

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 31st May, 2006

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

PRESENCE OF HON. MEMBERS  
FROM ETHIOPIA, ERITREA, UGANDA  
AND TANZANIA IN THE SPEAKER'S ROW

**Mr. Speaker:** Hon. Members, I wish to bring to your attention the presence in the Speaker's Row, of Members of Parliament from Ethiopia, Eritrea, Uganda and Tanzania. The hon. Members from Eritrea are hon. Amina Nurhessein, M.P. who is the Minister for Tourism, hon. Hiwet Zemichael, M.P., hon. Lijam Almaz, M.P. and hon. Gebreab Luul, M.P. From Tanzania, we have hon. (Dr.) Batilda Burhan, M.P. who is the Deputy Minister for Development, Gender and Children, hon. Anna Makinda, M.P. who is also the Deputy Speaker and Chairperson of Tanzania Women Parliamentary Group, hon. Cynthia Ngoye, M.P. and hon. Bernadette Mshashu, M.P. From Ethiopia we have hon. Asfaw Netsanet, M.P., hon. Wadajo Masselech, M.P. and hon. Fanta Gezahagne, M.P. From Uganda we have hon. Sara Nansubuga Nyombi, M.P., hon. Betty Amongi Ongom, M.P., hon. Emma Boona, M.P. and Alice Alaso, M.P.

The hon. Members are attending the Network of African Women Ministers and Parliamentarians workshop on mobilization, capacity building and advocacy which is hosted by our Women Parliamentarians (Kenya Women Parliamentary Association).

Let me take this opportunity, on your

behalf and on my behalf to welcome the hon. Members to our country and wish them a happy, enjoyable stay and fruitful discussions in the workshop. Thank you.

*(Applause)*

### NOTICES OF MOTIONS

IMPLEMENTATION OF FREE SECONDARY  
EDUCATION PROGRAMME FOR CHILDREN  
ORPHANED BY HIV/AIDS

**Mr. ole Metito:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, given the debilitating effects of HIV/AIDS in the country, taking

cognizance of the high number of orphans estimated at 1.2 million; noting the increased primary school enrolment occasioned by Free Primary Education Programme, and further noting that the increase is not reflected in secondary schools, this House urges the Government to implement free secondary education programme for children orphaned by HIV/AIDS and other causes.

*(Applause)*

AMENDMENT OF THE  
PETROLEUM ACT

**Mr. Ojode:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, taking into account the rampant poverty that has gripped many Kenyans; having regard to the fact that the pricing of petroleum products has been on a steep increase over the last couple of years; cognizant of the fact that any increase in prices on petroleum products affects the prices of almost all the commodities; and aware that arbitrary price increase on petroleum products only enhances the revenue of the multinational oil companies; this House do grant leave to introduce a Bill for an Act of Parliament to amend the Petroleum Act, Cap. 116, Laws of Kenya in order to give power to the Minister responsible for matters relating to petroleum products to fix the maximum price in respect of sale of petroleum products.

*(Applause)*

**QUESTIONS BY PRIVATE NOTICE**

RAPE/STRANGLING OF 14-YEAR-OLD GIRL

**Mr. Sambu:** Mr. Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

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

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

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

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

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

(a) I am aware that a 14-year-old girl was abducted on 23rd February, 2006 and allegedly raped by an adult person known to her.

(b) I am also aware.

(c) I am aware that the suspect has not been charged in any court of law.

(d) I wish to assure the House that the suspect has already been arrested vide Kapsabet Police Station OB No.31/05/06 under record No.771/347/06.

**Mr. Sambu:** Mr. Speaker, Sir, the young lady was assaulted by the suspect on 23rd February, 2006. The suspect had assaulted another lady before but he was not arrested. Could the Assistant Minister assure the House that the suspect will be charged in a court of law? This is

because the tendency at the Kapsabet Police Station is that suspects are arrested, locked up over a night, *kitu kidogo* changes hands and they are freed. Could the Assistant Minister assure the House that the suspect will be charged in a court of law?

**Mr. Kingi:** Mr. Speaker, Sir, I would like to assure the hon. Member and, indeed, the entire House that the suspect will be charged in court. Rape is a serious case and we should deal with it firmly. I also agree with the hon. Member that there could have been something wrong with the police officers at Kapsabet Police Station. Indeed, that is why I requested to be given more time in order to deal with the issue firmly. I assure the hon. Member that we will take stern measures against the police

officers who have exhibited some laxity as far as this matter is concerned.

**Capt. Nakitare:** Thank you, Mr. Speaker, Sir. I am not convinced by the answer the Assistant Minister has given this House. Noting that this is a murder case---

**Mr. Speaker:** Order, Capt. Nakitare! Did you listen to what the Assistant Minister and the hon. Member said?

**Capt. Nakitare:** Yes, Mr. Speaker, Sir. The Question says that the young girl was strangled. This is killing. Why should a suspect who has caused loss of a life be left to walk free from February, 2006 up to June, 2006? Could the Assistant Minister answer that question?

**Mr. Kingi:** Mr. Speaker, Sir, initially, I was also confused. The Question says that, that girl was strangled and then raped. However, when we sought to know more, we realised that she may not have been strangled, but she was raped. We have taken the measures that I have already revealed.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. So that it may not appear that I do not know how to frame my Questions, I have a copy of the OB which was filled in by a police officer. It says that the complainant was abducted and strangled on the neck and was possibly defiled. There are other details that show that she was actually defiled. I framed the Question as per the language that was used in the OB. This is for the record. I am not the one who formulated that language.

**Mr. Speaker:** Was she strangled on the leg?

**Mr. Sambu:** Yes, Mr. Speaker, Sir. That is what a copy of the OB says. It is signed by a police officer.

*(Laughter)*

She was strangled on the neck and not the leg.

**Mr. Speaker:** That is okay. That is all right, Mr. Sambu!

**Mr. Rotino:** Mr. Speaker, Sir, I think the Assistant Minister is belittling this Question. This is because the incident took place in February, 2006 and this is the end of May. How come that it took the police officers a long time to arrest the suspect? From the way the Question is framed, it appears as if this is a known suspect. Could the Assistant Minister tell us whether the man has been arrested and charged in a court of law? Could the police officers who colluded with the suspect be also arrested?

**Mr. Kingi:** Mr. Speaker, Sir, I have already said that this is a serious matter. The suspect has been arrested.

**Hon. Members:** When was he arrested?

**Mr. Kingi:** Mr. Speaker, Sir, the suspect was arrested on the night of 31st May, and he is already in police custody.

**Mr. Rotino:** On a point of order, Mr. Speaker, Sir. Have you heard what the Assistant

Minister has said? He has said that the suspect was arrested on 31st May, 2006 which is today. The day is not yet over!

**Mr. Speaker:** Order! I heard the Assistant Minister say that the suspect was arrested on the night of 31st May, which is yet to come!

*(Laughter)*

**Mr. Kingi:** Mr. Speaker, Sir, I am sorry for that slip of the tongue. I meant on 30th May, 2006 which was last night. We are handling this matter with the seriousness it deserves. We have already issued instructions ordering the sacking of the police officer, who was investigating this matter. We have also issued instructions for the sacking of the OCS, who was in charge of the police station at that time because of the laxity with regard to that matter. This matter was reported to the police station in February this year, but no action was taken until this Question was filed. We are serious about this matter and we will ensure that justice is done.

**Mr. Speaker:** Very well; last Question, Mr. Sambu.

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

Order! Mr. Rotino!

**Mr. Rotino:** This is a serious Question!

**Mr. Speaker:** Order! Every Question is serious. I think the Assistant Minister is also serious. He is doing his best.

**Mr. Sambu:** Mr. Speaker, Sir, the Assistant Minister says that these people have been sacked. Three weeks ago I asked a Question regarding a two-year-old baby who had been abducted by a police officer from the same police station. What guarantee is the Assistant Minister giving the House that these two officers, the OCS and the DCIO, have been sacked? In Kapsabet, justice is for sale. You can defile a child and get away with it. As we talk now, a five-year-old girl has been defiled. The defiler has sold a piece of land and paid the DCIO and the OCS. Could the Assistant Minister table documentary evidence to prove that these two have been sacked?

**Mr. Kingi:** Mr. Speaker, Sir, we have issued instructions to have these two officers sacked. I can assure the House that we are sacking them. If need be, I will bring documents to the House to show that we have sacked them. Not only are we sacking them, but we also want to carry out investigations. Should we discover that some officers were compromised in one way or another we will definitely charge them in court.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Sambu. I have limited time for all Questions and I must make progress.

DELAY IN DISBURSEMENT OF GLOBAL  
FUND FOR HIV/AIDS MONEY

**Mr. Ojode:** Mr. Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

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

(b) Could the Minister table the names of non-governmental organizations (NGOs) that have mismanaged funds meant to fight the aforementioned diseases?

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

Mr. Speaker, Sir, before this Question came to the Floor of the House, I had consultations with the office of the Clerk of the National Assembly, and we agreed that this Question be transferred to the Office of the President where the National AIDS Control Council (NACC) is placed. I can see the transfer was never done. Would I be in order to request the Chair to ask the Clerk's office to transfer this Question to the Office of the President, so that it can come back to the Floor of the House by Tuesday.

**Mr. Speaker:** Mr. Ojode, the Speaker does not ask the Clerk of the National Assembly; he orders him. It is so ordered.

*(Question deferred)*

DESTRUCTION OF CROPS BY ELEPHANTS  
IN GIKUMBO/KANGAITA AREA

**Mr. Karaba:** Mr. Speaker, Sir, I beg to ask the Minister for Tourism and Wildlife the following Question by Private Notice.

(a) Is the Minister aware of the ongoing wanton destruction of food crops by rampaging elephants at Gikumbo/Kangaita area on the slopes of Mount Kenya?

(b) What measures is the Ministry taking to protect the farmers who are under siege by these animals?

**The Assistant Minister for Tourism and Wildlife (Mr. Muriungi):** Mr. Speaker, Sir, I wish to seek the indulgence of the House to be allowed to answer this Question next week, because the answer that I have with me does not sufficiently address the issues that the hon. Member has raised. I have already discussed this with the hon. Member for Kerugoya/Kutus and he is in agreement with me.

**Mr. Speaker:** Is that the position, Mr. Karaba?

**Mr. Karaba:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well, the Question is deferred to Thursday next week.

*(Question deferred)*

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. It has become common practice by Ministers to say that the answers from their Ministries are either misleading or are unsatisfactory. Is it possible for the Chair to order the Ministers to ensure that they do their work at the Ministries before they come to the House, to save time on Question Time?

**Mr. Speaker:** I think I have had occasion to address this issue. Nevertheless, we do not live in an ideal world. Sometimes these things do arise, and we must understand that, that is how things work. I do not think it should be a tradition. Under these very special circumstances I will allow this Question to be deferred. The Assistant Minister saw me in good time and convinced me. I am convinced and order that the Question be deferred to Thursday next week.

**Mr. Karaba:** Mr. Speaker, Sir, did you say Thursday, which is tomorrow?

**An hon. Member:** Go to the Table!

**Mr. Speaker:** Order, Mr. Karaba! Every Kenyan knows that tomorrow is not a sitting day for this House!

Anyway, I thank the hon. Member for reminding hon. Members that the Speaker must be let alone to conduct the business of the House uninterrupted. I think the House is very clear on that. So, approach the Clerk-at-the-Table if you want to consult the Chair. The Clerk-at-the Table will

then approach the Chair.

## ORAL ANSWERS TO QUESTIONS

### *Question No.023*

#### ROLE OF REGISTRAR-GENERAL IN POLITICAL PARTIES DISPUTE RESOLUTION

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

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

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

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to reply.

(a) Political parties are societies within the meaning of the Societies Act, Cap.108, Laws of Kenya. The section that empowers the Registrar-General, who is also the Registrar of Societies, to determine disputes is Section 18 of the Societies Act, which provides as follows:-

"If the Registrar is of the opinion that a dispute has occurred amongst members or officers of a registered society, as a result of which the Registrar is not satisfied as to the identity of persons who have been properly constituted as officers of the society, the Registrar-General may, by order in writing, require the society to produce to him within one month of the service of the order, evidence of the settlement of the dispute and of proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such a dispute. If an order under Sub-section 1 of this section is not complied with to the satisfaction of the Registrar within the period which the Registrar may allow, the Registrar may cancel the registration of the society."

In other words, the Registrar has no legal role to settle disputes, but he can order a society to commence arbitration proceedings or proceedings in court to settle the dispute. In normal practice, while trying to implement Section 18(1) the Registrar may deem it fit to call both the warring parties and, as an impartial office, may make a ruling on the facts as placed before him by both parties. The Registrar's decision is not final, and any party aggrieved can seek redress in the High Court. In other words, the Registrar merely seeks clarification from the parties in order to make a decision on which group to register. The final word lies with a court.

Under our current law, there is no mechanism in place for the resolution of political party disputes. This is one of the reasons why the Government has initiated the drafting of the Political Parties Bill, which has been done in consultation with the various stakeholders, and it will soon be brought before this august House. To fill the vacuum created by having no proper mechanisms to deal with the resolution of political party disputes, a practice has emerged in the Office of the Registrar-General whereby this office seeks clarification from the parties in dispute. When any dispute is brought to its attention, the office may seek clarification either orally or in writing. The office of the Registrar-General is bound to observe the principles of administrative law and, in particular, the principles of natural justice, which include the right to be heard and there should be no bias towards any of the parties.

All parties must be given a chance to put forward their case. You will note that there is no legal obligation for the Registrar-General to hold any court, but, gratuitously, he/she may seek

clarification.

