

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 25<sup>th</sup> January, 2017

The House met at 9.30 a.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

### QUORUM

**Hon. Speaker:** Well, I confirm that we do not have quorum. I direct that the Quorum Bell be rung.

*(The Quorum Bell was rung)*

We now have quorum. We can proceed.

### PAPERS LAID

**Hon. Katoo:** Hon. Speaker, I beg to lay the following Papers on the Table of the House, today Wednesday, 25<sup>th</sup> January, 2017:

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2014 and the Certificate therein:

- (i) Water Towers Conservation Fund;
- (ii) Pyrethrum Board of Kenya; and,
- (iii) Eldoret National Polytechnic.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2015 and the Certificate therein:

- (i) Kenya Forest Service;
- (ii) Water Towers Conservation Fund;
- (iii) Tana and Athi Rivers Development Authority;
- (iv) Kenya Seed Company Limited and its subsidiaries;
- (v) National Water Conservation and Pipeline Corporation;
- (vi) Garissa University College;
- (vii) Pyrethrum Regulatory Authority; and,
- (viii) Moi University.

The Parliamentary Service Commission Report on the approval of the appointment of Mr. Michael Rotich Sialai as the Clerk of the National Assembly.

Thank you, Hon. Speaker.

## NOTICES OF MOTIONS

## APPOINTMENT OF CLERK OF THE NATIONAL ASSEMBLY

**Hon. Kato:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House notes the Report of the Parliamentary Service Commission on the recruitment of a Clerk of the National Assembly, laid on the Table of the House on Wednesday, 25<sup>th</sup> January, 2017 and pursuant to the provisions of Article 128(1) of the Constitution, approves the appointment of Mr. Michael Rotich Sialai as Clerk of the National Assembly with effect from 22<sup>nd</sup> March, 2017.

**Hon. Speaker:** Let us now have the Member for Kiambu.

## FORMULATION OF MECHANISMS TO ENCOURAGE VOTER REGISTRATION

**Hon. Njomo:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that the Independent Electoral and Boundaries Commission (IEBC) is currently conducting countrywide mass voter registration, further aware that this activity forms an integral component of democracy and specifically the exercise of universal suffrage, appreciating the fact that as elected national leaders, Members of Parliament are key stakeholders in the process, concerned that unlike in the previous dispensation where the Executive as part of the House, would regularly apprise the House on progress of such activities, concerned that Parliament is oblivious of the current progress, further concerned of the report of low turnout in the current enlisting, noting the need for deployment of persuasive mechanisms to encourage voter registration and participation in elections of all identity card holders in the country, further noting that this would go a long way in furtherance of Article 38 of the Constitution, this House instructs the Departmental Committee on Justice and Legal Affairs to urgently formulate and propose persuasive and compelling mechanisms for consideration by Parliament to motivate and encourage all unregistered citizens to register.

Thank you.

**Hon. Speaker:** Very well

## BILLS

*First Readings*

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)*

## PROCEDURAL MOTIONS

### LIMITATION OF DEBATE ON BILLS SPONSORED BY PARTIES/COMMITTEES

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that, each speech in a debate on Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party be limited as follows: A maximum of forty five (45) minutes for the Mover, in moving and fifteen (15) minutes in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each (if the Bill is not sponsored by either of them); and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.

On this Procedural Motion and the rest that will follow up to Order No.16, there are customs and practices of this House that in the beginning of every Session of this House, it is always good that a framework of procedures to be followed by the House for the rest of the Session is put in place.

Therefore, we are just putting in place this morning a framework of operations on how we will operate in the last Session of the 11<sup>th</sup> Parliament. This is in debating Motions, Bills and anything else which will be brought to the Floor of the House. There is nothing much to say other than to request my colleague, Hon. Mwadeghu to second the Procedural Motion.

I beg to move.

**Hon. Mwadeghu:** Asante, Mhe. Spika. Ninaomba nichukue nafasi hii ili niunge mkono Hoja hii na mwongozo ambao umewekwa bayana ili tupate kuelekezana vile tutakavyoweza kuwa na majadiliano hapa Bungeni.

Wakati huu wa kupeana mwongozo wa majadiliano Bungeni, itakuwa vyema kama kila Mhe. atakayesimama kutoa maoni yake apewe muda tukianza na viongozi wa utawala Bungeni. Tutaangalia vile waheshimiwa watatoa maoni yao ili kila mmoja apatiwe nafasi ya kutoa maoni yake katika kila Mswada ambao utaletwa Bungeni.

Mhe. Spika, ni jambo la kawaida kuwa mwongozo huu ukubalike na kila Mbunge ama Wabunge wengi ili tutoe utaratibu ambao utakubalika kwa kila mmoja wetu na kwa kila kiongozi wakati wanajitayarisha.

Vile nilivyosema jana, utakuwa ni muda mzuri Wabunge wautumie ili wasije wakawa katika ile theruthi themanini ya kupelekwa nyumbani na wananchi. Usipotumia muda huu utakuwa umejipotezea, na huenda ukawa na jambo muhimu la kuchangia katika Miswada hii.

Kwa hayo machache, ninaomba kuunga mkono pendekezo hili.

Asante, Mhe. Spika.

*(Question proposed)*

**Hon. Speaker:** Is it the desire of the House that I put the Question?

**Hon. Members:** Yes!

**Hon. Speaker:** Very well.

*(Question put and agreed to)*

Let us move on to the next Order.

#### LIMITATION OF DEBATE ON INDIVIDUAL MEMBERS' BILLS

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that, each speech in a debate on Bills not sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party be limited as follows: A maximum of three hours and thirty minutes, with not more than thirty (30) minutes for the Mover, in moving and ten (10) minutes in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.

Hon. Speaker, Order No.10 was on Bills sponsored by parties or committees. This one is on Bills sponsored by individual Members which normally come on Wednesday morning. This is a framework on how debate will be conducted in terms of time spent on the whole Bill. This is also time spent by individual Members speaking.

Therefore, I have nothing much to say other than to move and request the Member for Ugunja, Hon. Opiyo Wandayi, being one of the very active Members on individual Bills to second.

**Hon. Wandayi:** Hon. Speaker, I wish to second this Motion. It goes without saying that a Private Member's Bill is just as important as any other Bill sponsored by either political parties or committees of the House. The guidelines on timing given here are also important in the sense that the House needs to operate within a timeframe. But more importantly, the House still has leave to vary this timelines, if and when necessary.

Therefore, I wish to second.

**Hon. Speaker:** Order, Members! I wish to draw the attention of the House to the fact that even as I propose this Question, I will not put the Question. This is because Members have come in and assumed that they have finished their day's attendance. This includes Hon. Onyura who is walking out.

Hon. Members, the Constitution decrees that a Question may not be put for determination if we have less than 50 Members in the House. We had over 50 and suddenly Members have

taken leave of absence. Surely, Hon. Members it is not fair that you come to the Chamber for five minutes and then you assume that you have finished business even if this is an election year unless we say that we do not want to proceed with business.

I will propose the Question and direct that the Quorum Bell be rung so as to quorate.

*(The Quorum Bell was rung)*

This falls on Hon. Mwadeghu and Hon. Washiali to make sure that we have quorum as Members debate this. Just call the Members because it is in the Constitution that they be here. We can debate as we wait for them to make their way back into the Chamber.

*(Question proposed)*

Let us have Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Speaker. I rise to support this Procedural Motion on Limitation of Debate on individual Members' Bills.

It is also important that I make observations. Bills are very important to this House. Most of the debate focuses more on Bills - both by the Government through the Leader of the Majority Party or Individual Members' Bills. I have observed that some of us who fall under the category of any other Member were only allocated 10 minutes. At times, in Bills where we have interest and have taken time to do a bit of research, we are limited by these 10 minutes. You realise that to some extent, this discourages serious research on some of these Bills. I plead with the House and more so with you, Hon. Speaker, being the presiding officer, that at times you could also use your discretion to give extra time to some Members who request for additional time so that they contribute more and use more than the allocated 10 minutes. This will help us do more research and add a bit of quality to the debate.

With those remarks, I support the Procedural Motion.

**Hon. Speaker:** Let us have Hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I request for the Mover to reply since there is no interest in debating this Motion.

**Hon. Speaker:** Are you requesting for the Mover to reply?

**Hon. Members:** Put the Question!

**Hon. (Ms.) Abdalla:** Put the Question! It is a new year, Hon. Speaker.

**Hon. Speaker:** It is a new year but the Constitution was promulgated on 27<sup>th</sup> August 2010. In Article 121, it provides that quorum of Parliament shall be 50 Members in the National Assembly and 15 Members in the Senate.

*(The Speaker consulted with Hon. A. B. Duale)*

The Hon. Members who are coming in and going out, is it your desire that we adjourn the proceedings? Members, I would like to advise you that until we finish Order No.16, it is fair that we be a bit patient and listen to these Procedural Motions.

*(Question put and agreed to)*

## LIMITATION OF DEBATE ON MOTIONS

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that, each speech in a debate on any Motion, including a Special Motion be limited in the following manner: A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.

Hon. Speaker, this is about Motions including Special Motions. The time of speaking and the time for the entire Motion has been stipulated. Therefore Members should take note that, that is how the order will be.

I do not have to say much. I request the Member for Kipipiri, Hon. Gichigi to second.

**Hon. Speaker:** Hon. Gichigi.

**Hon. Gichigi:** Thank you, Hon. Speaker. I rise to second this particular Motion. We want to avoid the situation that occurred during the last Session. In the last month, very many Bills and Motions were passed, but had errors because they were done in a hurry. Let us create time to do this early in the year.

I second.

**Hon. Speaker:** Order, Members!

*(Question proposed)*

*(Question put and agreed to)*

## LIMITATION OF DEBATE ON A REPORT OF A COMMITTEE

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that, each speech in a debate on a Report of a Committee, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House, be limited as follows: A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any other Member speaking; except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order

Hon. Speaker, this is about the Reports of Committees and Reports of a Joint Committees. That will be the framework.

Therefore, allow me to request Hon. Amina Abdalla who is an active chairperson of a Committee to second.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. I beg to second.

I have only one item that I would like to urge especially the secretariat of Parliament to note. Under this Motion, Report of a Committee includes report on a mediated version of a Bill. Therefore, if this process is used, the Chairs of the Mediation Committees will have more time to expound on what they have agreed under mediation.

