SUMMING UP OF HON. ATTORNEY GENERAL

THE CRIMINAL CODE (AMENDMENT) BILL

(No. VIII of 2012)

Mr. Speaker, Sir,

May I start off by expressing my sincere thanks to all Honourable Members who have intervened on this Bill. On such an issue, it is difficult to reach an absolute consensus and we have to agree to disagree. I must say that I respect the personal views and positions taken by all in this debate. I have listened with great interest to the arguments which have been put forward.

I again thank the Hon. Prime Minister for his support and intervention. We have listened to 52 interventions and the debate which has spread over 5 parliamentary sittings has generally been of very high standard. I seize the opportunity to thank you Mr Speaker and the Deputy Speaker for the dexterity with which you both presided over the debates.

I thank the Hon. Leader of the Opposition for generally supporting the Bill. However, he had 3 reservations. Firstly, he stated that, we should ensure that the requirement to have 2 specialists in obstetrics and gynaecology does not cause undue delay. The process should be smooth and rapid. He also referred to the law in the UK, stating that proposals are now being made to have only 1 doctor.

Mr. Speaker, Sir, let us not forget that the UK Abortion Act dates back to 1967; it is not surprising that the UK feels comfortable with the system put in place and is now considering a proposal to rely on the opinion of only one doctor. We, on the other hand, are making a start in Mauritius in 2012 and we have in fact agreed to the proposition of the Hon. Leader of the Opposition to have the opinion of 2 specialists instead of 1 in obstetrics and gynaecology and 1 specialist in the relevant field. This will be a very strong and necessary safeguard. It will reduce the likelihood of wrong opinions being reached. As far as the delay issue is concerned, the Ministry of Health and Quality of Life, will prevent undue delays. I understand that pools of appropriate specialists will be available to deal with the matter.

Secondly, the Hon Leader of the Opposition, the Hon. First Member for Savanne and Black River and other Honourable members expressed reservations about how these specialists will be able to form an opinion on
whether the pregnancy results from rape, sexual intercourse with minor or incest. I am informed by colleagues from the medical profession that it is not difficult, following a medical examination of the pregnant person, to conclude whether the pregnancy results from an offence of rape, in view of the physical and mental trauma suffered.

I must also state that we are not re-inventing the wheel with this formula. This specific provision has been inspired from South Africa’s Choice on Termination of Pregnancy Act 1996, although I hasten to add that what we are proposing in the Bill contains better safeguards.

Under section 2(1)(b)(iii) of South Africa’s legislation, a pregnancy may be terminated from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman, is of the opinion that the pregnancy results from rape or incest. In South Africa, it is, therefore, sufficient for a medical practitioner, after he has examined the pregnant woman, to form such an opinion. Nothing more is provided as safeguard there. However, in this Bill, we are taking the care to include the following safeguards –

(a) the opinion of not 1, but 3 specialists (2 in obstetrics and gynaecology and 1 in the relevant field) has to be sought;

(b) the opinion is not in relation to whether the offence of rape, sexual intercourse with minor under 16 or incest has been proved. If we read the wording of the proposed section 235A(2)(d) carefully, together with the relevant amendment which I shall be moving at Committee Stage, it is in relation to an opinion, formed in good faith, that the pregnancy results from a case of rape, sexual intercourse or incest which “has been reported to the police”. A priori, therefore, these specialists will have to ascertain whether the matter has been reported to the police;

(c) any false declaration will constitute a criminal offence.

What has to be ascertained first of all is whether any such allegation has been reported to the police. The specialists will then have to form the opinion in good faith that the pregnancy results from such an offence.
Mr. Speaker, Sir,

The third point raised by the Hon. Leader of the Opposition was that swearing of affidavit by victims of rape or incest to that effect would have had more of a deterrent effect. The swearing of an affidavit will necessitate going through certain administrative steps, e.g. going through an attorney, getting the paperwork done and going to Court. As a result, it is bound to take more time and may prove a daunting experience for the victim. What we are proposing instead, i.e. the requirement to have the case reported to the police, is straightforward and practical. Moreover, the penalty for making a false declaration will be penal servitude for a term not exceeding 10 years, which is much stronger than that for swearing of false affidavit. The aim behind this is to have a powerful deterrent effect on the rare women who may be inclined to make false declarations of rape or incest in order to have the pregnancy terminated.

