can you make such kind of law, that a girl who is 17 years old cannot go out with a boy who is also 17 years old and enjoy themselves if they want? Even in America, they are not allowed to take alcoholic drinks, but only up to 16 years old. President Bush had a problem with his daughter who was under 16 years old, because she bought some drinks.

Mr. Deputy Speaker, Sir, there is also another issue of child pornography. What is child pornography if we ask the definers? Pornography is simply pornography! There is no child or adult pornography. So, why are we making the law look so laughable? We make people who come from abroad laugh at us when we say there is something called child pornography. However, child pornography is not defined in this Bill. What is it? I know what it is, but it is not included in this Bill. So, if you charged me with child pornography and you took me to court, I will ask: "What is that?" Do not make us look like people who are not serious when we are making laws.

On this issue of pornography, they say this includes showing a child an obscene object. What is an obscene object? I have seen the gadgets used by HIV/AIDS educators for demonstration on how to use condoms. Those are obscene objects!

*(Laughter)*

If you take me to court and say I showed a child an obscene object, I will ask: "What is an obscene object?" We should not make things so subjective, that it is the person who has charged you who seems to know what an obscene object is, but you do not. That way, we will be charged everyday.

Mr. Deputy Speaker, Sir, there is also talk of exploitation of prostitution. That is a political statement, which is very fundamentalist in nature. What is this thing called exploitation of prostitution? First of all, they have not defined prostitution. Nobody knows what prostitution is in this law. Do not ask me what I know, because I have a different opinion from other people. If you want to make law, you must define prostitution and discuss its exploitation. The Penal Code already defines it. In fact, there is nothing called prostitution in the Penal Code, but they say feeding from the earnings of prostitution is an offence. This means that if you keep a girl somewhere and people pay you to have access to her, then of course, you are feeding from the earnings of prostitution. That is an offence. If you have a brothel, which is also defined in the Penal Code, and you earn some money from it, because people hide there, you are feeding from the earnings of prostitution. However, what is this thing called exploitation? This is alarmist!

Mr. Deputy Speaker, Sir, there is another word called "trafficking" for sexual exploitation. Unless we are very careful, this NGO language can destroy this country.

*(Applause)*

I have heard of trafficking in the Press, but I do not know what it is. However, it is defined here in the Penal Code that if you take a woman anywhere in Kenya or outside the Republic of Kenya with a view to making sure that you are paid for men to access her, then of course, that is an offence. So, why use language which is scary. It is the packaging part that makes it come out as something so terrible that unless we pass this Bill, Kenya *inaungua!* We are not about to go to hell yet. I am seeing a fire there, so I have to quickly put it off.

Mr. Deputy Speaker, Sir, there is something else about touching a sexual organ. There is no excuse that someone does it with a woman's consent. Rape is of course having carnal knowledge without consent. However, there is another offence they have defined here under indecent acts, which also includes touching the private parts. If you touch the private parts of a woman, even with her consent, you are in trouble.

Mr. Deputy Speaker, Sir, what makes this proposed law so bad is its packaging. The second thing is the minimum sentence. Lawyers, or drafters, of the Penal Code were not blind to the fact that any woman could use the excuse that she has been raped, or that there has been an attempted rape on her, to fix men. If you are her boss and you are harassing her in ways other than sexual, she can report you to the police. This can also be done by a woman who is married to you. If you earn Kshs1 million and you drink it with friends, and she does not see your money she can fix you. If she suspects that you slept somewhere with a friend, she can tell you that unless you bring that Kshs1 million, I am fixing you for 10 years. She can do that as this Bill provides for it. So, if you put a minimum sentence you remove from the magistrates the power of discretion, which is very necessary in law.

I will give you an example. If a magistrate is listening to a rape case and finds that you are actually husband and wife, he or she listens to the circumstances in which the rape was committed, they can say that a rape has been committed, but because you are husband and wife and I have listened to every circumstance, you will be imprisoned for one day. Many people have been jailed for one day. If you go to court and the magistrate listens and finds out that you are boyfriend and a girlfriend, and have been sleeping here and there, then one day the girl said no, but the boy kind of forced her into sex, the magistrate can look at all the circumstances and jail the boy for one day. The magistrate may ask the girl: Do you love this boy? She may say: Of course I love him but he forced me into sex. The magistrate may say: Well, one day's imprisonment will do. But if you fix a minimum mandatory sentence of 10 years and my son, who is 17 goes out with a girl, who is 17, they dance at Carnivore, drink there, as they usually do, and then tumble in the hay, then the girl says she has been raped, the magistrate will have no discretion to exercise. He may say: Well, I sympathise with the young man. This is really terrible; you had one too many and you are also young people.