(b) Mr. Speaker, Sir, any party aggrieved by the actions of the Registrar-General, may appeal to the High Court. We have several cases pending on this issue.

**Dr. Ojiambo:** Mr. Speaker, Sir, I want to thank the Minister for that comprehensive answer, but I would like to ask her to consider certain things. Political party disputes are very volatile and can result in violence or disagreements among communities and cause problems for society. I would like to request that the Minister considers extending the period from the time the dispute has been reported to the office of the Registrar-General to the time when the Registrar-General might decide to even alter names on the register already registered by an acknowledged political party. The office of the Minister should also consider finding a better way of transmitting information to the other party, because the current system of using the post office is unreliable and the second party often fails to receive information in time and, therefore, ends up being unable to meet a deadline. Sometimes this causes the office of the Registrar-General to start working on a file before it has known what happened.

**Ms. Karua:** Mr. Speaker, Sir, I appreciate the concerns raised by the hon. Member. You will appreciate that for the Government to consider extending time, we will need a legal framework. Since the Political Parties Bill is ready, we propose to expedite its publication so that the matter is squarely put before the House. We will then have a comprehensive mechanism of dealing with political parties. Currently, the practice that has emerged is that Members of political parties, afraid of applying democracy in dealing with their own disputes, are using the courts or the Office of the Registrar-General to run their parties. It is, therefore, incumbent on this House, once that Bill is published, to expedite matters so that we may have a proper framework.

**Mr. Ojaamong:** Mr. Speaker, Sir, now that the Minister has said that the work of the Registrar-General is to arbitrate, what measures did the current Registrar-General take to arbitrate between the two factions in KANU, New KANU and Old KANU, before they were registered as different entities?

**Ms. Karua:** Mr. Speaker, Sir, you will appreciate that, that is a different specific Question which, if put to me, I should be able to answer. What I have already said applies when the Registrar is looking at disputes. It ought to have applied, and I believe it did apply.

**Dr. Ojiambo:** Mr. Speaker, Sir, would I be in order to request the Minister to use her office to ensure that the Political Parties Bill comes to this House as soon as possible?

**Ms. Karua:** Mr. Speaker, Sir, I will do that. It is part of my performance contract.

*Question No.227*

CRITERIA USED IN CREATION  
OF NEW DISTRICTS

**Maj-Gen. Nkaisserry** asked the Minister of State, Office of the President:-

- (a) whether he could state the legal criteria the Government is using to determine the creation of new districts in the country;
- (b) why the Government has failed to fulfil its 2003 promise of reversing the boundary between Kajiado and Machakos districts to its original state; and,
- (c) whether he could undertake to have the boundary adjusted during the current exercise of creating new districts.

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

- (a) The Government has not created any new district in the country. However, it has

gazetted the intention to create new districts which will be done after receiving the necessary legal authority from this august House.

(b) The Government has not failed to address the issue of Kajiado and Machakos districts boundary. The Government will only adjust the boundary once the leaders and the people of the two districts reach a mutual agreement.

(c) The review of the district boundary will, therefore, be undertaken in concurrence with a mutual agreement of leaders and people of the two districts.

**Mr. ole Ntimama:** On a point of order, Mr. Speaker, Sir. Apart from the fact that the Minister knows very well that he has flouted the law, Cap.224 and definitely trying to use bush law, is he also aware that the Maa community have not been consulted and whatever they intend to do is going to be forced down their throats, which is undemocratic? Is he also aware that---

*(Laughter)*

**Mr. Speaker:** Order, Mr. ole Ntimama! Hon. Members, you must appreciate the fact that Mr. ole Ntimama is learning the ropes as a Back-bencher; he has never been. Those are very good supplementary questions. I will give you the opportunity at the right time to ask your supplementary questions. It is not a point of order, actually.

**Maj-Gen. Nkaiserry:** Mr. Speaker, Sir, you can see the interest that Members have on this Question. I must thank the Assistant Minister for coming out quite clearly that this Government has been cheating Kenyans that they have created new districts---

**Mr. Speaker:** Order! Maj-Gen. Nkaiserry, four years is a long time to learn what is Parliamentary and what is not. So, will you use Parliamentary language?

**Maj-Gen. Nkaiserry:** Mr. Speaker, Sir, I withdraw the word "cheating". The Government has been misleading Kenyans by saying it is creating new districts, and this has aroused a lot of expectations. Today, the Government has come out quite clearly that there are no districts which will be created until this august House passes a law. That was actually the specific question; the legal criteria, and the Assistant Minister has come out quite clearly.

Secondly, could the Assistant Minister revert to the Lands Act of 1992 to specifically resolve the dispute on the boundary between Kajiado and Machakos districts?

**Mr. Kingi:** Mr. Speaker, Sir, I wish to thank the Member for accepting that what we have done as a Government is publish our intentions which is as a result of expressions that have come from Kenyans themselves, wanting districts to be created in their places. I am not aware of the dispute in 1992. I am actually answering the Question that he has put to us. We are saying we are consulting leaders and the people themselves so that they can resolve these boundary disputes as opposed to us going down there to impose on the citizens things that may not be very popular.

**Mr. ole Ntimama:** Mr. Speaker, Sir, is the Assistant Minister aware that the people of the Maa districts that he intends to partition are saying that it is not for their well being, but for the well being and opening up avenues for other people to come and loot and grab their resources?

**Mr. Kingi:** Mr. Speaker, Sir, we are accepting that Kenyans have said that they want districts. So, we have thrown the ball back to them and given them a few criteria items to consider. So, we are not going to impose new districts on Kenyans where they do not need them.

**Mr. Munya:** Mr. Speaker, Sir, the Government seems to be creating more problems because even the existing districts - many of them - have persistent boundary disputes. The Government has never been firm in resolving those disputes. The Ministers always come here and promise that they are going to consult *wananchi*, but they have never taken any firm action in resolving disputes. In many of those dispute areas, lives are lost year in, year out. A case in point is the dispute between Tigania and Tharaka districts. What specific action is this Government going



to take to resolve these disputes before they multiply by creating even more districts?

**Mr. Kingi:** Mr. Speaker, Sir, our intention as a Government is not to create more problems for Kenyans. But we believe that Kenyans wherever they are, together with their leaders - like hon. Members - can sit and resolve these problems without necessarily inviting Government to use force or any other method. So, we want the leaders in those areas to come together with the citizens and resolve those conflicts. Out of the 37 intended districts that we say we want to create, about 30 of them have no disputes. We are sure that even those few that have disputes they will be resolved.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, if I heard the Minister correctly, he said that he is going to come to Parliament to seek authority to create districts. But I come from an area where a district has already been created and we welcomed it. But now, if you are coming back to Parliament to ask for authority and Parliament refuses, what are we going to do with the people who are already expecting a District Commissioner? Why did you create and then come back to seek authority? What kind of administration is this?

*(Applause)*

**Mr. Kingi:** Mr. Speaker, Sir, Parliament represents the people and the people want districts. Therefore, I cannot see Parliament refusing to grant the districts if we are truly representing the people.

**Mr. Speaker:** Mr. Kingi, do I understand you to mean that Parliament has a reputation of being a rubber-stamp?

**Mr. Kingi:** Not at all, Mr. Speaker, Sir. We represent the people, and if they have expressed a wish to have districts, I think it is our responsibility as a Parliament to ensure that their wishes are fulfilled.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to say that we come here as representatives of the people, but rather than consulting us, he consults the people and comes back to us later? Is he in order to interpret representation in that manner?

**Mr. Kingi:** Mr. Speaker, Sir, we are also citizens and part of our consultations include seeking out Members of Parliament. That is why we have said let us sit down as leaders with the people and resolve these matters.

**Maj-Gen. Nkaiserry:** Mr. Speaker, Sir, could the Government defer the creation of the new districts until we enact a new Constitution?

**Mr. Kingi:** Mr. Speaker, Sir, when we come here with our intention, Parliament will decide.

**Mr. Speaker:** Question by the Member of Parliament for Eldoret East Constituency!  
Is he not here?

**An hon. Member:** Yes!

**Mr. Speaker:** The Question is dropped!

*Question No.256*

SALE OF NSSF SHARES IN KPLC

*(Question dropped)*

Next Question by the Member of Parliament for Mumias Constituency!

*Question No.237*COMPENSATION FOR OWNER OF  
MAKUNGA HEALTH CENTRE LAND

**Mr. Osundwa** asked the Minister for Health:-

(a) whether she is aware that Makunga Rural Health Demonstration Centre in Mumias Constituency was built on private land; and,

(b) what steps she is taking to compensate the land owner and acquire a title deed for the facility.

**The Minister for Health** (Mrs. Ngilu): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The issue of compensation does not arise. According to the information that we have gotten from the health centre's management committee the land was donated in 1966 by the community for this particular purpose. We have also gotten information that some few members of the community have urged the same member of the community to start asking the Government for compensation. Therefore, the question of compensation does not arise. We will not compensate him.

**Mr. Osundwa:** Mr. Speaker, Sir, the Minister did not care to give me a written reply in time. However, I want to thank her because she gave a new ambulance to this facility. This is one of the few things this Government has done.

Mr. Speaker, Sir, this land does not belong to a community. In Mumias, we do not have community land. We have individual land. The owner of this land is called Mr. Christopher Kweyu. He gave out this land after being promised by a District Commissioner who I will not name, that he was to be settled somewhere in a Government settlement scheme. To date, he has not been settled on one of the Government settlement schemes. When will the Government settle him, or compensate him for that land because he did not surrender it for free?

**Mrs. Ngilu:** Mr. Speaker, Sir, this land was donated 40 years ago. Surely, if, in 40 years, he was not compensated and we have set up a health facility there, does he expect us to compensate him. In fact, we gave the facility an ambulance and the hon. Member is happy about it. So, the question of compensating for the land does not arise. We will not compensate him.

**Mr. Speaker:** Order! In fact, if I had known this I would not have approved this Question. This is because the Statute of Limitation applies here; three times over. An individual has only 12 years within which he can lodge a claim. This is 40 years later. So, it is time out!

Next Question by Mr. Munya!

*(Laughter)*

*Question No.014*HARDSHIP ALLOWANCE FOR TEACHERS  
IN TIGANIA EAST

**Mr. Munya** asked the Minister for Education:-

(a) whether he is aware that Ntulili and Mweromuthanga primary schools in Tigania East Constituency neighbouring Isiolo District do not benefit from the school feeding programme and that their teachers do not receive hardship allowances from

the Teachers' Service Commission (TSC);

(b) why the Ministry discriminates against these schools given that the environment and geographical conditions prevailing in the area are similar to the conditions in Isiolo; and,

(c) when the Ministry will stop these discriminatory practices and accord these schools the above and other benefits entitled to those in arid lands.

**The Assistant Minister for Education (Mrs. Mugo):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Ntulili and Mweromuthanga primary schools in Tigania East Constituency do not benefit from the school feeding programme, neither do the teachers receive hardship allowances from the TSC.

(b) The Ministry does not discriminate against the above mentioned schools. The schools are in Meru North District which is not under the current school feeding programme. Under the current operation contract, 2004/2008, between the World Food Programme and the Government, the beneficiaries are pupils in the designated ASAL districts and some slum areas in Nairobi. The targeting is done based on the district and not the particular schools.

However, the two schools are in Buuri Location which is a designated hardship area. The teachers in those schools were erroneously left out and the TSC is correcting the anomaly.

(c) The Ministry has never exercised any discriminatory practices against any school in the Republic. It is the desire of the Ministry to see that deserving primary school pupils in the targeted Arid and Semi-arid Lands receive midday meals. Also note that all the teachers working in the gazetted hardship areas are receiving hardship allowance.

**Mr. Munya:** Mr. Speaker, Sir, the Assistant Minister is misleading the House. This is because we know that discrimination is when you treat people who are in the same circumstances differently. The people in Buuri Location live in an arid areas which is in the same environment with Isiolo District. Why does the Ministry treat the children from Tigania who deserve food like any other children in Isiolo differently? That is discrimination! When will the Ministry change this agreement to include this arid zone in the school feeding programme?

**Mrs. Mugo:** Mr. Speaker, Sir, the Ministry does not designate areas which are arid and semi-arid. That is done by the Personnel Department in the Office of the President. They are the ones who designate and advise the Ministry about the areas. The Ministry, therefore, follows what is designated. However, I would advise the hon. Member to get his District Development Committee (DDC) as well as the District Education Office (DEO) to recommend such to the right office, so that my Ministry takes the right decision and implements it.

**Mr. Mwandawiro:** On a point of order, Mr. Speaker, Sir. I think the Assistant Minister is further misleading the House. This is a very serious Question. In Taita Taveta, Mwatate and Voi Constituencies which face the same circumstances, teachers are getting hardship allowances. So, is it in order---

**Mr. Speaker:** Order! You are totally out of order! You have, in fact, breached the Standing Orders by pretending to be on a point of order to make a speech. It does not detract from the fact that the Assistant Minister does not declare what areas are ASAL and which ones are not.

So, maybe, Mr. Munya, could finish his question.

**Mr. Munya:** Mr. Speaker, Sir, we bring Questions to this House because we feel that some policies that are undertaken by the Government are wrong, and we intend to influence them, so that it can correct itself. Now, when a Minister brings an answer which is not looking into the issues that we raise, we are left wondering.

Mr. Speaker, Sir, deciding which regions are ASAL on the basis of districts only misses the point because there are pockets of poverty in even those districts that are not considered ASALs. What will the Ministry do to make sure that those arid areas that are in districts that are not

considered arid are included in the school feeding programmes? The DDCs will not do anything for us.