With those remarks, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

#### LIMITATION OF DEBATE ON MOTION ON THE ADDRESS BY THE PRESIDENT

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4) and in furtherance to the provisions of Standing Order 24(6), this House orders that debate on the Motion on the Address by the President be limited to no more than five (5) minutes for each Member speaking; thirty (30) minutes for the Mover in moving and replying and twenty (20) minutes for the Leader of Minority Party.

Hon. Speaker, this comes ones or twice in a Session. Therefore, it will be good for Members to know how it will be debated. I do not have much to say because it is a Procedural Motion.

Allow me to request the Leader of the Majority Party to second.

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

#### LIMITATION OF DEBATE ON SESSIONAL PAPERS

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that each speech in a debate on any Sessional Paper shall be limited as follows: A maximum of sixty (60) minutes, with not more than ten (10) minutes for the Mover in moving and five (5) minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party and that five (5) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order.

Hon. Speaker, Sessional Papers are very important. They form the source of documents of formulating legislation. Therefore, this is a very important Motion. I request Hon. (Dr.) Makali Mulu to second.

**Hon. Mulu:** Thank you, Hon. Speaker. I second.

*(Question proposed)*

**Hon. Members:** Put the Question!

*(Question put and agreed to)*

#### LIMITATION OF DEBATE ON ADJOURNMENT MOTIONS

**Hon. Katoo:** Hon. Speaker, this is the last on the list of Procedural Motions. I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that, the debate on any Motion for the Adjournment of the House to a day other than the next normal Sitting Day in accordance with the Calendar of the Assembly, be limited to a maximum of three (3) hours with not more than five (5) minutes for each Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of ten (10) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order. Provided that, when the period of recess proposed by any such motion does not exceed ten (10) days, the debate shall be limited to a maximum of thirty minutes (30), and shall be strictly confined to the question of the adjournment.

Hon. Speaker, adjournment Motions are now stipulated in the calendar of the Assembly which this House is yet to approve for this Session but it is also good that a framework is put for other adjournment Motions that may be brought to the Floor of this House. I want to request the Deputy Chief Whip of the Majority Party to second.

**Hon. Speaker:** Hon. Washiali

**Hon. Washiali:** Thank you, Hon. Speaker. As the title of the Motion reads, this is just a Procedural Motion. By implication, this is not to mean that I am the king of the adjournment Motions. I wish to second because the adjournment Motions are equally important. I second.

**Hon. Speaker:** Well, you have played a very key role this morning. You understand this one quite well.

*(Question proposed)*

**Hon. Members:** Put the Question!

*(Question put and agreed to)*

**Hon. Speaker:** Next Order!



**BILLS***Second Readings*

## THE CONSTITUTION OF KENYA (AMENDMENT) BILL

**Hon. Speaker:** Order, Members! Hon. Mithika Linturi, the Mover of this Bill has requested that it be stood down to some other dates suitable to the House. Therefore, that business appearing as Order No. 17 is taken out of the Order Paper.

*(Bill deferred)*

Next Order!

## THE CLINICAL OFFICERS (TRAINING, REGISTRATION AND LICENSING) BILL

**Hon. Speaker:** Hon. Leonard Sang is the Mover of this Bill.

**Hon. Member:** He is absent.

**Hon. Speaker:** He has just been here. This is why I keep insisting, hon. Members, that it is good to look at the Order Paper to understand the businesses appearing.

*(Bill deferred)*

We move to the next Order.

## THE SEXUAL OFFENCES (AMENDMENT) BILL

**Hon. Speaker:** Hon. Florence Mutua, the Member for Busia County, is the Mover of this one. I have seen her walking up and down. I can see her.

**Hon. (Ms.) F.M. Mutua:** Thank you, Hon. Speaker. I beg to move that the Sexual Offences (Amendment) Bill (National Assembly Bill No. 33 of 2016) be now read a Second Time.

First and foremost, I want to take this opportunity to thank the Legal Department of the Kenya National Assembly, the Kenya legal fraternity, the Departmental Committee on Justice and Legal Affairs and all the relevant stakeholders who made this Bill a possibility. Despite the passage of the Sexual Offences Act in 2006, the issue of sexual offences in our society is one that still requires us to take urgent action to address. An incident that occurred to a minor in Busia County in the year 2013 remains a chilling reminder of what can happen when we as leaders and the agencies tasked to ensure the safety of citizens fail to take action.

You will recall the story of Liz who in late June 2013 was brutally gang raped by six men and thrown down a pit latrine where she was left to die. Upon her rescue by villagers in the area, the vicious attack was reported to the relevant authorities. What followed was shocking as the

attack was recorded by the officers merely as assault and the alleged offenders given a punishment of cutting grass around the police station.

Hon. Speaker, since the incident, Liz is confined to a wheelchair and requires constant support to perform normal bodily functions. Liz and her family have received threats to their lives and they had to abandon their homes. The characterisation of the incident by the National Police Service (NPS) seemed to diminish the viciousness of the attack, and to an extent blame Liz.

Hon. Speaker, the 2013 Annual Crime Report released by the NPS indicated that the rape cases in the country had increased by 20 per cent, followed by robbery and murder at 19 per cent and 11 per cent respectively. The report recorded a total of 882 rape cases in the country. The 2014 Annual Crime Report corroborated this statistics and further revealed that there were 893 rape cases, 685 defilement cases and 240 cases of incest, which were an increase of the previous year numbers. These statistics, without taking into account the unreported cases, are an indication of a troubling trend in sexual offences across the country.

The 2013 United Nations Multi-Country Study on Men and Violence in Asia and the Pacific revealed that a vast majority of men who had perpetuated rape did not experience any legal consequences. The above lack of legal consequences reveals that impunity is a major issue when dealing with the violation of reproductive health rights worldwide. The absence of legal sanction and possibility of out of court negotiations reinforce the socialisation that a woman's body can be violated freely without any legal recourse. This notion must not be allowed to breed within the national context.

The Sexual Offences (Amendment) Bill of 2016 seeks to amend the Sexual Offences Act with an aim of ensuring its better implementation. It also seeks to cure the defects witnessed in its implementation over the last 10 years. More specifically, the Bill aims to expressly prohibit out of court negotiations and collusions in sexual offences which help perpetrators of sexual offences to evade justice and to strengthen the police service to ensure better investigation and prosecution of offenders.

The Bill further seeks to require both the national and county governments to promote public awareness of sexual offences through a comprehensive nationwide education and information campaign conducted through the relevant Ministries, departments, authorities and other agencies. The education and information campaign is to focus on sexual offences and shall be carried out in all schools, institutions of learning, prisons, remand homes and other places of confinement amongst the discipline forces, all places of work and communities throughout Kenya. Further, the Bill compels the Ministry of Education, Research and Technology to prescribe guidelines on the inclusion of sex education at some agreed level in the school syllabus.

Hon. Speaker, please permit me to refer to some of the key clauses in the Bill. Clause 2 of the Bill seeks to redefine the term "indecent act". It reads: "Indecent act" includes an unlawful intentional act which causes-

- (i) any contact between any part of a body of a person with the genital organs, breast or buttocks of another, but does not include an act that causes penetration;
- (ii) exposure or display of any genital organs, breasts, buttocks or pornographic material to any person against his or her will."

In the mother Act, the word “indecent act” is not clear. I will give a case of Mr. Kenneth Mwaniki versus the Republic where the court observed that the use of fingers to indecently assault a complainant does not fall under the definition. I will also give an example where women have been complaining that they undergo indecent acts in the ferry in Mombasa that when they are crossing, men do indecent acts behind them but they do not have ways of reporting since it is not in the law. We have redefined the indecent Act.

Clause 4 of the Bill seeks to amend Section 30 of the Act to enhance the applicable penalty for contravening the section from Kshs50, 000 to Kshs500, 000. Section 30 of the principal Act requires a person who has been convicted of a sexual offence to disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable persons. The safety and security of our children is paramount, and enhancement is sure to act as a deterrent to persons who intend to contravene the section. We have heard of cases where people rape disabled people.

Clause 5 of the Bill seeks to introduce a new Section 30A to require an employer to confirm that a person seeking employment to a position of care or access to children or any other vulnerable persons has not been charged or convicted of a sexual offence under this Act. Under the new section, an employer who knowingly employs a convicted sexual offender in a position of care or access to children or any other vulnerable persons commits an offence, and is liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding Kshs1 million, or to both. The safety of our children and other vulnerable persons is a legitimate interest that may override individual liberties of convicted sexual offenders and persons who seek to employ them. The proposed amendment seeks to ensure that an institution of care or learning is vigilant in the vetting of the persons it employs or places in a position of authority over children and other vulnerable persons.

Clause 7 of the Bill seeks to amend Section 36 of the Act to allow for the collection of sample of semen of a person accused of a sexual offence. The current section only allows for collection of blood, urine or tissue sample. We are adding the word “semen”. DNA forensic evidence is recognised as the most efficient means of proving or disproving a link to sexual offences. The proposed amendment seeks to enhance the mode of identifying perpetrators of sexual offences.

Clause 8 of the Bill seeks to amend Section 37 of the Act to enhance the option of a fine for tampering with a scene or witness of a crime to a sexual offence from Kshs100, 000 to a sum not exceeding Kshs500, 000. Tampering of crime means a lot of things. A parent can burn clothes of a girl who has been raped. Lying is also tampering of crime. We also have police officers who tamper with evidence. This will be a crime and if convicted, someone will be charged.

Clause 9 of the Bill seeks to introduce three new sections in the Act immediately after Section 40. The proposed Section 40A prohibits persons from colluding in order to conceal the commission of a sexual offence. It reads:

“Any person who, in order to conceal a sexual offence -

- (a) solicits for money, domestic animals or any other property as compensation from the suspect;
- (b) marries off the victim to the suspected offender;
- (c) prevents police officers from conducting investigations; or

(d) distorts evidence or the scene of crime commits a crime; commits an offence and shall on conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings or to both.”

Soliciting for money is very rampant in some communities and it is so sad when a parent/guardian takes very little money or cattle to have out of court negotiations. This needs to end because some of these girls who have been defiled and they are under 18 or even if they are over 18 years, do not have any justice that has happened in their lives. So, if you solicit for money, domestic animals or any other property as compensation, you will be convicted.

We have some communities where girls who have been defiled are forced to marry the rapist. When you force a girl to marry somebody who has defiled or traumatised her, she will be in a marriage that will traumatise her all her life. She will never be happy in that marriage and the marriage might not even work. Also, the girl will not have got justice because you are pushing her to get married to the sexual offender. We have places where police officers are prevented from conducting investigations. We have very many examples where a police officer is prevented by the community from conducting investigations. So, we need to tell these communities which prevent such things that they will be convicted. There are some parents or even officers who distort evidence of the scene of crime. This will be a conviction and one be liable to imprisonment for a term of not less than five years or to a fine of not less than Kshs500,000 or both.

