

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 26th April 2018

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. Cheboi) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Members, we do not have the required quorum and, therefore, I order that the Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Deputy Speaker: Order Members. We seem to have the required quorum and, therefore, we will begin business.

PAPERS LAID

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 26th April 2018, Morning Sitting:

The Report of the Auditor-General on the Financial Statements of the National Government Constituencies Development Fund (NG-CDF) of Kathiani Constituency for the year ended 30th June 2016, and the certificate therein.

Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2019 and projections for 2019/2020 – 2021.

The Insolvency (General Amendment) (No.2) Regulations 2018 and Explanatory Memorandum pursuant to Section 730 of the Insolvency Act 2015.

Hon. Deputy Speaker: Very well. Let us have the Chairman of the Departmental Committee on Defence and Foreign Relations.

Hon. Katoo: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House today Thursday, 26th April, 2018:

The Report of the Departmental Committee on Defence and Foreign Relations on the consideration of the African Continental Free Trade Area (CFTA), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and South African Development Community (SADC) tripartite free trade area agreements.

Hon. Deputy Speaker: Very well. Next Order.

NOTICE OF MOTION

Hon. Deputy Speaker: On this particular, one let us have Hon. Metito.

**ADOPTION OF REPORT ON AFRICAN CONTINENTAL FREE TRADE AREA
AND TRIPARTITE FREE TRADE AREA AGREEMENTS**

Hon. Katoo: Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the consideration of the African Continental Free Trade Area (AFCTA); and, the Tripartite Free Trade Area (TFTA) Agreements, laid on the Table of the House on Thursday, 26th April 2018 and, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the African Continental Free Trade Area (AFCFTA); and, the COMESA-EAC-SADC Tripartite Free Trade Area (TFTA) Agreements.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. Hon. Keter.

**NOTICE OF MOTION FOR ADJOURNMENT UNDER
STANDING ORDER NO.33 (1)**

DESTRUCTION CAUSED BY HEAVY RAIN IN THE COUNTRY

Hon. Keter: Thank you, Hon. Deputy Speaker. Pursuant to Standing Order No.33 (1), I seek leave for the adjournment of the House for purposes of discussing the disasters caused by heavy rains in the country.

The heavy rains have pounded most parts of this country since late October and have continued to wreak havoc in several parts. Over 60 people are thought to have lost their lives and hundreds forced to evacuate their homes over the last few months. In addition, properties of unknown value have been lost as a result of flooding and landslides. Further, infrastructure across the country has been destroyed.

There is need to ventilate on how the State Department for Special Programmes can establish precautionary measures to deal with such natural disasters, especially in terms of identifying areas for resettlement and compensation of displaced persons. It is for this reason that I seek leave for the adjournment of the House in order to discuss this matter of great national concern. I want to ask Members to support.

(Hon. Members stood up in their places)

Hon. Deputy Speaker: Obviously, I can see you have the numbers. But, before that, I want to be sure about the specifics to be discussed so that I can know the amount of time required. I will give a few Members so that I can see the magnitude and know the time to be allocated. Obviously, you have succeeded in securing the Motion but the amount of time required is what I am trying to... Let me have two or three Members, starting with the Member for South Mugirango.

Hon. Onyiego: Thank you, Hon. Deputy Speaker. Indeed, this discussion is necessary due to the harm caused by the rains. I am a victim of being caught up in the rains while I was travelling from my constituency in Kisii County. Upon reaching Mai Mahiu, vehicles could not pass. The road had cracked into two parts and several other commuters and I left our vehicles. This was 10.00 p.m. in the night and we walked in search of safety.

This matter needs urgent attention and all the concerned relevant authorities should act as quickly as possible because several people have been left homeless. This is not about transport but it also affects food security. People cannot go to work and in some constituencies, they are camping in schools in pursuit of shelter and even those schools are not safe. This is a matter that is of grave concern. It is important to look for ways of making sure that this is resolved generally and collectively through the relevant Ministries. I rise to second.

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

Hon. A.B. Duale: I want to thank Hon. Keter for bringing something which is very serious. He does a lot of his business in the lounge but now he has brought... There is a serious humanitarian crisis in our country. As I speak, the whole of Tana River County is submerged. Also parts of Garissa County in centres like Baraki and Gurufa in Lagdera Constituency, people have not accessed food for the last two weeks. Roads have been cut off and there is complete destruction of infrastructure. If you watch television, the rains have also affected Nyando in Kisumu County.

That is why this country must have its priority right. Do those Governors have to sit in Kakamega when the essence of devolution is to help the people they represent? The Cabinet Secretary (CS) for Devolution and Arid and Semi-Arid Lands (ASALs) should not be seated in Kakamega. This matter should be given enough time, either this morning or in the afternoon, so that we can discuss it. There are many people in this country who are Internally Displaced Persons (IDPs). In major towns, we never used to experience flooding but, today, in major estates and urban centres, people have lost their private property because their houses have been submerged.

The weatherman is saying the rains will continue until June. We must have an emergency recovery system in this country. The Kenya Defence Forces (KDF) must come in. We must allow them because they are obligated under the Constitution to come and offer emergency assistance to the people of Kenya. We need helicopters to deliver food and non-food items to the areas which are landlocked. In Makueni and Murang'a, we have seen over 30 families who are victims of landslides. This is affecting the whole country.

I am surprised that there is no water in Ndakaini Dam. This is a matter of national security and must be investigated. The Managing Director (MD) of Nairobi City Water and Sewerage Company (NAWASCO) says it is only raining in the savannah and not in the Aberdares. But it is raining in the desert, highlands, Coast, Nairobi and everywhere. The Almighty God has opened up the skies. This is a blessing but the Government has a responsibility. Malaria causing mosquito is becoming a menace and people are going to die. Assistance must be provided in the health sector and food items...

Hon. Deputy Speaker: The Leader of the Majority Party, convince me on the time required.

Hon. A.B. Duale: This matter is very serious and I want you to allocate it not less than 1 hour 30 minutes.

Hon. Deputy Speaker: Yes, that is what I want. Hon. Members, if you start contributing to the substance, then I will stop you from contributing to the Motion when it goes through. I am

interested in knowing the number of hours you require. Let us have the Leader of the Minority Party.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker. Let me start by encouraging you to allocate two hours to this debate. We need to discuss the effects of rains, floods and what is causing this. This starts with environmental degradation and other things. I expect this House to talk on how to mitigate the effects of the same. This will include what the Leader of the Majority Party has said about involving the KDF as opposed to leaving this to the Kenya Red Cross as if it is a Government organ. We will discuss how we can allocate funds to repair roads which have been damaged by the rains. So, a lot will be discussed. Apart from the specific areas that are affected, I think this House needs not just to lament, but even to start indicating what we are likely to do in the event that the rains continue and even after. That is why I urge the Members...

Hon. Deputy Speaker: Hon. Members, I am also trying to look at the kind of agenda we have this morning. We will have the Computer and Cybercrimes Bill which, in my estimation, will take an hour and a half or two. So, I think it will be okay if I allocated an hour and a half and just in case we finish the Computer and Cybercrimes Bill a little earlier, then we simply go straight to this particular Adjournment Motion. It depends on how you move. If you move faster, then you will have enough time to discuss the Motion. However, in terms of the specifics, let it be one and a half hours. So, we will start at 11:30 a.m., which is not normal. That is a little bit more than normal. We normally give an hour and sometimes even 30 minutes. This is going to be an hour and a half but it could be more if we are able to dispense with the Order listed as No. 10, Committee of whole House on the Computer and Cybercrimes Bill.

Before we move to the next Order, there was something from the Budget and Appropriations Committee. This is a serious issue and I congratulate that Committee. I am informed that they slept this morning at 4.00 a.m. I know ordinarily the Chair of the Budget and Appropriations Committee sleeps at 4.00 p.m. but this one was on a very serious business.

PAPER LAID

Hon. Ichung'wah: Thank you, Hon. Deputy Speaker. It is indeed true that I ordinarily sleep at 4.00 p.m. but this time I had to sleep at 4.00 a.m.

Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

Report on the Budget and Appropriations Committee on the Second Supplementary Estimates for the Financial Year 2017/2018.

NOTICE OF MOTION

ADOPTION OF REPORT ON THE SECOND SUPPLEMENTARY ESTIMATES

Hon. Ichung'wah: Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Second Report of the Budget and Appropriations Committee on the Supplementary Estimates for the Financial Year 2017/2018, laid on the Table of the House on Thursday, 26th April 2018 and, pursuant to the provisions of Article 223 of the Constitution and Standing Order No.243, approves the Second Supplementary Estimates for the Financial Year 2017/2018.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Of course, that will be the main item of this House's afternoon business. That is why I thought it is better we allocate time for the Adjournment Motion for this morning so that in the afternoon, we can deal with the Second Supplementary Budget.

Next Order!

BILL

First Reading

THE HEALTH LAWS (AMENDMENT) BILL

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

Hon. Deputy Speaker: Hon. Cheptumo, on which one do you intend to speak to? Is it on the statements?

Hon. Cheptumo: Extension of time for the Parliamentary Service Bill.

Hon. Deputy Speaker: So, what is it that you want to do so that we know?

Hon. Cheptumo: Hon. Deputy Speaker, I just want to request for additional time so that we are able to file our Report as a Committee on that Bill.

Hon. Deputy Speaker: I have an issue with how you have approached the House.

Hon. Cheptumo: Hon. Deputy Speaker, it is not a Bill. It is tabling of the Report.

Hon. Deputy Speaker: I thought the Report is supposed to belong to the Leader of the Majority Party. I am also thinking, is it that we are just going to go in that particular manner or do we want to have a Procedural Motion? Hon. Cheptumo, let me consult briefly and then see how we can handle that matter.