**Mrs. Mugo:** Mr. Speaker, Sir, there are procedures which are followed even in the Government. Every Ministry and department has its responsibilities. As I said, the gazetting of arid and semi-arid and hardship areas is done by the Directorate of Personnel Management and not the Ministry of Education. However, if those children are suffering, we will definitely bring that to the attention of the relevant Government department, so that the officers can visit the area to ascertain the situation. When they gazette it, we will be very pleased to supply food there.

**Mr. Speaker:** Very well! Last question by Mr. Rotino!

**Mr. Rotino:** Mr. Speaker, Sir, the Assistant Minister has missed the point. When the Office of the President designates a district an ASAL area, there are certain pockets of the district which are left out of that categorisation. It would not be wise for her to abdicate her responsibility to the District Development Committee (DDC). So, I am pleading with her to consider, through the District Education Board (DEB), those zones that fall within ASAL areas, even though the district has not been gazetted as ASAL area by the Office of the President, just like the zone that Mr. Munya talked about.

**Mrs. Mugo:** Mr. Speaker, Sir, I did not say that we cannot give food to those areas. I just said that the right procedure must be followed so that we are empowered to be able to include those areas in the programme. That involves the gazetting of those areas as ASAL areas. The right Government Department has to do the gazetting of the areas as ASAL areas. However, we shall recommend the gazettelement of that area as an ASAL area.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! It appears to me that some hon. Members think that every time their points of view are not agreed to by the Minister, automatically, there must be a point of order. It is not so. Ministers are actually not bound to agree with any hon. Member on everything or anything. They have responsibilities and minds of their own. If you disagree, just ask supplementary questions. I think that is the position.

Next Question, Mr. J. Nyagah!

*Question No.202*

APPOINTMENT OF EMBU-MBEERE  
WATER COMPANY DIRECTORS

**Mr. J. Nyagah** asked the Minister for Water and Irrigation how the directors of the Embu-Mbeere Water Company were appointed.

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

The Directors of Embu-Mbeere Water Company were elected by the stakeholders from the two districts of Embu and Mbeere in accordance with guidelines formulated by the Tana Water Services Board. Tana Water Services Board, which is mandated by the Water Act, 2002, to provide water services in an efficient and economical manner, held workshops for stakeholders where they were sensitised on the reforms in the water sector, including the responsibilities of water service provider companies and guidelines for the formation of such companies. The guidelines were aimed at ensuring formation of companies which are efficient and effective in service delivery, and which have equitable representation of stakeholders.

**Mr. J. Nyagah:** Mr. Speaker, Sir, I would like to thank the Minister for the theoretical answer he has given. I call it "theoretical" because the truth of the matter is that consultations were held amongst friends in Nairobi during which decisions were made. One or two meetings were held in hotels. I was tricked into attending one of them with my colleague, the Member for Siakago. At a very short notice, they called a meeting without the knowledge of the Mbeere and Embu people, where a decision was made. We were told that if we did not accept the decision, it would be difficult for us to find water in Mbeere. Given all that background, is the Assistant Minister satisfied that there were genuine consultations that took place?

**Mr. Wanjala:** Mr. Speaker, Sir, there were genuine consultations. On 31st November and 1st December of 2005, there were sensitization workshops for the stakeholders of Embu and Mbeere districts, respectively. The stakeholders were sensitized on the reforms within the water sector, formation of water services provider companies and minimum requirements for the water companies, including qualifications of the directors as well as on the advantages of clustering some of these schemes. So, there was enough consultations.

**Mr. Muturi:** Mr. Speaker, Sir, the Assistant Minister has said that there were workshops which were held in November and December of 2005, and that the stakeholders were called to those meetings. Is it considered by the Ministry that Members of Parliament who represent both Embu and Mbeere districts are stakeholders in the water sectors? None of them was invited to the so-called "two workshops".

**Mr. Wanjala:** Mr. Speaker, Sir, I agree with the hon. Member that as Members of Parliament from that area, they are stakeholders. I would like to remind the hon. Member that the Ministry also organised a similar workshop, where hon. Members were invited. However, most of the hon. Members did not attend. The Ministry is organising another workshop to sensitize hon. Members on the reforms being undertaken by the Ministry of Water and Irrigation.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, hon. Members from Embu and Mbeere districts are very lucky to have been tricked by the Minister to attend the sensitization workshop in that area. Hon. Members from Machakos District are neither tricked to attend such workshops nor are they consulted. Could the Assistant Minister ensure that before such appointments are made, there is adequate consultation with all interested parties, including Members of Parliament?

**Mr. Wanjala:** Mr. Speaker, Sir, that is why I said that there is need for hon. Members to attend the next round of sensitization workshops being organised by the Ministry. The former Minister for Water and Irrigation organised a workshop during the reforms. We got the reforms on the way having been implemented. However, even then, hon. Members did not attend the workshops. There is a criteria used in appointing members of water services boards. The local councils are represented. Local authorities could be represented in the boards by town clerks or clerks to councils, treasurer, mayor or chairman to the council. That is at the council level. When it comes to representation at the individual level, the stakeholders may elect a resident of the area covered by the water company. One must have attained, at least, Form Four level of education and have some acquaintance with business management. Experience in various fields would be an added advantage, especially if he has technical know-how in the area of water. Above all, one should be a person of impeccable integrity, like myself.

*(Laughter)*

**Mr. Speaker:** Hon. Members, I have been at this Question for too long now. Therefore, I will have Maj. Madoka, followed by Mr. J. Nyagah, who will ask the last question.

**Maj. Madoka:** Mr. Speaker, Sir, it is very well for the Assistant Minister to tell us the criteria used to appoint the directors of a water services board. The fact of the matter is that in

nearly all these boards, the people who are appointed are not genuine stakeholders. You will find people who are not from the local communities being served by a certain water company having been appointed as directors. Would I be in order to ask the Assistant Minister to review the appointment of such directors in most of the companies countrywide?

**Mr. Wanjala:** Mr. Speaker, Sir, the hon. Member is right. That is because we have just started implementing the envisaged reforms in the water sector. It is unfortunate that hon. Members did not respond at that time. We are organising additional sensitization workshops and hon. Members will be invited to attend. Hon. Members will be expected to raise specific issues, so that we can review the areas of their concern.

**Mr. Speaker:** Mr. J. Nyagah!

**Mr. J. Nyagah:** Mr. Speaker, Sir, the Assistant Minister has made it clear that there is a big problem in this sector. There is also a big problem in the way the appointments were done. He has accepted the fact that there is need to educate the people. Could he, therefore, tell this House that he is willing to repeat the whole process and involve the communities, so that we can appoint the right people and not the kind of people who have been appointed; because they have been rejected by this House? This includes the people who were appointed by the Embu-Mbeere Water Company.

**Mr. Wanjala:** Mr. Speaker, Sir, all these matters fall within the powers of the Minister, and I am an Assistant Minister. However, we are organising a workshop to this effect. These people can only be in office for a certain period of time. I also have powers to terminate their services. Anything is possible as long as we work together.

**Mr. J. Nyagah:** Mr. Speaker, Sir, I want to thank the Assistant Minister for agreeing to take the appropriate action of repeating the process as he has confirmed with his type of English.

*Question No.334*

CHARGING OF EXCESSIVE ELECTRICITY  
TARIFFS TO INDUSTRIAL CONSUMERS

**Mr. Chepkitony** asked the Minister for Energy:-

(a) whether he is aware that electricity tariffs charged to industrial consumers are excessive and are a disincentive to local industrial manufacturers because they increase the cost of production; and,

(b) what he is doing to reduce the tariffs to almost the same level as those charged by other countries.

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

(a) Yes, I am aware that manufacturers have been expressing concerns about high tariffs in Kenya when compared with those of our trade competitors, namely, Egypt and South Africa.

(b) Although it may not be possible to reduce tariffs so much as those charged in Egypt and South Africa, measures have been instituted with a view of containing the cost of electricity in Kenya. This includes:-

(i) Negotiations with independent power producers, leading to reduced deduction of bulk tariffs.

(ii) Implementation of the Energy Sector Recovery Project at a cost of Kshs255 million, which, amongst other things, will reduce system losses.

**Mr. Chepkitony:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. However, it looks like he has no specific plan to reduce electricity tariffs in Kenya.

I would like to request the Assistant Minister to consider zero-rating taxes on power

generating inputs such as diesel in order to bring down the cost of power. When you impose taxes on power generating inputs, the cost of power goes up.

**Mr. Kiunjuri:** Mr. Speaker, Sir, that can only be done by the Minister for Finance.

**Mr. Karaba:** Mr. Speaker, Sir, the Assistant Minister is likely to tell us that electricity is cheap in Kenya. However, it is a mirage for any ordinary person to access electricity in Kenya. Could he consider reducing the overhead costs of things like transformers, poles and wires, so that our local consumers can easily access electricity?

**Mr. Kiunjuri:** Mr. Speaker, Sir, the Ministry has done its level best. However, we can only deal with the issue of taxation from this House or through the Ministry of Finance. It should be noted that in 2004, the Ministry of Energy negotiated with Ibera Africa and we reduced the bulk of tariffs from Kshs395 to Kshs197 per kilowatt per year. That means that we can stabilise the cost of power.

If hon. Members listened carefully, through the initiation of the Government, the implementation of the Energy Sector Recovery Project is also going to stabilise the tariffs. We are increasing our generation capacity, especially in Ol Karia where we are producing another 31 megawatts. In addition, we are up-grading the distribution. This will stabilise the tariffs.

**Mr. Ndolo:** Mr. Speaker, Sir, there are a lot of industries in my constituency. Last year, we had the Nyanja Report. The power sector had loaned money to many organisations in this country. Up to now, the people who took money from that organisation have not been taken to court. What is the Ministry doing to make sure that the people who were mentioned in the Nyanja Report will be arraigned in court?

**Mr. Kiunjuri:** Mr. Speaker, Sir, that is a very different Question and it has nothing to do with tariffs. I will have the pleasure to answer the Question if the hon. Member follows the right channel.

**Mr. Weya:** On a point of order, Mr. Speaker, Sir. Hon. Ndolo's question was very clear. He was saying that the Kenya Power and Lighting Company (KPLC) charges the highest tariffs in Africa because of the past mismanagement within the company. Consumers are paying for the mismanagement costs which were mentioned in the Nyanja Report. For example---

**Mr. Speaker:** Order, Mr. Weya!

**Mr. Weya:** Mr. Speaker, Sir, they were negotiating with IPOs which were being financed--

**Mr. Speaker:** Order, Mr. Weya! Will you sit down? I wish to warn the hon. Members that there is actually a provision for punitive action against standing on frivolous points of order. Hon. Ndolo is sufficiently fluent; in fact, very fluent, to express himself fully. He was fully understood. He does not require an interpreter!

**Mr. Chepkitony:** Mr. Speaker, Sir, power is an engine for growth. The Assistant Minister has said that he negotiated with Ibera Africa to reduce the bulk tariffs, and this was done. Why were the tariffs not reduced in favour of the consumers following the negotiations with Ibera Africa?

**Mr. Kiunjuri:** Mr. Speaker, Sir, the demand is going high every year, which means that the economy is improving. At the same time, we have to generate enough power to match the development that is taking place in the country. It is not a must for us to reduce the tariffs, but the fact that the cost has stabilised shows that we have put proper measures in place.

**Mr. Speaker:** Last Question, Prof. Olweny!

*Question No.040*

REINSTATEMENT OF MR. MILTON DURI

**Prof. Olweny** asked the Minister for Labour and Human Resource Development:-

- (a) whether he is aware that Mr. Milton Ochieng' Duri was an employee of United Millers Limited, Kisumu, from 1st September, 1995 until 1999;
- (b) whether he is further aware that the management of the company implicated Mr. Duri in a case leading to a prosecution (Case No.1528/99) at Winam Court, Kisumu), but was later acquitted for lack of sufficient evidence; and,
- (c) when United Millers Limited will reinstate Mr. Duri.

**The Assistant Minister for Labour and Human Resource Development (Ms. Mwau):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Milton Ochieng' Duri was employed by United Millers Limited, Kisumu, as a machine operator with effect from 1st September, 1995 to 1999.

(b) I am also aware that Mr. Milton Ochieng' Duri was charged with stealing in Winam Court (Case No.1528/99) together with two others, but they were later acquitted for lack of evidence.

(c) Mr. Milton Ochieng' Duri was dismissed by United Millers Limited because the employer lost trust in him once he was arrested and charged in court. The employer/employee relationship ceased to be sustainable after that incident. He, therefore, cannot be reinstated.

The employer, however, deposited an amount of Kshs8,290 at the Kisumu Labour Office on 21st June, 1999, for onward payment to Mr. Ochieng'. He collected the money on 19th July, 2001.

**Prof. Olweny:** Mr. Speaker, Sir, I thank the Assistant Minister for that answer. However, some employers, especially in and around Kisumu Town, have the practice of implicating their employees. United Millers Limited is one of them. It is very notorious for that kind of thing. Mr. Duri was implicated, but he was found innocent. He was then paid a meagre Kshs8,000. The employer, probably, did not like his face any more. Could the Assistant Minister tell us whether the Kshs8,290 was for compensation for services that were terminated without notice? Did he deserve other payments?

**Ms. Mwau:** Mr. Speaker, Sir, Mr. Duri should not have collected the money! He should have taken the company to court to demand for his compensation. He kept quiet and did not complain to the labour officers in Kisumu. The Kenya Human Rights Commission took up the case, but since he took the money, there was very little that the Ministry could do.