Research carried out by Crime Scene Investigations, a forensic and private DNA agency, reveals that rape in all provinces except Nairobi is mostly settled out of court through clan elders and that women and children in rural areas are subjected to such courts unwillingly. It is, therefore, important to prohibit collusion between an accused person and persons purporting to represent the interests of a complainant, especially where the latter is a minor as that will ensure that sexual offences do not evade justice.

The proposed Section 40B requires the Cabinet Secretary (CS) responsible for the National Police Service to ensure that all police stations have special units to deal with sexual offences and to establish at least one special unit in the counties to handle sexual and gender based violence offences. Under the section, the proposed special units are to be equipped with modern equipment and facilities for carrying out investigations on the spot and all police officers are to be trained in handling and investigating sexual offences. On this issue of the special units in the county, we have instances where a victim goes to report a case and the police at the police station either do not know or do not want to handle the case. Most of those girls or boys are really mistreated. They go there to report and they are asked all manner of issues like: “What did you do for this man to rape you? How were you dressed?” Instead of handling the case in a professional manner, they are asked all these manner of questions. Most rape cases never get reported because when people go there to report, they really get embarrassed. You might go to a police station where there is no privacy and the police officer, in front of so many people, asks you: “Can you say what has happened to you.” It is hard to even say what has happened to you in front of all those people standing out there. So, we need the police stations to have a confidential place where the victim can go and have their specimen taken on the spot so that we can have the correct and right DNA taken for investigations. So, we request the special units to be set in the counties for such investigations and the police officers need to be trained. A special cadre of

police need to be trained to be handling these cases. If not all, at least a special cadre of police should be trained to handle the sexual offences and even the gender based violence.

Hon. Speaker, research shows that very few police officers have the skills to collect, document and preserve crucial evidence such as DNA. In C.K. Achand and 11 others versus Commissioner of Police and three others in 2013, the court observed that failure of the police to enforce existing defilement laws was partly contributed to lack of proper training. It directed the National Police Framework to be made a mandatory component of the training curricular to all police training colleges and institutions.

The proposed Section 40C of the Act requires both the national Government and the county governments, in collaboration with civil society organisations, to promote awareness on the negative effects of sexual offences. This is proposed to be done through a comprehensive nationwide education and information campaign conducted through the relevant Ministries, departments, authorities and other agencies. The campaign is to target key groups such as schools, other institutions of learning, all prisons, remand homes and other places of confinement, the disciplined forces and places of work.

Clause 10 of the Bill seeks to amend Section 46 of the Act to outline the matters to be covered by the National Policy Framework prepared by the CS to guide the implementation and administration of the Act. The amendment proposes that the framework provides for promotion of awareness and civic education on sexual offences and cooperation between the Government and the civil society in the enforcement of the Act.

As I end, Clause 11 of the Bill introduces a New Section 46A immediately after Section 46 of the Act. The proposed section requires the CS for Education, Science and Technology and the ministry responsible for schools to prescribe guidelines for the inclusion of sex education at some agreed levels in the school syllabus. Such education will go a long way in ensuring that our children are nurtured to be sexually responsible and to respect each other's dignity. On the issue of sex education, Busia County which I represent, from January to December 2016 had 9,167 girls who dropped out of school. Some of these girls were interviewed and we came to realise that some of them even said that they did not know that the act they were getting into would end up in pregnancy. This means that some of these girls did not understand the basics of what sex is. So, we really need to have sex education in schools because it might even minimise the high level of school dropouts. It will also minimise the high level of early pregnancies and will ensure our girls and boys respect one another's dignity.

With those few remarks, I beg to move and Hon. Jared Opiyo was to second. Thank you, Hon. Speaker.

**Hon. Speaker:** Was he to second or is he actually seconding? Hon. Jared Opiyo, the Member for Awendo.

**Hon. Opiyo:** Thank you, Hon. Speaker. First, I start by thanking Hon. Florence Mutua of Busia County for coming up with these amendments. In the past, the Kenyan people have had to endure different forms of sexual abuse and it is in that regard that the Sexual Offences Act was done, but in the realisation that the Act was not being implemented properly or because there were gaps in the Act, that informed Hon. Mutua to come up with these amendments.

Having said that, I want to say that these amendments will go a long way in trying to enforce certain critical issues that were not covered by the mother law. It is important to note that

the redefinition of the words “indecent act” now does not leave anything to chance and any person who engages in any form of indecent sexual acts will have to be charged as per this law.

Hon. Speaker, the reading of this law implies that, even our womenfolk who knowingly expose certain parts of their body will equally face the law. That is what the law is now saying. The most interesting part of this amendment is to compel the Cabinet Secretary (CS) in charge of Education to make a proposal or to bring up some kind of guidelines to introduce sex education in schools. What disturbs our youth most of the time is, parents have shied away from exposing their children to sex education in good time. Making sex education part of the curriculum at some agreed level will be very useful because they will get basic information regarding their sexuality, and that will go a long way in helping them develop their personalities with regard to their sexuality.

With regard to penalties, a lot of people who in the past have engaged in sexual assault have sometimes walked away with fines of about Kshs5000. That is not good. In fact, those people who have been proven to have engaged in sexual abuse should face stiffer penalties than is being proposed by Hon. Mutua. Here, she proposes Kshs500,000 up from Kshs 50,000 which I think is reasonable, but it could be enhanced. We are sure that there is deterrence from people who are engaging in these activities.

Those people who tamper with scenes of crime are equally engaged in that crime. By proposing some kind of penalty or punishment for people who tamper with scene of crime or with evidence, is a good thing that this Bill has introduced.

Lastly, there is something that happens very often in the villages and even in towns with regard to sexual offence. When somebody is found to have defiled a minor, some people engage in out of court negotiations. The beneficiaries are mostly caretakers, neighbours or parents. This does not bring justice to the person who has been defiled. By proposing that all forms of sexual abuse be handled by proper courts, this will ensure that, at least, all the victims have been properly taken care of. Those people who own schools or managers of schools or, indeed, Teachers Service Commission (TSC) will be compelled by this law to ensure that everyone who seeks employment in such positions as teachers or caretakers must produce certificate of clearance. They should show that they have not in the past engaged in any indecent acts of sexual violence or sexual abuse against minors or any other person. This will guard against the temptation of people employing individuals and trusting them with taking care of children, yet they abuse them.

I appreciate the efforts that have been put in this Bill. I want to urge all the Members of this august House to support this Bill so that it can go through to ensure that our women and even our boys are protected from sexual abuse.

With that, I second.

*(Question proposed)*

**Hon. Speaker:** I am assuming that all the names I am seeing here are Members who are keen to contribute to this Bill. I can see the Member for Makueni is on top of the list.

**Hon. Maanzo:** Thank you, Hon. Speaker for giving me this opportunity to contribute on this very important Bill. I congratulate Hon. Florence Mutua for preparing and presenting this

Bill very well. In fact, she made an extra effort and worked very well for Members of our county and the country generally on this matter.

Most of the offences and issues mentioned in this Bill are in the original Act; the Sexual Offences Act and the Penal Code. But she has made an attempt to cover areas which had not been covered before and areas which have become a challenge after the implementation of the original Act. There are serious matters which are raised on sexual offences, especially when communities attempt to settle matters out of court or frustrate hearings of matters of this nature. These matters never take off in court and in most cases they are lost for failure of presentation or proper evidence in court, or evidence which has been tempered with. There are cases of collusion and corruption in relation to this area.

As we debate this Bill and as we go to the Committee of the whole House, we can polish it up so that it can serve the country better. There is also the issue of abuse of young boys by people who are under their care. We could have had a balance so that indecent assault is looked at in two ways, so that it does not originate only from men, but also from women. It can also happen in molestation of young children, particularly boys by women who take care of them. There is also the issue of schools where children are under care of teachers and this sort of thing is happening. There are bodies which fight for the rights of teachers which tend to step in to negotiate and protect the rights of teachers at the time they have broken the law, yet the consequences are very severe such as very heavy jail terms. Although the fine has been moved from Kshs50,000 to Kshs500,000, it may not be prohibitive enough, if the accused person is of good means. We have seen in previous court cases on the same matter, some offenders pay the fines immediately and get away with it.

There is also an issue of the country getting to learn and getting to move together so that we change our culture to ensure that people begin to know that what was culturally acceptable could now be a criminal offence. What could have appeared not to be an offence in a normal cultural situation is now a crime. This also needs extra training of the special police officers who will be handling these matters. Different cultural backgrounds have different sexual orientation and some of the acts to most of Kenyans have been made serious, just like indecent exposure has now been made a serious offence. This law attempts to prohibit phrases like “my dress my choice”.

I want to thank Hon. Florence Mutua for cleaning up the older Act which seems to have left out most of the issues. She has actually done a lot of work which would have been done by the Attorney-General’s Office. She has brought out the issue of the Cabinet Secretary (CS) very well. I believe the whole Act should be cleaned up so that it is not parts of it which have been cleaned up.

Otherwise, the Bill also concerns counties. I believe it will be going to the Senate. I also believe that, through the process, this law should come to effect as soon as possible. In fact, before we go into the next elections – if possible. It is a very important law. There are assaults on young girls, young school children, and young women going to work in *matatus* and public transport, especially when they are travelling at night. All those cases have been reported but nothing has been done about it. It is especially for lack of a better law to deal with such matters.

I really support this Bill and once again congratulate the Hon. Florence Mutua. Thank you, Hon. Speaker.

**Hon. Speaker:** When you talk about “cultural practices,” what comes to mind is a situation whereby, in some Kenyan communities, the elderly have a way of cursing the youth by undressing. Now, is this going to be part of those “indecent exposures?” So, we want to take them into prison when they do that yet they are just doing something they are used to in their culture? What do you do in situations whereby you are in crammed up public transport systems?

When we get to Committee Stage, you need to clean up some of these because you could very well find yourself in a situation whereby you are being put into jail for no fault of your own. Maybe *Matatu* drivers or public transport drivers apply sudden brakes and you find yourself in certain contact with people. What do you do in those kinds of situations?

Anyway, let us hear the Hon. Johana Ngeno.