**Ms. Ndung'u:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Kajwang do you want her information.

**Mr. Kajwang:** No. I am just about to finish.

If that happens the magistrate has no discretion to exercise.

**Ms. Ndung'u:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to misrepresent a section of the Bill? The Bill clearly does not provide minimum sentences for teenagers. There is an exception for children. Is it in order, therefore, to mislead the House by using the example he has given.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, the Bill says teenagers will be taken to a borstal institutions. However, if you take my son, who may be at a university to a borstal institution, then that will be a big joke.

With those few remarks, I oppose.

**The Assistant Minister for Agriculture (Mr. Kembi-Getura):** Thank you, Mr. Deputy

Speaker, Sir. The issues raised in this Bill are important. The generality of the intentions meant to be accomplished is very important. In this House virtually all of us are parents. We all know how bitter and sad it can be if your daughter is raped or your son is caught in a rape case. Therefore, this is a Bill that all of must look into carefully and deal with very passionately. There cannot be a sadder occasion for a parent than when their daughter is raped, or their son is jailed for 10 years on allegations of rape. It is, therefore, a situation we must look at from both sides. As parents, we must take care of our sons and daughters. Rape, defilement or any other sexual offence is very serious, and must be taken very seriously. Rapists and other offenders of this nature, in truth, need to be removed from the society. They should be jailed for as long as possible and removed from our society.

We are law makers, but however serious an offence appears to be, we must deal with it within the law. It would be irresponsible of us, as law makers, to allow this Bill to go through in its present condition. There are several things that we need to look into. We know that the intention of the Bill may have been good in the first instance. My serious and sincere advice to the Mover of this Bill is to consider withdrawing it, take it back to the relevant Committee so that it is looked into afresh to avoid it being thrown out all together by this House. It will, indeed, be sad if the whole Bill is thrown out, which is likely, if it remains in its present form.

Mr. Deputy Speaker, Sir, you know that a lot lobbying has been done about this Bill. I do not say that there is anything wrong with lobbying for any Bill in this House. When I received an e-mail from the Kenya National Commission on human Rights, telling me to sign and say that I support this Bill, otherwise my name will be published to show whether or not I supported it, I thought this was the height of irresponsibility. I must take a position and must be able to express myself and say why I support this Bill, or why I find it impossible to accept it in its present form.

As hon. Members, regardless of what anybody may think of us, including what has been thought of us in the recent past, we owe a duty of care to the people we represent and the nation at large. Therefore, we should not be made to fear to argue or present views on a certain Bill. I cannot oppose or favour a Bill because of the fear of what the people I represent may think of me. If my conscience does not tell me that this is a Bill I should support, then I regret to say this, that whatever anybody thinks of me, I am going to say "no" when I must say so, or when I am called upon to say "no".

Many of my colleagues have argued very ably about this Bill. I commend what they have said about it. I am going to look at the legal aspects of this Bill. Is this a Bill that can pass the test of time? Is it a Bill that we are going to pass and five months later we are back here to amend it? If we do that, then we will have negated our duty as law makers. I really appreciate what the Minister for Justice and Constitutional Affairs, Mrs. Karua, said. This is one Bill that shows that law makers are taking their work seriously. Every hon. Member, who has contributed, has taken the Bill clause by clause. They have read it because they wanted to understand it. They do not wish to support a law that is going to impact negatively on this nation.

So, what kind of Bill do we have in front of us? Those of us who are lawyers know the shortcomings of this Bill. I have defended rape and murder cases in court, and know exactly what happens in courts. Our fore fathers cannot have been extremely wrong when they said that he who alleges must prove. That is why the burden of prove generally lies with the complainant. Only in very exceptional cases - I know that the Constitution allows for such cases - are we allowed to place the burden of proof on the accused?

Mr. Deputy Speaker, Sir, if you look at Clause 8 on page 399 of the Bill, you will find that it says:

"Section 123 of the Criminal Procedure Code is amended by inserting the words defilement, gang rape, deliberate transmission of HIV/AIDS or any other life-

threatening sexually transmitted disease" immediately after the word treason"

If you look at the relevant section of the Criminal Procedure Code, which, unfortunately, is not reproduced in the Bill as it should have been, you will see that the offence of defilement and gang rape have been made unavailable.