**Mr. Sungu:** Mr. Speaker, Sir, surely, the Government's job is to protect the poor and innocent workers in Kenya. Mr. Duri reported that matter to the labour office. Why would that poor unemployed Kenyan, who does not have any money to hire a lawyer, sue for compensation when the Government is there? Could the Assistant Minister take action and ensure that Mr. Duri is paid his rightful dues?

**Ms. Mwau:** Mr. Speaker, Sir, Mr. Duri was paid. He accepted to be paid the Kshs8,290. He should have complained immediately after the payment. He did not do so. We visited the firm to follow up on that case. We are also willing to take up the case with Mr. Duri. I advise the hon. Member to ask Mr. Duri to come to the Ministry and we will take up the case.

**Mr. Speaker:** Very well. Last question, Prof. Olweny!

**Prof. Olweny:** Mr. Speaker, Sir, the Assistant Minister has requested Mr. Duri to go to her Ministry for help! I am happy about that. I will tell him to do so.

**Mr. Speaker:** Very well! Order, hon. Members! That marks the end of Question Time. As you know, we will go to the Committee of the Whole House to discuss the Sexual Offences Bill immediately after this.

There is one other thing that I want to advise the House before we move to the Next Order.



There have been certain amendments by Dr. Khalwale. I hope copies of the same have been distributed to hon. Members. That was the condition of my approval of the amendments. They must be availed to hon. Members in the House before they are moved! The rationale of 2.30 p.m. is the deadline that Dr. Khalwale did not meet! Hon. Members must be aware in good time of what amendments are going to be moved. If, by that time, the Committee had not considered the amendments by Dr. Khalwale; or it had considered but the amendments had not reached hon. Members, he will be deemed to be time-barred!

So, with that guidance from the Chair, Next Order!

## BILL

### *First Reading*

#### THE WITNESS PROTECTION BILL

*(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

### IN THE COMMITTEE

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

#### THE SEXUAL OFFENCES BILL

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! We are now in the Committee of the whole House to consider the Sexual Offences Bill.

**Mr. Marende:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Before we go to Clause 2, there is an amendment proposed to the preamble.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! We have that in mind. But that comes much later! So, can you move your amendment to Clause 2?

### *Clause 2*

**Mr. Marende:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended as follows-

(a) by deleting the definition of "child" and substituting therefor the following new definition-

"child" has the meaning assigned thereto in the Children Act;

Mr. Temporary Deputy Chairman, Sir, the intention of the amendment is to harmonise the provisions of this Bill with the provisions of the Children Act.

*(Question of the amendment proposed)*

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I wish to second that proposed amendment which was proposed by the relevant Departmental Committee to delete any matter that is already covered in certain legislations and hence this proposal.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I think we have dealt with Clause 2(a) and then we will move to Clause 2(b) and go on in that order. Mr. Marende, I would suggest that since the papers were given to hon. Members in advance, I think we will save a lot of time by just saying that "I move that the clause be amended as per the Order Paper", and then you can go on and explain to us.

**Mr. Marende:** Thank you, Mr. Temporary Deputy Chairman, Sir, I beg to

move:-

THAT, Clause 2 be amended by deleting the word "unwilling" in the definition of "complainant".

Mr. Temporary Deputy Chairman, Sir, the intention there is to remove compulsion and also to protect the rights of the alleged victim.

*(Question of the amendment proposed)*

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I want to make a further amendment to that amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Did you submit it?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I submitted it but I was told to raise it on the Floor of the House. It is a slight amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): What is it?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, other than using the word "complainant", I would have used the word "Republic" as the complainant.

**The Temporary Deputy Chairman** (Mr. Khamasi): Can you say that again!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): On a point of order, Mr. Temporary Deputy Chairman, Sir. We are being taken by surprise because we do not know exactly what the hon. Member is trying to amend. I mean the question of his further amendment has not been put and it has not been circulated to hon. Members. So, we are at sea!

**The Temporary Deputy Chairman** (Mr. Khamasi): Yes, this is exactly what the Speaker said; that hon. Members who intend to make any amendments need to have provided sufficient notice to the hon. Members to look at them and make decisions on them.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I did exactly that very early in the morning today, and I was told that because there was an amendment in the Order Paper, this was going to be a further amendment to the original amendment and so there was no need of circulating the notice.

**The Temporary Deputy Chairman (Mr. Khamasi):** There was already a notice of amendment and you wanted to make a further amendment to the original amendment which had been made. Is that what you are saying?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I talked to the Clerk in the morning and he said that hon. Marende had already made an amendment to Clause 2.

**The Temporary Deputy Chairman (Mr. Khamasi):** Could you explain yourself better and I will give you a hearing?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, if you go to Clause 2 on page 347, the word "complainant" means:-

"The Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable, unwilling or inhibited, from lodging and following up a complaint of sexual abuse;"

So, we need a person who is not just a complainant. So, I indicated that the word "Republic" should be deleted from the meaning of "complainant".

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. The point I want to raise is that you proposed the Question on the amendment proposed by hon. Marende and it has not been seconded before hon. Ojaamong can move his further proposed amendment.

**The Temporary Deputy Chairman (Mr. Khamasi):** Procedurally, could we first have a Secunder to that? Ms. Abdallah!

**Ms. Abdallah:** Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to second that proposed amendment. We thought that a complainant who is unable or inhibited could be assisted, but a person who is unwilling would then make her not to have a complaint. So, I beg to second that amendment.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I beg to oppose that particular amendment. Many times in the work place, civil servants working for people are intimidated to the extent that they do not want to come forward to complain. I think it is only fair that somebody else can speak for the complainant on behalf of those who are intimidated.

*(Applause)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

**The Temporary Deputy Chairman (Mr. Khamasi):** Mr. Ojaamong, now I want to solve your problem after disposal of that particular amendment.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 (b) be further amended by deleting the word "Republic" under "complainant" but the rest of the words remain.

Mr. Temporary Deputy Chairman, Sir, there can arise at a situation whereby the Republic could be misused and maybe victimise people by turning out as a complainant when actually no case or matter has arisen. So, I want the word "Republic" to be deleted in the definition of "complainant".

**The Temporary Deputy Chairman (Mr. Khamasi):** Could you come again since it is not quite clear?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, among the complainants in Clause

2(b) is the Republic, but I foresee a situation whereby those in power might misuse the Republic being a complainant to mishandle other people turning out as complainants instead of the real victims coming out. So, I would wish that the word "Republic" be deleted and we leave the rest of the definition as it is.

**The Temporary Deputy Chairman** (Mr. Khamasi): All right! I think you have been heard.

*(Question of the further amendment proposed)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I wish to oppose that amendment on two fronts. To begin with, it was not circulated to hon. Members. It is, therefore, not fair to hon. Members. But more substantively, according to Criminal Law, the Republic is always the complainant. Every case filed against an accused person in a criminal case is done so in the name of the Republic. It is the State that is the protector of its citizens. Deleting the word "Republic" is trying to make it as though sexual offences are different from other categories of criminal offences where the Republic cannot protect the weak. It would be totally wrong. Maybe, there is a misunderstanding on the use of the word "Republic".

Mr. Temporary Deputy Chairman, Sir, I would urge hon. Members to retain the word "Republic" and to think of the people who cannot complain on their own. It could be an imbecile, or a person of diminished responsibility or capacity, or someone who is totally under fear. The State is the protector of all citizens. Let the word "Republic" remain.

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

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, in any criminal case, the Republic is a complainant. Why are we putting the word "Republic" to appear as if the "Republic" is initiating on its own? In [Mr. Ojaamong] the same Bill, we have the alleged victim of a sex offence. Why are we inserting the word "Republic" specifically as if it is initiating on its own without any criminal event coming out?

*(Question of the further amendment, that the word to be left out be left out, put and negatived)*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 2(c) be amended as follows:-

(c) in the definition of "indecent act"-

(i) by deleting the word "wilful" and substituting therefor the word "intentional";

(ii) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) any contact between the genital organs of a person, his or here breasts or buttocks with that of another person;

(iii) by deleting paragraph (b);

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, perhaps you can explain this.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, the proposed amendment will ensure that the provision is precise and it removes ambiguity as to what, in fact, amounts to an

indecent act. The purpose there, as you will see from the original Bill, is that there is ambiguity in as much as it says that an indecent act may be a wilful act, which causes direct or indirect contact between the genital organs. It is not clear what indirect contact will amount to. So, the purpose of the proposed amendment is to ensure that there is precision and ambiguity is removed. This way, that contact must be between the genital organs of one person and parts of the body of the other person, inclusive of the breast and buttocks.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, could you move the whole amendment to Clause 2(c), so that we take it as one?

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I further beg to move the following amendment to Clause 2(c):-

(b) in the definition of "intermediary" by-

(i) deleting the word "lawyer" and substituting therefor the word "guardian".

The Departmental Committee on Administration of Justice and Legal Affairs foresaw possible conflict between a lawyer who represents an alleged victim, and who may also act as an intermediary. That is why we have proposed that the word "lawyer" be deleted and substituted with the word "guardian", which is conspicuously missing. The guardian who keeps custody of a child, who may become a victim of sexual violence has the right to give evidence on behalf of such an alleged victim.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, go on, you have not finished moving the amendments.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 2(c) be further amended by:-

(ii) inserting the words "or experience" immediately after the word "expertise".

An expert is a person who has devoted learning and skill in a given profession or vocation. This is a person who also has knowledge and is conversant with the acts as are envisaged in the Bill out of experience or actual contact with acts of this nature, hence the introduction of the word "experience", so as to widen the scope of persons who could qualify to be intermediaries.

*(Question of the further amendment proposed)*

**Ms. Abdallah:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Ms. Abdallah, do you want to support the amendments?

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I wish to support the proposed amendments to Clause 2(c). The amendments are in appreciation of issues raised by the hon. Member that, that clause was not gender neutral. By deleting paragraph 2(c)iii we are doing so, in appreciation of cultural diversity in our country. On the issue of lawyers and expertise, my colleague has widely explained this.

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, I will now have to put the question.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, are you putting the question or proposing it? Can we comment on this issue?

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Sungu, it is not a question of proposing the question. We proposed the question a long time ago. This matter is being debated. Do you want to make a contribution to the same clause?

**Mr. Sungu:** Yes, please.

**The Temporary Deputy Chairman** (Mr. Khamasi): All right! Proceed, Mr. Sungu!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I agree whole heartedly with the amendments by the Committee on the question of indecent acts. However, allow me to state my reservations that the definition of any contact between the organs, excludes the last part in the original definition; that is, "any part of the body of an animal." It is a known fact that in Kenya there have been cases where human beings have made sexual contact with animals. That must be captured within the definition of "indecent acts". Any exclusion thereof will make this definition incomplete. **The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Sungu! You are now introducing something which is quite valid. However, you should have brought an amendment earlier. So, you have missed out. What you are saying is exactly not what is here. Indeed, you should have seen the Speaker before we started this debate and brought your amendment. So, I do not want to take that in as of now.

**Mr. Marende:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Now, what is your point of order? I thought you argued out your case.

**Mr. Marende:** Temporary Deputy Chairman, Sir, there is something which I inadvertently left out. There is a proposal to delete paragraph "b", which reads:-

"Exposure or display of the genital organs of a person to another person without the consent of that person."

The Committee had considered this matter and proposed an amendment. We took into account that there are certain communities in this country whose cultures do not allow them to wear underpants and can walk around wearing *shukas* which can fall down by omission rather than by commission. We suggested that the paragraph be deleted.

**The Temporary Deputy Chairman** (Mr. Khamasi): We cannot go on forever. I would like to put a question and dispose of this clause as it is.

**Mr. Bett:** Mr. Temporary Deputy Chairman, I would like to seek a clarification on Clause 2(a). It defines indecent act, which may mean any wilful act which causes: Direct or indirect contact between the genital organs of a person or in case of a female, her breast and buttocks or any other part of the body, with that of another person, including any part of the body of an animal.

Supposing I am involved in a graceful dance and there is contact? What will happen?

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Bett, what is your concern?

**Mr. Bett:** My concern is that during the graceful dance, especially the one we used to have in the past, the breasts or buttocks could touch another person. What would happen?

**The Temporary Deputy Chairman** (Mr. Khamasi): In that case, there would be no complainant.

*(Question, that the words to be  
left out be left out, put and  
agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clauses 3, 4, 5, 6, and 7 agreed to)*

*Clause 8*

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Clause 8(2) be amended by deleting the words "is liable upon conviction to imprisonment for life," and inserting the words "shall be upon conviction sentenced to life imprisonment" after the word less.

The reason for amending this sub-clause is simple. Currently, under our laws, which I will refer to, the penalty for the offence of manslaughter under Section 205 of the Penal Code is life imprisonment. It reads:-

"Any person who commits a felony of manslaughter is liable to imprisonment for life."

Therefore, life imprisonment is provided for in manslaughter. However, we have seen people being sentenced even for a few hours for committing the felony of manslaughter. The amendment is, therefore, merely proposed to make it clear that the conviction for this offence - life imprisonment shall be mandatory.

I beg to move.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to second the amendment which strengthens the clause.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof, be inserted, put and agreed to)*

**Mr. Arungah:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8(2) be amended by inserting the words "Provided the first ten years for the said sentence shall be served in a prescribed mental institution" after the word "life."

As the article puts it, any person who defiles a child of less than 11 years of age is liable to life imprisonment. That, in itself, does not guarantee that it is mandatory. Secondly, a man who defiles a child of one year cannot be of sound mind. It is my proposal that upon conviction, the person, apart from being sentenced to life imprisonment, be confined to a prescribed mental institution for the first ten years, because, I believe, that there could be something seriously wrong with him.