**Hon. Kipyegon:** Thank you, Hon. Speaker.

Before I even make my contribution, I would like to say this is my first time talking in the New Year. I welcome and thank everybody including you. I congratulate you for moving to the New Year; the year of so many things; the year of opportunities, and; also the year which is scaring most people, especially in this premise. It is because we are also going to be facing another round of elections. I just want to wish everybody a happy New Year, a prosperous future and good and peaceful campaigns in this country.

Secondly, I thank the Member for Busia County for this amendment to the law. I have just read and most of us have also gone through it a little bit, we must understand that this Bill is good. We will be bringing up some new amendments to the amendments so that we have it properly in place.

The most interesting parts which caught my eye in this Sexual Offences (Amendment) Bill are the issues of minors. I mean the young girls whom sometimes the law does not properly define. We normally have what we call “defilement.” Sometimes the issues in that defilement are not as serious as those ones in rape. I think we should also be looking at how we can also make defilement more serious like a rape case. It is so that our young daughters and young boys who some people engage in sodomy can also have justice properly meted to those people who commit those offences.

Another issue which caught my attention seriously is this question of plea bargaining. Rape and defilement is a very serious offence which normally affects not only the person who has raped or defiled but also the community and even the family. When these matters are committed, you know it usually affects the person health wise, mentally and also socially. Sometimes when people decide to go for plea bargain, usually it is in situations or cases where it affects minors. That is a situation where the minor herself cannot even have a serious contribution in the bargaining. It could also be either the parents or the guardians who these minors are under the care. We can have this plea bargain on other cases. For this one, I tend to believe it is a very serious offence and we should not allow it to happen in our society. A person who defiles a young person must understand that, that young person is not only defiled sexually but has also been affected mentally for the rest of her life. We should not allow this. This thing has been going on even in our schools where young girls are impregnated. Then, instead of justice being meted, there are these negotiations between the parents that: “you marry off this girl; we finish the issue; you pay dowry, and; the matter dies.” This is promoting serious dropouts among our girls. We are making this an issue that affects the education of our daughters.



I also wish to support the area where it is talking about the proposal on creation of important or special units in police stations where police officers who are supposed to be handling these matters must be people who are properly trained to handle sexual matters. Because of time, anybody can just handle the issue in the way they know, but the evidence that is meant to have been used in courts of law will have been lost. This can happen because the person who was handling that case could not have been somebody who is properly informed on those matters. So, I agree that we should create these special units in police departments so that we can have people who are handling these matters and who are specialised.

Hon. Speaker, the question of awareness is also very important. It is important we have this education so that people who will be handling these matters know how we handle them. Also people who will be indulging in these sexual offences must also understand the consequences.

Also, is the question of students versus students. You could be having in high schools a student who is a boy above 18 years indulging in sexual activity with a girl who is below 18 years. These young people do not understand that, that is defilement. It is not love affair. So, education is very important. It should be done in high schools and primary schools.

There are parts which I tend not to agree with, especially the part you just mentioned - this idea of bodies meeting. Sometimes, these are accidents. Sometimes we have the problem of transport systems in our country, especially in these cities. Because of the problems like jams and lack of transport system, people tend to crowd buses and even trains. When you look at the train that normally comes from Imara Daima to town, you cannot just imagine. Maybe it is because it is cheap and it reaches town within the shortest period. People will not understand because the moment bodies meet, Hon. Speaker you know, there is that reaction. Sometimes you will not say it was intentional just because of that. Like you said, if the driver applied brakes, obviously, people must meet. You cannot avoid that. That is what we just meant. We should make a law that will not seriously affect even a situation which was very accidental.

Another issue which I thought we should be looking at during the amendments stage, sometimes women report on matters of rape or defilement, but especially rape cases, and yet sometimes it is a situation where the two could have agreed and maybe an issue arose later and then it becomes a rape case. Serious investigations must be done so that it can be defined properly whether that was rape or it was just something which was agreed. We should also look at that seriously so that we do not allow other people--- There are some mischievous people. I know this law is intended to curb the question of this crime. Sometimes there are mischievous people who may take advantage of this particular amendment to do other things. In the society, we have people who have bad intentions. Sometimes they can use this law to meet those particular intentions. So, we must ensure that we pass a law that will allow proper use of this law.

Lastly is the question of the person who could have been convicted for rape. Sometimes when somebody rapes somebody, that person could be health wise infected with HIV/AIDS or any other disease or that person is pregnant. How then will we ensure that person is taken care of? This amendment should be made in a way that when a rapist is convicted, they should also pay a certain fine to take care of the pregnancy of the child of the person who was raped and also to ensure that health matters of the person who was raped are taken care of.

**Hon. Speaker:** Hon. Christine Ombaka.

**Hon. (Ms.) Ombaka:** Thank you, Hon. Speaker, for this opportunity. First and foremost, I want to thank Hon. Florence for bringing this amendment. What is interesting and which I highly support is the definition of “sexual offence”. It includes what we never think about. Things like non-verbal which may not be used here distinctly, but it deals with touching of private parts of a person. That must be included. Touching breasts, buttocks and other private parts is part of sexual offences that must be understood as an offence. More than that, I would like to include words such as winking at a person, or staring at a person in a manner that is likely to be an offence.

**Hon. Speaker:** Winking?

**Hon. (Ms.) Ombaka:** Winking is very common in the streets and marketplaces. These are sexual offences. They must be included in this Bill. It is very critical. Sexual offences are very rampant in this country. The victims are normally infants: two or six-month olds, helpless children, little girls. Sometimes you have sexual offences committed against people living with disabilities; even old women. As long as people are helpless, they are seen to be weak, they tend to be abused. This is the category of human beings that are often abused. We need laws that will strictly punish perpetrators. I think this Bill does that very well. I support these clauses.

There are also other parts of the Bill that have been well done and I support them, particularly the section where the police do investigations. This had never been done very well. They give up along the way because of various out-of-court discussions and agreements. Even the very fact that the offence is sexual, not many people want to pursue the matter because of the shame and fear that it entails. Many victims do not pursue the matter so that they get proper justice because of the fear and shame that the society associates with these crimes. Therefore, a lot of victims suffer silently without seeking justice. We need to encourage them a lot because so much damage is always caused when a person is sexually offended. There is psychological trauma that a victim goes through for years on end; sometimes for life. They will always be regarded as people who were offended for many years and they can never settle in society. We need to put proper interventions for them.

It is also true that perpetrators of this kind of violence go scot-free. It is very sad when a three-year-old girl has been sexually offended and the perpetrator goes scot-free. It looks really unfair for the little girl who may not know what has happened to her, but the perpetrator is much older and goes scot-free. It is morally wrong, and laws must be put in place to punish those who offend the little girls. That is why the amount of Kshs500,000 set here may be little for those who have the money, but it is quite a lot for those who do not have jobs in the village; they cannot get this. This is going to be a good deterrent to those perpetrators. They must know that there is punishment at the end of it all.

There have been very difficult ways in which to find whether one is guilty or not. We talk of semen, we get that semen and we get the DNA. But what of a case where there is gang rape? That has not been captured well here. What happens where there is gang rape? Whose DNA are you going to take and there are many people involved in it? Whose semen are you going to take? What is going to happen when a case of gang rape takes place? That is quite a challenge even within this amendment. We need to define and be very clear on what is going to happen in case of gang rape.

Finally, the intervention is also very important when it comes to HIV/AIDS. I remember in the early 1980s and 1990s there was a lot of public education and sensitisation in schools,

media, churches and many places. People talked about HIV/AIDS. Again, people were scared of the disease to the extent that it was not very easy to talk about HIV/AIDS. Therefore, the name “HIV/AIDS” was not used all the time; people used other names in reference to the disease. Still, there was a lot of public education going on. Today, it is a little easier to talk about HIV/AIDS and a lot of people are quite aware about the disease, even though it has not come down to the expectations. The amendment proposed here that we need to include public education is highly acceptable. Many schools today need to know that sexual offence is part of that education that every girl and boy, teacher and everybody in the society must be aware of. Public education is critical. Everybody will have to know wherever they are working, in the church, in Government ministries, private offices, everybody must know the consequences of sexual offences and what can happen to a person who is assaulted. What are the consequences of assault? Even perpetrators are at risk. You are forcing somebody to have sex with you but you do not know the health status of that person. Even perpetrators of these offences need to be aware of the kind of risks they are taking in offending somebody whose health status they do not know. So, public education is important for each person, women and men, boys and girls, the police and everybody else. An extensive and comprehensive public education is very important.

Hon. Speaker, I want to support this Bill because it is capturing areas that were loosely dealt with in the original Bill. I believe this is going to be very important in protecting the lives of everybody.

The last point is that interventions can be difficult just like it is with other areas. But I think we need to continue sustaining the fight until everybody is aware that their lives are at risk, victims and perpetrators alike.

I support the Bill.

Thank you.

**Hon. Speaker:** Hon. Members, when Hon. Mutua was moving this Bill, she gave examples of passengers in a ferry. This was when she was describing the new definition of “indecent act”. The Bill reads:

“Indecent act” includes an unlawful intentional act which causes any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration”.

Are the buttocks and others covered by clothes? This is because it is an indecent act. Hon. Florence gave an example of people travelling in a ferry and incidents of people being touched. Are they exposed? Unless they are nude, how is it going to be defined?

I am just raising this so that as Hon. Florence takes notes - because she will still have an opportunity to reply – to clarify to Members so that they can understand. This will ensure that as they contribute they are also aware how those things are supposed to be defined.

More importantly, Dr. Ombaka talked about public education of all concerned including the officers involved in enforcement. However, I think it is important that, that particular aspect is clarified so that Members do not oppose the Bill. They do not know how those areas will be touched by the body of another person when not defined whether they are exposed or not.

Hon. Cecilia Ngetich, the Floor is yours.

**Hon. (Ms.) Ngetich:** Thank you, Hon. Speaker for this opportunity. I rise to support the Sexual Offences (Amendment) Bill as proposed by Hon. Florence Mutua. Indeed, we have the

Sexual Offence Act which is now being amended. This Bill is a further emphasis on the same, particularly on the implementation.

There are many legislations that protect the girl and boy-child from being sexually offended. However, we noticed that the implementers – those who are supposed to protect them-- -For example, when reporting sexual offences, there should be a desk where a report can be made in privacy but this rarely happens.

Secondly, I want to support public awareness, particularly giving students in schools or young persons life skills. How can they also avoid this? It is better to prevent than allow an offence to be committed and then follow it up.

