

BILLS
SECOND READING

THE INTERNATIONAL CRIMINAL COURT BILL, 2004

2.48

THE MINISTER OF STATE FOR LANDS, HOUSING AND URBAN DEVELOPMENT (HOUSING) (Mr Werikhe Kafabusa): Mr Speaker, the minister notified me that he would be coming later because he is still in Cabinet. So, I plead that we hold on.

THE SPEAKER: For how long? Did he indicate when he would come?

MR WERIKHE: As soon as they come out of Cabinet.

2.49

MR FRANCIS EPETAIT (FDC, Ngora County, Kumi): Thank you, Mr Speaker. Earlier on in your communication, you decried the dwindling numbers of Members in the House. But even with the dwindling numbers, which is partly caused by the issue that my colleague, hon. Ekanya has stated, we are also perturbed with the fact that Parliament's time gets eaten up every other day.

Mr Speaker, if there is need to gazette every Wednesday for Cabinet, so be it. It is very disappointing for Members to come in only to find no frontbench on the government side and business stalls.

When it comes to issues of disaster, for example, it really calls for emergency interventions. Last week, we agreed that the minister would be here to give a report. Today we are told he is still in Cabinet, and yet issues keep unfolding every other minute. I think there is need for the ministers to put in extra effort in their work, and to even honour commitments that they make on the Floor about when they would be able to furnish the House with updated information on any matter. But for us to come here and then be given excuses of Cabinet running another meeting, or a caucus going on, I think if we are to have Wednesdays in this style, it is not □ (*Interruption*)

MR BARTILLE: Mr Speaker, I just wanted to inform the House and colleague that every ministry has more than one minister. (*Applause*) We have ministers of state. If the other minister is in Cabinet, why can't the other minister come?

MR EPETAIT: So, you can imagine! The ICC Bill, I think, was supposed to be presented by hon. Fred Ruhindi. He is just within the precincts of Parliament, but there is

an excuse that he is in Cabinet. I think we really need to be honest with each other.

2.52

THE GOVERNMENT CHIEF WHIP (Mr Daudi Migereko): I thank hon. Epetait for giving way. I just wanted to assure the honourable member and colleagues that the Deputy Attorney-General and the chair of the committee are actually coming in right now. They were trying to harmonise a few things. We are sorry that the Deputy Attorney-General could not be here on time, but any time now he will walk in.

As for the other ministers, Mr Speaker, I want to give assurance that we are being joined by other ministers and we should be in position to transact the business of the day. I thank you.

2.53

MAJ. DAVID GUMA GUMISIRIZA (NRM, Ibanda County North, Ibanda): Mr Speaker, you are the custodian of the rules that govern our operations in the House. We are in the fourth year in the fourth session of this Parliament, which is ending soon. Someone yesterday or the other day, was it hon. Ekanya Geoffrey, was talking about how the chief executive is complaining; the general public. Mr Speaker, the bulk of the business comes from the Executive arm of Government! Although the rules do enjoin us also, the backbench, to originate Private Members' Bills, however, even the Private Members' Bills have to be sanctioned with statements of financial implication and so on; it has to be ratified by Government.

So, really, when we come here day in, day out - because as of now, according to this Order Paper, we are about to get out! The only substantive item I can see here is the one of hon. Jachan Fred Omach, which also is really wanting in many ways; borrowing, borrowing, borrowing. There are many non-performing loans where Government is paying heavy penalties. There is a loan in the Ministry of Agriculture - tsetse fly eradication; that is non-performing. We guaranteed US\$ 15 million to a railway organisation; the other day I saw in the papers that it was going to be bought by an investor. So, we are not seeing any business. You colleagues of ours, honourable Members of Parliament who are in the Executive, where is the business to transact? Tell us to go to our constituencies; yes, and we go there and supervise NAADS and other programmes other than coming here and there are just four items on the Order Paper; and even with the four, ministers x, y, z, are not available.

THE SPEAKER: Hon. Attorney-General, would you like to move your motion?

2.56

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS/DEPUTY ATTORNEY-GENERAL (Mr Freddie Ruhindi): Mr Speaker, I beg to move that the Bill entitled, 'The International Criminal Court Bill, 2006' be read for the second time.

MR WACHA: Mr Speaker, our rules insist that a motion on the Floor must be seconded.

And the secondment must be captured in the *Hansard*. As far as I know, nobody has seconded this motion. Is it order for the Attorney-General to continue with his motion?
(*Mr Werikhe rose*)

THE SPEAKER: Hon. Werikhe has seconded it.

MR RUHINDI: Mr Speaker, the International Criminal Court was established at the conclusion of the United □ I am referring to the International Criminal Court Bill, 2006 and you may actually need to refer to the memorandum for this explanatory note, but it is for purposes -(*Interjection*)- the reports must be ready. I think the chairperson of the committee can speak to that.

The court was established at the conclusion of the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an international criminal court, and it took place in Rome, Italy, in 1998.

It came in force in 2002 and on the heels of its enforcement, Uganda ratified it. Uganda is so far the first country to make a referral to this court. And very soon, on the sidelines of the substantive debate on this Bill, Uganda is privileged that this year, starting 30th May to 11th June, we shall be hosting the first ever review conference □ I think the only statutory conference under the statute, which is supposed to be done after seven years - and it will take place in Uganda around that time. But we shall be coming back on the Floor of the House with a detailed statement on that targeted review conference.

It is quite important □ I hear Members saying it may not be relevant, but if you look at the ICC Statute, you will notice that there is a crime of aggression, which is not defined. So, part of the work of this review conference will be to properly contextualise and have it defined. Therefore, the ICC handles essentially crimes of genocide, war crimes, crimes against humanity and so on, as you actually read from the Statute itself under its Section 5.

The purpose of the Bill is to domesticate the statute so that it can be smoothly operationalised in Uganda. I beg to move.

3.02

THE CHAIRMAN, COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS (Mr Stephen Tashobya [Chair, PGA Uganda National Group]): Thank you very much, Mr Speaker. This is a report of the Committee on Legal and Parliamentary Affairs on the International Criminal Court Bill, 2006.

Introduction

The International Criminal Court Bill, 2006 □ (*Interruption*)

MR KAWUMA: Procedure, Mr Speaker. The Attorney-General has read a motion for the Bill to be read for the second time and it is entitled, □The International Criminal

Court Bill, 2004□ and the committee chairman is reading a report entitled, □The International Criminal Court Bill 2006□ □

THE SPEAKER: No, the minister read a 2006 Bill; that is what we are considering.

MR TASHOBYA: Thank you very much, Mr Speaker. As I was saying, the International Criminal Court Bill, 2006 was read the first time on 5th December 2006 and referred to the Committee on Legal and Parliamentary Affairs in accordance with Rules 112 and 113 of the Rules of Procedure of Parliament.

In analyzing the Bill, the committee was guided by Rule 113 of the Rules of Procedure of Parliament.

Methodology

Mr Speaker, the Attorney-General and Minister of Justice and Constitutional Affairs introduced the Bill to the committee. In the process of analyzing this Bill, the committee discussed it. It also received memoranda from the following stakeholders:

1. The Uganda Law Reform Commission;
2. The Directorate of Public Prosecutions;
3. The Uganda Law Society;
4. The Advocates for Public and International Law-Uganda; and
5. The International Criminal Court Coalition in Uganda.

Objectives of the Bill

Mr Speaker, the Bill is intended to give the force of law in Uganda to the Rome Statute adopted on 17 July 1998 by the UN Diplomatic Conference Plenipotentiaries and ratified by Uganda on 14 June 2002 □

- " to implement obligations assumed by Uganda under the Rome Statute;
- " to make further provisions in Uganda's law for the punishment of the international crimes of genocide; crimes against humanity and war crimes;
- " to enable Uganda to co-operate with the International Criminal Court in the performance of its functions, including the investigations and prosecution of persons accused of having committed crimes referred to in the Rome Statute; and
- " to provide for the arrest and surrender at the ICC of persons alleged to have committed crimes referred to in the Rome statute.

The other objectives are:

- " To provide for various forms of requests for assistance to the ICC.
- " To enable the Uganda courts try, convict and sentence persons who have committed crimes referred to in the Rome Statute.
- " To enable the ICC conduct proceeding in Uganda and

" To provide for the enforcement of penalties and other orders of the ICC in Uganda.