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I wish to second the amendment because a man who rapes a child of 11 years or less cannot be of sound mind. Therefore, the person should first be taken to the Mathari Mental Hospital for check-up.

*(Question of the amendment proposed)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I am opposed to the proposed amendment because it is not right to presume that everybody charged with defilement has a mental illness and, therefore, needs to be taken to a mental hospital. Under our laws, a court which hears the case is at liberty to, if evidence is presented before it, suggest that a person is of unsound mind and make appropriate orders for examination. The amendment, although well intentioned, may serve as an excuse for criminal elements or perverts who are bent on assailing our children. I suggest that since the law provides

that when the court hears reasonable evidence to make appropriate orders, that this amendment be disallowed and we leave the clause as it is.

**The Assistant Minister for Information and Communications** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment. Our laws are very clear regarding the issue. In our laws, the process of committing somebody to a mental institution is clearly provided for, and has nothing to do with defilement.

I, therefore, oppose the proposed amendment.

*(Question, that the words to be inserted be inserted, put and negatived)*

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I had intended to propose an amendment, but after consultation and looking at the menacing eyes over there, I have decided to withdraw my amendment.

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Mr. Ojaamong, do not be intimidated, I am here to protect you.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to withdraw my amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): It is withdrawn. Can we move on?

*(Clause 8 as amended agreed to)*

#### *Clause 9*

**The Assistant Minister for East African Community** (Dr. Khalwale): Thank you, Mr. Temporary Deputy Chairman, Sir. If the current Bill sails as it is, Clause 9(2) assumes that a rapist--

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order! First of all, you are supposed to move your amendment, then you can go ahead to explain.

**The Assistant Minister for East African Community** (Dr. Khalwale): Thank you, Mr. Temporary Deputy Chairman, Sir. I propose that we amend Clause 9, so that Sections (2)(3) and (4) are deleted and a new clause be inserted, which should read as follows:-

"Any person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years".

Mr. Temporary Deputy Chairman, Sir, if the current Bill sails through as it is, Sections (2), (3) and (4) presume that a rapist who rapes an 11-year-old child commits a greater crime than the one who rapes a 12-year-old child. We should drop these three sections so that we harmonize the law. If somebody rapes a child, it does not matter whether the child is 11 years or 13 years old; it is still rape of a child and it must be punished heavily. That punishment should not be less than ten years in jail.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding your proposal?

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): Thank you, Mr. Temporary Deputy Chairman, Sir. The definition of a child is a person who has not attained 18 years of age, and the assumption is that, that person is not capable of giving consent. So, it would be irrelevant that the person who has been defiled is of a different age group within that gap of up to and including 18 years. So, I second the proposed amendment by Dr. Khalwale in order to have a



harmonized sentence and conviction so that we do not necessarily have to prove the age of the defiled child. It is sufficient that it is a child who, under the law, is less than 18 years. I beg to second.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I seek your guidance to find out whether it is possible to propose an amendment to the proposed amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): First of all, let us dispose of this one and then we will hear you. Otherwise, we will get confused.

*(Question of the amendment proposed)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I do not see anything wrong with the Bill as drafted, because a crime should be equal to the punishment. To hurt a child of 12 years is not the same thing as hurting a child of 16 years, because the latter is of child-bearing age and more damage could be inflicted on a younger child. So, it is all right to justify the punishment. I, therefore, appeal to hon. Members to leave the Bill as it is so that we can make minimum changes to it.

Thank you, Mr. Temporary Deputy Chairman, Sir.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I rise to support that amendment. But, as I had requested earlier, my suggestion is that when it comes to the number of years, we should set the upper limit as proposed in the existing Bill, which is 15 years, instead of the ten years proposed by Dr. Khalwale.

*(Question of the amendment of  
the amendment proposed)*

**Archbishop Ondiek:** Mr. Temporary Deputy Chairman, Sir, a rapist is a rapist, whether he has raped an 11-year-old child or a 15-year-old child. Therefore, the punishment should be even heavier than ten years.

**The Assistant Minister for Transport** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, although what the hon. Member has proposed makes a lot of sense, the purpose of this Bill was to show the disgust and abhorrence for any person convicted of defilement of children of different ages. That was the intention. But I would agree with the proposal that, instead of ten years, we make it a minimum of 15 years.

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Mr. Temporary Deputy Chairman, Sir, I support the amendment to the amendment, so that we have a uniform minimum sentence for defilement, agreeing that a child is a child and anybody who defiles a child should be sentenced to not less than 15 years.

**The Temporary Deputy Chairman** (Mr. Khamasi): That is all right. Dr. Khalwale, I would like to hear from you about this amendment.

**The Assistant Minister for East African Community** (Dr. Khalwale): Mr. Temporary Deputy Chairman, Sir, because the intention of my amendment was to harmonize and also, give a heavy punishment, I support the amendment.

*(Applause)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

Mr. Ojaamong, you have a proposed amendment?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, initially, I was not aware of what attempted defilement is, but my able sister-in-law assisted me. I have understood the argument and I wish to withdraw my amendment.

*(Amendment withdrawn)*

*(Applause)*

*(Clause 9 as amended agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Mr. Khamasi): Is there an amendment or notice of amendment?

**Hon. Members:** There is, Mr. Ojaamong!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): He has withdrawn it!

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, again, it is was my proposal that we delete Clause 10 because of the way it is worded.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Ojaamong! You say "it was" as if you are going to change your mind. If you are moving it, please, do so first.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Clause 10 be deleted.

If you clearly look at the way Clause 10 is worded, it says:-

"Any person who commits the offence of rape or defilement under this Act in association---"

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! Can you listen to him so that you can understand what he wants to say?

**An hon. Member:** Yes!

**Mr. Ojaamong:** It says:-

"---in association with others."

I have come to understand this to mean that if somebody was going around raping women and by accident you happen to be associated with him, you will also be guilty of rape. I wanted the rapists themselves to be punished and not their associates. I may be having an association with two or three people and one of them rapes a woman. The way this clause is worded, it would mean that since we drink together, I may be deemed guilty. I want the rapists to be punished as individuals and not by association. Whether it is a gang, let them be convicted as individuals and not by association. That is my greatest worry in Clause 10. That is why I want it deleted.

**The Temporary Deputy Chairman** (Mr. Khamasi): Do you still want it deleted?

**Mr. Ojaamong:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is your seconder?

**Hon. Members:** None!

*(Mrs. Kilimo stood up in her place)*

**Mrs. Kilimo:** Mr. Temporary Deputy Chairman, Sir, I am not seconding it. I want to oppose it.

**Hon. Members:** Oh!

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Khamasi): She is learning the ropes very fast. Do you have a Seconder, Mr. Ojaamong?

**Hon. Members:** No!

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! In view of that, then obviously it falls out.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, may be the Mover of the Bill should give us her insight on what association means.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr Ojaamong! Those are lectures you should have received earlier.

*(Clause 10 agreed to)*

#### *Clause 11*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the Bill be amended in Clause 11 by inserting as new paragraph (6) as follows-

(6) Any person who commits an indecent act with an adult is guilty of an offence and is liable to imprisonment for a term of not less than one year or to a fine of not less than Kshs50,000 or to both.

Mr. Temporary Deputy Chairman, Sir, the rationale for the proposed amendment is so as to expand the scope of the offence of indecent act to include such an act against an adult. It is my contention that an indecent act is not exclusive to children and it is, therefore, necessary to capture adults. It is also my admission that an appropriate editorial ratification will take care of the side note.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to second that amendment. This is in appreciation of stakeholder input that, that clause was over-focusing on children yet indecent acts are not confined to children.

*(Question of the amendment proposed)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Chairman Sir, could I be allowed to make an amendment to that amendment?

**The Temporary Deputy Chairman** (Mr. Khamasi): Yes, go on!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, that amendment is good but it should be further amended.

I, therefore, beg to move:-

THAT the Bill be amended in Clause 11 by inserting a new paragraph (6) as follows:-

(6) Any person who commits the act with an adult is guilty of an offence and is liable to imprisonment for a term not exceeding five years or to a fine not exceeding Kshs50,000 or both.

**The Temporary Deputy Chairman (Mr. Khamasi):** Instead of one year?

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Yes, Mr. Temporary Deputy Chairman, Sir. The reason I am giving it latitude to five years is because sometimes in these cases--- I have been both a practitioner and a magistrate. Sometimes in a rape case, the exhibits may have been mishandled, therefore, not conclusively establishing as the law requires the offence of rape. Although rape may have been committed, the magistrate then has no option but to go by the lesser charge of indecent assault. When we leave it open up to five years, it means that a magistrate assessing the situation then can give such sentence as the facts of the case disclosed. The reason why I am proposing that the fine should not exceed Kshs50,000 is because we are enabling those who have money to buy their way out and the accused; that is the poorer man, to be left in custody. Let the court assess what fine the accused can pay depending on his background. It is better to say he will be liable to imprisonment not exceeding five years or a fine not exceeding Kshs50,000 or to both.

**The Temporary Deputy Chairman (Mr. Khamasi):** Not exceeding Kshs50,000?

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Yes, Mr. Temporary Deputy Chairman, Sir, so that the magistrate is also in a position to impose a lesser fine. If I were a magistrate and I had an hon. Member as an accused and I know their salaries, and I had a cleaner or a messenger whose salary is Kshs5,000, I would not award the same fine for the same offence because their financial circumstances are different. We should not enable the rich to buy justice.

**The Temporary Deputy Chairman (Mr. Khamasi):** Who is seconding that amendment to the amendment?

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I know this is unusual. However, from experience, what Ms. Karua has said is, indeed, the truth. I would, therefore, wish to support the amendment for the same reasons that she has explained that the magistrate is able to weigh the peculiar circumstances of each indecent act. It is not rape but indecent act, as we have already defined. So that if it was somebody found doing funny things at the Carnivore and depending on their mental situation whether they are inebriated or they were over-excited, the magistrate would be able to assess the kind of sentence, and looking at an hon. Member, put a fine that is commensurate with his status.

I beg to second.

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

**The Temporary Deputy Chairman (Mr. Khamasi):** Do you want to oppose? If you want to support, let us save time then.

**Mr. Magara:** Mr. Temporary Deputy Chairman, Sir, I want to support the sentiments. Could I be heard? As I support this amendment to the amendment, we need to be more cautious on what Ms. Karua did. She upped the penalty on one year to not exceeding five years yet she is restricting the fine to Kshs50,000. I thought if we were to be in parity, we would have also given a higher ceiling to magistrates to act if that was the reasoning.

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** But it can be either or both!

**The Temporary Deputy Chairman** (Mr. Khamasi): You have not stood up to make any amendment. You are only making an observation.

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

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 11 as amended agreed to)*

*(Clauses 12, 13, 14 and 15 agreed to)*

*Clause 16*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended in clause 16 by inserting the word "art" between the words "painting" and "representation".

The intention of this amendment is so as to fill the lacuna which leaves out "art" from one of the possible instruments which contain pornography.

*(Question of the amendment proposed)*

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to support that amendment. My input is that songs and videos are major culprits under this clause, and will be left out if we do not put in the word "art".

*(Question, that the word to be inserted be inserted, put and agreed to)*

*(Clause 16 as amended agreed to)*

*Clause 17*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended in Clause 17 by deleting the word "or" appearing immediately after paragraph (a) and substituting therefor the word "and".

The rationale for the proposed amendment is so as to create one offence instead of two offences, which are largely two sides of the same coin. The intention is to avoid possible duplicity, which could result in the case of a charge under that subclause when the Bill becomes law.

*(Question of the amendment proposed)*

**Mr. Syongo:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): What is your point of order, Mr. Syongo?

**Mr. Syongo:** Mr. Chairman, Sir, for avoidance of any doubt, the word "or" appears twice in that particular paragraph. Could the Mover specify which one he is referring to?

**The Temporary Deputy Chairman** (Mr. Khamasi): Yes, Mr. Marende, could you respond to that point of order?

**Mr. Marende:** Mr. Chairman, Sir, the word "or", which it is proposed to delete, is clearly shown in the proposed amendment. It says clearly that the Bill be amended in Clause 17 by deleting the word "or" appearing immediately after sub-paragraph (a). There is no other "or" appearing immediately after sub-paragraph (a)

**The Temporary Deputy Chairman** (Mr. Khamasi): Very well; who is supporting this amendment. Yes, Ms. Abdalla.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to support that amendment. The use of the word "or" is to cover both the inciter and the person benefiting from the work of the incited.

*(Question, that the word to be  
left out be left out,  
put and agreed to)*

*(Question, that the word to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 17 as amended agreed to)*

*(Clauses 18, 19, 20 and 21 agreed to)*

#### Clause 22

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the words "adoptive brother" and "adoptive sister" be deleted altogether from this Clause 22 (1) and that Clause 22

(2)(e) be deleted.

This is because the way we understand it, incest is sex among close blood relatives. We have very many case where a warm-hearted person finds a young girl, who is doing very well in secondary school and has no parent to educate her. He then brings her under his care, and educates her. Then 10 years later, one of his sons marries this girl.

Mr. Temporary Deputy Chairman, Sir, if we allow this law to be passed, a situation can obtain where if you were the guardian of the girl, your boy will end up in prison because he has had carnal knowledge of his adopted sister. I am further reminded that even the Bible allowed Jacob to marry Leah, when he settled in her home as an adopted son. So, I ask hon. Members that we delete these words altogether to remove the threat to young men who will not be aware of the details of this law.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is supporting this amendment?