The best way is to have a Procedural Motion on it and we place it in the Order Paper. We can do that in the afternoon. You will agree who will move it between yourself and the Leader of the Majority Party. Of course, I know that is your Committee specifically, but that is the Leader of the Majority Party's docket. However, that is something you can work out yourselves. There is no major issue on that one. Let us have it in the afternoon so that it is in the Order Paper and we can put it in the proper manner.

Next Order!

MOTION

ADOPTION OF REPORT ON NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF COMMERCIAL VEHICLES) REGULATIONS, 2018

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the National Transport & Safety Authority (Operation of Commercial Vehicles) Regulations, 2018, laid on the Table of the House on Tuesday, 17th April 2018, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety the said Regulations.

(*Hon. Murugara on 25.4.2018*)

(*Debate concluded on 25.4.2018 – Afternoon Sitting*)

Hon. Deputy Speaker: On this particular one, what remained was putting of the Question. I confirm that we have the required quorum of at least 50 Members.

(*Question put and agreed to*)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(*Order for Committee read*)

[*Hon. Deputy Speaker (Hon. Cheboi) left the Chair*]

IN THE COMMITTEE

(*The Temporary Deputy Chairman
(Hon. Omulele) took the Chair*)

THE COMPUTER AND CYBERCRIMES BILL

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we are now in the Committee of the whole House.

Hon. Musimba: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): What is out of order, Hon. Musimba?

Hon. Musimba: Hon. Temporary Deputy Chairman, I rise under Standing Order No.131. We had submitted amendments to this particular Bill, which do not appear on the Order Paper. We had written several letters to the Speaker, as my amendments were submitted on 28th March 2018. As such, we had deliberations yesterday with the Chairs of the two committees; that is, the Departmental Committee on Administration and National Security and the Departmental Committee on Communication, Information and Innovation, in accordance to a letter which is dated 24th April 2018 emanating from the substantive Speaker himself. What we deliberated upon was to try and synchronise with the view of having the amendments on the Floor of the House and we marry them as we progress in line with the same Standing Order.

However, the same has not been listed anywhere in today's Order Paper. So, I stand to be guided and, with your discretion, to actually postpone this particular sitting because there is a report which has to be given prior to proceeding with the Committee of the whole House. I can submit a copy of the letter, if you do not have it.

The Temporary Deputy Chairman (Hon. Omulele): Do I see any other Member who wishes to join Hon. Musimba? Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, with a lot of respect to Hon. Musimba, he had a candid discussion for over two hours with the two Chairs and they have married their amendments. It will be very important for Hon. Musimba to be very particular. He needs to

look at the Order Paper and see what the two Chairs have carried. Maybe, whatever he has in mind is in the amendments that will be carried by either the Chair of the Departmental Committee on Administration and National Security, Hon. Koinange, or of the Departmental Committee on Communication, Information and Innovation, Hon. Kisang. Secondly, there are certain amendments awaiting the Speaker's opinion as to whether they fall within money Bill category or not.

I had about three or four amendments, but I was only allowed one. Because Hon. Musimba had further discussions with the Chair of the Departmental Committee on Administration and National Security, he can walk to the Chair and see whether some of his amendments have been left out. The Clerk can confirm whether those amendments were removed subject to something else. They discussed this yesterday for the whole afternoon. I do not think we need to go into that bit.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, you know how we do things. You do not have to be on your feet. You will have an opportunity. It is you who raised this. You will have the last word on it.

I would like to give this opportunity to the Chair of the Departmental Committee on Communication, Information and Innovation, Hon. Kisang.

Hon. Kisang: Hon. Temporary Deputy Chairman, yesterday, Hon. Musimba, Hon. Koinange and I sat for close to two hours and we agreed that some of the amendments will be carried by Hon. Koinange. Hon. Musimba has several amendments on page 24 of the Order Paper on the long title and Clause 16A to Clause 16H. He also has additional amendments on Clause 3C. That is what we agreed. According to the Communication from the Speaker, most of Musimba's amendments were carried by the Chair of the Departmental Committee on Administration and National Security.

The Temporary Deputy Chairman (Hon. Omulele): Let us have Hon. Musimba.

Hon. Musimba: I have listened to the discourse by the Leader of the Majority Party and the Chair of the Departmental Committee on Communication, Information and Innovation. This is not a true reflection of what we discussed yesterday from 5 p.m. We agreed very clearly that the Clerks would work on it and share with us. It does not preclude me as a Member of Parliament to move my amendments on the Floor of the House. There is no usurpation anywhere by the Chairs of the Committees.

Standing Order No.131 is very clear. It calls for a report from the Committee before the commencement of the Committee of the whole House so that what is agreed on is captured very well in the same report. Contentious issues will be captured in the amendments on the Order Paper. My rights cannot be just taken away purely by an exchange on the Floor. Following Standing Order No.131 and to the extent of the money Bill aspect Standing Order No.114, I expressly wrote a letter to the Speaker to ask him to clarify - because it happened to Hon. Abdulswamad during the Energy Bill - to what extent any clause within my amendments has to do with a money Bill so that I make the same presentations before the Budget and Appropriations Committee, as is the tradition of the House. The only letter I received from him said that I should refer those amendments in line with Standing Order No.131. So that we are on the same page, Hon. Temporary Deputy Chairman, I do not know whether you have received the same letter. Are you in receipt of the letter written to me by the Clerk's Office, so that we can exchange on the same page?

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, I will give a communication on this issue after you finish your delivery.

Hon. Musimba: Hon. Temporary Deputy Chairman, I must say this clearly. This particular Bill opens up this country to grave danger and attacks. We cannot treat it casually. We are opening our country to the *Al Shabaab* to come in, work and threaten this country. We cannot take this particular Bill casually at all. I would invite the Hon. Chair, as you make your ruling and direction as we move forward, to please consider this in the same breath. Our country's stance on cybersecurity is of grave importance. If we are casual about it, we will fall. We will regret it.

COMMUNICATION FROM THE CHAIR

PROPOSED AMENDMENTS TO COMPUTER AND CYBERCRIMES BILL

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, with a lot of respect, I do not think that this House has considered any matter casually. Everything that is considered by this House is done so with due respect because this is a House of Parliament. Everything that is considered in this House is given the weight that it deserves. We cannot consider anything casually.

Be that as it may, I will now issue a Communication from the Chair regarding the proposed amendments to the Computer and Cybercrimes Bill (National Assembly Bill No.36 of 2017).

I wish to report to the House that on 20th April 2018, the Speaker received notice from the Member for Kibwezi West Constituency, Hon. Patrick Musimba, intending to propose amendments to the Computer and Cybercrimes Bill (National Assembly Bill No.36 of 2017) at the Committee Stage. In his opinion, the Speaker noted that some of the proposed amendments were substantive and had a money Bill effect to the extent that they proposed to create an institution on cybersecurity. In this regard, the Speaker directed that:

(a) The proposed amendments be subject to the provisions of Standing Order No.131 or that those with a money Bill effect be moved by the Chairpersons of the relevant Committees and failure to which, the amendments be stayed and not included for consideration.

(b) The proposed amendments that have no money Bill effect be carried by the Member for Kibwezi West subject to harmonising with those of the Committees.

Hon. Members, I am glad to inform the House that my office has received information that the amendments were discussed in a forum comprising of the Chairpersons of the Departmental Committee on Administration and National Security and the Departmental Committee on Communication, Information and Innovation and the Mover of the amendments, Hon. (Dr.) Patrick Musimba. It was agreed that:

(i) The amendments proposing to create an institution of cybersecurity will be moved by the Chairperson of the Departmental Committee on Administration and National Security;

(ii) The amendments relating to offences included in the amendments proposed by the Chairperson of the Departmental Committee on Communication, Information and Innovation be moved by that Chairperson;

(iii) The amendments relating to cybercrime offences and not included in the amendments proposed by the Chairperson of the Departmental Committee on Communication, Information and Innovation be moved separately by Hon. Musimba.

It is for this reason that I have allowed the Chairs of the Departmental Committee on Administration and National Security and Departmental Committee on Communication,

Information and Innovation to move the said amendments. I direct that the Committee of the whole House on the Bill proceeds as guided.

Members, this addresses the issues that Hon. Musimba had raised. We shall proceed with the Committee of the whole House.

Hon. Musimba: On a point of order.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, there cannot be a point of order on Communication from the Chair.

I will allow you but there cannot be a point of order on a Communication from the Chair.

Hon. Musimba: Hon. Temporary Deputy Chairman, your communication is very clear. It says that I will move the amendments which are not covered. How will I move those amendments if they are not on the Order Paper? They are not there. They are not in my name. I refer you to the Order Paper. There is no amendment in my name. The Order Paper by itself is in contravention of the said Communication.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, I do not know whether you have the Order Paper for today. If you look at page 424 of the Order Paper, you have three amendments to my reckoning. Hon. Musimba, so that we may just move, maybe, you may want to acquaint yourself with the Order Paper so that the House makes progress.

Hon. Musimba: Hon. Temporary Deputy Chairman, I have seen the clauses about the offences. I would like to hear the comments of the Chair of the Departmental Committee on Administration and National Security because we have heard from the Chair of Departmental Committee on Communication, Information and Innovation, as far as the command is concerned.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, we cannot do that because we will be opening the floodgates after we have closed them. It is actually flogging a dead horse. I have already communicated on that issue.

Hon. Musimba: Can I get a copy of the Communication so that I can look at it?

The Temporary Deputy Chairman (Hon. Omulele): Very well. Let us have the Leader of the Majority Party. I will not allow a lot of debate on this so that we can make progress.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, when the Speaker or Chair gives a Communication, that is it in the parliamentary procedure. I am the Leader of the Majority Party whether you call me a sham or not. That is why we need to refute fake news. We need to move on. These Members are waiting to debate this. We cannot be a victim of one person.