Observations

Mr Speaker, the committee observed the following:

- a) The Bill requires the consent of the Attorney-General before prosecutions can commence under it. However, under Article 120 of the Constitution of Uganda, the Director of Public Prosecutions is given mandate to commence and prosecute criminal offenders.
- b) The Bill provides for a death penalty for crimes such as genocide and crimes against humanity under the Penal Code Act, yet the Rome Statute that stipulates crimes against genocide, war crimes and crimes against humanity does not provide for this kind of penalty. Persons prosecuted in Uganda under this law will get a harsher punishment than those who will be tried under the Rome Statute.
- c) Article 19 (1)(a) of the ICC Bill provides that persons under the age of 18 years shall not incur criminal responsibility. However, Article 8 (2)(b) 26 of the Rome Statute makes it an offence for a person to enlist children under the age of 15 to take part in hostilities. These two provisions create an opportunity for children between 16 and 17 years to be enlisted to take part in hostilities without the enlists committing crimes and the children not being criminally responsible for their actions.
- d) The Rome Statute provides for several matters of determination to be referred to the Magistrates Court. In some countries, Mr Speaker, magistrates are the equivalent of judges in Uganda. Owing to the gravity of the offences created by the Bill, the committee is of the view that matters of determination before the magistrates be handled by the High Court.
- e) The Rome Statute applies equally to all persons without any distinction, based on official capacity. Immunities or special procedural rules, which may attach the official capacity of a person, where under national or international law, shall not bar the court from exercising its jurisdiction over such a person.

The committee recommends that the Bill be passed into law, subject to the proposed amendments. I beg to move.

THE SPEAKER: Thank you very much, chairman and your committee members, for that good report. Honourable members, the debate is now open to you. Yes, hon. Obua.

3.09

MR DENIS HAMSON OBUA (NRM, Youth Representative, Northern): Thank you, Mr Speaker, for this opportunity. I would like to take this opportunity to thank the committee for the good report presented.

As a victim and survivor of war, I would like to put it emphatically clear that I support this Bill because it was primarily intended to domesticate the Rome Statute.

My support to the passing of this Bill into law is based on three fundamental grounds: One is that this Bill, when passed into law, will empower the local courts to carry out trials rather than having to appeal to The Hague.

Secondly, it brings justice closer to the people. How many victims of the war in Uganda can fly to lodge formal complaints at The Hague other than the Government of Uganda? I think as victims and survivors of some of these crimes, we can mobilise ourselves and make formal complaints, if the government does not do it. So, the passing of this Bill into law will definitely bring justice closer to the people.

When this Bill is passed into law, it will open the door to the victims of the war to present their grievances directly to the national courts that will be established. And these are the premises upon which I support the passage of this Bill into law by this Parliament. I beg to submit. Thank you, Mr Speaker, for the opportunity.

3.12

DR FRANCIS EPATAIT (FDC, Ngora County, Kumi): Thank you, Mr Speaker. I would also like to thank the minister and the committee for the good job so far done. However, I would like to point out that this Bill has been long overdue. I think it was read for the first time in December 2006. And I think its intent is to avoid excesses or the overzealousness of certain individuals in abusing people's human rights. With this in mind, I feel very concerned that the committee took three years and three months to process this report. We need to improve on our speed of handling business.

I entirely agree with the committee's observations about the discrepancies in the ICC Bill, visa-avis that of the Rome Statute in as far as age is concerned - that persons under 18 years shall not incur any criminal responsibility. In my opinion, we would rather enact a law that is in tandem with the provisions of the statute to avoid a lacuna. I am saying this because somebody will take advantage of this to recruit children of say, 16 years into armed rebellion and get away with it. You know that we still have those sad memories of children who were enlisted into certain very violent acts. I would insist that we amend the Bill when time comes, to be in tandem with the provisions of the statute.

I also would like to seek clarification - Uganda ratified the Rome Statute on 14 June 2002. And a few years ago, there was the issue of having to arrest and prosecute the President of Sudan, General El Bashir. But by that time, we had not passed the Bill, which seeks to provide for the arrest and surrender to the ICC, of persons alleged to have committed crimes referred to in the statute.

I, therefore, would like to say, any law enabling to arrest President Bashir or cause his surrender to the ICC - now, the question is, what takes precedence? Is it the ratification or the enactment of the law? I think it is not until we enact this law, because the provisions of the Bill are very clear; to enable Uganda to cooperate with the ICC in the performance

of its functions. To me, this law will bring us aboard with the real obligations that are expected of member states for cooperating with the ICC. I support the motion that this Bill be passed into law. Thank you, Mr Speaker.

3.16

MS ALICE ALASO (FDC, Woman Representative, Soroti) [Member of PGA]:

Thank you very much, Mr Speaker. I would like to support the Bill as I submit on four issues.

First of all, I would like to understand the place of traditional justice vis-a-vis the ICC Bill that we are passing now. Previously, we have been asking Government to facilitate traditional institutions because □ you know that in the northern areas of West Nile, Acholi, Lango and Teso there was a lot of work in terms of reconciliation that was being done traditionally. How will this relate with the enactment of this law? Are we going to be casting room for reconciliation in a traditional setting? What has been done? I am asking this because, initially we thought that there would be an attempt to document all these traditional practices, formalise and have them into a recognised form of justice that would allow people to reconcile with their children, who probably might have been recruited or participated in genocide, and yet they were not the ring-leaders. I am also saying this because my position is that traditional justice has a big role to play in reconciling warring parties.

Secondly, it is important that we look at this Bill to reflect on access to justice by the greatest victims of war - the women. You also know that when it comes to justice, women are greatly constrained. I would like to suggest that we provide for scenarios where we can avail paralegal support to facilitate access to justice by women.

The formal justice system is apparently too alien and expensive to the ordinary women of this country. Imagine a scenario where a peasant woman, who has been subjected to rape or a victim of genocide - she even does not know what provisions of the law are there for her. Then come to think of hiring the services of a lawyer □ women are the poorest of the poor in this country! So, I think this law will only make sense if we create room where access and affordability of justice is made much easier to the greatest victims of war.

I would also like to emphasise here that making laws and ratifying them is not the thing that will drive us forward. I think it is important before we get situations of war, situations of genocide and situations of extreme injustice, to reflect as a country whether we have done enough to create peace and stability in the country. For instance, we have always been asking that Uganda should have a truth and reconciliation commission. Ugandans are excitable people; you need just one or two demonstrations to turn sour in town and you find them throwing stones at each other.

Mr Speaker, laws are not adequate; there should be a deliberate peace policy by Government; there should be a truth and reconciliation commission.

I also want to understand, what would this mean from the minister? If we pass this now,

will that mean that we will not be talking peace? What does it mean with our amnesty law, are we going to throw it aside? Because initially, under the amnesty law, you had excluded some five, I think three or two have already died; maybe you have two more remaining - Kony and I do not know who else. But at one time, I know that the Uganda Government and people of Uganda were involved in a peace process with the LRA, which some of us believe is the reason peace has returned to the Northern part of the country. So, what does this mean? When we pass this, have we put the final nail on the peace process? Do we see you making attempts to talk again or is it a foregone conclusion?

Finally, I understand that presidents must have immunity; I am glad that under this Bill, there is provision for not only the government to raise complaints to the ICC, but for anybody to raise complaints on Government functionaries and armies. It is important that while we retain presidential immunities, presidents, whoever they will be, will keep watch and ensure that under their presidency, no genocide occurs to any people in this country. I thank you.

3.23

MR JOHNSON TOSKIN (NRM, Kongasis County, Bukwo): I also stand to support this motion and to say that it is unfortunate that it has taken us such a long time to have this Bill passed into law. I am sure it is not only Uganda which is doing it as late as this. It is true that many of our African countries have actually delayed in ratifying most of the treaties and even statutes, and some of these are very important in as far as our governance is concerned.

I, therefore, want to thank the committee for at least bringing this Bill out now, and also to say that while we delay in passing all this into law, we still face a lot of problems on the continent. There are people who are still traversing this continent after doing a lot of harm to our people. As I speak now, we have Kony and he is still free and moving around in countries of this continent, but we are not able to arrest him. This is the reason why I strongly support this motion.

3.25

MR GEOFFREY EKANYA (FDC, Tororo County, Tororo): I want to thank the committee chairperson and the Members for bringing this report, and Government. I just have some few clarifications to enhance my support for the Bill.

I want to find out from the Attorney-General and the committee chairperson, what harm would it cause to expand the definition of the Bill as regards the crimes against humanity, to include plunder. As we speak now, the international community has been facilitating some countries to plunder natural resources in Africa and I think this should be part of the crimes against humanity.

I am talking about DRC, for example; I am talking about the conflicts we had in other parts of Africa. The guns come from the West to facilitate conflicts; to plunder Africa and then they take the minerals; but the Bill does not talk about those who facilitate

plundering because this is what leads to conflict and finally crimes against humanity.