Mr. Deputy Speaker, Sir, if this is the question, obviously, the whole Bill might face the risk of failing because of being unconstitutional. At Clause 8 of the Bill, a child is defined as a person under 18 years. If you then look at Clause 47(4), at page 393 of the Bill, it says that a child under 18 years cannot appreciate the nature of an act whether of penetration or whatever else. That begs the question: If that is the position, why then would punishment be different? If a person under 18 years is a child and is, therefore, unable to appreciate the act complained of, then that kind of person cannot give consent of any form at all. Therefore, in the drafting of this Bill, it means that, that child who is less than 18 years is not capable of granting consent. This begs a question, regardless of what my friend, Mr. Kajwang, said; that 16 years should be the age of discretion. Why should the punishment of any child up to 18 years be different if that person is not able to appreciate the consequences of the act?

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Mr. Poghio) resumed the Chair]*

Mr. Temporary Deputy Speaker, Sir, if a child under Section 14 is not able to appreciate the nature of the act, how is that child then able or capable of deceit? The Bill is saying that if I can prove that a girl under 18 years deceived me that she was actually over 18 years, it is a defence. How is a child, as defined in the Bill, capable of deceit yet at the same time she is not capable of appreciating the act that is going to send him or whoever else to jail for ten years or more? This is important. The point I am making is that if rape is such a serious offence as defilement, like we say it is - indeed it is - then rape should be an offence of strict liability. There cannot be a defence. If you want to sleep with my daughter, ask her for her identity card (ID) or birth certificate. However, you should not come back and say that: "She told me she was 19 years old when, in fact, she was 16 years old." It should be an offence of strict liability as it is known in law. I, therefore, want to submit that there cannot be a question of proof. However, we must define a child fairly and reasonably. To that extent, I will adopt almost wholly the argument of my colleague, Mr. Kajwang, on that score without repeating.

Mr. Temporary Deputy Speaker, Sir, let me now turn to the issue of Borstal institutions. Again, we are caught in a trap of saying that if you are under 18 years, you are a child. At Clause 47, you are not capable of appreciating what you are doing. How then are you going to send my son to jail, who is 17 years old, who committed or is alleged to have committed a sexual offence if, at the same time, he was not capable of appreciating what he was doing?

*(Applause)*

There are contradictions. If you look at them one by one, you will find that this Bill risks being rejected. I say this sadly because I do not want to be party to bringing this Bill down, because the core intention is good. It is the dressing that is going to bring this Bill down. That is why I started by saying that I would have wished that we could save the good intentions of this Bill. We should look at the Memorandum of Reasons. At the beginning, at page 400, it states clearly, and it is imperative that we look at it:-

"The main object of this Bill is to facilitate the implementation of the resolution of the National Assembly passed through a Motion on 27th April, 2005, that a Bill for an Act of Parliament "The Sexual Offences Bill" be introduced to the National Assembly for debate."

Mr. Temporary Deputy Speaker, Sir, in truth, at that moment, we talked, essentially, about rape. However, this Bill has several other things that one could say are extraneous to the Motion which we passed.

*(Applause)*

All these are dangers. I would like us to deal with the core things that brought this Bill here because I would want to support it. I would not want to throw out the child with the bat! The truth is, however, that, that might have to happen if we allow it to go the way it is. Is it possible to salvage it at this late moment? Could we still withdraw it; sit down as a Committee and decide what exactly we want to achieve for the betterment of our nation and safety our children, both boys and girls? We should remember that this is not an argument for gender.

As I stand here, I am a father of girls and a boy. I want all my children to have an equal opportunity. They have been given an equal opportunity. When my son is at his prime, just when he has completed his university education; when he has just bought a new car and starts to see what life is all about; just because he crossed a girl or because she said things that may have not been true; remembering that Clause 38 of this Bill has removed one of the cardinal pillars of the law of evidence, corroboration; or because the young girl said he did it at 24 years old, he goes in for ten years. He comes out when he is 34 years old, a bitter angry young man who cannot live in society any more. Is that what we are trying to achieve even as we try to remove the evils from society? With a lot of respect, I would like to submit that these are some of the things that we need to re-look so that we can save the very important intentions herein. Mr. Temporary Deputy Speaker, Sir, there are also technical issues of juristic persons and I do not want to deal with these issues. However, when we go to Clause 23, the one that has been discussed at great length by almost everybody, what exactly does Clause 23 mean? It is at page 367 and it says - and this again is a danger I see in the interpretation of the law when the time comes:-

"Any person who undertakes any unlawful, unsolicited and unwelcome sexual advantage or is paid for sexual favour is guilty of an offence of sexual harassment."