(*Laughter*)

The Temporary Deputy Chairman (Hon. Omulele): I had already directed that we move on. I direct that we move on with the business of the House as directed by the Chair.

(*Consideration in Committee of the whole House resumed*)

Clause 3

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended—

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) facilitate the prevention, detection, investigation, prosecution and punishment of cybercrimes”;

(b) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) protect the rights to privacy, freedom of expression and access to information as guaranteed under the Constitution;”

It is also important to note that if a Member has a particular interest; it is good to declare it. This is a national law. What is so particular about one Member, unless he has a particular interest that he needs to declare?

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, do you have something to say to this amendment?

Hon. Musimba: No.

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

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

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended in sub-clause (2) by deleting the word “this” appearing immediately after the words “purposes of”;

This amendment will ensure that there is consistency and clarity in the clause. We are cleaning up the Bill.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended in sub-clause (2) by—

(a) inserting the words “or psychological” immediately after the word “physical appearing in paragraph (c);

(b) deleting the word “of” appearing immediately after the words “for a term” at the end of the sub-clause;

This amendment rectifies typographical errors. We are cleaning up the Bill.

(Question of the amendment proposed)

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

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

(Clause 7 as amended agreed to)

Clause 8

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended—

(a) in sub-clause (2) by deleting the words “without sufficient excuse or justification” appearing immediately after the words “this Part”;

(b) in sub-clause (3) by deleting the words “in thereof” appearing immediately after the word “described” and substituting therefor the words “under the subsections”;

The words, “without sufficient excuse or justification” contradict Clause 8 (2). We are amending to take care of this.

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

Clause 9

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 9 of the Bill be amended in sub-clause (1) by deleting the word “term” appearing immediately after the word “imprisonment”;

This amendment will rectify typographical errors. We are cleaning up the Bill.

(Question of the amendment proposed)

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 10 of the Bill be amended—

(a) in sub-clause (1) by inserting the words “for a” immediately after the word “imprisonment”

(b) in sub-clause (2)(f) by deleting the words “by the Cabinet Secretary in the manner or form as the Cabinet Secretary may consider appropriate” and substituting therefor the words—

“relating to the security, defence or international relations of Kenya, critical information, communications, business or transport infrastructure and protection of public safety and public services as may be designated by the Cabinet Secretary responsible for matters relating to information, communication and technology.”

The amendment seeks to correct a typographical error. Two, it prescribes the purpose for which the Cabinet Secretary may designate a system to be protected under the Bill. Thank you.

(Question of the amendment proposed)

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

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

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

(Clause 10 as amended agreed to)

Clause 11

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended—

(a) by inserting the following new sub-clauses immediately after sub-clause (1)—

“(1A) A person who commits an offence under subsection (1) which causes physical injury to any person is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(1B) A person who commits an offence under subsection (1) which causes the death of a person is liable, on conviction, to imprisonment for life.”

(b) in sub-clause (3) by inserting the word “shillings” immediately after the words “five million”;

This amendment seeks to include a penalty where the offence of cyber espionage results to a physical injury or death. Secondly, it rectifies a typographical error. Thank you.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

Clause 12

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 12 of the Bill be amended by—

(a) renumbering the existing provision as sub-clause (1);
(b) inserting the following new sub-clause immediately after sub-clause (1)—

“(2) Pursuant to Article 24 of the Constitution, the freedom of expression under Article 33 of the Constitution shall be limited in respect of the intentional publication of false, misleading or fictitious data or misinformation that—

- (a) is likely to—
 - (i) propagate war; or,
 - (ii) incite persons to violence;
- (b) constitutes hate speech;
- (c) advocates hatred that-
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - (ii) is based on any ground of discrimination specified or contemplated in Article 27(4) of the Constitution; or
- (d) negatively affects the rights or reputations of others.

This amendment provides the extent of limitation of the freedom of expression as required by Article 24(2) of the Constitution.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Clause 13

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 13 of the Bill be deleted;

This amendment seeks to transfer the proposals in the clause and harmonise them with the Sexual Offences Act, 2011. This will result to a consequential amendment to Sexual Offences Act.

Clause 13 will be deleted in this Bill and then we transfer the proposals to Sexual Offences Act.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Those who would like to have a say on the clause, kindly put your cards at the interjection slot. I see interest from Hon. Rasso Ali.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Speaker. I rise to oppose the amendment. The Sexual Offences Act is a standalone Act. If this Bill becomes an Act, hence the law of the land, it can be read together with the existing statutes and the laws of the land. For that matter, the reasons that have been given are not good enough.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): I will give a chance to the Leader of the Majority Party. Hon. Shamalla has proposed to amend this clause, so, you will have a say on it. Hon. Musimba, hold your horses. You will also have your chance.

Hon. A.B. Duale: The Chairman, the Departmental Committee on Communication, Information and Innovation needs to tell us more because the issues discussed in Clause 13 are also found in the Sexual Offences Act. Here, we are talking about how technology, computers or gadgets will be used in as far as child pornography is concerned. If you give the Chair of the Committee a chance, he will make a clarification. He has told me that he has proposed another amendment to substitute this one. He can explain to us. I feel it should be in the Bill and not deleted. I oppose the deletion.

The Temporary Deputy Chairman (Hon. Omulele): Leader of the Majority Party, you are on point on this. Before I give a chance to Hon. Shamalla who is proposing to enhance Clause 13, the Chairman should tell us why he wants to delete the clause.

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairman. We are saying that we want to amend and replace provision 16 of the Sexual Offences Act, 2011 to deal with child pornography. Basically, we are moving Clause 13 from this Bill to the Sexual Offences Act. This is to amend Section 16 of the Sexual Offences Act, 2011 to harmonise its provisions with those of the deleted clause.

We can debate it and if Members say that the provisions can be in the two Acts, we do not have a problem with that as a Committee. We can retain it in this Bill.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman, you can see the kind of agitation it is raising in Members. You must be cognisant that a lot of child pornography is carried out through cyber. You need to be very clear on this.

Hon. Kisang: Hon. Temporary Deputy Chairman, because of the mood of the House, even when we were debating, every Member contributed on this clause, I withdraw this amendment.

(Proposed amendment by Hon. Kisang withdrawn)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba, do you still have a problem?

Hon. Musimba: Hon. Temporary Deputy Chairman, I wanted to seek clarity from the Chair and he has done that. The Sexual Offences Act does not provide for electronic offences. So, it is important, in line with what has been said by the Leader of the Majority Party and Hon. Dido, that the clause is retained in the Bill. It has to stay.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Shamalla, you can now move your amendment because it is seeking to enhance Clause 13.

Hon. (Ms.) Shamalla Jennifer: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended—

(a) in sub clause (1)-

(i) by inserting the following new paragraph (ba) immediately after paragraph (b)

“(ba) downloads, distributes, transmits, disseminates, circulates, delivers, exhibits, lends for gain, exchanges, barters, sells or offers for sale, let on hire or offer to let on hire, offer in another way, or make available in any way from a telecommunications apparatus pornography”; and,

(ii) by deleting the word “to” appearing immediately after the words “five years, or.” in paragraph “(c)”

(b) by deleting sub clause “2” and substituting therefor the following—

(2) “It is a defence to a charge of an offence under Clause 13 (1) that a publication which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, art, representation or figure is in the interest of science, literature, learning or other objects of general concerns.”

The reason for this proposed amendment is that it may comply with Section 181(1)(a) of the Penal Code which states that:

“(a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals;...”

Furthermore, it is important that this clause is inserted because it touches on pornography. We cannot say enough about the dangers of pornography and what it does to human dignity. But most important of all, human dignity is a value that is enshrined and captured in Article 10 of the Constitution of Kenya. Pornography, not only child pornography, debases human dignity and human interactions.

In the most modern western countries of this world, access to pornography is regulated. In the United Kingdom, you cannot simply pick up a phone and access pornography. Indeed, if you are an adult, you need to request your Internet Service Provider (ISP) server to allow you to access it. In this country, for any tablet, phone and any child who is able to use a telecommunication gadget can access pornography, hence the justification for this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Let us now have the Leader of the Majority Party, if he wishes to say something.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I thank Hon. Shamalla for proposing the amendment. This Bill is very important for protection of family values in this country. How do we protect them? By making sure that we control access to pornography which is dirty, according to most of us. We are bringing up children. Our children and adults should not access pornography. There are countries that have done better than us. China and the United Arab Emirates have done well. At a click of anything, you cannot access it. So, we should not even bother but we can do better.

I support the amendment and ask the Chair to agree with us. This is a very serious Bill, as Hon. Musimba said, and we must make sure that each and everything that is deleted or amended is explained well to Members. I ask the two Chairs who have the bulk of the proposed amendments to take more time to explain to us what each and every action they want to commit.

The Temporary Deputy Chairman (Hon. Omulele): Hon. ole Sankok.

Hon. ole Sankok: Thank you very much, Hon. Temporary Deputy Chairman. Surely, the country and every Member of this House has suffered cyber bullying. We really need to support the Anti-Cybercrimes Bill so that we protect, if not adults, our children. We have seen what is going on, on social media. Somebody sent me the video clip of the Deputy Governor of Kirinyaga. I opened it because it was in an ordinary *WhatsApp* group. When I opened it accidentally, I could not close the application yet my child was watching. He asked me: “*Baba, what is this? This man does not have clothes. What is happening?*” My fingers started sweating and when your fingers sweat, the touch screen does not respond. So, it could not respond.

I had to throw my phone under the chair. After throwing it, my child said, “*baba, imeanguka.*” He rushed and picked it while the video was playing. It turned out to be worse. For sure, we are suffering. Nowadays, for me to open any video clip, I have to first of all go to the toilet, make sure I have closed the door and reduce the volume on my phone because sometimes what comes out may attract a lot of attention.

The issue of cybercrime should also be in the security Bill so that our officers can be trained on how to handle these fellows so that we can make sure we are safe.