So, would it be wrong for us to expand the definition of crimes against humanity to include the agents who facilitate plunder? I am talking with a lot of information and background that there was a UN report which was supposed to be tabled to the Security Council resulting from a committee that was established by the General Assembly, to investigate the cause of conflict in DRC, but the report was pushed aside and instead a committee was asked to rewrite this report, and then the committee finally wrote a report saying that the conflict is being facilitated and the focus should be rape of women, and that the UN team that is involved in some of these African countries is not doing enough. The focus is minerals and plunder of African resources.

Secondly, I also want to seek clarification from the Attorney-General and the chairperson. There are several states who are not signatory to the Rome statute. In this country, some time back, there was a foreign national who was wanted by the US Government; that gentleman had committed crimes and the American Government wanted him. He was seeking safe haven here; the security officials cooperated and the gentleman was abducted and taken to the US courts. While in the US courts, he got his lawyers and the judge ruled that the manner in which he was taken out of Uganda was contrary to the law of the land and the gentleman was set free. It is common knowledge that the United States of America is not party to the Rome Statute. How are we going to deal with the movement of citizens to those countries that are not party to the Rome Statute? What provision do we have to protect Ugandans and to cooperate with them because at the end of the day, they want us to cooperate and yet they are not part of the Rome Statute? Can we be assured and guaranteed that if they are also not party to the Rome Statute, then we have no dealing with them because they should be party to it?

About the protection of security personnel, I want to seek clarification from the chairperson, the Deputy Attorney-General. It is common knowledge that under command structure, police and army officers work on order but the statute I perused through does not give them the necessary protection as individuals who have to obey orders because if they do not obey orders from the Commander-In-Chief, they are court-marshaled. So what protection do they have? Right now we find that some of them have to cooperate with witnesses but at the end of the day, if they do not cooperate, they are the ones who are arrested. I have an example of the Rwanda genocide convicts where some of these officials were obeying lawful orders from their superiors but they are the ones now serving sentences. We need a provision to protect small people who have to obey lawful orders or otherwise face the court marshal. To what extent have we detailed that in the Bill to protect security personnel who have to obey lawful orders?

In conclusion, those who are involved in intelligence gathering I see in the Bill things like information sharing and so forth. The Bill needs to go deep to protect those who are deployed. For example, for Government to get information on what Kony is now doing in Bahl-El-Gazal, some security personnel have to behave as if they are part of LRA. We have children who are abducted

THE SPEAKER: Hon. Member, if you read the memorandum of this Bill, you clearly see its purpose. This Bill is giving the force of law in Uganda the Statute of International - there is already a statute, the Rome Statute you will find at the back. I think it is not intended to amend the statute but to give force to this. The statute which you see on page 73 □ you may not actually go beyond what it says and, therefore, you have to confine yourself whether this is giving force to this one. But as to whether we can amend the Rome Statute, I do not know. You are intending to expand and that will be an amendment of the Rome Statute.

MR EKANYA: Thank you for your guidance. I am basically raising these fundamental issues because the Deputy Attorney-General said there is going to be an ICC review conference here and if you read the report of the committee, it talks about the issue of immunity of the President regarding the Rome Statute and the conflict with our Constitution. I am basically saying that there are certain provisions within the Rome Statute which are not in consonance with our law here which causes conflict. So we need to raise some of these issues so that in the upcoming conferences and meetings, these issues are taken care of so that we and innocent people are not used as guinea pigs.

There are countries that have objected to signing the Rome Statute □ you can give your objection to some of these clauses such that while we pass this, we bear that in mind. I thank you very much.

3.33

MR CHARLES EKEMU (FDC, Soroti Municipality, Soroti): I thank you very much. I also want to support this motion because it is good for all Ugandans and it sends a very clear message that perpetrators of such crimes can be prosecuted. When I look at the observation that the committee has made on page 3 where it says that, *□In some countries, Magistrates are the equivalent of the Judges in Uganda. Owing to the gravity of these offences created by the Bill, the committee is of the view that matters for determination before the Magistrate□s Courts should be handled by the High Court.□* This suggests that according to the committee, we should actually empower our High Courts to handle matters of crime that should be committed to the ICC.

It is also common knowledge that the perpetrators of these crimes are usually on top of the situation - they are usually in charge and they are actually incumbents. I am finding a problem to imagine that they can ever be handled by our High Courts because to imagine that is a bit far fetched. I would have wanted that the committee comes out with the due process through which such persons could, for example, be arrested and committed to the ICC. I want the committee to help me understand this because I thought that could have come out. What are we doing about these crimes against humanity that were committed in the past? Whereas we say that we can usually forgive, forgetting is sometimes a problem and yet the healing process is very important.

There are crimes that were committed in the recent past and may not be captured and the victims are still aggrieved. I come from Teso region where people are still asking about the Mukula incident. We do not want these issues to come up. How is the ICC going to

address this? What is the committee's thinking on how we shall address this issue so that we have a once and for all solution to this problem? How do we make some people personally accountable, especially those we know have issued directives or orders that have led to the commitment of such crimes? I expect the committee to give me those fill-ups so that I get to appreciate the report completely. Thank you, Mr Speaker.

3.37

MR MICHAEL MABIKE (Independent, Makindye Division East, Kampala): Mr Speaker, I would like to thank the committee for this report. The Rome Statute is the best thing that has happened to Africa. For too long, violence has been the norm in African politics and governance. African leaders have resorted to the gun and the use of violence as a way of settling civil political differences.

The Rome Statute is good because it brings in an element of civility in our governance and politics. You can no longer — as the case was in the 70s and 80s and even the 60s — commit crimes against your people; against the Opposition and you go away with it. The long arm of the law will catch up with you whether you are a president or a minister. By the way ministers on the Front Bench, look at this very critically and study it; the first ladies, Army personnel like the so-called Generals, Lieutenant Generals, Major Generals, Colonels and Members of Parliament. If you incite violence, if you incite crime; you should know that from now onwards, you will not get away with it - (*Interjections*)- no, they cannot withdraw.

Fortunately, Uganda is already a signatory to the Rome Statute. I visited The Hague two years ago and during my interaction with the ICC, members were asking whether Uganda has domesticated this statute. Today, I am happy that we are moving to further commit ourselves to the values espoused in the Rome Statute.

I am happy with the affirmation in the statute and even this Bill that states that criminal responsibility is individual. Contrary to the debates by hon. Ekanya, we cannot entertain a situation whereby someone commits crime all in the name of obeying lawful orders. The ICC, particularly the Rome Statute, has done great work to resolve the dispute in Yugoslavia and Rwanda now. I visited the UN facility, the ICC detention facility in Arusha and I recommend that honourable members, especially Cabinet members, visit this detention facility before hand to acquaint themselves with what happens there and the sort of crimes the inmates committed.

This statute and the Bill may not be for this Government to implement. I am sure it will be for our government to implement.

Lastly, Uganda is bracing for an election. I have been at many seminars and conventions where the question is, — Will the events that happened in Kenya replicate themselves in Uganda? — People have got varying positions. Some people believe that if we do not handle the forthcoming elections well, we may have a situation like Kenya's where violence erupted and at the end of the day, over 1,500 people were killed. But even then, what happened in Kenya and those who perpetrated the violence in Kenya are today

listed for the ICC. So honourable members, honourable ministers, Army Generals, think very seriously before you utter a word; before you organise guns; before you train mobs to cause violence during the coming elections. Even the Kenyans are not going to get away with it.

What happened in Mbale should not be reproduced on a mass scale. All you have got to do after we enact this is to video record and document because this is the evidence you can produce to kick off the process under the Rome Statute.

I would like to thank the committee. I support this Bill with all my heart and soul. I am happy that very soon, some of you are going to be held accountable □ (*Laughter*)- I am waiting. Thank you, Mr Speaker.

3.46

MR JOHN BAPTIST KAWANGA (DP, Masaka Municipality, Masaka): I thank you, Mr Speaker. I want to thank the committee for the report. At long last, the Bill has come to Parliament. I think the committee should have been kind enough and explained why it has taken so long. This Bill deals with the question of impunity at the highest levels. It is intended to prevent people from committing crimes because they hold powerful positions and think they can protect themselves. This Bill is intended to prevent that. It deals with crime. I think at another stage we shall have to deal with commercial crime, corruption and things of the kind.

But I would request the committee to say something about the observations. You made observations but you did not explain how they should be harmonised. You said, □ *The Bill requires the consent of the Attorney-General before prosecutions can be commenced under it. However, Article 120 of the Constitution of Uganda gives and mandates the Director of Prosecution to commence and prosecute criminal offenders* □. The question is: how shall this Bill be harmonised within the Ugandan context to avoid conflict between these two vital offices?