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to support the amendments proposed by Dr. Khalwale. If you look at this Bill, you will see that this Clause contains a foreign idea, whose time has not come. A child is adopted for a purpose. May be a man or a woman cannot get children. If, for instance, I adopt a *Mzungu* child from Germany, I see no reason as to why, if I

love her, I cannot marry her when we are not relatives by blood. I wish to support this amendment to remove a foreign idea whose time has not yet come.

**Eng. Toro:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment because the word "incest" as described even in the dictionary means sex between close relatives. Now, adopted children, that is, a brother and sister cannot qualify in the real sense to commit incest if at all they come from diverse races as was described by hon. Dr. Khalwale. I, therefore, support the amendment.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment. You cannot have your cake and eat it. We know, for certain, that our laws provide for adoption of children. Once you have adopted a child, it is your child. Some of us have now adopted children belonging to our brothers and sisters because of the HIV/AIDS scourge. You cannot adopt a child and not consider him or her as your child. Similarly, your children must consider your adopted children as their brothers and sisters.

On that note, Mr. Temporary Deputy Chairman, Sir, we must, therefore, oppose this amendment.

**The Assistant Minister for East African Community** (Dr. Khalwale): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to mislead the House about the proximity between a boy and girl of an adopted relationship when, in fact, we know that he comes from a community where a man is allowed to marry a blood sister of his own wife and so on?

*(Loud consultation)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, that is a completely different scenario because our laws allow that. Our customary laws allow you to marry your sister-in-law.

The question of adopted children is very clear in our laws and there should be no argument about it. If you adopt a child, that child is yours and he or she becomes a brother or sister of your children and they cannot cohabit.

**The Assistant Minister for Transport** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, we must oppose that proposed amendment. A child is a child whether it is adopted or of one's blood. Once you have adopted children, you have for all purposes to tell your own children that the adopted children are their brothers and sisters. It does not matter whether that child is a *mzungu* or of a different tribe from yours as one hon. Member has put it.

Once you go through the Adoption Act, that child is declared to be your own child legally. Our laws do not distinguish between adopted and blood children. We must, therefore, oppose that proposed amendment. If we do not do so, then we shall be sending the wrong message to Kenyans. We shall be telling them that if they adopt children, for some purposes, they may not be their children.

*(Question, that the words to be  
left out be left out,  
put and negatived)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Ojaamong, you have an amendment which is more or less similar.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, it is different. What I wanted to be amended is Paragraph IV of Clause 22. I, in fact, want it completely deleted because it can easily---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Ojaamong. You must have known the procedure of the House by now. You are making an amendment and yet you have not moved it.

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT Clause 22 be amended by deleting Paragraph IV in totality.

The intention of the paragraph, on the basis of its wordings, is that if one committed incest in one's house - I want to give an example of a man---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is that?

Proceed, Mr. Ojaamong!

**Mr. Ojaamong:** Mr. Temporary Deputy Chairman, if it is alleged that you committed incest in your house which you just bought, say in Karen, the court has an obligation to order you out of your house until that day your case will be determined. Could you put yourself in a situation where you are being ordered out of a house you have just bought at Kshs10 million simply because it has been alleged that you committed incest? You will be forced to walk in the streets of Nairobi because of an allegation.

This is a law that men and women are going to abuse with an intention of taking property from their colleagues for very flimsy reasons. If we have to pass this Bill properly, then let us delete Paragraph IV of Clause 22.

**Mr. Temporary Deputy Speaker** (Mr. Khamasi): Who is seconding you?

**Hon. Members:** There is no seconder!

**Mr. Ojaamong:** Mr. Temporary Deputy Speaker, Sir, people have chickened out, but history will judge them harshly.

**Mr. Temporary Deputy Speaker:** It, therefore, falls flat on his face.

We will now move on.

*(Proposed amendment dropped)*

*(Clause 22 agreed to)*

### *Clause 23*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT the Bill be amended by deleting Clause 23 and substituting therefor the following new Clause-

23. (1) Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests for sexual favours which he or she knows or has reasonable grounds to know, are unwelcome is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine not less than Kshs100,000 or to both.

(2) It shall be necessary to prove in a charge of sexual harassment that-

(a) The submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;



(b) Such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public from a public office.

Mr. Temporary Deputy Chairman, Sir, this proposed amendment is extensive. This particular Clause of the Bill has attracted a lot of debate. There was a lot of zeal on the part of hon. Members when they were discussing this particular Clause. The concerns raised have been addressed in this proposed amendment.

The rationale of this amendment is that it will introduce clarity to the Clause as to what amounts to sexual harassment. The proposed amendments will take care of both the alleged victim and the suspect. The proposed amendment will also ensure that the public is safeguarded against possible blackmail and frame-up. Importantly, it will ensure that there are no frivolous and vexatious allegations by alleged victims of sexual harassment.

Mr. Temporary Deputy Chairman, Sir, it is in that context that I have proposed that amendment.

*(Question of the amendment proposed)*

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I second that amendment. The redrafting of that Clause is intended to deal with the disconnect that hon. Members pointed out when we were debating the Bill. They did not appreciate that this Clause was dealing with persons in position of authority and hence they would be abused since there was no protection for the accused.

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

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 23 as amended agreed to)*

*(Clauses 24 and 25 agreed to)*

#### *Clause 26*

**The Temporary Deputy Chairman** (Mr. Khamasi): We have received a notice of amendment from Mr. Marende.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 26 be deleted.

Mr. Temporary Deputy Chairman, Sir, you will recollect that the House was very enthusiastic about this clause. It was the general mood of the House that we need to safeguard our cultural heritage by deleting that clause. Perhaps more significantly, there are other laws that sufficiently provide for those kind of acts. The Penal Code has sufficient provisions to take care of genital mutilation and assault causing actual bodily harm. There is a sufficient sentence provided for in the Penal Code. It is a sufficient deterrent against such acts.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to second that amendment which seeks to delete Clause 26 on indecent acts. That was in appreciation of cultural diversity. I, however, feel that eventually, we will have to take care of that because indecent exposure will be a bigger problem.

*(Question of the amendment proposed)*

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 26 deleted)*

*(Clause 27 agreed to)*

#### Clause 28

**The Temporary Deputy Speaker** (Mr. Khamasi): We have received a notice of amendment from Dr. Khalwale.

**The Assistant Minister for East African Community** (Dr. Khalwale): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28(1) be amended by deleting the word "distributed". Clause 28(2) be amended by deleting all the words from the word "accused" to the word "person", and be replaced with the words, "complainant to prove that the accused person distributed, administered or caused harm to partake the substance with a view to engaging in sexual activity with him or her".

Mr. Temporary Deputy Chairman, Sir, if we do not amend that, we shall have left the people who engage in legal business like pharmacist who distribute drugs that cause sedation in jeopardy. When an accused person is brought before a court of law, he or she can mysteriously enjoin chemists and bar owners into the suit. That way, the person who distributed the drugs and did not know how they were going to be administered ends up in jail.

I am proposing an amendment to Clause 28(2) because, as it is, we are leaving the burden of proof to the accused. So, by changing it, I am trying to make sure that the burden of proving that the drug was administered intentionally should be on the part of the one who is complaining.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you?

*(Loud consultations)*

Order, Front Bench! Do not intimidate people.

**Mr. M'Mukindia:** Mr. Temporary Deputy Chairman, Sir, I am not a lawyer but in our legal system, the burden of proof is always on the complainant. It seems that we have changed that principle in this particular Bill. We need to be aware that now, the burden of proof has been transferred from the complainant to the accused. If that is acceptable to the House, I have no problem. But I do not think that we can pick up just one specific law and change the basic principle. For that reason, I support the amendment. In fact, Clause 29 touches on the same issue. It could be misused, especially where alcohol related cases are concerned. If two men or two women went to a bar, drunk themselves silly and found themselves in a bed the following morning, it is possible that one could become a complainant. The question is: Why would a person drink himself or herself to nothingness and then, accuse the other one and yet, the two may not have known what

they were doing because they were under the influence of alcohol. That is very dangerous. It could be used maliciously and fraudulently. We need to protect people in such circumstances. The intention is not to let the culprits go free. In fact, all of us support this Bill strongly. But we should also not create avenues where malice and fraud could be introduced. Let us remember the Affiliation Act and how it was badly misused over several years. It was finally repealed. That was very unfortunate because it was meant to protect children. We want to protect Kenyans against sexual offences. But we should not create another avenue of fraud and malice. Therefore, in order to protect this Bill and ensure that it protects Kenyans, we need to be sensitive to those areas. Therefore, I support the amendments very strongly. Even the Mover of the Bill needs to rethink about that. I have even talked to her about it myself! But I am surprised that it is still there. I pointed out those issues to her.

*(Question of the amendment proposed)*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. I think it is important for Members to understand the context in which this Clause has been brought into this Bill. The intention is to address the very serious problem of drugs. If you read carefully, it is where a person gives a substance with the intention to stupefy or overpower that person in order to have sex. I would like the Member for Ikolomani to know that even pharmacists who give drugs knowing that they are meant to overpower other people to commit sexual acts must be treated as criminals. The fact that you are a doctor of medicine cannot excuse you from giving drugs to other people for them to use for such activity. So, let us keep our eyes on the ball. This is about drugs. It is not possible to say that these things do not happen.

With those remarks, I beg to oppose the amendment.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I would like to state that with the word "distribution" having been proposed for deletion at Clause 28(1), it should not appear in Clause 28(2), so that there is consistency.

Secondly, I support this amendment fully. The burden of proof must be with the complainant and that is consistent with the legal principles of this country.

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): Mr. Temporary Deputy Chairman, Sir, it is difficult to support the first part of the amendment because, in my considered opinion, Clause 28(1) is clear; "intentionally distribute." If that happens and the person distributing knows that this is the intention, then that person must bear the consequences.

However, I would propose to amend the second one by deleting the totality of Clause 28(2) so that in agreeing with the Members who have spoken, it is clear that he who alleges must prove. If I sell drugs because I am a pharmacist and they are misused, then I cannot be held to be the one to prove. However, if the drugs that I have prescribed are then misused, then the person who claims that I am the one who intended that purpose must be the one to prove. The burden of proof does not shift except in very rare circumstances prescribed by law. I do not consider that this is one of them, and I would propose that we delete that clause completely so that the burden of proof lies with the one who alleges.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment on Clause 28(1).

The Member who has just spoken has explained why. This Clause is not aiming at a third party. It is aiming at the perpetrator of the offence. So, if the pharmacist who sold the drug is not the one administering it, then he is not the one who will be liable. If you read carefully, it says, "Any person commits an offence if he intentionally distributes or administers substance to another person with the intention of stupefying." So, you have to distribute to another person with the intention to

stupefy that person. Therefore, if a Mr. X goes to the chemist and buys a substance, it is not the pharmacist who is liable, but Mr. X, who then distributes it to Y with an intention to stupefy Y. Therefore, this is not targeting innocent people who are legitimately selling drugs, but the actual person who commits the act.

Mr. Temporary Deputy Chairman, Sir, to allay the fears expressed by hon. Kembi-Gitura, Clause 28(2) is totally harmless. Before you read Clause 28(2), the complainant will have to have first proved by evidence that this substance was administered by that person. Once that is proved, then that person in their defence can avail the defence themselves by showing the court that they had no intention of stupefying. I am assuming that the substance would have to be something that you can distribute legally, not the sort of things that are being given in buses and stupefying people and then they are robbed. So, Clause 28(2) very much depends on what substance we are discussing. There are enough safeguards in this Bill and---

**The Assistant Minister for East African Community** (Dr. Khalwale): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the hon. Member who is, in fact, a senior Member of the Bar to mislead the House that the only way an accused person finds themselves in Clause 28(2) is after he has moved from Clause 28(1) when, in fact, we know that in courts, you can purely be charged under Clause 28(2)?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Dr. Khalwale! You are debating; that is not a point of order.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, to conclude my argument, Clause 28(1) is very specific. It is directed at the actual offender, and it does not talk of burden of proof. This means the normal thing in our criminal law applies; he who asserts must prove. So, until it is proved that you have administered, there is no way you then can be defending yourself that you did not have an intention to commit a sexual offence. I am, therefore, proposing to Members to reject the amendment and let the Bill go through as it is.

**Mr. Syongo**: On a point of order, Mr. Temporary Deputy Chairman, Sir. I seek your guidance on this matter. If the substance in question includes alcohol, which is allowed by law and the Government gets revenue out of it, the bar tender and distributors of alcoholic beverages would be victimised. It is a part of our social lives that you take a lady out and normally, you would buy her a drink. If in the process other things follow, I do not see why that should be an offence.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Hon. Syongo, that is a clever way of trying to catch my eye for you to advance your argument, and you have done very well.

**Mr. Biwott**: Mr. Temporary Deputy Chairman, Sir, I am also trying to seek clarification on this. I think the argument arises because that Clause is not specific on the use of the word "substance" which can have a much wider application. Is it possible to amend this Clause without deleting the word "substance?" To me, it is very clear. Can we say with the exception of alcohol?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Biwott! Mr. Biwott, if you wanted to make a further

amendment to the amendment, then you should have stood up to say so. The Chair cannot give you answers to your questions. We want to know whether you are supporting the amendment or not.

**Mr. Biwott**: Mr. Temporary Deputy Chairman, Sir, I wanted to find out if we could come up with a further amendment concerning the one on the Floor which will clarify this Clause. If you allow me, I could move a further amendment to this Clause.