With those remarks, I support.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, unless one has a totally divergent position from what Hon. Shamalla eloquently and sufficiently set out, we should make progress on it so that the House makes a decision. Unless you have a totally divergent position, Hon. Manje, I will give you an opportunity.

Hon. Manje: Hon. Temporary Deputy Chairman. In the social media, some links are sent to you. You are unwillingly linked to a site you do want to view. That is why it is very important to make sure that at least this amendment goes through. We should realise that children are like any other creation. When they are exposed to funny things, they grow with the funny things just the way any other animal would grow. So, this exposure should be curtailed.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Wambugu, Member for Nyeri, is it something different?

Hon. Martin Wambugu: Thank you, Hon. Temporary Deputy Chairman. I see us getting to the point where we want to discuss about keeping that particular clause as it is. I was just seeking direction on Clause 13(2). Are we going to get there at some point to amend it or are we going to discuss and pass it as it is? I do not agree with Clause 13(2). I have a problem with

anything that tries to justify that it is possible to have child pornography as a scientific medical research or law enforcement purpose. I just asked Hon. Shamalla and she says she had not got to the point of presenting her amendment. I am worried that we will get to the point where we will decide whether we are keeping it or not. I find Clause 13(2) offensive.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we are dealing with the amendment as proposed by Hon. Shamalla holistically unless Members want to deal with each sub-clause.

Hon. (Dr.) Pukose: He dropped his amendment on Clause 13.

The Temporary Deputy Chairman (Hon. Omulele): Unless it is in the Order Paper, we cannot purport to amend it.

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

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

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

(Clause 13 as amended agreed to)

(Clausess 14 and 15 agreed to)

Clause 16

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 16 of the Bill be amended—

- (a) by deleting the marginal note and substituting therefor the following marginal note—
“cyber harassment”;
- (b) in sub-clause (1) by deleting the words “and repeatedly” appearing in the opening statement;
- (c) by inserting the following new sub-clauses immediately after sub-clause (3)—
“(4) A person may apply to Court for an order compelling a person charged with an offence under sub-clause (1) to refrain from—
 - (a) engaging or attempting to engage in; or
 - (b) enlisting the help of another person to engage in any communication complained of under subsection (1);
(5) The Court—
 - (a) may grant an interim order; and
 - (b) shall hear and determine an application under subsection (4) within fourteen days.
(6) An intermediary may apply for the order under subsection (4) on behalf of a complainant under this section.

(7) A person may apply for an order under his section outside court working hours.

(8) The Court may order a service provider to provide any subscriber information in its possession for the purpose of identifying a person whose conduct is complained of under this section.

(9) A person who contravenes an order made under this section commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

We are talking about crimes on cyber harassment that covers two aspects of cyberbullying and cyberstalking. The amendment also allows a victim to apply for restraining orders from the courts.

I seek support from the Members to amend the clause.

(Question of the amendment proposed)

Hon. (Ms.) Shamalla Jennifer: Hon. Temporary Deputy Chairman, I also have an amendment to Clause 16.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Shamalla, I have seen your proposed amendment. There are three proposed amendments to this clause, one by the Chair of the Departmental Committee on Communication, Information and Innovation, another one by the Chair of the Departmental Committee on Administration and National Security and another one by you. I am proposing to deal with the one for the Chair of Communication, Information and Innovation to its logical conclusion then we come to yours.

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

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

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

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 16 of the Bill be amended by deleting sub-clause (3).

(Question of the amendment proposed)

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

Hon. (Ms.) Shamalla Jennifer: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 16(1) of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

“(ba) is in whole or part, of an indecent or grossly offensive nature and affects the person.”

This is in regard to cyberbullying and cyberstalking. I went through the same legislation in the United Kingdom and they include the words “of indecent or grossly offensive nature”. I remember parliamentarians stating in this House how they would get pictures on WhatsApp of grossly offensive and indecent nature, which has an effect on the person receiving them.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

(Clauses 17, 18, 19 and 20 agreed to)

Clause 21

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 21 and substituting therefor the following new Clause—

Additional penalty
for other offences
committed through
use of a computer
system

21. (1) A person who commits an offence under any other law through the use of a computer system commits an offence and shall be liable on conviction to a penalty similar to the penalty provided under that law.
- (2) A Court shall, in determining whether to sentence a person convicted of an offence under this section, consider—
 - (a) the manner in which the use of a computer system enhanced the impact of the offence;
 - (b) whether the offence resulted in a commercial advantage or financial gain;
 - (c) the value involved, whether of the consequential loss or damage caused, or the profit gained from commission of the offence through the use of a computer system;
 - (d) whether there was a breach of trust or responsibility;
 - (e) the number of victims or persons affected by the offence;
 - (f) the conduct of the accused; and
 - (g) any other matter that the court deems fit to consider.

This is to make the use of computer technology to commit an offence covered in other laws constitutes an aggravated offence. Under the revised clause, the court will have discretion to consider the circumstances of each case before applying the enhanced sentences as we have put on the Bill

(Question of the amendment proposed)

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

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

(inserted, put and agreed to)

(Clause 21 as amended agreed to)

(Clause 22 agreed to)

Clause 23

The Temporary Deputy Chairman (Hon. Omulele): There are two proposed amendments to this.

Hon. Kisang: They are two. One is from the Departmental Committee on Communication, Information and Innovation and the other is from the Departmental Committee on Administration and National Security.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 23 of the Bill be amended—

(a) in sub-clause (7) by inserting the following new paragraphs immediately after paragraph (b)—

“(c) maintain the integrity of a computer system, any data or information accessed or retained; and

(d) maintain the confidentiality of a computer system, any data or information accessed during the execution of the warrant.”

(b) in sub-clause (8) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) compromises the integrity or confidentiality of a computer system, data or information accessed or retained under this section or misuses the powers granted under this section, commits an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both.”

This is to require investigative authorities to maintain integrity and confidentiality of information they seize.

The Temporary Deputy Chairman (Hon. Omulele): Just give me an opportunity to give direction. This is because there are two proposed amendments by you, the Chairman of the Departmental Committee on Communication, Information and Innovation and also by the Chairman of the Departmental Committee on Administration and National Security. I think the one by the Chairman of the Departmental Committee on Administration and National Security is proposing to delete the entire clause and substitute it with a totally new one. Yours is proposing to enhance it as it exists. So, the right way to deal with it will be for us to deal with the one by the Chairman of the Departmental Committee on Administration and National Security. If it is carried, yours will fall. Let us deal with the one by the Chairman of the Departmental Committee on Administration and National Security first.

Hon. Koinange: Thank you. Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 23 of the Bill be deleted and replaced by the following new clause—

Search and
seizure of
stored
computer

data.

23. (1) Where a police officer or an authorised person has reasonable grounds to believe that there may be in a specified computer system or part of it, computer data storage medium, program, data, that—

(a) is reasonably required for the purpose of a criminal investigation or criminal proceedings which may be material as evidence; or

(b) has been acquired by a person as a result of the commission of an offence, the police officer or the authorised person may apply to the court for issue of a warrant to enter any premises to access, search and similarly seize such data.

(2) A search warrant issued under subsection (1) shall —

(a) identify the police officer or authorised person;

(b) direct the police officer or authorised person under paragraph (a) to seize the data in question; or

(c) direct the police officer or authorised person to:

(i) search any person identified in the warrant;

(ii) enter and search any premises identified in the warrant; or

(iii) search any person found on or at such premises.

The clause lays down procedures that a law enforcement officer must follow to obtain a search warrant to conduct a search or seizure of stored data. This is to make the process of acquiring a search warrant that will support timely and effective decision, investigation and prosecution of computer and cybercrimes and respect rights to fair administration as enshrined in the Fair Administrative Action Act. This is in line with the preamble and recommendations of the Budapest Convention and the Paper by Collin County Bar on the Cybercrimes Act, 2015 in Jamaica.

Thank you, Hon. Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I tend to agree with the Chairman of the Departmental Committee on Administration and National Security because there is a procedure that the law enforcement officer must follow to obtain a search warrant to conduct a search or seizure of any stored data. If you compare that with the amendment by the Chairman of the Departmental Committee on Communication, Information and Innovation, it is better improved by the one that the Chairman of the Departmental Committee on Administration and National Security has made clearer. He is proposing to replace the entire clause with his amendment. What he has done is that there must be a process of acquiring a search warrant in a manner that it will support timely and effective decision and investigation. That protects both the investigating officer and gives a chance to the person in terms of the Fair Administrative Action Act. Of course, he has brought the element of best international practices according to the Budapest Convention and the one from Jamaica.

The amendment by the Chairman of the Departmental Committee on Administration and National Security makes more sense. I beg to support.

The Temporary Deputy Chairman (Hon. Omulele): It is true. It is good that the kind of action that is proposed is properly regulated so that it does not offend the Constitution in terms of the right to property and fair administrative action.

I see interest from Hon. Wamunyinyi Wafula, Member for Kanduyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairman. I also support this proposed amendment by the Chairman of the Departmental Committee on Administration and National Security.

Just to add, it not only provides clarity on how to manage the process of investigation and other related actions, but also ensures that we have looked at the other related laws and provisions in other international statutes. Therefore, we are also complying with international statutes looking at the UN and other countries the Chairman has cited.

This proposal will also protect all the parties that are affected and will ensure that we are able to comply and take care of the interests within the law.

I support, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Kisang, I see you wanted to say something on this.

Hon. Kisang: I wanted to say that as the Departmental Committee on Communication, Information and Innovation, we do not have any issues with the amendments from the Departmental Committee on Administration and National Security. We had enhanced, but this is better than ours. As a Committee, we support.

The Temporary Deputy Chairman (Hon. Omulele): So, let us deal with it so that we come to yours and deal with it as necessary.