I would also like the committee to explain the last observation: □ *Rome Statute applies equally to all persons without any distinction based on official capacity. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law shall not bar the court from exercising its jurisdiction over such a person* □.

We would want to know what will happen in practice under the circumstances in Uganda; what have you got to say about this observation with respect to Uganda? I would also like to know from the committee whether they think that the enforcement mechanism in Uganda is sufficient to enforce this statute. We may pass it and adopt it but when there is no enforcement mechanism to ensure that it is implemented, then we would have passed this Bill into an Act for nought. I would like the committee or the Attorney-General himself to explain these positions clearly enough so that Ugandans can get to know how to go about it.

Finally, I want Government to tell us how information in regard to this Act will be spread around the country, so that it becomes common knowledge to everybody concerned that this statute is put in place and that it will affect everybody. Otherwise, you may pass it and it goes into our libraries and have no meaning to Ugandans. With those remarks, I support this motion with all my might.

3.49

MR HUSSEIN KYANJO (JEEMA, Makindye Division West, Kampala): Thank you, Mr Speaker, and I thank the committee for this report. I want to express my reservations on two fronts. One, the ministerial background report to this important Bill is insufficient. And two, the committee report should have contained a short summary of the implications of signing or not signing □ rather passing or not passing this motion.

I say this because we have to ratify the Rome Statute only after we have thoroughly studied and synchronised it with the practical aspects of our own laws, giving due consideration to the behaviour and conduct of our leaders and governments.

The statute clearly spells out that it will work with full force where there is unwillingness or inability by the State to act on a certain criminal. I do not know whether we have studied pretty well and have therefore reached the conclusion of the measurement of inability and unwillingness by our own governments. This is not to the Executive, but to us the Members of this House. We can pass the motion, but a government could go ahead and say, □Criminal x and y are not away from our hand and we are willing to prosecute them□ and the words of hon. Mabikke would not be applicable at all because Government has said they are willing to prosecute the criminal. So we need to study thoroughly the implications of this Bill.

When you look at some of these countries which have not ratified the Rome Statute, I do not want to imagine that they are criminal States or that they are not wise. I am sure they are wise and they are non-criminal in practice and nature. But they studied and were unable to ratify the statute. My point here is that we should get further education, especially from the Attorney-General and the chairman of the committee assisted by his committee members so that we do not enter into a deal that will tie our hands.

Looking at the report of the committee, you can see that it started with contradictions. It states that, □Yes, we should ratify and pass the Bill - domesticating the Rome Statute,□ but you do not want your President to be prosecuted! This is a provision within the statute.

As you rightly asked, Mr Speaker, that do we have the mandate to amend the Rome Statute? The simple answer is we do not have the express mandate. We can apply to submit proposed amendments, but we cannot change the Rome Statute as it stands now. That is why it is very necessary to further study this whole project so that we are in unison as we pass the motion without it becoming a burden to us.

Otherwise, the spirit of supporting this motion is everybody□s interest but we need to

exercise extreme caution before we pass it. Thank you, Mr Speaker.

3.54

MRS MARY MUGENYI (NRM, Nyabushozi County, Kiruhura): Thank you, Mr Speaker. I want to register my appreciation to the Government of Uganda, first of all for bringing this motion and for ratifying the Rome Statute and now the effort to domesticate it into our national laws. That is something that should be commended.

And as a member of the Pan-African Parliament, I want to register my appreciation from the institution that you sent me to because we know that many African countries have failed to ratify important treaties like the Rome Statute and many other treaties on governance and Uganda is making me proud. So, congratulations!

In the same spirit, I congratulate the committee for the observations that they have made. But I have one concern; for such an important Bill, how come the signatures are just half of the membership? Was this a show of objection; because surely this is a Bill that we should all be supporting? Other than that, my comments are of a general nature.

This also applies to the law that we recently passed against female genital mutilation which was domesticating one of the important treaties of the UN on discrimination against women. I congratulate the government and the committee. I thank you.

THE SPEAKER: Chairman, would you like to wind up? Okay, last contribution and then the chairman responds.

3.56

MR ROBERT KASULE SEBUNYA (NRM, Kyadondo County North, Wakiso): Thank you, Mr Speaker. My comments are in general. We are domesticating the Rome Statute; I am perturbed by the honourable member who said that they are in seminars concerning the post-election violence. I do not know why these seminars are only privileged to the Opposition? I have not heard anybody from this side say he is in a post-election violence seminar even before you start planning the elections.

Secondly, we must take this Bill with a good heart because we have had many elections before but it is not that when we pass this Bill, people's minds will change about violence. If somebody has already started planning post-election violence today, then are we filming that person already?

I would like us to take this motion in good faith. I would want the donors and those who feel good for Uganda, not to drum up things that have not happened like violence. It has not happened; let us plan for peace for which we are living now because we know that peace shall prevail in Uganda.

Maybe, to inquire from the chairman of the committee, that as we domesticate this Bill, have we asked the government whether they have the capacity to handle the violence before and after events. If they do, then they should allow us to exercise the legal

framework here even before we jump to this Rome Statute. We already have enough laws that can handle Ugandans and some of the violent ways some few people have. We should not jump to the Rome Statute before we can even implement the laws we have
□(*Interruption*)

MR LUKWAGO: Mr Speaker, I am really disturbed by the observations made by my colleague, hon. Sebunya. He knows we assented to the Rome Statute and we are duty bound to domesticate the Rome Statute. He is aware that we are members of AU and he is fully aware that here in Uganda international law is applicable, I presume. Hon. Sebunya knows that this motion was drafted and adopted by Cabinet, presented here and read for the first time and committed to the committee and we had extensive deliberations on this Bill with the Uganda Law Reform Commission and other stakeholders. Is he in order to debate on a matter in such a manner as if he is not aware of the importance of the matters before you and this House? Is he in order?

THE SPEAKER: Were you with him all the time when what you have stated happened? Now, you have told him what happened, maybe he will change his mind. (*Laughter*)

MR KASULE: Thank you, Mr Speaker. I know the importance of the motion and when I was beginning, I appreciated the chairman and his committee for the work they have done, including the Cabinet's work. We always look out there before we look at what we have already done because we have handled these matters before. So, I rest my case but we should take this motion without suspicion. The Opposition tying the hands of people in Government; no, it applies to all. Even the inciters of violence the other side and those who commit the crimes should be profiled. It should not be the Opposition against the Government side. I thank you so much.

THE SPEAKER: Chairman, do you have any brief comments to make? If not, then I will call the minister to wind up. The minister is the owner of the motion, he should conclude but if you have any point, you make it before he makes his.

4.03

THE CHAIRPERSON, LEGAL AND PARLIAMENTARY AFFAIRS

COMMITTEE (Mr Stephen Tashobya): Thank you very much, Mr Speaker. I would like to thank Members for the views that they have given and the support extended to the Bill. I will try to pass through a few of the observations and the questions raised and the hon. Attorney-General will respond to the others.

Hon. Epetait supported the Bill but was concerned about the time the Bill has taken in the committee; approximately three and a half years. I want to agree with him that it is a long time but I also want to inform Members that this is a special Bill and it is the first of its nature. The committee, therefore, had to make necessary consultations, at times repeated consultations in order to come out with a report like we have done today.

One Member wanted to know under what law, the President Bashir would have been arrested if he came to Uganda and my response is that referrals to the ICC can be made

through three procedures. One, through the Security Council, they can be initiated by the prosecutor and they can also be made by State parties like Uganda did in the case of Kony. The indictment of Bashir was raised by the Security Council and as the Member may know, Uganda is a member of the United Nations and is obliged under the statute to carry out the arrest as mandated.

Hon. Ekanya was of the strong view that the offence of plunder should be included among those offences to be tried by the ICC. My response is that that may be a point but as you know, the ICC is a relatively young court with a very wide mandate. The Member may wish to know that since the court started, it has not tried more than 10 cases. So, I think it is important that the court executes its mandate in respect of the offences that it is supposed to cover under the current statute. The doors are open, as you said, for revision of the statute and for inclusion of more offences.

Hon. Ekemu was concerned that people who are in authority may be protected by the judicial systems in the countries they serve. I would like to refer the Members to a case for example in Kenya. There is a government in place but the prosecutor commenced proceedings on his initiative. So, it is still possible, using the avenues for people being protected by their own countries or by the Judiciary in their countries, to be caught by the long hand of the law - (*Interruption*)

MR KYANJO: Thank you, Mr Speaker and thank you Mr Chairman for giving way. On page 5 of your report, following the argument you are placing before the House right now, the report says that the Bill is inconsistent with Article 98 Cap. 4 of the Constitution in as far as it does not recognise the immunity of the President from arrest or court proceedings while holding office as President.