I have dealt with a case before where a mentally sick girl was raped by a boy who used protection. So, if you look for evidence, you cannot find any. Secondly, because the victim was mentally ill it was very difficult to resolve the case. This is despite having a witness. We are still dealing with that case in Sotik. I hope that this Bill that is now being amended will come up with very stringent measures to be taken against anybody who does some undesirable acts to either a girl or boy. They should face the law as it is.

Hon. Speaker, this also happens in social places. This is because there are people who intentionally, as you criss-cross each other, make sure that their bodies touch your breasts. This, again, is a sexual offence because it is a deliberate move. I think matters of privacy and decency should be upheld at all times. This is a matter of public education and awareness.

The Speaker mentioned some crowded places. We used to have the Kenya Bus Services (KBS) and people were allowed to stand in the buses. We have ferries where people stand and are congested. There are those that can be identified as deliberate move but there are others that may just be due to the small area in which people are standing. I believe the Mover should explain to us. There is also an opportunity during the Committee of the whole House to amend the law so that it does not become vague on what exactly is being moved here.

Hon. Speaker, I want to support this Bill and call upon Members to support it. Gender violence through sexual offence is increasing. This is portraying Kenyans as people who are a bit indecent.

I also recall some remarks about Africans that were made by one of the presidents of a leading nation.

I support the Sexual Offence (Amendment) Bill. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Michael Onyura, the Floor is yours.

**Hon. Onyura:** Thank you, Hon. Speaker. I rise to support this Bill. I wish to thank Hon. Mutua who is also my County Women Representative for bringing these amendments. This promotes the effectiveness of the original act to the sort of punishment that such perpetrators should face and clarifying some of the definitions that were either missing or were perhaps not clearly defined.

Sexual offences include acts like rape and indecent assault. These are acts or crimes that traumatise the victims a great deal. Not only are these acts degrading but they are also traumatising. The acts could damage the victim psychologically forever. It is only fair that the punishment should be enhanced for those who are caught doing this. I also feel that this is an area that calls for concerted efforts from all stakeholders or sectors such as law enforcers, the Ministry of Education, Science and Technology and parents.

Hon. Speaker, even as we build capacity in schools, we should also build capacity for those who train in counselling and parenting. Everybody in a family setting should be concerned. I support that we should have designated areas in police stations that can handle this matter because of its delicate nature and psychological implications. We should train and build the capacity of those who will be charged with this matter.

I also support the provision of good record keeping and tracking of offenders so that they do not repeat these offences. In many cases, the victims are vulnerable people such as minors, the disabled and mentally retarded people. The provisions on how to collect and preserve evidence and provisions against interference or cover up go a long way in strengthening the Act. One of the deterrent measures is for the offenders to know that chances of being caught, charged and convicted are high. So, we strengthen the Act by applying the necessary technology and preserving scenes of crime.

We need to ensure that the backward cultural practices are not used as excuses for people to commit such offences. Bad manners such as whistling and cat-calls against ladies are things that need to be discouraged through education and legislation. I think the most important thing is that we should invest in education and public awareness to minimise such offences.

I support these amendments.

Thank you, Hon. Speaker for giving me this opportunity.

**Hon. Speaker:** Let us have Hon. Sunjeev Birdi.

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Speaker for giving me this opportunity to lend my thoughts to the Sexual Offences (Amendment) Bill. I congratulate Hon. Florence because as we approach elections this year, many issues pertaining to elections will be discussed. Issues pertaining to society such as these get ignored. While Hon. Florence will be leaving this year to pursue gubernatorial seat or defend her seat – I am not quite sure - she will know that she put effort in this Parliament to clean up the Sexual Offences Act. Modernisation brings modern problems. Children get older much faster than before. In some cases girls look much older than their actual age and those are the effects of modernisation. In many cases, some unscrupulous people take advantage of some young girls and boys.

At the outset, this Amendment Bill seeks to clean up the original Bill. One of the things that stood out in this Bill was the collection of evidence. Section 36 of the original Bill clarifies that the collection of semen will be introduced as evidence. This was not there before. I feel that this is one of the most pertinent forms of evidence that you need in this Bill. This was omitted before, but it is now included.

Hon. Speaker, fines have been increased from Kshs50,000 to Kshs500,000. Many times people in villages cannot afford a fine of Kshs500,000, but this is the more reason they should not engage in the vice. So, I am okay with the fine being increased.

Clause 30 states:

“A person who has been convicted of a sexual offence and who fails to disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable person or when offering or agreeing to take care of or supervise children or any other vulnerable person is guilty of an offence and liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or both”

Many times we see on social media or television unscrupulous people take advantage of vulnerable people. So, the employer should be responsible for the people they are hiring so that they make sure that vulnerable people are being taken care of by the right persons. I have talked about collection of semen for evidence.

One more important thing that has been clarified is with regard to police stations having special units to deal with sexual offences. This is very important because the 2006 statistics stated that one rape was committed every half an hour. So, if we are dealing with figures as high as that, as a country, we need to have trained police officers so that we can take care of the vulnerable citizens. They have to be trained to conduct their activities in a proper manner.

Hon. Speaker, overall, I do not have any issue with this Amendment Bill. Though, I would like to talk about Section 46A where the Minister responsible for Education, in provision of guidelines, should include sex education. For example, I remember a few years ago my friend who lives in the United Kingdom (UK) was telling me that his nine-year old cousin was being taught about sex education and she came home with a condom. He was quite surprised and was expressing his horror to me.

Our children are maturing at a very fast rate these days. We cannot sit at home and expect teachers to educate them on what is right or wrong. We have to let the doors open and sit our children down and talk to them in a way that they can understand.

Finally, I would like to support this Bill and congratulate Hon. Florence once again for a job well done.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Let us now have Hon. Mwinga Chea, the Member for Kaloleni.

**Hon. Chea:** Thank you, Hon. Speaker for this opportunity. I rise to support the Sexual Offences (Amendment) Bill. I equally join my colleagues in congratulating Hon. Florence for bringing this very important Bill.

I come from Kilifi County where the preference in terms of sexual offences is quite high. If you walk into any police station today, you will find that there are very many cases relating to sexual offences. If you also walk into our courts, right from my constituency to Malindi Constituency, you will find that the entire court list is made up of sexual offences. If you walk to our prisons today, you will find very many boys, some convicted while others still in remand for these offences.

Before the passage of the parent law on sexual offences it used to be a free- for-all world. I remember before 2001, you would find very many offences being committed in the villages and in rural areas but nothing was being done. Today, at least with the passage of that law, we realize that there is sanity in the manner in which some of these things are being done. However, the challenges that exist, I believe will be taken care of by some provisions we now find in the new amendment law.

That is why as I was going through this amendment Bill, I was interested with Section 40C which seeks to talk about public awareness. I think we seriously need to look at ways in which we can prevent some of these things. This is because depending on where you are, there are times when the parents of the boy who is probably a suspect of having committed a sexual offence will come to you. At the same time, the parents of the girl who is the victim will equally come to you. If you listen to both sides, you will find that there is a problem in the law.

The only way that some of these issues can be addressed is through awareness. It is important that the public is made aware and funding is provided so that our children can have this information at an early stage. This issue should not be left to teachers alone. We have had initiatives where we have even had some magistrates and senior police officers go to our schools so that they can talk to these children and equally enlighten them about the law, what it provides and what they are supposed to do. All these measures, I believe, have gone a long way towards ensuring that we, at least, prevent the commission of these offences.

I want to agree that very many suspects have had to be acquitted for want of investigations. We do not carry out thorough investigations in the field of sexual-related offences. This is because in most situations, these offences have just been taken like any other and this is a wrong approach. That is why it is equally important for the officers in charge to be trained so that, at the end of the day, they can deal with the situations that they are trained in so that we can have a conviction.

However, as we train police officers, the question we must ask ourselves is, is the Judiciary equally taking steps to ensure that we develop jurisprudence so that at the end of the day the police will be trained and the magistrates who will be handling this matter will equally have some extra knowledge on what they are supposed to do.

This is because you will realize that when you go to a court, the magistrate will begin with a traffic matter and adjourns. He comes back and goes to civil matters. You find that there is no time to invest in the knowledge of sexual offences. You will also realise that these matters have equally collapsed before courts for want of evidence. A lot of time is spent from the time the offence was allegedly committed to the time the judgement is passed. Are we talking about a situation where we can have some timeframe in the determination of these matters so that at the end of the day no evidence is lost? The matters should be heard a fresh, for example, six months or one year, they are concluded and judgement is given.

If all these initiatives are addressed, we will have these cases going down and we will live in a society where we can be sure that our boys and girls are safe. I wish to seriously support this Amendment Bill. I urge my colleagues to equally support it.

Thank you, Hon. Speaker.

**Hon. Speaker:** Yes, the Member for Vihiga.

**Hon. Chanzu:** Thank you, Hon. Speaker. I take this opportunity to wish Members happy New Year now that we have come back to the Assembly. I also take the opportunity to support the Bill which I find very important. This is because there are some things which we do not take seriously but they nag a lot. This is particularly those of us who interact with villagers a lot through representation. On indecent exposure, members have mentioned a few interesting points.

I congratulate Hon. Mutua for bringing this Amendment Bill to this House. On the issue of buses and public places, as Members of Parliament, we mingle a lot. Sometimes this is when walking out of this Chamber. The most important thing is that they do not do it deliberately. If it is in a ferry where you have all types of people meeting---

Since we are dignified Members, touching does not really matter. Sometimes when congratulating someone like my dear sister here, I can find myself passing my hand to touch her shoulder and by mistake it touches elsewhere. We take it because we understand it differently. But if it is in a ferry, you should apologise. This is because it is very difficult to prove otherwise. Sometimes there is also the issue of body language. You can do it in a public place or when you

are walking just by sheer coincidence. The body is very funny. Sometimes you find somebody looking at you and seeming upset. The best thing is to apologise very quickly if it was not deliberate.

With regard to indecent assault, we have had cases where even boys are assaulted indecently. It is important. This matter cannot just stop here. You may find that the situation that arises or comes up for prosecution might be totally different from the guidelines that you have set. For example, Hon. Florence, with all due respect, the boys in your area may have done well in the exams. As the Member of Parliament for the area, you may hold them like that and some of the mothers may feel offended but the boys may feel very happy. It also depends on the circumstances.