This begs the question immediately. It assumes that, therefore---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Poghiso): Order, hon, Members! As you can hear for yourselves, consultations are getting louder. You can even hear the hon. Member now raising his voice to try and compete with your own. Let us, therefore, consult in low tones.

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): Mr. Temporary Deputy Speaker, Sir, I was examining Clause 23 on page 367. It talks about unlawful, unsolicited, and unwelcome sexual advances. That begs a question and assumes that, therefore, there must be lawful, solicited or welcome sexual advances. The question is: What exactly does that mean? Where do we draw the line? If you make sexual advances at a woman or she makes advances at you; at the moment she says "no", and you withdraw and go your way, have you already committed a sexual offence? Is there anything else that you can do after that which is a mitigatory offence? What is the position in that? There are dangers of words. I say that because the terms as used here; "unlawful" and "unsolicited", always assume that there can be solicited sexual favours.

Mr. Temporary Deputy Speaker, Sir, I submit that Clause 25, of the Bill is superfluous and should be struck out completely. I say that because it states:

"Conduct by a person which would otherwise be an offence under this Act against another person is not an offence under Section 24 if, immediately before the position of authority or trust arose, a sexual relationship existed between that person and the other person."

That contradicts the clause that has been discussed in length by hon. Kajwang, about the evidence on character. The Bill says that I cannot, as a lawyer, or as an accused person, discuss the character of a woman who has laid a complaint against me. That is the position. Time will bear us out on that one. The largest number of complaints, unfounded ones, will not be of rape because rape is a completed offence and you have to show a lot of evidence, including taking of DNA tests. Attempted rape leaves no residue, and there need not be penetration for an attempted rape. And still, if she can lay that claim and sustain it against a person, the person gets a 10-years jail term; it is dangerous because if you look at Clause 38, you will see that they are removing the necessity for corroboration. The moment corroboration is removed, then any offence of attempt becomes very easy to deal with because it will be the word of one person against the other.

The point I am trying to make is that we need to be very careful as we move on to pass this Bill. One argument that we have heard this afternoon, and yesterday, regards Clause 31 of the Bill. If I remember very well, under the Children's Act, circumcision of women is outlawed. If a child is defined in that Act as a woman of less than 18 years, then it is because she is unable to give her own consent. What does Clause 31 mean on page 375 when it says in part:

"Any person who engages in, or carries out forced female circumcision is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years or a fine of one hundred thousand shillings or to both."

What does the word "forced" mean in that context? Is there any lawful circumcision for a woman of less than 18 years? I see a major contradiction in this clause. I, therefore, would wish to recommend that the whole clause be removed because it is superfluous.

If you look at Clause 26, you will see that it is a clause that is worded in an interesting way. It says:

- (1) "A person who commits an offence if -
  - (a) he or she intentionally poses his or her genital organs; and,
  - (b) he or she intends that someone will see them and be caused alarm or distress.
- (2) A person guilty of an offence under this section is liable on conviction to imprisonment for a term of imprisonment of not less than two years or to a fine of not less than fifty thousand shillings or both."

That clause does not say whether that has also to do with man and wife or if it applies to everybody. If it has to do with man and wife, then it is an extremely dangerous clause because it does not say what happens if that is done in the privacy of the home of a husband and wife. I am not trying to impugn this Bill; I am only trying to say that we must take care that we do not do things which should not be done.

Before I finish, I would like to look at Clauses 38 and 39. I talked about Clause 38 as pertains to corroboration. Corroboration has been time-tested. The reason for corroboration is that for a serious offence like rape or defilement, where one stands to be jailed for 10 years, then, the question is; is it fair that anyone should be convicted on the evidence of a child of eight years without any more evidence because she says that she thinks someone did it? I find that to be a very dangerous provision, and the way it stands, it is very difficult for many people to support this Bill.

Clause 39, which I had alluded to earlier, is also one of the most dangerous in this Bill. It is the one I had referred to earlier about character. If, in evidence, I am not allowed to deal with, and

test the character and veracity of the person complainant against me, that removes the filler of the law of evidence. The reason our forefathers brought in the issue of character as a test is because through it, you can know if a person is a habitual complainant in such offences. If a woman complains two to four times and it is on record in court, against two to five men, in similar line of offences, what would be so special that she is the only one that sexual offences are committed against? If I am not allowed to test the character of a complainant, then I see no effect of going to court to defend anybody.

Clause 39 Sub-section 4 says in part:

"A court shall not grant an application referred to in subsection (1) if in its opinion, such evidence or questioning;

(a) relates to the sexual reputation of the complainant and is intended to challenge or support credibility of the complainant."