I find difficulty understanding what you want to convince me about when you have already covered the head of state in much the same way as he was covered by the local Constitution. What is supposed to happen when we ratify? Will he continue to be left out when he has the power to order the troops to go on the street and probably shoot one, two, three or ten people and have a clean cover in this House? I want that clarified.

MR TASHOBYA: We have agreed that the hon. Attorney-General will make a comment on that point - (*Interruption*)

MR WACHA [Member of PGA]: Mr Speaker, I think the chairman has already answered this in another format. The President could have immunity within Uganda but that does not exclude the powers of the prosecutor or of the Security Council to ask for a reference to the court. So, I am sure even in Sudan, Bashir must be having immunity but it has not stopped the court from going ahead with the proceedings against him.

And then most importantly, there is a provision within the statute which excludes limitation for purposes of crimes under the statute. So, while the President might be immune now, that does not stop a reference from being made in future, in respect of the crimes he has committed now, because there is no time limitation.

MR TASHOBYA: Thank you, hon. Wacha. I think hon. Kyanjo wanted to know why we are rushing. Why have some countries not ratified the statute? I also want to inform him that right now as we sit in this House, 110 member states have ratified the statute. I think the move in the international community is to fight impunity and to resist abuse by people in authority; to stop them from killing and maiming people and getting away with it.

I would like to thank hon. Mabikke for the contribution he made. I think we should come out to support this so that people; leaders and their subjects, armed gangs and rebels, know that at one point in future, they will be responsible for their acts. Thank you very much, Mr Speaker. I think the rest of the issues were directed to the Attorney-General.

4.12

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS/ DEPUTY ATTORNEY-GENERAL (Mr Freddie Ruhindi): Mr Speaker, I would like first of all to thank colleagues who have made very useful contributions to this debate. I would like to say, without necessarily making repetitions that the long time taken on deliberating on this matter was not by accident. Interestingly, we are not even recalling that the first one was a 2004 Bill which lapsed with the Seventh Parliament. Then we came out with the 2006 Bill and at one point, you may recall that we were in very serious negotiations with the Kony group and everyone of us was actually quite reluctant to disturb that process by coming on the Floor of the House and at the end of the day derailing the process. But as we speak, that has gone bad and there is nothing to stop us from going ahead with the enactment of this law in full swing.

An interesting question that came from hon. Epetai is which takes precedence; ratification or enactment of this law? Ratification is key in this process for purposes of cooperating with the ICC. In other words, from the time we ratified the statute, we were bound to begin cooperating with the ICC in as far as some of these renegades are concerned. But for purposes of enforcing the statute here in Uganda, for instance trying these criminals and suspects within our jurisdiction, you certainly need to have domesticated this statute and that is what we are doing.

Hon. Alaso also raises very fundamental issues, but which I am very happy to report to her that they are being addressed. She is making reference to traditional justice mechanisms. Everyone knows very well that the domestication of this Bill and its implementation will not really do much to address the large numbers of people suspected of committing some of these atrocities and offences. Therefore, there is need to have that traditional justice mechanism.

A lot has been done as I speak by the Uganda Law Reform Commission together with other relevant stakeholders in putting together a framework that we can debate. The National Reconciliation Bill has already been prepared by the Uganda Law Reform Commission together with other relevant stakeholders, including the institutions within the Justice, Law and Order Sector. It is now also ready to proceed with it.

Before I come to immunity, hon. Alaso also talked about amnesty - do we throw it overboard; what happens to our amnesty law? No. You need to understand the concept of enforcing this process under the international criminal justice system. Do you understand the principle of complementarity, for instance? As hon. Kyanjo has put it, there is where the state is unwilling or is unable, but where it is willing and able, that is where the matter should be tried first. In other words, that is the principle of complementarity.

International criminal justice does not throw away our own initiatives to try some of these renegades. In other words, we can still have our amnesty law. However, you cannot invoke amnesty when a person is indicted to go to the ICC, because it will not be applicable. You cannot say, "We have already granted amnesty to Kony or whoever". You cannot invoke amnesty when these persons or suspects are being indicted at the international level. However, you can actually have amnesty internally or domestically under the complementarity principle.

Hon. Ben Wacha and the chairperson of the committee have actually put it very well. Irrelevance of official office under Article 27 of the Rome Statute is quite an interesting one, but we shall uphold the immunity nationally. However, like amnesty, you cannot invoke it at international level. You cannot say, "Our President is immune under our laws for being tried while in office." You cannot say that under international law. Interestingly, there are countries, which have responded to these challenges, and the particular ones that I know of are Norway and Lichtenstein in Europe.

In the case of Norway, they use the interpretative method, meaning that certainly you do not expect any country's Constitution to shield a president or whoever commits genocide, war crimes or crimes against humanity; certainly not! The probability ratio, as believed by some countries and is applied by Lichtenstein, is to the effect that they believe that even if they acceded to this treaty, their leaders are not expected to get engaged in some of these crimes. There are those who actually behave and believe that way.

DR EPETAIT: Thank you, hon. Member, for giving way. Mr Speaker, there is something that keeps tickling me in the Bill from clause 7 to clause 16 dealing with international crimes. There is a riding clause, clause 17, which subjects all those clauses from 7 to 16 to a veto by the Attorney-General. "The proceedings for an offence against any of the sections 7 to 16 shall not be instituted in Uganda Court without the consent of the Attorney-General."

We are aware the Attorney-General is also a human being. So, my fear is that there may be a tendency for certain individuals to hide under the cover of the Attorney-General. So, at an appropriate time, I will insist that the law applies to everybody across the board as required by the Statute, without having to subject any proceedings to the nod of the Attorney-General.

MS ALASO: Thank you very much, hon. Minister. I listened to the Attorney-General

and I think he makes a very important point, which I thought should be made explicitly clear. He said that the peace process has gone bad. We know that before the peace process went bad, there were certain undertakings or certain commitments on either side. Actually, I believe that there was some signing of a partial understanding at a certain level.

I am also aware that before the peace process, Kony and some of the LRA had been referred to the ICC. However, I know that as part of the undertakings in the peace process which went bad, some LRA were demobilised, some of those who wanted to rejoin the forces were re-absorbed, some were resettled and some were reconciled with their communities under the traditional justice system. We saw people stepping on eggs as a way of reconciliation with their communities.

Now that we are putting in place a law to operationalise the Rome Statute and the Minister says that the peace process has gone bad, what assurance do you want to give these people that were demobilised and brought back as a result of the peace process that has gone bad? Should we leave this House with them thinking that from now on, you are referring them, wherever they are, to the ICC because the peace process went bad? Should we leave this House thinking that all those who were reconciled to their communities based on the traditional justice mechanism, from this point still have something to answer in the courts of Uganda and you could send them to the ICC? The Minister of Justice is the one talking and I really think he should come out very clearly on this.

Also, I had a question on women's access to justice under the ICC. I hope you will remember to give me that answer. Thank you.

MR RUHINDI: Mr Speaker, thank you and I thank the honourable members for those observations and comments.

Hon. Epetai, I will be coming at committee stage, after further consultations in-house and out, to propose an amendment to section 17 as far as the powers of the AG and the DPP are concerned. You know very well that under Article 120, clause 6 of our Constitution, consent to prosecute comes from the DPP. It would have been different if the Statute itself provided for the office of the Attorney-General to give the consent. Like the Speaker said, we are here to give a purposive interpretation to the Statute and under Article 120 of the Rome Statute, no reservations can be made to the provisions of the Statute.

What I am saying is that since the Office of the Attorney-General is not specifically provided for in the Rome Statute, I will be proposing an amendment to clause 17 to replace "Attorney-General" with "DPP" to tally and comply with the provisions of our Constitution.

Hon. Alaso, the process of negotiations have been long and protracted and as you know very well, the Office of the Attorney-General participated in that peace process and was

the chief negotiator for this Government. For me to speak authoritatively on that matter, would really be delving into an area on which further clarification from other government stakeholders who were involved may be necessary, in order to make an authoritative position. I am really giving the picture as I understand it.

Of course, there have been so many arguments, for instance, on the benchmarking agreements that were concluded. There have been interpretations that those ones could be enforced, and yet some people say we have got to wait for the comprehensive peace agreement. Whichever way, there are so many issues which are unresolved. Many things are undone or yet to be done and I think Government can, at a later stage, come and make a statement on that matter.