**The Temporary Deputy Chairman** (Mr. Khamasi): What is the amendment?

**Mr. Biwott**: Mr. Temporary Deputy Chairman, Sir, it is an amendment to the amendment. It should read: "Administering a substance other than alcohol."

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Mr. Biwott, you are now mixing everybody!

Yes, Ms. Karua!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I just want to respond briefly to the amendment to the amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): I have not taken it!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Okay, Mr. Temporary Deputy Chairman, Sir.

**Mr. Odoyo:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment to Clause 28 as proposed by Dr. Khalwale. I am also of the view that the word "distributed" should be deleted because the word "administer" is what the Minister for Justice and Constitutional Affairs was referring to; the person who administers it. So, I am also of the view that it should be deleted.

I support the amendment by Dr. Khalwale.

**The Temporary Deputy Chairman** (Mr. Khamasi): I want to dispose of this Clause because of the time. We have heard several arguments for and against it.

**Ms. Ndung'u:** Which ones?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! What is itching you?

**Ms. Ndung'u:** Nothing, Mr. Temporary Deputy Chairman, Sir. I just want to seek your guidance. There have been amendments upon other amendments. Could you tell us which ones we are dealing with?

**The Temporary Deputy Chairman** (Mr. Khamasi): I propose to deal with them in this way. First of all, I will deal with Clause 28(1). After disposing it of, we will then go on to Clause 28(2). That is the route we shall take.

I now want to put the Question on Clause 28(1) as amended.

*(Question, that the words  
to be left out be left out,  
put and agreed to)*

*(Clause 28(1) as amended agreed to)*

I will now move on to Clause 28(2).

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I am putting the Question Mr. Kembi-Gitura! You cannot, therefore, interrupt because we have finished debate on it!

I will now put the Question.

*(Question, that the words  
to be left out be left out,  
put and agreed to)*

*(Clause 28(2) as amended agreed to)*

*(Mr. Syongo consulted loudly)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Mr. Syongo, you have been here long enough. We should play the game by the rules! You cannot do what you are doing!

*(Clause 28 as amended agreed to)*

*(Clause 29 agreed to)*

**Mr. M'Mukindia:** Mr. Temporary Deputy Chairman, Sir, I am aware you did not see me stand when you proposed this Clause.

**The Temporary Deputy Chairman** (Mr. Khamasi): Which one?

**Mr. M'Mukindia:** Clause 29.

**The Temporary Deputy Chairman** (Mr. Khamasi): That is history now!

**Mr. M'Mukindia:** I know, Mr. Temporary Deputy Chairman, Sir. But consequential upon amending Clause 28, it will directly affect most of us.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. M'Mukindia! Unfortunately, you did not catch the Chair's eye. Next time, you better sit in a very conspicuous place where you can be seen when you stand up!

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. We have heard different information. There have been so many amendments upon other amendments that when we were voting we did not know what we were voting on.

**Mr. Temporary Deputy Chairman** (Mr. Khamasi): That is why I decided to put the Question on Clause 28(1) and (2) separately. That is now gone! We cannot argue over it!

Let us proceed!

**The Assistant Minister for Agriculture** (Mr. Kembi-Gitura): On a point of order, Mr. Temporary Deputy Chairman, Sir. I ask this with a lot of respect to you. I did make a proposal on Clause 28, that we delete Clause 28(2) completely to shift the burden of proof. However, you did not give me or anybody else a chance to vote on the proposal upon the proposal. I know that it is not usual. But the point I am making here is that I feel that I was not treated properly in my proposal because I made a proposal on that proposal and it was not considered. I do not know how the draughtsman will deal with Dr. Khalwale's proposal which has gone through right now, because it will look completely out of place in terms of draftsmanship and the law of evidence. I do not know whether it is advisable that we go back to it. What do you propose to do about it?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I appreciate what you say, Mr. Kembi-Gitura. However, at the end of the day, the content of whatever we are doing here will be looked at when the Attorney-General is drafting the Act. I think if there are any issues which are not tallying--- That exercise can be done. But, as I said, that we will deal with Clause 28(1) and (2) separately.

Even after saying that and listening to you, it is already done, and we will have to proceed.

*Clause 30*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members. There is a notice of an amendment to Clause 30 by Dr. Khalwale.

**The Assistant Minister for East African Community** (Dr. Khalwale) Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 30 be deleted.

Mr. Temporary Deputy Chairman, Sir, hon. Members will notice that in this particular clause, we are trying to connect the managers and owners of precincts where the offence of rape takes place to that offence. We all know that there is no single hotel in this country which does not have ownership or management. So, if we carry this particular clause, somebody can go to court and actually ask the manager, who may be at home at night while a client was raping a young lady in a room of a hotel he manages, to explain. It is, therefore, important that we delete this clause. How would you expect a manager to know that in Room 20 out of, say, 400 rooms in a hotel, somebody is raping an innocent person? How would the owner who would, for argument's sake, be Mr. Kenneth Matiba, living in Riara Ridge, Nairobi, know that in his hotels in Mombasa somebody is raping somebody? The poor old man would end up in jail for being the owner of a hotel where rape took place.

I beg to move.

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I beg to second the proposed amendment by Dr. Khalwale. As he has ably demonstrated, even if you are told that an offence of rape or attempted rape has been committed, say, in a coffee plantation or coffee warehouse, how would the manager of such a premise be able to know that such an offence was being committed? There is merit in the proposed amendment.

I beg to second.

*(Question of the amendment proposed)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. If you look at what mischief is being prevented by this clause, you will realise that it is putting an obligation on the owner of the premises or the manager. Let us assume it is a hotel. Merely because a person has hired or rented the accommodation, you are hearing screams and you are refusing to intervene and yet you are the owner of those premises, this clause, if hon. Members care to listen, is not talking of a person who does not know what is happening. That is why the clause clearly says:-

"--unless it is proved that, that person through no act of omission on his or her part, was not aware that the offence was being or was intended to be committed."

This is to give a specific obligation. We have seen it everywhere, where everybody assumes that they are their brother's keeper. If it is within your factory and you know that an offence is going on, it is not for you to turn a blind eye. You have a duty to ensure that your premises are not used for the commission of an offence. What if you saw a person entering the premises with a child? You are being called upon to start questioning, so that you can see what is happening. This is just putting a duty of care on owners of premises. I think it is wrong to say that it will cause victimisation because nobody can be convicted without explaining. Even the statement you will record with the police will either exonerate you or show that you are guilty. Hon. Members should remember that the Departmental Committee on Administration of Justice and Legal Affairs, which comprises of hawk-eyed and very serious persons, had looked at this clause and seen that there was no mischief in it. I am urging hon. Members to let this clause pass as it is and not to support those who countenance crime.

**Mr. Mukiri:** Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment. If we pass this clause in the way it is worded, we will criminalise business. As Dr. Khalwale said, the passage of this clause will make it incumbent upon business persons who are, for instance, running hotels to sit there and wait for whoever checks in to see whether he will commit rape in his premises. The net is so wide in this clause that is prone to abuse. In the circumstances, I support Dr. Khalwale's amendment.

**Mr. Mwanzia:** Mr. Temporary Deputy Speaker, Sir, I stand to oppose the amendment. The last sentence of this clause is very clear and specific. It says that if the owner of the premises was not aware that the offence was taking place, he will not be held responsible. I believe that, that is what the Minister for Justice and Constitutional Affairs said. So, I do not see why there should be disagreement over this clause. This clause is actually trying to protect our daughters and women generally. If those of us who operate hotels come across a situation where a woman checks into a room in the company of a man but, suddenly, she starts shouting, it would be the duty of the security personnel of that hotel and the owner to investigate and establish what is happening in that room, or call the police.

I beg to oppose.

*(Applause)*

**Mrs. Mugo:** Mr. Temporary Deputy Chairman, Sir, I rise to very strongly, oppose the amendment. A lot of the rape incidents we have read about in the Press involve school girls who are raped in hotel rooms or in public places. The girls are lured into hotel premises by grown up men; that they are going to be bought lunch or other gifts. At the end of the day, they are raped. When the hotel managers give keys to these so-called "men", they can see that whoever is being led into that hotel room is a child. Instead of supporting that child and saying "no", they settle for that quick money. They are more concerned with making profit than protecting the girls. If we do not just oppose this amendment for anybody else, let us do it for the sake of innocent children who are being sexually assaulted day in, day out. Maybe, some hon. Members here think otherwise but they should realise that the victims of such crime are their daughters. They are harassed everyday.

Therefore, I completely oppose the argument that hotel owners, who may be sleeping at home while a lady is being raped in their premises, will end up in jail if we adopt this clause. There are managers in hotels all the time. The managers work under the owners of the hotels. The responsibility lies with the management.

I beg to oppose.

**Mr. Kimeto:** Mr. Temporary Deputy Chairman, Sir, I rise to support Dr. Khalwale's proposed amendment. Rape can be committed in hotel rooms, but we should not blame hotel owners, who may not even be present at the time rape is committed. The clause fails to explain why we should blame hotel owners. Therefore, I support the amendment.

*(Question, that the words to  
be left out be left out,  
put and agreed to)*

**Hon. Members:** Division! Division!

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

**The Temporary Deputy Chairman** (Mr. Khamasi: Order! You do not have the requisite number. You know the Division rules! Unless you have 20 hon. Members standing up---

**Hon. Members:** We are 20 hon. Members already!

**The Temporary Deputy Chairman** (Mr. Khamasi): The Clerk has counted you and you cannot challenge me on that!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): We agree that we were



not enough. We were 17 hon. Members.

**Mr. Odoyo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. There are certain points that hon. Members want to ventilate a bit more, especially on the clause which we have just disposed of. **The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Odoyo, you are now treading on very dangerous grounds! You will find yourself out if you continue with that trend. In fact, I am going overboard. I am giving more time than I am supposed to give.

**Mr. Odoyo:** Mr. Temporary Deputy Chairman, Sir, I seek your indulgence and I beg to sit down.

*(Clause 30 deleted)*

*Clause 31*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:  
THAT, Clause 31 be deleted

Mr. Temporary Deputy Chairman, Sir, some of the arguments that I am putting across in support of the amendment are as I put across in respect of Clause 26. However, I beg to add that the offence that is anticipated to be covered by this provision is already covered by the provisions of Section 251 of the Penal Code. This section provides for punishment for assault causing actual grievous bodily harm. There is also a provision in the Children Act against female circumcision or female genital mutilation (FGM).

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, it is assumed that every hon. Member has read the amendment. So, you just move it. If there are hon. Members with issues, they will raise them.

**Mr. Marende:** Thank you, Mr. Temporary Deputy Chairman, Sir. I have already moved the amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding? Ms. Abdalla!

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I second the amendment.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 31 deleted)*

*(Clauses 32 and 33 agreed to)*

*Clause 34*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 34 be amended as follows:-

(a) in sub-clause (1)-

(i) by deleting the word "shall" and substituting therefor the word "may";

(ii) by deleting the word "complainant" appearing in paragraph (a) and substituting therefor the words "alleged victim".

(b) by inserting the following new paragraph (9A)-

(9A) A court shall not convict an accused person charged with an offence under this Act solely on the uncorroborated evidence of an intermediary.

The rationale of the two amendments is, firstly, to safeguard the discretion of the courts. The court will decide whether or not to declare a witness vulnerable. It is not making it mandatory for the courts to do so.

The second amendment is intended to safeguard against possible misuse and abuse of the provision. It limits application to actual victims rather than any other complainant, generally.

With those few remarks, I beg to move the amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding?

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to second the amendment as proposed by the Mover.

*(Question of the amendment proposed)*

*(Question, that the words to  
be left be left out,  
put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 34 as amended agreed to)*

*(Clause 35 agreed to)*

**Mr. Marende:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I am sorry but, in Clause 34, I moved two amendments. But I had given notice of one more amendment. I overlooked it--

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, we have proceeded as per the Order Paper!

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, we have done the amendments as per the Order Paper, but there is a proposal to introduce Clause 9(A).

**Hon. Members:** We have passed it!

**Mr. Marende:** If it has been passed, then it is in order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Marende, you are learning fast. It is there.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I am glad it has been passed as per the Order Paper.

*Clause 36*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 36 be deleted.

Mr. Temporary Deputy Chairman, Sir, all hon. Members are in agreement.

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I second.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 36 deleted)*

*(Clause 37 agreed to)*

*Clause 38*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 38 be deleted.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to second in appreciation that it is covered under the Criminal Procedural Act.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 38 deleted)*

*Clause 39*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 39 be amended by deleting Sub- section (4).

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I second that amendment.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 39 as amended agreed to)*

*(Clauses 40, 41, 42, 43, 44, 45  
and 46 agreed to)*

*Clause 47*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the clause be amended as follows:-

(a) by deleting the words, "which causes penetration" wherever they together appear.

(b) inserting a new subclause immediately after Subclause(4) as follows:-

(5) This section shall not apply in respect to persons who are lawfully married to each other.

Mr. Temporary Deputy Chairman, Sir, the rationale for all these amendments, especially the introduction of Paragraph 5 is specifically to protect and safeguard the marriage institution. This will also give a provision to what is the offence rather than what appears in the provisions as they are now. **The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Muturi, do you want to second the amendment?

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I beg to second. This particular amendment shows that the offences intended here cannot be committed between married persons.