How can that be? If I cannot challenge the credibility of a complainant by bringing out, as it were, a printout of her sexual character, and say that she is serial liar, and prove that she did that to so-and-so last year, and now she is doing it to me; if I cannot say that she could be doing it for gain as a matter impinging on her character, that is not fair. The clause moves on to say in (b);

"is sought to be adduced to support an inference that by reason for sexual nature of the complainant's experience or conduct, the complainant -

(i) is more likely to have consented to the offence being tried; or

(ii) is less worthy of belief."

Why can I not adduce evidence to show that the complainant was more likely to consent to what she is complaining about? Why can I not adduce evidence that the complainant is less worthy of belief? What are we protecting? If she is less worthy of belief, then it must tilt against her.

Finally, I would like to touch on the issue of maximum sentence. I appreciate very much the seriousness of this offence and the need to jail defilers of our daughters, even to a maximum of life imprisonment.

However, the magistrate should be allowed the discretion to steer from the maximum penalty. There are so many extenuating and mitigating circumstances. When a child of, say, 17 years is

unfortunately drunk with alcohol, he is unlikely to behave like a man of 45 years or so, who is also drunk after consuming the same amount of alcohol in terms of discretion and just the way they carry themselves around. Is the magistrate or judge not going to be given a discretion not to jail my son for ten years, but, perhaps, to send him to an institution, warn him or commit him to community labour in order to appreciate the gravity of the offence and put the fear of God in him so that he does not repeat it as opposed to destroying his life forever by jailing him for 10 years without an option of a lesser sentence?

The point I am making is that whatever we may think of our courts, if you say that this is the minimum sentence and you remove the discretion of the court, we may end up doing more injustice than the justice that we hope to bring about. One of the major maxims of the law is that better 100 guilty people go free than one innocent person to be jailed.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, whereas I support this Bill in its core value, I am unable to vote for it in its present form. It needs to be re-looked at.

**Mr. Muturi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to associate myself with the sentiments that have been expressed by various speakers with regard to the philosophy underlying the presentation of this Bill.

Mr. Temporary Deputy Speaker, Sir, I supported the Motion when it was moved. We all know what the Motion called for. However, I feel that the law that is proposed to be enacted through this Bill is strange. I have never myself supported or even shown mercies for rapists. For

close to 18 years, my record in dealing with court cases concerning rapists will speak for itself. However, I cannot now stand here and support something that is strange because some people have already said, as hon. Kajwang put it, that if you do not support this Bill, you are a supporter of rapists.

There are various SMSs that have been sent to all of us today by strange civil society activists and feminists who are loitering in the streets. Those messages are meant to intimidate Members of Parliament. We are above that! Of course, that is part of the reason why some people behaved funnily yesterday. I went to school and I understand that---

**The Assistant Minister for Housing** (Mrs. Tett): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the hon. Member on the Floor say that some of us behaved in a strange manner? He just referred to women Members of Parliament as "some people."

**The Temporary Deputy Speaker** (Mr. Poghishio): Did you say that, Mr. Muturi?

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I am surprised. I think she has decided to ask herself a question and give answers.

These SMSs are all over. They read as follows:

"We request you, as leaders of this country, to do the right thing by supporting the Bill before the House. You are supporting your wife, mother, daughter and sister. If you do not support this Bill, then we are watching"

I want to say it here: I want everybody to watch me.

Mr. Temporary Deputy Speaker, Sir, I will first of all take issue with the publication of this Bill. Standing Order No.96 clearly says the following:

"Where a Bill seeks to amend any provision of an existing Act, the text of the relevant part of such provision shall either be printed or else copied and supplied with every copy of the Bill which is despatched to Members, unless in the opinion of Mr. Speaker, the amendment is formal, minor or self-explanatory."

The amendments proposed to be made by this Bill cannot, in wildest stretch of imagination, be termed either formal, minor or self-explanatory. These are major issues. In fact, the Speaker of the House yesterday said that this is a momentous piece of legislation and, therefore, there was need for the Mover of this Bill to ensure that all portions or provisions of the laws to be amended were either printed or reproduced and despatched to Members alongside this Bill.

Mr. Temporary Deputy Speaker, Sir, I know that the Mover of this Bill indicated yesterday that she would be complying with that. However, our Standing Orders do not say that you publish, despatch to Members and then later comply with it. I am saying this because on page 398 of the Bill it is stated thus:

"Section 163(1)(d) of the Evidence Act is repealed."

If it is repealed or proposed to be so repealed, in terms of Standing Order No.96, then it ought to be reproduced here. If you go through this Bill it is not there.