When it comes to the issue of rape, I also heard some of my colleagues talk about the police stations. From what I have seen, having been here for a long time representing my people from 1997, our police stations are not handling cases well. This is not only the cases of rape. Even a case where somebody has been arrested and suspected to have committed an offence, sometimes they take the law into their hands and torture the person instead of trying to find a better way of extracting information and getting evidence. We need to take seriously these laws that affect the people and even refine them not only through this.

The police need to be taken for regular training. These days, I see that they are even being influenced by politicians. If they assault somebody who is your supporter and there is another politician who is involved, it now depends on who means what to them. There are laws that we need to review all the time. I am very happy when I see some of our colleagues here like Hon. Florence Mutua moving this Bill because it is a nuisance, particularly to those people who cannot afford the fines. We are talking of a fine of Kshs500,000.

Another thing I have also seen also in this country is that we have made it very expensive for ordinary Kenyans to access justice. In a case where somebody has done something, you have to go and engage an advocate who is asking for money, filing fees and all those things. When you add them together, it is quite expensive. In a way, we should also make justice cheaper. In fact, as Members of Parliament, before we break for the election, we should introduce some laws which can bring down these incidences. Chapter Four of the Constitution on the bill of rights says that Kenyans are entitled to justice but it is too expensive. It is like somebody telling you that there is *chakula* here but he puts it at a height that you cannot access. The cost of justice is an issue that we have to review in due course.

The other thing I was also looking at is malice on the part of the complainant. That is a matter which should be looked into. Recently, I noticed that the President commuted the terms of those who had been sentenced to death. I have watched some of them who have stayed in Kamiti Maximum Security Prison on television narrating their experiences and saying that although they have been sentenced to life in jail, they did not commit the offence. The level of proof---This is the reason why I believe that there should be public awareness. If people who have been assaulted can avoid some of those places, it will be much better.

When it comes to the level of proof, somebody can just frame you. I have seen some cases in the media where somebody frames a Member of Parliament because they imagine that MPs earn a lot of money. They frame somebody as having impregnated a girl or something like that. The malice aspect is one that we need to address. Those who will be looking into these



cases must people who can be patient and take time to counter-check the information that is received.

There is another thing happening mostly in the rural areas where there are a lot of rape cases. I have heard some Members and colleagues here raising it. This is to do with out-of-court settlement. One reason why this happens is because of poverty. The other reason is intimidation. The people who commit this offence go and see the chiefs or assistant chiefs. They use them to intimidate these people that if they raise that matter then this will happen to you. These are all issues that must be addressed. That is why the investigation must be thorough enough. The poor should also help. The chiefs should not use their positions to intimidate those victims.

With those few remarks, I support the Bill.

**Hon. Speaker:** Let us have the Member for Shinyalu.

**Hon. Anami:** Thank you, Hon. Speaker for giving me this opportunity. I would also like to thank my colleague Florence Mutua for bringing up this matter. It is a very important subject that we should discuss and revisit every now and then as legislators so that we can sustain the social fabric of our society. Some of these offences are very dehumanising. We should agree that they are not offences that we can tolerate in a society that is fast-growing and one that is as enlightened as the Kenyan society. In fact, sometimes you wonder because the situation earlier before we got into this modernity seems to have been better. People were more morally enlightened than they are now. It looks like we must examine and consider modernity and the changing social infrastructure. We know that these offences can dehumanise people who are affected. We know that it creates degradation of our cultural landscape. We know that it even causes death and sometimes even creates controversial lives that are very difficult to fit in the social landscape of our society. Sometimes we have to be careful with how we indulge because as many Members have stated, the circumstances surrounding these offences are an important component that we must consider when dealing with these offences.

Hon. Speaker, when we discuss this matter from a cultural point of view, our traditional communities have indigenous infrastructural arrangements that manage the relationships between different genders to the extent that the issue of sexual relationships between people is a matter that is properly engendered in our social fabric. It will never come up as an offence and when it does, it is dealt with in a sustainable manner thoroughly to the extent that it does not affect continuity of society.

*[The Speaker left the Chair]*

*[The Temporary Deputy Speaker (Hon. Omulele)  
took the Chair]*

In legislating in this area, we need to consider an approach of case by case. We need to revisit our indigenous institutions and establish some of the deterrent measures that have always worked for us.

The criminal aspect in these practices cannot be ignored or be taken for granted. This being essentially an emotional and sometimes psychological thing, we need to find institutions that can do mitigation. I support the approach of education and sensitisation of the youth. We have abandoned our youth to an education system that is very limiting in itself. It is limited to

just academics. It is important for us to strengthen guidance and counselling components in our school curriculum so that our young people are educated to grow up as men and women of respect and honour. Sometimes they get ambushed. They have feelings that they will never understand. That is why they attack each other.

On modernity and physical infrastructure, we have the case of the ferry and the *piki piki*. *Boda boda* is the most common mode of transport. I can tell you that what happens on the *piki piki* is not what I would want to describe here. Sometimes families get destroyed because of the use of the *piki piki*. The moral fabric and the relationship that happens between the passenger and the *piki piki* rider can never be quite known in a five kilometres journey. How the passenger will end in the police or how the rider will end up reporting to the police because he was being tickled everywhere by the lady passenger thus offending him cannot be imagined because they are just the two of them. That is a sexual offence.

So, which way do we go? We need to understand the circumstances and we need to prepare our people. I would like to support the idea of creating a special police unit. If we can create a special police unit for traffic offences, then, we also need to create a special police unit that will deal with sexual offences because this is the area where humanity is created and where humanity needs to be enriched. If that is how important this sector is, then we need to have a special police unit specially trained where we have incorporation of properly trained psychology professionals to deal with this matter of sexual offences. Otherwise, we have witnessed cases where lives are created between partners that are not partners at all, but are actually antagonists in one way or another. So, we need this special police unit.

I would like to support the idea of adopting traditional coping mechanisms to deal with the changing social fabric, the changing physical environment and changing interactions. Look at the new greeting phenomenon. For a long time, we had greeting mechanisms where only hands were shaken. But, nowadays, if you do not hug your friend, you have not shown a lot of love and that hugging could create an interaction that could be disturbing. How do you get into a hug without coming closer and your heads coming in touch and interacting with a chest environment of your colleague? This creates a problem. Take the example of the Isukha, Banyore, Kabras and Maragoli culture where in a social circumstance, the son-in-law is not supposed to greet the mother-in-law or shake hands. Now, that has been abandoned. What is happening now is that you find a mother hugging a son and almost behaving like the daughter. We need to revisit these mechanisms because they were developed as coping mechanisms which healed these confrontations that happen among different sexual relations.

Therefore, I support these amendments, but I would like us to revisit many of them by my sister Florence, so that we allow our cultural creativity, cultural phenomenon and cultural mechanisms.

I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well, a man of culture.

I would like to take this opportunity to just wish Members a happy New Year. I give this opportunity to Hon. Hellen Chepkwony, Member for Kericho.

**Hon. (Ms.) Chepkwony:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I would like to thank Hon. Florence Mutua for bringing this Sexual Offences (Amendment) Bill. The way this Bill is framed is really going to help us if we amend and it is implemented.

We have seen many sexual offences being done to young girls even as young as two months, but we have not seen any action being taken by the police, our assistant chiefs and chiefs. This Bill is going to help us so that we reduce the defilement cases in this country.

We have the issue of the police colluding with clinical officers and laboratory people who cannot even give a proper direction when they are doing clinical research. You find that the officers are compromised to change the results of the offender. With this Bill and if it is implemented, it will save our girls. We know the challenges and victimisation our girls have faced is much. This Bill is going to help us. Since we left our culture, these offences have become too much.

Christianity and Islam have come, but this does not even help reduce these cases of defilement. If possible, we want civic education to be done. Let us have our cultural mothers and fathers to see that good culture is brought back which can change the society. In our tribe long time ago, you could not find a young man less than 30 years taking alcohol, but you find in the present generation a child of 10 years doing so. So, all these cultures which have been ignored have caused all these problems of defilement in this country. If possible in schools, we should come up with a subject on culture so that children get to know how they should behave.

These days, we have people teaching girls about their culture. If we introduce cultural education in our schools and areas, I think it is going to help reduce these defilement cases. As the Member proposed, anybody who is compromised should be fined Kshs500,000. It is very important if men who defile children are jailed for life. I think it is going to reduce those cases.

Another problem is the issue of condoms. You find that these people use condoms in such a way that when the test is taken, there is no proof that the child was defiled but in the real sense, the child was defiled. The Member should improve that Bill on how to deal with people raping these children using condoms. We find that in our schools, some teachers rape these children using condoms. So, what steps should we take? The Member, Hon. Florence, should amend that section so that we get these culprits who are using condoms to rape children.

We find that our chiefs like talking to the parents of the defiled children. Again, we want this Bill to be amended in such a way that these civil servants who try to convince parents to settle the matter locally should be dealt with thoroughly. We also encourage mothers not to be compromised. We know poverty makes them agree to be compromised. We have to find a way of educating villagers that in case an offence has been committed, everybody should take steps because they do not know if it will be their child who will be defiled tomorrow. Everybody should be responsible so that we stop these defilement cases which have become so rampant, especially in slum areas among school-going children. Those who go long distances, especially through forests and bushes are affected most.

When defilement happens, the victims become afraid. They will not tell their parents what happened. You will only see the child limping and by that time, there will be no proof because the child will have taken a bath. So, we need to pay attention to our children. We need to help them develop trust in us. In most cases, culprits go scot-free for lack of proof. This is a serious thing, especially to us mothers. We get embarrassed when such things happen to our children. When somebody who has defiled a child is just walking in the streets and laughing, you wonder where we are headed. Parents are compromised because of poverty. We are losing the dignity of our girls through defilement.

I want to tell the Member to amend a few sections in that Bill so that we include those who are using condoms and those who have taken bath because when they take bath, there is no proof that they have been defiled.

With these few remarks, we need to push for this Bill so that it goes through and it helps our children.

Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well spoken and passionately so. I would just want to draw your attention to what Hon. Florence Mutua was trying to address by amending the definition of “indecent act” in Clause 2(a)(ii) where she says “exposure or display of any genital organs, breasts or buttocks or pornographic material to any person against his or her will.” What you have passionately spoken to is part of what she is trying to address, which was not in the substantive law. It is very enriching.

I will now give this opportunity to Hon. Dannitah Ghati, Member for Migori County.