Hon. Ekanya, you make fundamental observations, most of which have been actually addressed. One interesting one is when you say, "How do we protect those who obey lawful orders?" I am only happy because you used the expression "lawful". If you engage in genocide and you say "I was obeying lawful orders" then there will be a question mark.

Let me assure you that the progress is not bad. One hundred and ten countries, the recent one being Chile, are signatories to the Rome Statute. That is about three quarters and more of the globe and that is the conference we expect to host here in May and June this year. It has never happened in the Continent of Africa - three quarters and more represented at very high levels including ministers and some presidents being in attendance.

The two countries that are still on the sidelines or on the fence are the United States and China, but there is a lot of intensive lobbying taking place. Also, I think the change of government in America may resonate very well in terms of coming on board. If China and America came on board, I think there would be good progress and we expect that and encourage them to do so.

Hon. Kawanga, I will certainly be getting back on the Floor of the House on the issue of the DPP and Attorney-General. He also raises an important area of enforcement mechanism. I have moved around a little bit internationally. For instance, I went to Sierra Leone. The facility in Sierra Leone costs about US\$ 500,000; but ever since it commenced its operations, it has only tried nine people, one of whom died during the process of trial, and that is Foday Sankoh. So, you can imagine; if you see the infrastructure in terms of protection of witnesses and how prisoners are treated, some of them are actually treated better than the normal citizens on the streets of Kampala.

I think all we need to do is re-evaluate our work methods. I believe we can deploy reasonable resources to have effective implementation of the law. I think the greatest problem may actually arise when high ranking officials of Government are indicted, but that too can be looked into in terms of commitment and I think this Government is fully committed to this cause.

In terms of disseminating information, we shall do our best even to engage members of parliament to help in this project of disseminating information to the people.

I think hon. Tashobya, the chairperson, has ably and clearly come out to answer hon. Kyanjo's observations and concerns. With those few remarks, Mr Speaker, I thank you once again for giving very useful debate to this subject.

THE SPEAKER: Honourable members, the motion is that the International Criminal Court Bill, 2006 be read the second time.

(Question put and agreed to.)

BILLS

COMMITTEE STAGE

THE INTERNATIONAL CRIMINAL COURT BILL, 2006

4.30

Clause 1

THE CHAIRMAN: Honourable members, before we start on clause 1, as you might have gathered from the report and recommended amendments by the committee - and these are the only amendments we have - 80 percent of the amendments are about one term, "registrar". Maybe 20 percent are other amendments, but most of them concern that. How do we handle this? The procedure would require me to call each clause.

MR KAWANGA: Mr Chairman, it would be extremely repetitive to continue saying the same thing. Since the same expression is used throughout, I think the chairman of the committee can help us with where they want to amend the word "Magistrate" throughout all the sections or the clauses concerned, and we do it once and finish. Otherwise, it will be extremely repetitive.

MR RUHINDI: Mr Chairman, I agree with the proposal made by hon. Kawanga, but we should be careful. Yes, we can say that we accept the committee's proposal and subsequently substitute "registrar" for "magistrate" wherever it appears, however, all matters in the Bill currently required to be done by the Magistrate and references to the Magistrate's Court will have to be reviewed to ensure that they are properly brought under the jurisdiction of the High Court before they are consequentially amended. If you look at clause 57 and clause 75, for example, there are those procedural matters which the Magistrate normally handles before proceeding to the High Court. So, I thought that one should be clarified.

THE CHAIRMAN: So, what do we do? Do we first of all identify those clauses that may require different amendments?

MR RUHINDI: Those are the two, Mr Chairman. It is 57 and 75.

MR TASHOBYA: Mr Chairman, I do agree. I concede to the proposals of the committee.

THE CHAIRMAN: Okay. I propose that clause 1 stand part of the Bill.

(Question put and agreed to.)

Clause 1, agreed to.

Clause 2, agreed to.

Clause 3

MR TASHOBYA: Thank you very much, Mr Chairman. In clause 3 on page 8 under the definition of the word "crime", the committee proposes to delete the words "includes crime" and replace them with the words "crime includes genocide, crimes against humanity, war crimes or crimes of aggression". The justification is to restrict the jurisdiction of the court to trying only offences prescribed for by the Rome Statute.

Still on the same clause, subject to the matters that the Attorney-General has referred to, the committee proposes that we delete the words "Magistrate means a Grade I Magistrate and Chief Magistrate". The justification is that the committee proposes to replace the word "magistrate" with the word "registrar". Immediately after defining the word "prosecutor", we insert "Registrar means a registrar of the High Court."

THE CHAIRMAN: I put the question to the proposed amendment.

(Question put and agreed to.)

Clause 3, as amended, agreed to.

Clause 4, agreed to.

Clause 5, agreed to.

Clause 6, agreed to.

Clause 7, agreed to.

Clause 8

MR TASHOBYA: Mr Chairman, the committee proposes on page 12 that we delete sub-clause 3(a) which reads: "If the offence involves the wilful killing of a person, the same penalty as the penalty for murder prescribed by the Penal Code Act" The justification is that the Bill here is inconsistent with the Rome Statute in so far as it makes reference to

the Penal Code Act which provides for death sentence whereas the Rome Statute in Article 77(1)(b) provides for the term of life imprisonment as the maximum penalty for extremely grave offences.

THE CHAIRMAN: I put the question to the amendment.

(Question put and agreed to.)

Clause 8, as amended, agreed to.

Clause 9

MR TASHOBYA: Mr Chairman, under clause 9 on page 13, the committee proposes that we delete sub-clause 3(a). The justification is that the Bill is inconsistent with the Rome Statute in so far as it provides for the death penalty whereas the Rome statute in Article 77(1)(b) provides for a life term imprisonment as the maximum penalty for extremely grave crimes.

THE CHAIRMAN: I put the question to the amendment.

(Question put and agreed to.)

Clause 9, as amended, agreed to.

Clause 10, agreed to.

Clause 11, agreed to.

Clause 12, agreed to.

Clause 13, agreed to.

Clause 14, agreed to.

Clause 15, agreed to.

Clause 16, agreed to.

Clause 17

MR RUHINDI: Mr Chairman, I propose that in clause 17 we substitute the expression Attorney-General wherever it occurs with the expression Director of Public Prosecutions.

THE CHAIRMAN: I put the question to the amendment.

(Question put and agreed to.)

DR EPETAIT: Mr Chairman, as we did observe during second reading, Article 27 of the Rome Statute shall apply equally to persons without any distinction based on official capacity. My argument has always been that subjecting this trial to the DPP or the Attorney-General first gives a go-ahead for the criminal proceedings to start. What would we lose if we delete clause 17 so that we leave it open, so that any ICC official in Uganda can still investigate?

For any person who is suspected to have committed crimes against humanity, this should really be left open rather than subjecting it to vetting by either the DPP or the Attorney-General, because a person may be covered up. Sometimes we lose very credible cases because something has happened somewhere. We do not want a repeat of this even with such very serious international crimes.

MR SSEBUNYA: Mr Chairman, that would interfere with the sovereignty of Uganda. This country is a state. I think the sovereignty of our state should not be jeopardised or interfered with because of our good heart to co-operate with the international community.

MR RUHINDI: we need to internalise the provisions of Article 120 of the Constitution. The DPP has the mandate to consent or even to withdraw charges where he feels that there is no sufficient evidence against a suspect. We are talking about implementation here in Uganda. When it comes to the international level, then it is a different matter. We are talking about a state cooperating not necessarily the DPP or the Attorney-General. The state must co-operate. All the functional institutions of the state must co-operate with the international body. When it comes to implementing or prosecuting, when it comes to our war crimes division in the High Court, then the DPP must take precedence on all criminal matters as mandated under Article 120.

THE CHAIRMAN: It is not to excuse anybody, but a procedural matter.

DR EPETAIT: Perhaps the clarification I am seeking is this: In the event that the DPP withdraws the criminal and the ICC prosecutor still has some interest in the same, does the withdrawal of the DPP automatically rest the whole case or the ICC prosecutor may follow it up? If that be the case, I would have no reason to argue on, but to concede.

MR RUHINDI: Really, we must understand how criminal law operates. Many lawyers here know the principal of double jeopardy. You cannot be tried for the same offence twice whether nationally or at international level. If the national state had judged you innocent on an offence, surely to be indicted for exactly the same offence in an international arena is certainly double jeopardy.