Even on top of Page 398 of the Bill it is stated:

"Sections 139, 140, 141, 144, 145, 147, 148, 149, 161, 164, 166, 167, and 168 of the Penal Code are repealed."

In as much as they have indicated what sections of the Penal Code they are going to repeal; for example, Sections 144, 145 and then they skip to Section 147; if you go to page 408 of the Bill, you will find that Section 146 of the Penal Code is included---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Poghishio): Order, Members! I think that it is very crucial that we follow what the hon. Member on the Floor is saying.



**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, you will find that even though it is not included among those consequential amendments and repeals, Section 146 of the Penal Code is now printed at page 408 of the Bill as one of those to be repealed. The Mover has said that she will repeal Section 163 of the Evidence Act but she cannot reproduce or print it as required by law. She says she is not repealing Section 146 of the Penal Code---

**Ms. Ndung'u:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Mr. Muturi:** No, Mr. Temporary Deputy Speaker, Sir. The Mover is a good friend of mine, but my time is almost over. The point which has already been raised by several speakers is on page 399. The proposal to amend Section 123 of the Penal Procedure Code is unconstitutional, which would, therefore, make this Bill unconstitutional. It also offends our Standing Orders. Some of my colleagues are proposing that this Bill be referred to the Committee to make amendments. Why do we want to amend what is unconstitutional? They ought to have seen this. It is very clear that they have not complied with this. I want to bring out that technical problem first.

**Ms. Ndung'u:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House with regard to the procedures under Standing Order No.96? Yesterday I circulated a corrigenda under Standing Order No.96 which distributed the sections which the hon. Member is raising. Therefore, he is misleading the House by saying that I did not follow the Standing Orders.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I do recall seeing some leaflets being circulated in the House. I really do not know if the Mover intended that they be the corrigenda. They needed to be attached to the Bill. But she came and threw them around here. The public had access to the leaflets. How could you differentiate between a corrigenda and that kind of civil society activism?

Let me not repeat the question of rape because it has been abundantly shown that it has not been defined in this proposed Bill. What is strange about the Bill is the attempt to repeal Section 139 of the Penal Code from the definition of rape which was read out to all of us by Mr. Kajwang when he contributed. It is so comprehensive. Now, this Bill seeks to oust that one. It replaces it with nothing as has been shown. On the sideline there is a note indicating "rape".

This definition is very interesting. It states that you commit rape if the consent is obtained by force or by means of threat or intimidation of any kind. This means that we do not have the definition of rape as an offence. Quite interesting is the provision on Clause 5 at page 351. This purports to be the offence of sexual assault. It states as follows:-

"Any person who penetrates the genital organs of another person with any part of the body of another or that person---

This means penetrating yourself. I do not know how that is likely to happen.

"---is guilty of an offence termed sexual assault."

It does not say "Without the consent of that other person." This is what is called in law, actors rule. It is the act of that penetration. Whether or not there will be consent, you are guilty of an offence termed sexual assault. This means that even in your own home you will be guilty of sexual assault. It is a figure of speech. I am not directing it to the person on the Chair.

The Bill has not said that if the penetration is without consent. It talks of penetration *per se*. It states as follows:-

"A person guilty of an offence under this section is liable upon conviction to imprisonment to a term of not less than 10 years but which may be enhanced to life imprisonment."

For what? Why should you be jailed for penetrating? You have not done it against the will or without the consent of the other party. It is just mere penetration. This is very dangerous. It will break up families.

Mr. Temporary Deputy Speaker, Sir, I cannot understand how we can discuss this Bill here as being revolutionary. It is clear to all of us that there exists sufficient law to deal with the offence of rape and other sexual offences. It is not the absence of law. We must locate blame where it is. On page 397 the transition provisions state the following. It is important that I read this for us to appreciate what I am saying. It states as follows:-

"1. Notwithstanding the provisions of any other Act, the provisions of this Act shall apply with the necessary moderations upon the commencement of this Act to all sexual related offences.

2. For greater certainty the provisions of this Act shall supersede any existing provisions of any other law with respect to sexual related offences."

This Bill has purported to define what sexual offences are.

Mr. Temporary Deputy Speaker, Sir, what happens to the offence created in the Penal Code under Section 162 which is called an unnatural offence? This is defined as the act committed by any person who has carnal knowledge of any person against the order of nature. This has not been defined here. What also becomes of the offence of Section 162(b) which states: "Any person who has carnal knowledge of an animal---"? All these are offences in the Penal Code. You are saying that the provisions of this Bill, when it becomes law, will supersede all other laws in relation to sexual offences."