**Hon. (Ms.) Ghati:** Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak about this topic. I would wish on the outset to say that I support the amendments. I thank Hon. Florence for the Sexual Offences Bill. Defilement in this country has reached an all-time high. Teachers are defiling our young girls, chiefs are defiling our girls and relatives are defiling our girls and even boys. When you are talking about sexual offences, you are not talking about girls only, you are talking about young boys who are also being defiled right, left and centre. Our young people and our children are not safe. It is high time that as a country and as a Parliament, we started talking freely about sex. We have to talk about sex and sexual harassment. I am happy that this Bill is proposing sex education in the curriculum. It is the 21<sup>st</sup> Century and we cannot bury our heads in the sand. We need to talk about how our young children need to learn about how to protect themselves from sexual harassment. I am happy that we are discussing this topic and our male and female colleagues are all contributing to this.

I come from Migori County. Every day, I hear cases of defilement from Rongo Constituency all the way to Isebania. Where I come from, defilement is like the order of the day. It is not right. I am happy that we are talking about people who should be custodians of this law.

Hon. Speaker, Section 40A says:

“Any person who, in order to conceal a sexual offence –

(a) solicits for money, domestic animals or any property as compensation from the suspect;

(b) marries off the victim to the suspected offender;  
commits an offence and shall be---”

Out of poverty, parents have been compromised. For example, a child is defiled and perpetrators come to negotiate with the parents of the child who think it is normal to negotiate out of court. I am happy that this is provided for in law. I have come across many cases where parents negotiate out of court: Perpetrators are left free, chiefs and police take their share and the young girl is left to nurse injuries. I am happy that it is now provided for in law that the offender shall be liable to imprisonment of not less than five years or to a fine of Kshs500, 000. I want to urge that the fine is increased to Kshs1 million. We cannot allow chiefs to compromise with parents and let girls drop out of school and nurse injuries. The fine for a chief, teacher or a parent is very little.

I am happy that Section 40B of the Bill provides for special units within the police stations. These units have been lacking. We have been talking about gender- based violence, but

are these police stations engendered? They do not even have women looking at the issues. When a girl reports that they have been raped or defiled, you find a clueless policeman seated there and asking her how she was raped, how she was touched and what was touched. We should have special units with two officers who should be trained on gender so that they can understand what a woman goes through when she reports a rape ordeal. These policemen do not care and we have a duty to ensure that they are trained. I am happy that the Ministry of Education, Research and Technology has been tasked by this Bill to ensure that our policemen are trained and well capacitated to handle issues of rape, defilement and be sensitive to our children so that they do not see it as a normal issue that should be sorted out within the community. We have many perverts in our society. For instance, you could be in a *matatu* or seated somewhere and you see a man looking very uncomfortable for lack of a better way of asking to feel your body. That is an offence. I am glad that Bill deals with those perverts.

I want to thank Hon. (Ms.) Mutua and state that the fine of Kshs500, 000 is less. This Bill will address the increasing nature of defilement especially where I represent.

I support.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well spoken. Let us now have the Member for Kiharu, Hon. Irungu Kang'ata.

**Hon. Kang'ata:** Thank you, Hon. Temporary Deputy Speaker. I want to support and oppose some sections of this proposal. I support the idea to prohibit plea bargaining and collusion to sexual offences matters proposed in this Bill. It makes a lot of sense. Victims of sexual offences have been coerced in law courts to enter into some plea bargaining. I want to urge Hon. (Ms.) Mutua to provide in the Bill that there will be no *nolle prosequi* and withdrawal of any matter of sexual offence and to let the court adjudicate until the matter is finalised and determined by a court of law. That will make sense. Plea bargaining is a limited concept and if you expand issues of *nolle prosequi* where one tells the Director of Public Prosecutions (DPP) that you will have no power to enter *nolle prosequi* or that there will be no withdrawals by the complainant and that the matter will be heard and finalised by a court of law, it is better. I understand that your objective is to ensure that these people do not coerce victims to withdraw these matters.

The idea of special units makes a lot of sense. Police officers should be trained on the area of rape and other issues. To strengthen it, you can provide that the people to man these special units will be trained in matters of forensic science because that is the area that we are quite weak on because we are unable to preserve evidence.

I support the idea to have public education in national and county governments. I am strongly opposed to the proposal to provide sex education in our schools. I always pray for those who believe in a deity or God in this plenary. The idea of sex education has been a contentious issue in international fora. There has been an attempt by the UN to insist that schools should introduce sex education. Those of us who are religious have been opposed to that idea because of the following reasons: We believe that sex education in our schools is going to sexualise our young people and you will have a situation where young people enter into sex to experiment. That will create more problems instead of alleviating it. Sex education should be left to parents. We must know that these children have parents and guardians and the idea of thinking that the State knows what is better to their children does not make sense. The parents have the primary role of upbringing children. They have the mandate of providing education to their children on

sex matters. Putting this role to third parties/strangers does not make sense at all. Therefore, I want to state that sex education should be left to parents. I oppose the proposal of placing that role to the teachers. These things are against our African culture. They are things that we do not discuss in public for a good cause. In my area, you can tell children who have undergone education through schools which have strong religious orientation. Those children tend to have better outcomes as opposed to those who go through a school that has no religious orientation. It makes all the sense when religion tells us that this issue should be left to parents and the church as opposed to the idea of giving condoms to our children. They will use condoms on the first day and forget on the third day and then we have issues of early pregnancies. We should follow the religious model which has worked. Religious schools have the best education outcomes. These liberal ideas do not make sense at all. I oppose the idea of including sex education in schools syllabus.

There is also this issue of your proposal as provided in Clause 2. I am going to read. You are defining “indecent act” in the following manner:

“(i) Any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration.”

This definition is very broad. You all know those *boda boda* people. I think all the *boda boda* people are going to be in a lot of problems because one can argue that there is intentional act, where you are carrying a woman behind you and she is touching you when you are riding your *boda boda*. As a strong proponent of *boda boda* people here in this House and a believer of the rights and the needs to create employment for those young people in that sector, I cannot support such a liberal and wide definition of “indecent act.” Remove this clause.

**Hon. (Ms.) Gathogo:** On a point of order, Hon. Temporary Deputy Speaker.

**Hon. Abongotum:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Member for Ruiru, what is out of order?

**Hon. (Ms.) Gathogo:** Thank you, Hon. Temporary Deputy Speaker. I was listening to Hon. Kang’ata because I do not want anybody to soil the reputation of the *boda boda* people. Later, I understood that he was protecting them. I was of the same idea that sometimes they suffer. When you go to Ruiru, I am *Mama Boda Boda*. That is why I was so keen to listen to what Hon. Kang’ata was saying. Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): So, nothing is out of order. There was a second point of order by the Member for Tiaty.

**Hon. Abongotum:** Thank you, Hon. Temporary Deputy Speaker. While I totally support all the sentiments expressed by my good friend, Hon. Kang’ata, there is something he did in this House that I think is out of order. When he was demonstrating how men and women are riding on a *boda boda*, he started dancing in this House. Is he in order to dance in the House?

**The Temporary Deputy Speaker** (Hon. Omulele): I think he was just demonstrating a bit. There is nothing out of order. Member for Kiharu, please complete your submissions.

**Hon. Kang’ata:** Apart from that illustration of *boda boda* as rightly denoted by our substantive speaker, you would imagine this definition may include contact between passengers in a vehicle and several other places where people usually come into contact notwithstanding

that, that contact is not intended for anything wrong. Therefore, you need to check on that definition.

Again, there is also this proposed amendment to Section 30 of this law where you are saying:

“An employer shall confirm that a person seeking employment to a position of care or access to children or vulnerable persons has not been charged or convicted of an offence under this Act.”

To me, the idea of barring people who are charged but not yet convicted from getting employment is quite troublesome because, as you know, the law and the constitution is very clear that every person is presumed innocent until proven guilty. So, to me, the right word should have been “convicted” alone so that you do away with the idea of being charged. You can as well be charged and then thereafter you are acquitted. Therefore, having been acquitted should not mean that you will never get employment to such kind of places. So, you should do away with the word “charged” and leave the term “convicted”.

With those few words, I support.

**The Temporary Deputy Speaker** (Hon. Omulele): That was very enriching. I hope Hon. Florence Mutua is taking note of those submissions about charge, convicted and the constitution. I will now give this opportunity to Hon. Ferdinand Wanyonyi, Member for Kwanza.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to support this amendment Bill by my sister, Hon. Florence. This is a well thought out Bill. I quite agree with Hon. Kang’ata, although he is walking out, that some of these issues should be looked at very critically on cultural value. I know sometimes back, when we were growing up, we were sleeping with our grandparents. I had the opportunity and privilege of staying in the evenings with my grandfather. Similarly, my older and younger sisters used to sleep with their grandmothers and some of these things were actually spelt out. The way they behave was very important. We grew up in a disciplined society. We did not have to go to school to be taught about sex. You were told what you should do and how you behave. Therefore, we have a problem with our parents. In fact, I think this has come up because parents have not taken up responsibility of looking after the children.

*(Hon. Abongotum spoke on phone)*

Hon. Temporary Deputy Speaker, is it in order that he speaks on phone when he is in the House?

**The Temporary Deputy Speaker** (Hon. Omulele): Member for Tiaty, you are out of order.

**Hon. F.K. Wanyonyi:** How do you speak on phone in the House?

**The Temporary Deputy Speaker** (Hon. Omulele): Just continue with your submissions.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, I think the cultural values were very important and how we brought up the children. They were disciplined. My sisters and cousins were brought up very well. We never had this question of rape. Look at the current cases where children put on dresses that are very suggestive. As we look at it, we are also ignoring that we are human beings. Girls put on very suggestive dresses. Yesterday but one, I was in a church and I was not amused. A church preacher had put on clothes that were not really befitting her as

a church person. We have that problem. The culture is how the parents brought up the children. Therefore, I do not agree with the fact that we should actually go to the schools to teach sex. I think culture should be emphasised in this amendment. When it comes to the Committee of the whole House, we should insert that bit so that we understand.

I agree with the case where we are saying police stations should have units that deal with these sex offenders. It is true. Today, you and I have heard cases where a child who has been raped is taken to a police station and when she gets there, she is so timid. She cannot explain the act. Then, she is fooled around by the policemen. I think this inclusion of police units suggested by Hon. Mutua is quite befitting because we have to have somebody who is actually well versed with whatever is required to be able to extract information from the child who has been raped. When you take a child to a police station, maybe it is the first time for her to go to the police station. I can tell you that she will be crying instead of explaining the circumstances that led to that. I support that inclusion.