*(Question of the amendment proposed)*

**The Assistant Minister for Education** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I want to oppose this amendment, especially with regard to Paragraph 5. Whereas I understand that in marriage many people say they cannot be raped, maybe because in the olden days when the Bible was written, that was a different time. However, we are now in the age of the HIV/AIDS scourge and we must protect both spouses. If one spouse suspects that the other spouse is infected with the HIV/AIDS virus, that spouse has a right to say "no" unless the partner uses a condom. We know that, in most cases, women are not able to negotiate with their husbands to use a condom because they are over-powered. In that instance, we are putting the lives of women in danger of transmission of the HIV/AIDS. I feel that women should be protected by leaving the clause as it is. Where there is love and there is no suspicion of any infection, no wife will say "no", so that she is raped. She will only be raped after saying no because she suspects the husband may be suffering from the HIV/AIDS virus.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 47 as amended agreed to)*

*(Clauses 48, 49, 50, 51, 52  
and 53 agreed to)*

*New Clause 42A*

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting a new Clause 42(A) immediately after Clause 42.

It should read as follows:-

Any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for

the offence complained of.

The intentions of my proposed amendment are very clear. All I am saying is that we should

discourage persons with ill motives from making false allegations that; there have been attempted defilement or rape made on them or, indeed, persons in authority may have committed the offence under this Act. A person making an allegation that I attempted to rape or I raped her, knowing very well that I could easily go to jail for life, must also be prepared to go to jail for life in the event she is found to be making false allegations.

With those few remarks, I beg to move, and request Mr. Kembi-Gitura to second.

**Mr. Kembi-Gitura:** Thank you, Mr. Temporary Deputy Chairman, Sir. I do not want to say that I was ambushed to talk because I see what our intention is. I think everyone here, two weeks ago, read a very sad story in one of our local dailies, about a dealer of illicit brew in Ukambani who wanted to frame an assistant chief as having raped her. Had her conscience not caught up with her, and had she not known that what she was doing was a very serious mistake, indeed, the assistant chief would have gone to jail, if the Act was in force, for a period of not less than ten years.

The purpose of the proposed amendment is to capture the seriousness of the meaning of this Bill; that if, indeed, you seriously allege that someone raped you, you must be ready to face the consequences. If it is a framed story like it can happen, then the same consequences that would have applied to the alleged offender should take effect. That will deter, as much as the punishment will deter the acts of rape, attempted rape and defilement. The provision will also deter frivolous and malicious allegations against innocent persons. This is a very important amendment.

*(Question of the new clause proposed)*

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I appreciate the spirit of the proposed amendment. However, I appeal to hon. colleagues to have a sense of balance. I also read about the case of a false allegation which happened in Kisumu. However, out of one false allegation that is made, how many more genuine cases of rape do we read about? The rape cases are much more frequent and we must take care not to stifle reporting of rape because of fear that people are likely to go to prison for life.

*(Loud consultations)*

Let me be heard. This is a very serious issue. I appreciate the spirit we are in. Therefore, I propose a further amendment to the amendment so that instead of providing for "life imprisonment", we remove the words, "liable to punishment equal to that of the offence complaint of" and we replace them with the words, "shall be guilty of an offence, and liable on conviction, to a fine not exceeding---"

*(Loud consultations)*

Mr. Temporary Deputy Chairman, Sir, could you protect me?

We should replace the sentence with a fine and imprisonment of a term not exceeding three years. That strikes a balance without discouraging girls and women from reporting cases of rape.

**Mr. Cheboi:** Thank you, Mr. Temporary Deputy Chairman, Sir. I always agree with my Chairman on many things, but on this one, I do not agree with him.

*(Applause)*

I do not agree with him and I support the amendment by hon. Muturi because rape is

something that is known. There are no two ways about it. You cannot say: "I think I was raped". So, there would be no issue about somebody going and making an allegation which she thinks is true but is not. So, in my opinion, hon. Muturi's amendment is very good and is going to stop anybody from making those allegations that can put people in jail.

I support the amendment.

*(Applause)*

**Mr. M'Mukindia:** Thank you, Mr. Temporary Deputy Chairman, Sir. I am very concerned about the issue of equity in this Bill. A Bill of such importance must have the principle of equity embedded into it in every clause. For that reason, I totally support this proposed amendment.

*(Applause)*

If you look at the clauses themselves, and I have even had time to discuss this issue with the Mover of the Bill, rape can occur to girls, women, boys and even to men. It has happened before. Therefore, rape is gender insensitive and it should not be seen as if we are talking about women or girls alone. We are equally talking about men and women, boys and girls.

**The Temporary Deputy Chairman** (Mr. Khamasi): You have made your point, Mr. M'Mukindia.

**Mr. M'Mukindia:** Mr. Temporary Deputy Chairman, Sir, I, therefore, propose that the principle of equity be embedded in the Bill so that in course of time, this Act can protect Kenyans.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I rise to oppose this proposed amendment. As it has been said by hon. Muite, we are here discussing this Bill because we have accepted that rape is on the rise and that there is a menace that we need to arrest. It cannot be said that there is an equal menace of false allegations which we are seeking to arrest. That is not to say that there is no occasional case of malice in every prosecution.

Mr. Temporary Deputy Chairman, Sir, the framers of the Penal Code had envisaged this. If you look at the Penal Code, there is an offence of false information, false witness and perjury. When you swear by the Bible and you lie to the court, and it is proved that you have lied, there is the offence of perjury. The sentence provided for this offence in the Penal Code is a misdemeanour for three years and, in the worst case scenario, five years. I would, therefore, support the amendment to the amendment proposed by hon. Muite that, for the offence of giving false information, we rest at what is known to the Penal Code. Otherwise, hon. Members must appreciate that we have been doing a zero-sum game since this afternoon. If this amendment is passed, let us know that we will have consciously negated this Bill, which is seeking to arrest the rampant cases of rape. I repeat that there is no equal menace of false allegations. This is intended now to intimidate and stop people from reporting the offences of rape. Let us not pretend that there is an equal menace. Let us know that we are willingly killing this Bill.

I beg to oppose.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I have a further amendment but I do not know whether we are going to dispose of that one first.

**The Temporary Deputy Chairman** (Mr. Khamasi): Is it on the same issue?

**Mr. Sungu:** Yes, Mr. Temporary Deputy Chairman, Sir, and it is before you.

**The Temporary Deputy Chairman** (Mr. Khamasi): That is true!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I have proposed a further amendment to the new Clause 42(A) by deleting the words "punishment equal to that for the offence

complained of" and replacing with the words "imprisonment of up to ten years".

The reason why I say this is very simple. We are making a law for this country.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Sungu! What you are doing is exactly what Mr. Muite had proposed. He had said five years and you are saying ten years. That is along the same thing.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I am happy to withdraw my proposed amendment in favour of the amendment by Mr. Sungu.

*(Mr. Muite's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Very well! Because of time, we can dispose of the amendment to the amendment by Mr. Muturi. All I want, therefore, is a seconder.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, allow me to say one thing. I would like to plead with my colleagues to be reasonable on this issue. We are making a law for this country and the question of rape is a very serious matter. We agree with the sentiments expressed by Mr. Muturi that we need to discourage people who will make false allegations against people. However, if we make the punishment too serious, we will end up killing the spirit and letter of this Bill.

**The Temporary Deputy Chairman** (Mr. Khamasi): Who is seconding you?

**Mr. Weya:** *Sema ni mimi nikuokoe!*

**Mr. Sungu:** I will ask Mr. Weya to second.

**Mr. Weya:** Mr. Temporary Deputy Chairman, Sir, I would like to second the proposed amendment by Mr. Sungu. I think ten years will be a punishment equal to the offence complained of---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! We are running out of time because we have to report the proceedings of this Committee of the Whole House. I want to deal with this matter in two ways. First, I would like to dispose of the amendment to the proposed amendment by Mr. Sungu.

*(Question, that the words to be  
left out be left out,  
put and negatived)*

**The Temporary Deputy Chairman** (Mr. Khamasi): We will, therefore, go back to Mr. Muturi's original amendment.

*(New clause read the First Time)*

*(Question, that the new clause be read a  
Second Time, proposed)*

*(Question, that the new clause  
be read a Second Time,  
put and agreed to)*

*The new Clause was read a Second Time)*

*Question, that the new Clause be added  
to the Bill, put and agreed to)*

*First Schedule*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended in the First Schedule by deleting word "related"  
wherever it appears.

This is so because the word "related" is superfluous in that Schedule and the intention is to introduce precision and to ensure that we focus on the mischief intended to be addressed by the Bill.

**The Temporary Deputy Chairman** (Mr. Khamasi): Very well! Who is seconding?

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to support the proposed amendment.

*(Question of the amendment proposed)*

*(Question, that the word to be  
left out be left out,  
put and agreed to)*

*(First Schedule as amended agreed to)*

*Second Schedule*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Second Schedule-

- (a) by inserting a new paragraph (1A) immediately after paragraph (1) as follows:  
(1A) The evidence Act is amended in the proviso to Section 124 by deleting the words "a child of tender years who is" and substituting therefor the words "alleged victim", and by deleting the word "child" wherever it appears thereafter and substituting therefor the words "alleged victim"
- (b) by deleting paragraph (8)
- (c) by deleting paragraph (4)
- (d) renumbering the paragraphs appropriately.

The intention is to get this new law to be consistent with the Evidence Act.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to support that amendment.

*(Question of the amendment proposed)*

*(Question, that the words to  
be left out be left,  
put and agreed to)*

*(Question, that the words to inserted  
in place thereof be inserted,*



*put and agreed to)*

*(Second Schedule as amended agreed to)*

*Further Amendment to Second Schedule*

**Mr. Muturi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be further amended in the Second Schedule:

(b) by deleting Paragraph 7.

This paragraph will repeal Section 163(1)(b) of the Evidence Act. This section provides that in criminal trials for sexual offences, the court shall not take into account the past conduct of the complainant or promiscuits. The purpose of my amendment is to ensure that people who are known to be of bad morals do not raise frivolous allegations against others and they do not want their dark past to be known.

*(Question of the further  
amendment proposed)*

**Mr. Omingo:** Mr. Chairman, Sir, I beg to support this amendment.

*((Question of the further amendment, that  
the words to be left out be left out,  
put and agreed to)*

*(Second Schedule as further  
amended agreed to)*

*Preamble*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the word "other" be deleted and the word "unlawful" substituted therefor.

This because some sexual acts are quite legitimate. It is only unlawful acts that are illegitimate.

**Ms. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to second that amendment by hon. Marende.

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Preamble as amended agreed to)*

*(Title agreed to)*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of the Sexual Offences Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

## REPORT, CONSIDERATION OF REPORT AND THIRD READING

### THE SEXUAL OFFENCES BILL

**Mr. Khamasi:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Sexual Offences Bill and approved the same with amendments.

**Ms. Ndung'u:** Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Assistant Minister for Education** (Mrs. Mugo) seconded.

*(Question proposed)*

**Mr. Sungu:** Mr. Deputy Speaker, Sir, it is said that a journey of many miles begins with one step. I believe that this is one of the very first steps that this Parliament has taken to ensure that rape cases occurring in Kenya now are controlled and punished accordingly. There should be no loser or winner in this case. We should all be winners because there is going to be room for further work on this Bill.

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

**The Assistant Minister for Education** (Ms. Mugo): Mr. Deputy Speaker, Sir, I support the passage of this Bill although it is a sad day that what we have passed is a shell. We have negated the original spirit of this Bill. I hope that another Parliament will correct this anomaly. I also hope that the women of Kenya have noted what our male hon. Members have done today.

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

*(Question put and agreed to)*

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

**The Assistant Minister for Transport** (Ms. Mbarire) seconded.

*(Question proposed)*

**Mr. G.G. Kariuki:** Mr. Deputy Speaker, Sir, I want to thank the whole House for what it has done. I wish to state as follows: Whatever law that people make, it does not matter how heavy the penalty awarded is. Penalising people for any action is not the answer. We expect those who are

going to implement this Bill to be more responsible. This law has a lot of loopholes for people to destroy one another.

Mr. Deputy Speaker, Sir, if we want rape incidences to be minimised, we need to give free education to all the girls from Standard One to universities free of charge. Women are harassed because of poverty and lack of knowledge. The police and judges should pay particular attention to all interested parties.

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, I want to thank the House for passing this Bill. I want to say that negotiations and compromise are the way forward in this matter. I would like to call upon the Government to implement this Bill without fear or favour.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, I would like to say that some work has been done by passing this Bill. We do hope that Clause 42(A), which has the potential to be used to negate the spirit of this Bill, will not be abused and amended in future. With regard to the issue of education, I support it not only for girls, but also for boys. That has been said by my colleagues. We must let our men and boys take care of their sexuality. They should not think that women will take care of their own sexuality and that of the men. Let women not be used as an excuse for diabolical and perverted acts of a few people in our society.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I would like to take this opportunity, on behalf of this House, to thank Ms. Ndung'u for spearheading this Bill to where it is now. I also thank hon. Members for looking at issues from both sides. When we pass a law, as a House, it is important to ask ourselves: If that law was going to be used against us by our enemies, would we survive if we are innocent? That fairness must be captured in the spirit of the law. I think the application would be fair to everyone.

**Ms. Abdalla:** Mr. Deputy Speaker, Sir, I support the work that we have done today. I hope we shall bring more amendments to the clauses that can be used to negate the spirit of this Act. But whatever we have passed today is curative. We need to deal with issues that prevent rape. We should bring a stronger law on drug-trafficking and distribution.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the  
Third Time and passed)*

## ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, that concludes the business on the Order Paper and, tomorrow being Madaraka Day, the Chair takes this opportunity to wish you all a very happy Madaraka Day.

The House is, therefore, adjourned until Tuesday 6th June, 2006, at 2.30 p.m.

The House rose at 6.30 p.m.