The Hon. Third Member for Stanley/Rose Hill, the Hon. First Member for Grande Riviere North West/Port Louis West, the Hon. Second Member for Port Louis North/Montagne Longue, the Hon. Second Member for Beau Bassin and Petite Riviere, the Hon. Second Member for La Caverne/Phoenix and a few Honourable Members have raised several qualms about the Bill, most of which have already been answered by my colleagues the Hon. Minister of Health and Quality of Life and the Hon. Minister of Housing and Lands. The Hon. Third Member for Belle Rose/Quatre Bornes has also already answered a number of issues raised.

Mr. Speaker, Sir,

International human rights law as well as courts worldwide, have clearly established that any prenatal protection must be consistent with women’s human rights.

As far back as 1973, the United States Supreme Court decision in Roe v. Wade established that a woman has a right to self-determination covering the decision whether or not to carry a pregnancy to term, but that this right must be balanced against a state's interest in preserving fetal life. In the case of Tremblay v. Daigle (1979), the Supreme Court of Canada hold that a foetus has no legal status in Canada as a person either in Canadian Common Law or in Quebec Civil Law.
Mr. Speaker, Sir,

The Hon. Third Member for Vacoas/Floreal and the Hon. Third Member for Grande Riviere North West/Port Louis West spoke about our international obligations. The Beijing Platform for Action (1995) to which Mauritius is party, thus, expressly called upon Governments to reexamine abortion laws that punish women.

The Committee on the Elimination of Discrimination against Women (CEDAW) recommended Mauritius to “consider reviewing the law relating to abortion for unwanted pregnancies with a view to removing punitive provisions imposed on women who undergo abortion in line with the Beijing Platform for Action.

Mr. Speaker, Sir,

I would also wish to reassure the Hon. Third Member for Grande Riviere North West/Port Louis West who referred to the case of the minor who is a victim of incest and whose parents would not give their consent to the pregnancy resulting from the incest being terminated. Once the young pregnant person reports the offence to a teacher, a doctor or a friend, members of the medical or paramedical profession and members of the staff of a school have the duty under section 11 of the Child Protection Act to notify immediately the Permanent Secretary of the Ministry of Gender, who may then promptly apply to the District Magistrate for an emergency protection order. Such an order confers on the Permanent Secretary authority, where necessary for the welfare of the child, to cause her to be submitted to medical examination or to urgent treatment. I have no doubt, Mr Speaker, Sir, that a victim of incest should be removed from the household of her aggressor and that the Permanent Secretary could in such circumstances authorise the termination of a pregnancy which results from the incest.

The Hon. Third Member for Port Louis Maritime/Port Louis East expressed the rather extraordinary view that the specialists would be usurping the function of the Judiciary by finding in effect a person guilty of the offence of rape, unlawful sexual intercourse or incest. I must say I had some difficulty understanding the Hon. Member on this issue. It is quite clear that the specialists are concerned not with the offender but with the victim. The identity of the offender is in fact irrelevant except in the case of incest. What matters is that the offence has been reported to the police. It will be dealt with by the appropriate authorities.
Unfortunately the outcome of the case cannot be awaited. It suffices for the purposes of this Bill that the offence was reported to the police and that the specialists are of the opinion in good faith that the pregnancy results from such an offence.

Many Hon. Members have spoken about the delay in prosecuting and hearing of rape/incest cases. I assure the House that I have taken good note of those representations and will convey them to the appropriate authorities.

Mr. Speaker, Sir,

We cannot close our eyes to regional and international provisions and judgments. We live, after all, in a global village. As a responsible Government, we are bringing this legislation to address real existing problems and, above all, to provide relief to vulnerable girls and women. We are only giving them the choice, in limited circumstances, rather than there being no choice at all. Do the women of this country not deserve to be given the right to choose?

Let me hasten to say, however, that I do not believe or wish termination of pregnancies as envisaged by this Bill to be the panacea for teenage pregnancy. I fully endorse the views expressed on both sides of this House in favour of enhanced sexual education for teenagers in the light of the stark modern realities.

As I stated in my Second Reading Speech, we are about to create history. By voting for this Bill, we will be changing the lives of many girls and women in a positive way. Once again, I am very grateful to the Honourable Prime Minister for his relentless support and vision. A change in the law was long overdue and, without the vision and commitment of this Government, it would not have been possible to move forward.

Before I end, Mr. Speaker, Sir, allow me again to express my thanks to all Honourable Members who have contributed to and enriched this debate.

I wish to inform the House that I will be moving for a division of votes at third reading.

Thank you for your attention.