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

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

Before we move to the next stage, we will have to deal with your proposed amendment, Hon. Kisang. What would you like to do with it?

Hon. Kisang: Hon. Temporary Deputy Chairman, because of what has happened, we have already taken the amendments from the Chairman of the Departmental Committee on Administration and National Security. The one on my Committee stands dropped.

(Proposed amendment by Hon. Kisang withdrawn)

(Clause 23 as amended agreed to)

Clause 24

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 24.

We discussed and deliberated. There are so many issues. In the Bill, there was a proposal that a police officer or an authorised officer could go into premises and seize data or arrest without a warrant of arrest. There is no justification because to conduct a search without a warrant contradicts Articles 24(1)(a) and 31 of the Constitution on freedom of expression and others.

As a Committee, we said this clause be deleted completely because it offends the Constitution of Kenya.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): It is a similar situation to the one we have just dealt with. Hon. Koinange, Chair of the Committee on Administration and National Security, you also have a proposal, which will fall in the event the one that is proposed by the Chair of the Committee on Communication, Information and Innovation is carried.

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 24 of the Bill be deleted and replaced by the following new clause—

Power to search without a warrant in special circumstances.

24 (1). A police officer or authorised person may without a search warrant search any person or premises for seizing any computer system or data referred to in section 23—

(a) if the person to whom the search is directed consents to the search for and the seizure of any computer system or data in question; or

(b) if the police officer or authorised person on reasonable grounds believes that —

(i) a search warrant will be issued to him under section 23 if he applies for such warrant; and

(ii) the delay in obtaining such warrant would defeat the object of the search.

(2) Pursuant to Article 24 of the Constitution, this section shall limit the protection of the right to property under Article 40 of the Constitution to deprive a person of a computer system or data or of any interest in, or right over, any computer system or data to the extent contemplated under subsection (1).

The clause lays down procedures that a law enforcement officer must follow to regularise a search seizure or store data conducted without a warrant.

(Question of the amendment proposed)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, we cannot legislate a law that contravenes the Constitution. Somebody will go to court and the courts will annul that piece of legislation. I totally agree with the deletion by Hon. Kisang. He cited Article 24 and Article 31 of the Constitution. Article 31 talks about privacy. Every person has a right to privacy, which includes the right not to have their person, homes and property searched, their possessions seized or information relating to their family or private affairs recorded unnecessary. That is why the element of a search warrant has been brought. Firstly, we cannot legislate contrary to the provision of the Constitution. Secondly, we should not give security agents a blank cheque to

violate your rights given under Article 31 of the Constitution. I want to agree with Hon. Kisang, that we delete Clause 24 because the other section that the Chairperson of the Departmental Committee on Administration and National Security raised earlier can cover it. So, we must also protect the citizens. We cannot also legislate if it contradicts a provision of the Constitution.

The Temporary Deputy Chairman (Hon. Omulele): This particular proposed amendment by the Chairman of the Departmental Committee on Administration and National Security, when taken with the one that we have just passed, will allow the police to get warrants. In the very next one, we will say that they can move without warrants. I see a lot of interest, but I think for us to move on, I will give a chance to two Hon. Members, namely, Hon. Osotsi and Hon. Mbarire, to have a say on this. Then I will let the House decide. Hon. Osotsi.

Hon. Osotsi: Thank you, Hon. Temporary Deputy Chairman. What I wanted to say is what you have just said. That amendment contradicts the amendment we have just endorsed on Clause 23. Whereas Clause 23 talks about a search warrant, Clause 24 talks of “without a search warrant” which clearly contradicts each other.

Hon. (Ms.) Mbarire: Thank you, Hon. Temporary Deputy Chairman. It is important that we do not legislate in vain. It is also important that we all know that the rights that enshrined in our Constitution are inalienable. In other words, they cannot be taken away from you by anybody or any institution or any Government. So, this particular House cannot be the one taking away the rights as enshrined in the Constitution. I think this particular clause that the Chairman is proposing is open to abuse by authorities. Each one of us should put ourselves in the shoes of the ones being searched without a search warrant. We also know that around politics, this is the one thing that can be misused to fight an opponent. Therefore, I oppose this particular amendment and I want to urge the Chair of the Departmental Committee on Administration and National Security, to consider withdrawing this particular amendment. It is not in good faith and it is illegal.

The Temporary Deputy Chairman (Hon. Omulele): Having heard the sentiments of Members, unless somebody has a totally contrary position, I intend to proceed.

Hon. Chairman of the Departmental Committee on Administration and National Security, what do you want to do with your proposed amendment?

Hon. Koinange: I will just drop it because it is similar to Clause 23.

(Proposed amendment by Hon. Koinange withdrawn)

The Temporary Deputy Chairman (Hon. Omulele): Very well, that opens the way for me to put the Question.

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

(Clause 24 deleted)

Clause 25

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 25 of the Bill be amended—

(a) by deleting sub clause (1) and substituting therefor the following new sub clause

‘(1) Where a computer system or data has been removed or rendered inaccessible, following a search or a seizure under section 23, the person who made the search shall, at the time of the search or as soon as practicable after the search make a list of what has been seized or rendered inaccessible, and shall specify the date and time of seizure.’

(b) by deleting sub clause (4)

(Question of the amendment proposed)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, since the Chair of the Committee on Administration and National Security and the one of Communication, Information and Innovation are deleting, it will be very good if the Chairperson of the Departmental Committee on Administration and National Security tells us which area he is deleting and the justifications.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chairman, you need to be clearer because we have deleted some preceding clauses and this is following on the work that we have just done so that it is clear to Members exactly what this means.

Hon. Koinange: Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Kisang.

Hon. Kisang: Hon. Temporary Deputy Chairman, I rise to oppose this amendment because if the security officers seize your computer or any other material that you have been using to perform your work, there is no harm in you being given an opportunity to access your computer and make a copy of what you have so that you can continue doing your own activity. They can retain what they have already seized, but it will be good for you to be given an opportunity so that you can make your copy and continue doing your work. Supposing you are an IT expert and they have taken the server away and you do not know how long they are going to retain it, how will you perform your daily duties?

The Temporary Deputy Chairman (Hon. Omulele): Very well. Let us have the Leader of the Majority Party followed by Hon. Wambugu.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I also stand to oppose. The Chairman of the Departmental Committee in charge of security wants to give the security agencies a blank cheque. Look at Sub-clause (4) which he wants to delete. It says:

“A court may, on reasonable ground being disclosed, allow a person who has qualified under sub-section 2(a) or (b) access and copy data on the system.”

When a security officer comes to your house with a search warrant and intends to pick certain computer gadgets, it is within the rights of that person to record, because you never know that the moment you take those gadgets and equipment, more things can be added. So, we must also protect that person where the seizure is being done. We have seen a situation where people can even put guns in your house. That is completely against fair administrative justice.

I want the Chairman, this time, to agree with us that we should not give security agents a blanket cheque on the pretext...If it is the KRA, for example, and they feel that you are involved in tax evasion, it is just important that that person copies the information that you are taking so that you can use it in a court of law. You cannot just take his things and say, “I found the following things,” which he is not aware of. So, I agree with the Chairman of the Committee on Communication, Information and Innovation. I want to ask the Chairman of the Committee on Administration and National Security that we should not go to the extent of putting the question. He can as well just drop that amendment.

The Temporary Deputy Chairman (Hon. Omulele): We shall have Hon. Wambugu.

Hon. John Wambugu: Thank you very much, Hon. Temporary Deputy Chairman. As a Member of the Departmental Committee on Administration and National Security, I rise to support the amendment that our Chairman has proposed. Why do I do that? In any other circumstance where police officers are conducting an investigation, let us just use an example that they have found you with a car that they think has been involved in a crime. They take possession of whatever item that they need to conduct investigations and finish. What we are saying is that if your computer has been seized by the police, you actually have permission to copy the information on that computer.

We have had incidents of bloggers creating fake news and then using it to hurt the reputations of Members here. What we are saying is that if the police seize the material or the computer that that blogger has been using, you are actually allowing that he can be given access or permission to copy that material and continue using it. Remember, the person being investigated is being investigated for a crime. In fact, every time I listen to the conversations we are having now between ICT and national security, I go back to one of my initial problems with this Bill: That we are trying to create a crime management process through ICT rather than through national security.

In this particular aspect of cybercrime, we are dealing with a person who is suspected of being a criminal. We are assuming that the computer that that person has been using is his tool of crime; his gun. In any other circumstance, if it is an armed robber, you pick his gun and conduct investigations on it. Here, the tool that is being used to commit the crime is a computer and you are now telling us that once that computer is seized, the suspect has access to the information even as the police conduct investigations. What is going to stop the suspect from continuing with the crime if he has a copy of the information that was on the computer?

The Temporary Deputy Chairman (Hon. Omulele): Hon. Wambugu, you will appreciate that if you commit a crime and it is a recognised crime and you persist in doing the acts that comprise that crime, then you will be charged as many times as you offend. Every time you offend, there is a charge. So, if you persist, then definitely you will be charged. What we are speaking to is the right to property on mere suspicion. I think that is what the Leader of the Majority Party was speaking to.

Let me not be the one to make this point. I will give this opportunity to Hon. Mutua Barasa, Member for Kimilili.

Hon. Didmus Mutua: Thank you, Hon. Temporary Deputy Chairman. I also rise to support the amendment and make it clear that as a Committee on Administration and National Security, we discussed this matter at length. My good friend, the Leader of the Majority Party's statement is a bit based on a layman's point of view. We, as security experts, looked at it in terms of preventing such kind of crime.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Barasa, there is no Member here who is a layman. Every Member here is a Member of Parliament. When we debate matters here, we do so as Members. Make your contribution on the proposed amendment, but without sullying the contributions by other Members.