I will go to another thing. I do not know about this issue about the contact of people in a crowded place. Some of those are unavoidable. There is nothing you can do about it. What would you do in a bus that is full and you are there and somebody is in front of you with huge buttocks? You know they have dressed very poorly. What do you do? That is what happens. But there is no penetration there. I am sorry to mention this. I have heard cases where some young man was so excited that he had to finish the act before the bus stopped at the next stage. I used to stay in Eastlands and you find a young man finishing the act in the course of the trip. You will not blame him because the place is so congested.

**Hon. Francis Waititu:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Member for Kwanza, I think you are going into matters that will run you into trouble.

**Hon. F.K. Wanyonyi:** I am sorry about it. I withdraw that remark, if somebody is offended. But that is the exact meaning. We should improve on transport---

**Hon. Francis Waititu:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Francis Waititu of Juja, what is out of order?

**Hon. Francis Waititu:** Hon. Temporary Deputy Speaker is the Hon. Member in order to say that he knows very well that they have their right even in schools? You can never say you cannot control some things. This is a law that we are making and when he says some things are unavoidable, I know what it means. Most of us have been victims and therefore we should make a law for everybody.

**Hon. F.K. Wanyonyi:** I do not know what that means, Hon. Temporary Deputy Speaker. I will leave it to him. All I am saying is, in a congested public transport---

**The Temporary Deputy Speaker** (Hon. Omulele): Order! That is what I was directing you on because we cannot have exceptions to this law. That is the crux of this proposed legislation. Proceed with care Hon. Member.

**Hon. F.K. Wanyonyi:** I will proceed. The other thing is the third party getting into negotiation to avert justice. That is quite in order. We have had cases where parents of the victims; be it a boy-child or a girl-child get involved. In my opinion, that punishment is lenient and we should raise it to 20 years. The Bill is talking about five years and a fine of Kshs500,000. We have had cases where children are victims and the parents on either side try to negotiate at



the expense of children who are traumatised and will never forget the act in their lifetime. Some irresponsible parents go to the extent of negotiating with the offender either through the churches, friends or elders. That should be stopped.

I quite agree with the Mover of this amendment that it should be stopped because the offender will go scot-free and that will not stop him from doing the same act with another person next time. That should be punishable.

I would like to raise the other issue that sometimes we have women taking care of children at home. That was mentioned here, where a boy-child is molested by the house help. In most cases you will find a child being infected by diseases. This should come out clearly. I am told that in most cases where a child is left under the care of a house help, he is infected.

Lastly, I want to speak on the fallacy that some people believe that a guy who knows very well he is infected can sleep with a younger child and be cured. Such person should be castrated or given a life sentence. You know you are infected and you go to infect a child who is innocent because you believe that will cure your disease! Those are the amendments that we should look at when we get to the Committee of the whole House.

I thank you and thank Hon. Mutua for bringing up these amendments.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Hon. Member for Kwanza, I am sure you are sitting next to my brother, Hon. Ababu. He will tell you an eye for an eye will definitely leave the whole nation blind. I want to take this opportunity to give this opportunity to Hon. Robert Pukose, Member for Endebess.

**Hon. (Dr.) Pukose:** Thank you, Hon. Temporary Deputy Speaker. I support this amendment. This Bill amends the Sexual Offences Act to expressly prohibit plea bargaining and collusion in sexual offences, which help the perpetrators of sexual offences and failed justice.

Before I contribute, I want to wish my colleagues a happy New Year and I also want to thank the team that welcomed the Deputy President in my county yesterday as we carried out sensitization of the voters to enable them register in large numbers. When we register in large numbers, when it comes to elections in August this year, we will vote since voting is a right for every Kenyan.

My heart goes out to the doctors who will go to court tomorrow. We hope that issues pertaining to their CBA will be addressed and they will arrive at an amicable solution.

As I contribute to this, as much as Hon. Mutua has done a good job, she has sneaked in a very offensive amendment. Clause 46A says:

“The Ministry responsible for education shall make a provision to prescribe guidelines for the inclusion of sex education in the school syllabuses.”

This has been a very controversial issue in the past. Hon. Mutua will need to consult with the bishops, Episcopal conference and other members of the church because I do not think this is the right move as far as the church is concerned. It will be a very big offence for this House to pass such an amendment because the church’s position as far as sex education is concerned is very clear. As a Catholic, I hold the same position. I support Hon. Kangáta for having made it very clear on this issue.

The other issue that I have seen and I think will need to be corrected is where she has brought in the definitions. She defines “indecent act” in the following manner:

“Any contact between any part of the body of a person with genital organs, breasts or buttocks of another, but does not include an act that causes penetration.” When you say

“contact,” it means somebody contacting you even on the back. It also means the two bodies coming together, it could be in a crowded place, a queue in a bank or any other place you are seeking services.

I remember when we were going through university; we used to have an ‘opening ceremony’ where we would line up to get food. Guys would start shoving and pushing. That could be considered a sexual offence. We are taking the definition to an extreme level. I remember the lady from Kisumu saying, even winking or staring is an indecent act; that when you stare at somebody you are being seductive. This country has “team *mafisi*” and they will go to court to declare that unconstitutional because when you stare, you are just appreciating. Somebody could be dressed nicely; it does not mean that you are staring to have anything that is sexual in it. You could be staring to look at a nice cloth or appreciating a nice figure of a lady. That to me will be an extreme level. As much as we want to make laws, when we bring activism into making of laws, it defeats the purpose.

As Hon. Kang’ata puts it, I think Hon. Florence Mutua has *boda boda* transport services in her county. How do you expect a *boda boda* guy to transport a lady who is seated behind him? The passenger will hold on to the *boda boda* guy. At times when an emergency brake is applied, their bodies will become even closer. As they are being transported, the breasts of the lady will touch the *boda boda* guy. Does that mean it is an indecent contact? Hon. Florence Mutua, who is my friend, should rethink this definition for the sake of our *boda boda* brothers, *matatu* passengers and any other areas we think could make them be taken to court.

Hon. Temporary Deputy Speaker, the other issue is the definition of “indecent act” in relation to exposure or display of any genital organs, breasts, buttocks or pornographic material to any person against his or her will. Now, when somebody dresses in a manner that is exposing him, how do you determine it is against the other person’s will? How do you determine that? A person might look at it out of curiosity because you are looking at a person who is naked. For example, if a naked person or mad man runs out while naked towards you, do you just face the other side and not see this person because he has exposed himself? Or, for instance, when two people are fighting---

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Pukose, I do not intend to interrupt you, but there are two points. The first part of the definition was contained in the original law. It is not her proposal. What she has added is this second part: “exposure or display.” Again, it has to be unlawful and intentional. Intention must be proved.

**Hon. (Dr.) Pukose:** How do you prove intention? That is my argument. Thank you for your guidance, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Yes. Now, that is what I want you to address me on.

**Hon. (Dr.) Pukose:** I am just imagining that some of these things could be an emotional look or out of curiosity. How do you prove that was intentional? If somebody is dressed in such a manner that it will make you look at her, how do you prove that it was intentional or it was out of curiosity? For instance, you will find that when a bomb explodes somewhere, people rush to have a look at what has happened. You will find a crowd looking to find out what has happened. People might just, out of curiosity, want to look at it. Then, somebody will be charged for having intention. How do you determine intention? That is why I am urging my colleague, Hon. (Ms) Mutua, to relook at the definitions.

With those few remarks, the Bill is generally good. We have had cases where individuals who have defiled children and underage girls have been taken to police stations, but they negotiate and get their way out. We have had people who even marry underage girls. Therefore, this Bill is good. It has good intentions and I support it.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. I will give this opportunity to the Hon. Enoch Kibunguchy, Member for Likuyani.

**Hon. (Dr.) Kibunguchy:** Thank you, Hon. Temporary Deputy Speaker.

Let me also start by wishing all of us, you included, a happy New Year 2017.

Secondly, I would like to generally agree with what most of the Members have said. I would also like to ask my sister, Florence, to look at certain aspects. They could be controversial, but that is why we are in this House. One of them is if a woman is raped, there are many consequences. She will suffer physical injuries, psychological injuries, but more importantly she could become pregnant. I have not seen her address that part. We need to look at that and see what we need to do. I am looking at three aspects that we must address. Yes, we are Christians. I have heard people talk about sex education and saying bishops are against this and that. But we are living in a real world. This girl is raped by a gang. Yes, earlier on we had people say it becomes difficult to gather evidence, but in the process she gets pregnant. This girl is assaulted and raped by her father or a close relative and she gets pregnant. This girl is assaulted by somebody who is HIV positive and she gets pregnant. We need to address that. In this country when you talk about termination of pregnancy, everybody's hair stands because people do not want to look at that. Truly, the Constitution allows us, and we can go around it, in certain circumstances especially when the health of the mother is threatened that we terminate the pregnancy. I would like the Member who has come up with these amendments to look at that and see how we can craft it in these amendments to take care of these vulnerable groups that not many people have addressed.

The second area that I would like us to look at is this whole concept of fines. I do not know whether the higher the fine, the more deterrent it is. Or does it just open up doors for people to compromise? We have increased fines on our roads, has it reduced road carnage? In my view, no. we need to look at the whole aspect of fines and see whether we can get a middle ground and what we need to do. The popular saying all over the streets is that: Why should you hire a lawyer when you can buy a judge? I will also include, when you can buy a police officer, prosecutor. If your fine is Kshs500,000, and if you took Kshs100,000 to the police officer handling this case, they can mess it up. Is it always that the higher the fine, the more deterrent it is?

Thirdly is the whole area of human beings. Human beings are social animals. Human beings over the years court and interact with people of the opposite sex. That is how some of us got our better halves. If we pass a law that is going to make it hard all the time--- I heard a Member saying you cannot even wink at somebody, you cannot stare at somebody. We are social animals. We interact. That is why people get to know each other. That is how people get to meet. If we are making it every time you look a girl, in your mind you are saying: "Oh, she might construe that I am staring at her, that I am winking at her, and that maybe it is an offence" then we are making life so boring. Life is spontaneous. People flirt in offices. People make jokes, sometimes jokes that liven up things. But other people may look at it and say it is an offence.

Those are things I look at and say; let us not make it sound that the law is so rigid that it stops us from living. We are social animals and we interact. That is how we get to meet our fair halves.

Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): The Hon. Kibunguchy, you have four minutes which you will take up at the next session. This Motion still has one hour. You will take it up when we come to it.

Hon. Members, I have seen you have a lot of interest in it. You will also have an opportunity to contribute.

Thank you for the contributions you made.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Members, time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.