MR LUKWAGO: I think the Attorney-General did not get his concern right. What he was talking about is a case where the DPP withdraws the case; he is not talking about a situation where there is an acquittal or a conviction, but in a situation where the DPP has decided to withdraw the case before trial. The question here is the element of

complementing each other. That would be a demonstration on the part of Government or the DPP that they are not willing to take up the matter and automatically Ocampo will come in *-(Interjections)-* I am sorry, the prosecutor will come in.

MR RUHINDI: That explanation is an elaboration and it is welcome. He is elaborating, in terms of criminal law, what amounts to acquittal, what the implications of acquittal are, what the implications of dismissal are, and what the implications of withdrawal are. If there is sufficient evidence later, you can still be called upon to answer.

THE CHAIRMAN: I put the question to the amendment.

(Question put and agreed to.)

Clause 17, as amended, agreed to.

Clause 18, agreed to.

Clause 19, agreed to.

Clause 20, agreed to.

Clause 21, agreed to.

Clause 22, agreed to.

Clause 23, agreed to.

Clause 24, agreed to.

Clause 25

MR TASHOBYA: I thank you very much, Mr Chairman. The committee proposes that clause 25 be deleted. The justification is that the Bill here is inconsistent with Article 98(4) of the Constitution. It does not recognise the immunity of the President from arrest or court proceedings while holding office.

MR RUHINDI: Mr Chairman, I think I did not have time to share this with my colleague, the chairperson of the committee. I think deletion is not tenable because clause 25 is simply restating Article 27 of the Rome Statute and under Article 120 of the Rome Statute we do not have a chance of reservation or amendment.

THE CHAIRMAN: It reads: *No reservations may be made to this Statute...* Is that what you are talking about?

MR RUHINDI: That is the provision. We cannot make a reservation nor can you actually amend the substantive provisions of the Statute to change the purposive or main

intention of the Statute.

THE CHAIRMAN: I put the question that clause 25 stand part of the Bill.

(Question put and agreed to.)

Clause 25, agreed to.

MR TASHOBYA: I thank you. This is part of the consequential amendments that we earlier agreed on.

THE CHAIRMAN: But we already have agreed. Honourable members, we have agreed that wherever you see □magistrate□ in any clause, you substitute it with □registrar□ so that those clauses are amended subject to the knowledge that we have amended them with the term □registrar□. I now put the question.

(Question put and agreed to.)

Clause 26, agreed to.

Clause 27, agreed to.

Clause 28, agreed to.

Clause 29, agreed to.

Clause 30, agreed to.

Clause 31, agreed to.

Clause 32, agreed to.

Clause 33, agreed to.

Clause 34, agreed to.

Clause 35, agreed to.

Clause 36, agreed to.

Clause 37, agreed to.

Clause 38, agreed to.

Clause 39, agreed to.

Clause 40, agreed to.

Clause 41, agreed to.

Clause 42, agreed to.

Clause 43, agreed to.

Clause 44, agreed to.

Clause 45, agreed to.

Clause 46, agreed to.

Clause 47, agreed to.

Clause 48, agreed to.

Clause 49, agreed to.

Clause 50, agreed to.

Clause 51, agreed to.

Clause 52, agreed to.

Clause 53, agreed to.

Clause 54, agreed to.

Clause 55, agreed to.

Clause 56, agreed to.

Clause 57

MR TASHYOBA: Under clause 57 on page 44 in line two of sub-clause (9), the committee proposes to delete the words "The Magistrate Courts Act" and substitute them with the words "Trial on Indictment Act". The justification is that the law applicable in regard to searches conducted on the orders of the Registrar is the Trial Indictment Act.

THE CHAIRMAN: I now put the question.

(Question put and agreed to.)

Clause 57, as amended, agreed to.

Clause 58, agreed to.

Clause 59, agreed to.

Clause 60, agreed to.

Clause 61, agreed to.

Clause 62, agreed to.

Clause 63, agreed to.

Clause 64, agreed to.

Clause 65, agreed to.

Clause 66

MR TASHYOBA: On Clause 66, page 51, on the second last line of sub-clause (1), the committee proposes to delete the words "Director of Public Prosecutions" and replace them with the words "the Registrar". On page 51 in line one of sub-clause (2), delete the words "Director of Public Prosecutions" and replace them with the word "Registrar". The same is proposed for sub-clauses (3) and (4).

THE CHAIRMAN: I now put the question.

(Question put and agreed to.)

Clause 66, as amended, agreed to.

Clause 67, agreed to.

Clause 68, agreed to.

Clause 69, agreed to.

Clause 70, agreed to.

Clause 71, agreed to.

Clause 72, agreed to.

Clause 73, agreed to.

Clause 74, agreed to.

Clause 75

MR TASHYOBA: I thank you. Under clause 75, page 58 in line three of sub-clause (2), the committee proposes that we delete the words "21 days" and replace them with the words "15 days". The justification is that the current provision is inconsistent with the Trial on Indictment Act, which provides for a period of not more than 15 days.

THE CHAIRMAN: I put the question to the amendment.

(Question put and agreed to.)

Clause 75, as amended, agreed to.

Clause 76, agreed to.

Clause 77, agreed to.

Clause 78, agreed to.

Clause 79, agreed to.

Clause 80, agreed to.

Clause 81, agreed to.

Clause 82, agreed to.

Clause 83, agreed to.

Clause 84, agreed to.

Clause 85, agreed to.

Clause 86, agreed to.

Clause 87, agreed to.

Clause 88, agreed to.

Clause 89, agreed to.

Clause 90, agreed to.

Clause 91

THE CHAIRMAN: I propose that clause 91 do stand part of the Bill □

DR EPETAIT: Mr Chairman, clause 91 is talking about the ICC sittings in Uganda. For purposes of performing its functions under the statute - under the rules - without limitation, taking evidence, conducting or continuing proceedings, giving judgement in a proceeding or reviewing a sentence. Now, when they are reviewing a sentence in Uganda, will they be sitting here in an appellate capacity or otherwise?

THE CHAIRMAN: Review is done by the same court which has made a decision. Review is made by you, who originally made the decision. Review is to reverse the decision you made and then change it or say, □Okay.□ You do not become the appellate. Is it clear?

THE CHAIRMAN: I put the question that clause 91 do stand part of the Bill.

(Question put and agreed to.)

Clause 91, agreed to.

Clause 92, agreed to.

Clause 93, agreed to.

Clause 94, agreed to.

Clause 95, agreed to.

Clause 96, agreed to.

Clause 97, agreed to.

Clause 98, agreed to.

Clause 99, agreed to.

Clause 100, agreed to.

Clause 101, agreed to.

Clause 102, agreed to.

The Schedule, agreed to.

The Title, agreed to.

MOTION FOR THE HOUSE TO RESUME

5.07

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS

(Mr Fred Ruhindi): Mr Chairman, I beg to move that the House resumes and the Committee of the Whole House reports thereto.

THE CHAIRMAN: I put the question that the House do resume and the Committee of the whole House reports thereto.

(Question put, and agreed to.)

(The House resumed, the Speaker presiding.)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

5.08

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS

(Mr Fred Ruhindi): Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled, □The International Criminal Court Bill, 2006,□ and passed it with amendments.

MOTION FOR THE ADOPTION OF THE REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

5.09

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS

(Mr Fred Ruhindi): Mr Speaker, I beg to move that the report from the Committee of the Whole House be adopted.

THE SPEAKER: Hon. Members, I put the question to the motion for adoption of the report of the Committee of the Whole House on the Bill entitled, □The International Criminal Court Bill, 2006.□

(Question put and agreed to.)

(Report adopted.)

BILLS

THIRD READING

THE INTERNATIONAL CRIMINAL COURT BILL, 2006

5.10

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS

(Mr Fred Ruhindi): Mr Speaker, I beg to move that the Bill entitled, □The International

Criminal Court Bill, 2006, be read the third time and do pass.

THE SPEAKER: Hon. Members, I put the question that the Bill entitled, The International Criminal Court Bill, 2006, be read the third time and do pass.

(Question put, and agreed to.)

A BILL FOR AN ACT ENTITLED, THE INTERNATIONAL CRIMINAL COURT ACT, 2010

THE SPEAKER: Congratulations, hon. Members! The Bill has been passed. This matter has been with us since May 2004. We have been sitting on it; now we have been able to pass it. I thank you very much hon. Members for the contribution. I thank the minister, committee chairman and the members of the committee for the work done

THE CHAIRPERSON, COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS (Mr Stephen Tashobya): Thank you very much, Mr Speaker. As a committee, we are indeed very excited that we are getting out this Bill *(Applause)*- after six years. We are mindful of the public interest in this matter, both here and outside; and I would like to sincerely thank my colleagues on the committee. I think we have moved very well. It has been a very long process. I would like to extend my thanks to them and the Members of Parliament for coming in to enrich the proposals that we have brought.