Hon. Didmus Mutua: I was simply saying that when we were coming up with this kind of amendment, we consulted security experts amongst ourselves. As opposed to looking at the comfort of the suspect, we should look at the bigger picture. Once you give them an opportunity to copy, it is their business. They should have a copy of what they are doing. Even in modern ICT setup, whatever you are doing is copied in some disc somewhere. This amendment is proper.

The Temporary Deputy Chairman (Hon. Omulele): I will give opportunity to two Members and then I will hand it over to you to make a determination. Hon. Wamunyinyi followed by Hon. Angwenyi. The Member for Dagoretti South, you will hold your horses a little bit.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairman. I think I should start by advising, for free, my brother, Hon. Didmus Barasa. We do not have laymen in the House and the Leader of the Majority Party can never be a layman. He is a senior legislator here. Didmus should learn. I know he was elected for the first time and he is learning, but I think he should speed up his learning, so that he can understand that there are no laymen in the House. We only have legislators.

I am a member of the Departmental Committee in charge of security, but I have been wondering and having an afterthought. What the chairman seeks to delete is as follows:

“Where a computer system or data has been removed or rendered inaccessible following a search or seizure under section 23, the person who made the search shall at the time of the search or as soon as practicable after the search—

- (a) make a list of what has been seized or rendered inaccessible, and shall specify the date and time of the seizure; and;
- (b) provide a copy of a list to the occupier of the premises or the person in control of the computer system referred to under paragraph (a).”

The other bit he is trying to delete is sub clause (4), which states:

“Despite subsection (3), a court may, on reasonable grounds being disclosed, allow a person who has qualified under subsection (2)(a) or (b)—

- (a) access and copy computer data on the system; or
- (b) obtain a copy of the computer data.”

Having looked at this again, I do not see how this injures anything. Why is it being deleted? How is it injurious? How does this injure the administration of the law? For this reason, because I do not see how offensive it is, I oppose this proposed amendment.

The Temporary Deputy Chairman (Hon. Omulele): What Hon. Wamunyinyi has set out is very crucial and fundamental because for us to make an amendment to law, there must be some mischief that we are trying to cure. What is the mischief that the law as proposed in the Bill trying to cure? What is the mischief the Chairperson of the Committee on Administration and National Security intending to cure?

Anyway, I will now proceed to give this to the House so that we can make progress considering the earlier communications. Member for Dagoretti South, I know you have an interest in this. Before I put that Question, I will allow you to say something.

Hon. Angwenyi, you will be the last. I had forgotten you, but not for too long. You are the senior most Member in this House. You will have your say.

Hon. Angwenyi: Hon. Wamunyinyi has said it.

The Temporary Deputy Chairman (Hon. Omulele): You are saying that Hon. Wamunyinyi has covered what you wanted to say. Let us hear the Member for Dagoretti South then we shall put the Question.

Hon. Waweru: Thank you, Hon. Temporary Deputy Chairman. I will also not take much time because Hon. Wamunyinyi has covered quite good ground and we are also guided by what you have said. The issue of an expert opinion has been sought here and I would like it to go on record that even when a computer is seized by a security organ, what normally happens is that

they do not even operate on the actual hardware that carries the material software that is being investigated. They make an impression copy of what is carried in that hardware.

In that sense, they do not even tamper with what originally existed within the hardware that was seized. But also, what this Committee is telling us is that there is a chance that there would be further modification or adjustment to data that exists and any computer expert will tell you that any modification made within any digital system has a footprint which carries its own metadata. As such, any modification that is going to be made is going to carry a footprint that shows the time, date, access and, modification done. So, I do not see any offensive nature that needs to be cured by what the amendment by this Committee is seeking to do. On that ground, I oppose.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Members, you have expressed yourself sufficiently on this.

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

(Clause 25 agreed to)

Clause 26

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 26 of the Bill be deleted and replaced by the following new clause—
Production order.

26. (1) Where a police officer or an authorised person has reasonable grounds to believe that—

(a) specified data stored in a computer system or a computer data storage medium is in the possession or control of a person in its territory; and

(b) specified subscriber information relating to services

offered by a service provider in Kenya are in that service provider's possession or control and is necessary or desirable for the purposes of the investigation, the police officer or the authorised person may apply to court for an order.

(2) The Court shall issue an order directing —

(a) a specified person to submit specified computer data that is in that person's possession or control, and is stored in a computer system or a computer data storage medium; or

(b) a specified service provider offering its services in Kenya to submit subscriber information relating to such services in that service provider's possession or control.

Hon. Temporary Deputy Chairman, the clause lays down procedures that a law enforcement officer must follow to acquire and execute a production order for data. The Committee proposes to replace the entire clause with a proposed amendment to make the process of acquisition of a production order in a manner that will promote timely and effective detection, investigation and prosecution of computer and cybercrimes and respects rights to fair administration as enshrined under the Fair Administrative Action Act, in line with the preamble and recommendation on the Budapest Convention and a Paper in the *Commonwealth Journal* by Colleen Bar on the Cybercrimes Act of 2015 of Jamaica.

Thank you.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Omulele): Chair of the Committee on Communication, Information and Innovation, you had also proposed to delete and now that the House has expressed itself by affirming and taking up the one by the Chair, Administration and National Security, yours automatically fails.

Hon. Kisang: Hon. Temporary Deputy Chairman, because we have already taken the amendments by the Chair of the Committee on Administration and National Security, mine was to delete Clauses 4 and 6 because of the offences. It was an offence in the Constitution, but these amendments have enhanced them so that they do not offend in any way. Basically, we will live with it because there is nothing offensive to the law.

(Proposed amendment by Hon. Kisang withdrawn)

(Clause 26 as amended agreed to)

Clause 27

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 27 of the Bill be amended—

(a) in sub-clause (2) by deleting the words “the period specified in the notice” and substituting therefor the words “thirty days”.

(b) by deleting sub-clause (4);

This is to define the time limit for preservation of traffic data and the requirement to maintain confidentiality of the existence of an order under the clause, which is not necessary.

(Question of the amendment proposed)

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

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

(Clause 27 as amended agreed to)

Clause 28

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 28 of the Bill be amended—

(a) in sub-clause (4) by deleting the word “not” appearing immediately after the words “for a period”;

(b) in sub-clause (7) by inserting the word “shillings” immediately after the words “ten million” appearing in paragraph (a);

This is to rectify some spelling mistakes and to clean it up.

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

Clause 29

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 29 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “a serious” appearing immediately after the words “in respect of” in the opening statement and substituting therefor the words “an”;

(b) in sub-clause (7)(a) by inserting the word “shillings” immediately after the words “ten million”;

This is to delete the subjective reference and rectify the spelling errors.

(Question of the amendment proposed)

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

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

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

(Clause 29 as amended agreed to)

(Clauses 30, 31 and 32 agreed to)

Clause 33

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 33 of the Bill be amended—

(a) in sub-clause (1) by inserting the words “the Extradition (Contiguous and Foreign Countries) Act” immediately after the phrase “2011”.

(b) in sub-clause (4) by inserting the words “the Extradition (Contiguous and Foreign Countries) Act” immediately after the phrase “2011”.

This is to include the words “the Extradition (Contiguous and Foreign Countries) Act”.

These two Acts are complementary and will ensure successful prosecution of offences under this Bill. Those who are not in our jurisdiction will be brought to book and charged in a court of law.

(Question of the amendment proposed)

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

(Clause 33 as amended agreed to)

(Clauses 34, 35, 36 and 37 agreed to)

Clause 38

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 38 of the Bill be amended by deleting—

(a) the word “another” wherever it appears;

(b) the words “without the authorisation but” appearing immediately after the word “may” in the opening statement;

(c) the phrase “(open source)” appearing in paragraph (a);

This is to rectify typographical errors. The words leave the clause open to abuse and allow a disproportionate hacking phrase which contradicts it. We are enhancing clarity of this clause so that when it comes to implementation, it is not ambiguous.

(Question of the amendment proposed)

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

(Clause 38 as amended agreed to)

Clause 39

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 39 of the Bill be amended in sub-clause (2)(g) by inserting the words “to the” immediately after the word “relevant”;

This is to correct some spelling mistakes.

(Question of the amendment proposed)

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

(*Clause 39 as amended agreed to)*

(*Clause 40 agreed to)*

Clause 41

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 41 of the Bill be amended in sub-clause (1) by deleting the words “and prosecuting” appearing immediately after the word “investigating”.

The Central Authority established under this Bill falls in purview of the Office of the Attorney-General, which does not have prosecution powers in the Constitution.

(*Question of the amendment proposed*)

The Temporary Deputy Chairman (Hon. Omulele): The Leader of the Majority Party.

Hon. A.B. Duale: I want the Chair to explain better. I think the Central Authority we are establishing, the Director of Public Prosecutions (DPP) has prosecution powers as a Member. The Director of Criminal Investigation (DCI) and all those who work under the DPP have prosecution powers. I disagree with the Chair, we should not remove the words “and prosecuting”. The essence of bringing the DCI and the Inspector-General (IG) is to investigate. We have the DPP in the Central Advisory Board for him to prosecute. If you remove the word ‘prosecution’, then you are telling us that the DPP has no role there. I ask the Chair to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Omulele): Before the Chair of the Departmental Committee on Communication, Information and Innovation speaks to it, I will give an opportunity to Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairman. I also looked at this keenly and the Chair of the Departmental Committee of Communication, Information and Innovation explanation has not convinced us why these words are being removed. As the Leader of the Majority Party has said, the prosecuting institution is important. We need to retain those words.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Hon. Osotsi.

Hon. Osotsi: Thank you, Hon. Temporary Deputy Chairman. Looking at this Bill, the Central Authority is in reference to mutual legal assistance which is basically a function under the Office of the Attorney-General, which does not have prosecution powers. The Committee thought this particular issue of prosecution should be removed so that only investigations are done.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chair.