**Ms. Ndung'u:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghismo): Order! There is a point of information.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, since she is the Mover of the Bill, I suggest she takes notes, so that when the Chair calls upon her to reply, she would be in a better position to address all issues raised by hon. Members. I appreciate---

**The Temporary Deputy Speaker** (Mr. Poghismo): Order! Just say you do not want information.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I recall, when the Minister for Justice and Constitutional Affairs was contributing, she actually said that this new law will supersede all other laws on sexual offences. It, therefore, means that the provisions of this law, outside these ones which have not defined here, will operate. It will lead to people behaving funnily, particularly with regard to animals; bestiality will be the order of the day. What would be offence the here? We are encouraging people to begin engaging in all manner of behaviour.

**Ms. Ndung'u:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that the Penal Code which he is quoting, is supposed to repeal all other sections of the law on sexual offences?

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, as I said, those issues could be introduced when the Mover is replying. It is important that she shows us how she proposes to handle them.

**The Temporary Deputy Speaker** (Mr. Poghismo): Order! Just address the Chair. You are now addressing the hon. Member.

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, the offences that I have read from the Penal Code are within the offences against morality in the Penal Code. Those are the offences which are supposed to be catered for by this Bill. By enacting this Bill as it is, and granted that we have even said that it will supersede all these other legislations regarding sexual offences, then there will be a lacuna within the law. There will be a vacuum that will never be addressed. I will be happy to hear from the Mover what she proposes to do in that kind of situation.

Mr. Temporary Deputy Speaker, Sir, the offence called sexual assault in Clause 5, page 351, does not introduce the issue of consent or no consent. That means that there will be family breakdowns as long as there is penetration. I would like to restrain myself because the definition of

sexual organs here includes the anus. If that is also a sexual organ, what are we trying to say? Are we not introducing sodomy through the back-door? I cannot see how this organ was included here.

I fear the fact that we are being told that if we are accused, we cannot give evidence of the past moral character of the person accusing us. That is a very dicey area. I think we need caution. It was not put there for fun. We must be able to show that the person standing there and giving evidence saying that she was sexually assaulted or raped is a person of good moral standing. We live in this country and we have seen cases of people being fixed and framed. I am saying this from my experience on the Bench. This Bill introduces the possibility that one could be jailed on the basis of evidence of somebody whom he has never seen. It introduces that kind of method of trial. Somebody you do not see would have given evidence. On the basis of that evidence, a 10 or 15-years, or life imprisonment, is visited on you. We need to be careful.

Mr. Temporary Deputy Speaker, Sir, I feel that we should also be careful. We cannot say that it does not matter, when a magistrate trying a rape or sexual offence under this Act will not have regard to the time it has taken to report. If we allow that kind of situation, people will start imagining that they did not like us 20 years ago, and when we go home we find police officers waiting for us. This is dangerous because a false allegation will be made against us and everywhere we go, whether we will be proved innocent or not--- Of course, the Bill says here that it is incumbent upon us to prove ourselves innocent. Whether it would be proved finally that you never committed the sexual offence complained of, the damage which would have been done to you will be irreparable. This is because everywhere you go, people will not be saying: "This is the man who is facing a rape charge." Instead, they would be saying: "This is the rapist." We should be careful because people label others all manner of names.

Mr. Temporary Deputy Speaker, Sir, I feel that we must have time limit. What is it that we are trying to protect, so that we could allow a person to report a rape case after 20 years down the road? What would they have been waiting for? Here we have provided that the court should not even ask that question. And that it does not matter even if it is a grandmother of 80 years coming to frame me that 30 years ago I raped her. We must be alive to this things. It has just happened in our neighbouring country here and in South Africa. What were those people waiting for? Those are the questions to be asked. I do not want a situation whereby the West will come to dictate to us on our ways of life; about marriage and cultural practices.

Mr. Temporary Deputy Speaker, Sir, among the Turkana community, it is customary for young men to go and do some mock fight while helping one of their own to marry. That is a situation in which five or six Turkana young men are all accused of gang-raping a girl, 20 years after the woman has been married and maybe divorced. All those are examples which come to mind when we read through the various provisions of this Bill. We must be careful. All these are examples which make it impossible for me to support this Bill. I think it is only fair that this Bill is withdrawn and re-cast so that it addresses only the issue of sexual offences, or if there is need to make amendments to the law, amend the Penal Code.

With those remarks, I beg to oppose.

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I will associate myself with the contributions of my colleagues, particularly Messrs. Kembu-Gitura, Kajwang and Muturi.