I would like to thank you for having been part and parcel of this process, including the international seminars and workshops that you hosted as a Speaker of Parliament in order to have this Bill moving.

This is a very important and critical stage in our history; that we are part and parcel of the civilised international society; that we show and provide an indication that nobody below and above will not be accountable for his or her actions.

Once again, I would like to thank you all for the support you have given this Bill.

MR WACHA: I want to appreciate my chairman, but I want to put certain things in context. Mr Speaker, the two Bills: the 2004 Bill and this particular Bill were not any different, they were the same. But they were of a particularly new type to us. A lot of us did not appreciate the context of the Bill, and the text of the Bill; we had to hold a number of workshops. In this respect, I want to thank Parliamentarians for Global Action which took some of us to Dar-el-salaam for a workshop in 2005.

I also want to thank the International Criminal Court which sent to us one of its Judges - you remember when we had a workshop with Justice Nsereko Daniel Ntanda [organized by PGA] so it has been a series of workshops and explanations from the ministry, from the commission and the various people who knew the importance of this Bill.

So it is not that the committee has just been sitting on the Bill; no, we were in a learning

process and we have come out knowing the purpose of the Bill, the consequences of infringing the provisions of the Bill, and now we can talk as people with experience of what that Bill wants.

I want to thank you, Mr Speaker, because you also took a lot of time to come and participate in the various workshops. I want to thank the ministry which also conducted some of these workshops and of course I want to thank other Members of Parliament who joined the committee in trying to appreciate the import of this Bill. Thank you, Mr Speaker.

5.14

THE MINISTER OF STATE FOR JUSTICE AND CONSTITUTIONAL AFFAIRS (Mr Fred Ruhindi): Mr Speaker, it has been a long journey, but at last we are there. I regard this as the beginning. To those who say, "The Hague", while pointing fingers at others, I think we should point at ourselves. The incidents of 9th, 10th, 11th and 12th September last year are reminiscent of what can happen to a society at the point of degeneration. And without mincing words, at that time, we were at the brink of a very bad situation - genocide.

Why do we fear to talk about these things? And in genocide, it is not just a Muganda who dies or a Munyankore, it is not an Acholi; it is any of us and it is actually about who gets the machete first to cut the other. Let us be mindful of our actions. It starts with every one of us. So, instead of pointing fingers at each other, let us point fingers at ourselves; everyone has a role to play in maintaining peace in this country.

I will be coming here shortly with a statement about the review conference that is going to take place in Uganda in May and June. Amongst the key issues on the agenda is the definition of the crime of aggression. Hon. Ekanya was trying to bring in the component of plunder and property appropriation. But I want to assure you that that is fully covered under the Geneva Conventions Act, which is part of our statutory book. If you look at it, you will see that it is fully covered and if you look at the International Convention on Civil and Critical Rights, it has general rights on such matters. So apart from focusing on the ICC Statute, look at other conventions and treaties that we are party to.

With those few remarks, I enjoin everyone else that has thanked everyone in this endeavour.

THE SPEAKER: Hon. Members, since we have finished this, let us concentrate on the work of the electoral reform laws. We are going for elections in 2011; let us prepare the proper laws to govern those elections.

5.16

MS ALICE ALASO (FDC, Woman Representative, Soroti): Thank you very much. Mr Speaker, you can see how much joy passing this Bill has brought to Members of Parliament across the board. It also means that beyond the joy you see, perhaps on the other side, there has always been anxiety that the country could go into trouble if we do

not manage it very well.

I appreciate the comments of the Attorney-General, and I would like to encourage Government as much as it is possible □ while we all have responsibility, I think those that have the Executive mandate have a bigger responsibility according to our Constitution to ensure that there is guaranteed stability in the country and that the life and property that we all own is protected. So, the bigger onus is on Government to ensure that Ugandans live in harmony.

I am glad that you have talked about the electoral laws. Elections are one scenario that can cause the grounds that are very conducive for danger, genocide, war, violence and it takes a Government that looks far beyond petty interests to figure out how to bring in electoral reforms and create a fair and level playing ground so that all of us that participate in an election walk out contented and agreeable to whatever outcome. That is one thing that can guarantee peace. Before we begin running to the ICC on matters of genocide, at least we will have done our part □ that is my appeal to Government.

Secondly, passing laws brings joy to this House. A few months ago, the women of this country celebrated a lot with the passing of the Domestic Violence Bill, which the House passed very well, knowing that the greatest numbers of victims of violence are actually women and children. Subsequently, we passed other laws after that. We have since learnt that the Land Amendment Bill which we passed after was actually assented to by the President. But the Domestic Violence Bill was not assented to.

On the 8th of March, we were celebrating Women's Day, and Ugandan women were asking for some of the tangible things that we have done as women leaders. One of the things we had hoped to show them was that law that deals with domestic violence. Unfortunately, it was not available to us.

I would like to implore you, Mr Speaker, to remind the President to assent to the Domestic Violence Bill that was passed by this Parliament. Thank you.

5.21

MR ERIAS LUKWAGO (DP, Kampala Central Division, Kampala): Thank you, Mr Speaker and honourable members. In my capacity as the Shadow Attorney-General, I also rise up to thank the committee, the House and everybody else who has made it possible for us, at long last to pass this very important Bill.

I know what we have gone through - you have talked about those seminars, several retreats and at one time the Uganda Law Reform Commission brought experts who took us through drills for us to come up with this Bill. It has not been that easy.

Having said that, I would wish to caution ourselves and Government in particular, not to turn this good law into an instrument of persecution. I know we have passed a number of good legislation for the good of this country for peace, security, tranquillity and all those other aspects but in the end, you find the laws do not serve the purpose they are intended

for.

A case in point is the Anti-Terrorism Act. When it was passed, little did I know that one time I would face a charge under that law of terrorism *-(Laughter)-* moreover when I am in the House here as a Member of Parliament. It is just a couple of months ago that I had to face that charge of terrorism. Luckily enough, I went through it and I am handling other aspects. I know so many people who are actually, right now being handled under that law. I do not want to talk about their guilt or innocence here, but for sure, not all of them committed the crime of terrorism. Some have been mentioned in a number of reports of the International Human Rights Watch, Uganda Human Rights Commission and others. They are being handled by JATT; they are in safe houses under the name of implementing the law against terrorism. I humbly appeal to Government to apply this law for the purpose it is intended; to deal with genocide, to handle the question of impunity and heinous crimes against humanity.

If it is for that purpose, we applaud that. The element of impunity is not elsewhere, it is not within the public domain; it is not in the Opposition, it is within Government circles by people who can take shelter in state institutions, who can be cushioned or shielded against prosecution. Be bold enough, Attorney-General. Everybody in Government be bold enough.

If you are a person who has offended this law and you are liable to prosecution under this law, it should not be shelved; it should not be applied selectively against those who may not even be subject to that law.

And for the electoral laws, I implore my colleagues to adopt the same spirit surely so that you extend that good gesture; we are making good laws not only for this generation but for posterity. So far so good!

When we appeared before the committee, we presented our views very well and they were received in good faith and we hope everything will be okay *-(Applause)-* like in this Bill. You have seen all these issues that we have handled. Actually, I was really touched when the Attorney-General opposed the amendment of the committee to delete section 25. I very much thought the Attorney-General would side with the committee. That is the spirit we really want. You did it for the good of the country that even if it is the President, he should be prosecuted and should not be cushioned against prosecution. Those official capacities are irrelevant and you stood by that in principle. I applaud you. I thank you and thank everybody.

THE SPEAKER: Then we go to the next business. Did you want to report on law reforms?

5.26

THE CHAIRPERSON, LEGAL AND PARLIAMENTARY AFFAIRS

COMMITTEE (Mr Stephen Tashobya): Thank you very much, Mr Speaker. I would like to thank the shadow attorney-general for recognising the atmosphere we had in the

discussion while interacting with him and the rest of the people that have interacted with us. As you are aware, we had agreed with you that the electoral Bills will be out of Parliament by 15th March this 2010 and I want to say that we as a committee had worked and were about to meet that deadline because we had concluded on the work on Thursday of last week.

Owing to the public interest and the interest of other stakeholders, we had to hold the process of bringing and finalising the reports to give chance to the people and stakeholders that had not interacted with us. That is why we delayed and we met a group of political parties yesterday.

Today, subsequent to your directive, we met the Shadow Attorney-General and a group of other leaders. We are also meeting the President of SDP, hon. Mabikke tomorrow and hon. Ekanya. That should bring us nearer -