Hon. Kisang: Those powers were moved to the DPP. In the Constitution, the powers are not in the Attorney-General’s docket.

The Temporary Deputy Chairman (Hon. Omulele): Very well, Members. I think you have expressed yourselves on this.

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

(Clause 41 as amended agreed to)

(Clauses 42, 43, 44 and 45 agreed to)

Clause 46

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 46 and substituting therefor the following new clause—

PART VI—PROVISIONS ON DELEGATED POWERS

- Regulations. 46. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of any provisions under this Act.
- (2) Without prejudice to the foregoing, regulations made under this section may provide for—
- (a) designation of computer systems, networks, programs, data as national critical information infrastructure;
 - (b) protection, preservation and management of critical information infrastructure;
 - (c) access to, transfer and control of data in any critical information infrastructure;
 - (d) storage and archiving of critical data or information;
 - (e) audit and inspection of national critical information infrastructure;
 - (f) recovery plans in the event of disaster, breach or loss of national critical information infrastructure or any part of it;
 - (g) standard operating procedures for the conduct, search, seizure and collection of electronic evidence; and
 - (h) mutual legal assistance
- (3) For the purposes of Article 94 (6) of the Constitution—
- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Authority to discharge its functions more effectively;
 - (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfill the objectives specified under this section;
 - (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013

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We are deleting Clause 46 to comply with the provisions of Article 94(6) of the Constitution by stating the limits, purpose and principals applicable to the powers delegated to the Cabinet Secretary. The CS may make regulations to better carryout the provisions under this Act. Without prejudice to the regulations made under this section this may provide for designation of computer systems, networks, programs as a national critical information infrastructure as in the Order Paper. Therefore, we are deleting the powers delegated to the CS to make regulations so they are brought to this House and we pass them through the Committee on Delegated Legislation.

(*Question of the amendment proposed*)

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

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

(*Clause 46 as amended agreed to*)

New Part IA

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new part immediately after Clause 3—

“PART IA – ESTABLISHMENT OF THE NATIONAL COMPUTER AND CYBERCRIMES COORDINATION COMMITTEE.

Establishment
of Committee

3A.(1) There is established a National Computer and Cybercrimes Coordination Committee.

Composition of
the Committee.

3B.(1) The Committee shall comprise of —

- (a) the Principal Secretary responsible for matters relating to internal security or a representative designated and who shall be the chairperson;
- (b) the Attorney General or a representative designated in writing by the Attorney General;
- (c) the Chief of the Kenya Defence Forces or a representative designated in writing by the Chief of the Kenya Defence Forces;
- (d) the Inspector-General of the National Police Service or a representative designated in writing by the Inspector-General of the National Police Service;
- (e) the Director General of the National Intelligence Service or a representative designated in writing by the Director General of the National Intelligence Service;
- (f) the Director General of the Communications Authority of Kenya or a representative designated

in writing by the Director General of the Communications Authority of Kenya;

- (g) the Director of the Public Prosecutions or a representative designated in writing by the Director of Public Prosecutions;
- (h) the Governor of the Central Bank of Kenya or a representative designated in writing by the Governor of the Central Bank of Kenya; and
- (i) the Director who shall be the secretary of the Committee and who shall not have a right to vote.

(2) The Committee shall report to the Cabinet Secretary responsible for matters relating to internal security.

Functions of the Committee.

3C. (1)The Committee shall—

- (a) advise the Government on security related aspects touching on matters relating to blockchain technology, critical infrastructure, mobile money and trust accounts;
- (b) advise the National Security Council on computer and cybercrimes;
- (c) coordinate national security organs in matters relating to computer and cybercrimes;
- (d) receive and act on reports relating to computer and cybercrimes;
- (e) develop a framework to facilitate the availability, integrity and confidentiality of critical national information infrastructure including telecommunications and information systems of Kenya;
- (f) coordinate collection and analysis of cyber threats, and response to cyber incidents that threaten cyberspace belonging to Kenya, whether such threats or incidents of computer and cybercrime that occur within or outside Kenya;
- (g) cooperate with computer incident response teams and other relevant bodies, locally and internationally on response to threats of computer and cybercrime and incidents;
- (h) establish codes of cyber-security practice and standards of performance for implementation by owners of critical national information infrastructure;
- (i) develop and manage a national public key infrastructure framework; and
- (j) perform any other function conferred on it by this Act or

any other written law.

(2) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

Secretariat of the Committee.

3D. (1) There shall be a Secretariat which shall comprise of the Director and such number of public officers that, subject to the approval of the Committee, the Cabinet Secretary responsible for matters relating to internal security in consultation with the Cabinet Secretary responsible for matters relating to information, communications and technology may deploy to the Secretariat.

. (2) The Director shall be—

- (a) the head of the Secretariat; and
- (b) responsible to the Committee for the day to day administration of the affairs of the Secretariat and implementation of the decisions arising from the Committee.

(5) Without prejudice to the generality of the provisions of subsection (4), the Director shall be responsible for—

- (a) the implementation of the decisions of the Committee;
- (b) the efficient administration of the Secretariat;
- (c) the management of staff of the Secretariat;
- (d) the maintenance of accurate records on financial matters and resource use;
- (e) the preparation and approval of the budget for the required funding of the operational expenses of the Secretariat; and
- (f) the performance of any other duties as may be assigned to him or her by the Committee.

(6) The Director shall be appointed for a single term of four years and shall not be eligible for reappointment.

Reports by the Committee etc.

3E. The Committee shall submit quarterly reports to the National Security Council.

Critical information infrastructure.

3F. (1) The Director shall, by notice in the Gazette, designate certain systems as critical infrastructure.

(2) The Director shall designate a system as a critical infrastructure if a disruption of the system would result in—

- (a) the interruption of a life sustaining service including the supply of water, health services and energy;

- (b) an adverse effect on the economy of the Republic;
- (c) an event that would result in massive casualties or fatalities;
- (d) failure or substantial disruption of the money market of the Republic; and
- (e) adverse and severe effect of the security of the Republic including intelligence and military services.
- (3) The Director shall, within a reasonable time of designating a system as critical infrastructure, inform the owner or operator of the system the reasons for the designation of the system as a critical infrastructure.
- (4) The Director shall, within a reasonable time of the declaration of any information infrastructure, or category or class of information infrastructure or any part thereof, as a critical information infrastructure, in line with a critical infrastructure framework issue directives to regulate—
- (a) the classification of data held by the critical information infrastructure;
 - (b) the protection of, the storing of and archiving of data held by the critical information infrastructure;
 - (c) cyber security incident management by the critical information infrastructure;
 - (d) disaster contingency and recovery measures, which must be put in place by the critical information infrastructure;
 - (e) minimum physical and technical security measures that must be implemented in order to protect the critical information infrastructure;
 - (f) the period within which the owner, or person in control of a critical information infrastructure must comply with the directives; and
 - (g) any other relevant matter which is necessary or expedient in order to promote cyber security in respect of the critical information infrastructure.

Protection of
critical
information
infrastructure.

3G. (1) The Committee shall within reasonable time and in consultation with the owner or a person in control of an identified critical information infrastructure, submit to the National Security Council its recommendations of entities to be gazetted as critical information infrastructures.

(2) The Committee shall, after the gazettlement under subsection (1), in consultation with a person that owns or operates the critical information infrastructure—

Reports on critical information infrastructure.

- (a) conduct an assessment of the threats, vulnerabilities, risks, and probability of a cyber-attack across all critical infrastructure sectors;
- (b) determine the harm to the economy that would result from damage or unauthorised access to critical infrastructure;
- (c) measure the overall preparedness of each sector against damage or unauthorised access to critical infrastructure including the effectiveness of market forces driving security innovation and secure practices.
- (d) identify any other risk-based security factors appropriate and necessary to protect public health and safety, or national socio-economic security; and
- (e) recommend to the owners of systems designated as critical infrastructure, methods of securing their systems against cyber threats.

3H. (1) The owner or operator of a system designated as critical infrastructure shall report to the Committee any incidents likely to constitute a threat in the nature of an attack that amounts to a computer and cybercrime and the action the owner or operator intends to take to prevent the threat.

(2) Upon receipt of a report by Commitee, under subsection (1), the National Security Council shall provide technical assistance, to the owner or operator of a critical infrastructure to mitigate the threat.

(3) The Director may institute an investigation of a computer and cybercrime attack on his or her own volition and may take necessary steps to secure any critical infrastructure without reference to the entity.

(4) The Director shall submit a report on any threat in the nature of a computer and cybercrime reported by the owners or operators of critical infrastructure periodically to the National Security Council.

Information sharing agreements.

3I. (1) A private entity may enter into an information sharing agreement with a public entity on critical information infrastructure.

(2) An agreement under subsection (1) shall only be entered into for the following purposes and in line with a critical infrastructure framework—

- (a) to ensure cyber security;
- (b) for the investigation and prosecution of crimes related to cyber security;
- (c) for the protection of life or property of an individual;
and
- (d) to protect the national security of the country.

(3) Prior to the sharing of information under subsection(1) a party to an agreement shall review the information and ascertain whether the information contains personal details that may identify a specific person not directly related to a threat that amounts to a computer and cybercrime and remove such information.

(4) A person shall not, under this Part, share information relating to the health status of another person without the prior written consent of the person to whom the information relates.

Auditing of critical information infrastructures to ensure compliance.

3J (1) The owner or person in control of a critical information infrastructure shall annually submit a compliance report on the critical information infrastructure to the Committee in line with a critical infrastructure framework in order to evaluate compliance.

(2) The Director, shall within a reasonable time before an audit on a critical information infrastructure or at any time there is an imminent threat in the nature of an attack that amounts to a computer and cybercrime, notify the owner or person in control of a critical information infrastructure in writing—

- (a) the date on which an audit is to be performed; and
- (b) the particulars and contact details of the person who is responsible for the overall management and control of the audit.