Mr. Temporary Deputy Speaker, Sir, I laud hon. Ndung'u for bringing this Bill. But I would say that it is absolutely dangerous for us to pass this Bill in its present form. We have Members in this House who come from the Somali community. There are some who live in my constituency. I know a case where one young man is married to a daughter of his aunt. The father of the boy is the brother of the mother of the wife. If this Bill is passed, they will go to jail because they would be

committing incest. This is something we have lived with in some of our communities and it is not an affront to their culture.

Mr. Temporary Deputy Speaker, Sir, on Monday, there was a seminar on this Bill at the Safari Park Hotel. Unfortunately, due to pressure of work, I did not participate fully. But there was something amiss with the seminar. If you called hon. Members of Parliament to a seminar to discuss and appreciate a Bill, you do not start by giving them frightening statistics. "As we speak, a woman is being raped." "As we speak, ten have been raped." That is the wrong way of going about things.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I know my good friend, hon. Ndung'u, has very noble intentions. We debated her Motion and passed it here, and we want to go the whole hog and pass the Sexual Offences Bill. But I want to give her free advice, that she steps down this Bill voluntarily, then we go and re-look at it and refine and pass a law that is good for all of us. There is nobody in this House, on either side, who would be happy about rape, particularly aggravated rape or paedophilia. We want the people who commit those offences severely punished. But we do not want to murky the waters by over-colouring the Bill and putting in all manner of things that are not defensible both in law and, particularly, under the Constitution.

This is the first time, for instance, that we have brought a law to this House where we are saying that an accused person has a duty to prove himself innocent. Section 77 of the Constitution is so clear. When you are taken to court, those who take you must prove you guilty. It is not for you to prove yourself innocent. The day we visit our people with that kind of law, God help this country.

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 36, you wonder what law we want to create. When somebody complains of rape and goes to court, you are not entitled as a defendant, or even the court itself, to make inference on the fact that the complainant took three, four or five years to complain. What was he or she doing? We have seen in other jurisdictions rape law being used as a political tool. There is a Swahili saying that, "*ukiona mwenzako akinyolewa, na wewe tia kichwa chako maji.*"

Mr. Temporary Deputy Speaker, Sir, the hallmark of this Bill is punishment; punishment. My colleagues have talked about it. I am a father of daughters and sons. My son has just turned 18. If he went to the Carnivore Restaurant tomorrow with hon. Anyang'-Nyong'o's daughter---

**Prof. Anyang'-Nyong'o:** God forbid!

*(Laughter)*

**The Assistant Minister for Foreign Affairs (Mr. Wetangula):** And in their excitement, he touched her genitals and nothing beyond that, he goes in for ten years. Do we want a law like that? This kind of law will only end up destroying our society.

Mr. Temporary Deputy Speaker, Sir, this Bill is even destroying the basic tenets of social life of courtship. How does one get intimacy without courtship? Clause 23 reads:

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

How do you know that the advance is unwelcome until you make it? If you make an advance and the person says no, the matter ends there. Why should this become criminal? We all have a responsibility to pass good laws. But this is not a good law.

Mr. Temporary Deputy Speaker, Sir, Clause 26 reads:

"A person commits an offence if:-

(a) he or she intentionally exposes his or her genital organs.

(b) he or she intends that someone will see them and will be caused alarm or distress."

Where I come from, women and men go to bathe at the river and they expose their genital organs. What we are saying in this clause is that if you are walking by the river and you see a naked man or woman bathing, you can rush to the police and say you have been caused distress, which will earn that person two years in jail or a fine of Kshs50,000. Is this the law we want to pass in this House? We have seen the Maasai. When they are walking against the wind, their *shukas* fly off and their genitalia is exposed. Does anybody who sees them and gets distressed run to the police? These are the things we are talking about.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, as we say we must punish rapists, we must not criminalise sexuality. As we say we must punish rapists, we must not make it for those of our nationals not endowed with enough money to buy clothes to cover their bodies fully, to become criminals. There is not a single Member in this House who does not represent a Kenyan who does not have sufficient clothing and whose genitalia is from time to time exposed for inadequate clothing. Do we want to criminalise that? I want to say no!

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, Clause 39 is even more dangerous. It says that if a sex hawker on Koinange Street shouts "rape" and you go to court, you are not allowed to adduce evidence on her character.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Poghio): Order! Mr. Wetangula, you have a balance of 20 minutes to contribute.

Hon. Members, it is now time to interrupt the business of the House. The House stands adjourned until Tuesday, 2nd May, 2006, at 2.30 p.m.

The House rose at 6.30 p.m.