(3) The Director shall monitor, evaluate and report on the adequacy and effectiveness of any audit.

(4) The Director may request the owner or person in control of a critical information infrastructure to provide further provide such additional information as may be necessary within a specified period in order to evaluate the issues raised from the audit.

(5) An owner or authorised person in control of a critical information infrastructure commits an offence and if convicted is liable to a fine not exceeding shillings two hundred thousand or term of imprisonment not exceeding five years or both if the owner or authorised person—

- (a) fails to file a compliance report and fails to cooperate with an audit to be performed on a critical information infrastructure in order to evaluate compliance with the directives issued;
- (b) fails to provide such additional information as may be necessary within a specified period in order to evaluate the report of an audit in line with the a critical infrastructure to the Director after he or she has been requested to do so to the Director;
- (c) hinders, obstructs or improperly attempts to influence any

member of the Committee, person or entity to monitor, evaluate and report on the adequacy and effectiveness of an audit;

- (d) hinders, obstructs or improperly attempts to influence any person authorised to carry out an audit;
- (e) fails to cooperate with any person authorised to carry out an audit; or
- (f) fails to assist or provide technical assistance and support to a person authorised to carry out an audit.

(6) A person shall not perform an audit on a critical information infrastructure unless he or she—

- (a) has been authorised in writing by the Director to perform such audit; or
- (b) is in possession of a certificate of appointment, in the prescribed form, issued by the Director, which certificate must be submitted to the owner or person in control of a critical information infrastructure at the commencement of the audit.

Hon. Temporary Deputy Chairman, the reason for including these new clauses is to provide for the National Computer and Cybercrimes Coordination Committee's functions in law and to provide for the secretariat, its reporting, the protection of critical information, infrastructure, information and sharing between public and private entities. It is also for auditing of critical information infrastructure to ensure compliance. I must admit that part of these amendments were originally proposed by Hon. (Dr.) Musimba, and I wish to sincerely thank him for allowing us to benefit from his expertise on cyber-related matters.

However, I wish to move the amendments in an amended form to include the Principal Secretary responsible for Information, Communication and Technology (ICT) or his representative in writing as a Member of the National Computer and Cybercrimes Coordination Committee.

I beg to move.

(Question of the new part proposed)

(New part read the First Time)

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

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Osotsi.

Hon. Osotsi: Hon. Temporary Deputy Chairman, the Departmental Committee on Communication, Information and Innovation had made some recommendations on this area, but I stand to oppose some parts of this amendment, especially Clause 3B (2), that says:

“The Committee shall report to the Cabinet Secretary responsible for matters relating to internal security.”

This Computer and Cybercrime Bill is a very technical Bill that requires a function of Government that has the capacity to implement it. In this case, the ministry in charge of ICT has the capacity to implement matters related to cybercrime. Even the unit that is currently handling issues to do with response to cybercrime is based at the Communications Authority of Kenya (CAK). It is going to take us time to implement this Bill if we are going to say the ministry in charge of internal security will be the implementing agency. Globally, the experience is that issues to do with cybercrime are handled at a multiagency level and this Committee will handle that. The technical committee responsible for matters of cybercrime is in the ministry in charge of ICT. So, on that basis, I oppose that particular amendment in 3B(2).

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, you know how we operate here. All of you have shown interest. We shall have Hon. Musimba. This is debate. So, everybody is allowed to have an opinion.

Hon. Musimba: I thank you, Hon. Temporary Deputy Chairman. I have heard what Hon. Osotsi has said. The points he has made are pertinent to the following level: The CAK is a regulator and this is a coordination committee. Largely, we are proposing prosecutions of offences as relates to cybercrime. That is why it is important for it to be at the security docket. When you look at the functions of that coordination committee, it further reports to the National Security Advisory Council (NSAC). Article 240 of the Constitution is clear as to who has the overall lead when it comes to issues security. So, they are the directing agency.

Further, when you look at the composition of the committee, you have people like the Chief of Staff of the Kenya Defence Forces (KDF) and you have the Inspector-General of Police. Surely, they cannot be reporting to the Principal Secretary in charge of ICT. It needs to be coordinated from the interior docket, which is directly under the NSAC in the Office of President. I encourage Hon. Osotsi to see it from that point of view because a lot of the operational issues to do with movement, including moving to the Director of Public Prosecutions (DPP) and all those people are covered within that coordination committee. So, we are all in concurrence.

The Temporary Deputy Chairman (Hon. Omulele): I will now give Hon. Rasso Ali this chance.

Hon. Dido: Thank you, Hon. Temporary Deputy Chairman. From the beginning, this Bill appeared to be a property of ICT, but the more we delve deeper into the horizon, the more we see that these are security matters. The minute we are saying it is about crime, I think we know clearly where law and order lies in this land. That is why we should not make it an ICT and computer function. It is about national security.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, I think we have eaten into the time that had been allocated for something else. We are trying to do this so that we can clear up and we move on. I will give the Leader of the Majority Party a chance.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Clauses 3A to 3J talk about the National Computer and Cybercrimes Coordination Committee. If you look at the membership, you even have the Chief of Defence Forces there. You have the DPP and the Attorney-General. In fact, in best practice and in other countries that I have checked, it is under the national security council. That is why Hon. Osotsi will agree with us that it is only the coordination of that committee. That is why the Chair has moved a further amendment and introduced the PS in charge of ICT and CAK to be members. However, because of the nature of security and the PS

of internal security sits in NSAC and at times, even chairs NSAC on behalf of the President, we felt that that is the security aspect of it. I think we agree with the Chair. So, Hon. Osotsi, you will forgive us. It is only that coordination which we have moved to the ministry in charge of internal security and it is from best practice. In fact, we should even have stated that this committee reports to the NSAC. It is there.

The Temporary Deputy Chairman (Hon. Omulele): Now that we are still on the new Clauses 3A to 3J, there is a proposed further amendment to New Clause 3C by Hon. Musimba. Hon. Musimba, I would like you to prosecute that proposed further amendment. Is it taken care of? Are you comfortable with it? You may either wish to withdraw it or move it because it is on the Order Paper.

Hon. Musimba: It is on the Order Paper, but it is by the Member for Kiambaa, Hon. Paul Koinange. It is just enhancing the functions.

The Temporary Deputy Chairman (Hon. Omulele): It was your proposed amendment to the proposals by the Chair of the Departmental Committee on Administration and National Security.

Hon. Musimba: It was just adding more functions, but I can still move it. I will move that further amendment.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the proposed amendment to New Clause 3C by the Member for Kiambaa Constituency, Hon. Paul Koinange, be further amended by inserting the following new paragraph immediately after paragraph (i) appearing in sub-clause (1)—

“(ia) develop a framework for training on prevention, detection and mitigation of computer and cybercrimes and matters connected thereto;”

The import of this is just to improve on the functions which have been deliberated on by the Departmental Committee on Communication, Information and Innovation, to develop a framework for training on prevention, detection and mitigation of computer and cybercrimes and matters connected thereto. It is that straightforward.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Let us have Hon. Mbarire.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Chairman, allow me to support this amendment. One of the biggest challenges we have in this country when it comes to cybercrimes is our being able to prevent, detect and mitigate cybercrimes before they happen. We always have to deal with it after the fact. This particular new role is critical going forward. I support the amendment.

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

Question, that the new part be read a Second Time, put and agreed to)

(The new part read a Second Time)

(Question, that the new part be added to

(the Bill, put and agreed to)

New Clause 12A

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 12—

Publication of
false
inform
ation

12A. A person who knowingly publishes information that is false in print, broadcast, data or over a computer system, that is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Hon. Chair, I looked for the term “fake news” in law and I could not get it. There is nowhere in law I could find that term. This amendment proposes to introduce and define the scope of the offence of publication of false information to tackle emerging offences of fake news. The ingredients have been informed by the existing legislation from similar jurisdictions in the Philippines and Malaysia. The definition falls within the offences that relate to the scope of the offence within the Bill and that are conducted over a computer.

If Members can remember, the late Hon. Biwott “died” 10 times through fake news. Mugabe died five times through fake news. When Mzee Moi just went for a knee surgery in Israel, people decided to kill him. There is serious fake news and false publications. I want the Members to support it. The amendment does not offend the provisions of Article 34 of the Constitution. We really looked at it with the Legal Department of Parliament. If you publish false information, the offence is so grave that you either pay Kshs5 million or get a prison sentence not exceeding 10 years or both. Those people who use gadgets to create alarm, false news and publish to harm others must be dealt with under this law.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Omulele): Let us have Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairman. On this one, I must applaud the Leader of the Majority Party. We must deal with a person who knowingly publishes information that is false in print, broadcast, data or over a computer system. This proposed new law will help us to deal with misinformation, false reporting and all kinds of mischief that come through this. I rise to support this new clause introduced by the Leader of the Majority Party so that we curb any attempt by any person to injure others falsely. Action must be taken against them.

(Question, that the new clause be read

a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clauses 16A, 16B, 16C, 16D, 16E, 16F, 16G and 16H

The Temporary Deputy Chairman (Hon. Omulele): There are three separate amendments. Let us start with the Chair of the Departmental Committee on Communication, Information and Innovation.

Hon. Kisang: Hon. Temporary Deputy Chairman, Hon. Musimba, the Chair of the Departmental Committee on Administration and National Security and I propose that we move all the amendments to the new clauses together then we contribute jointly.

The Temporary Deputy Chairman (Hon. Omulele): That is your proposal. I need to get the concurrence of the other proponents. Let us hear from the Chair of the Departmental Committee on Administration and National Security.

Hon. Koinange: Hon. Temporary Deputy Chairman, I concur.

The Temporary Deputy Chairman (Hon. Omulele): Let us hear from Hon. Musimba.

Hon. Musimba: I concur, Hon. Temporary Deputy Chairman. We will marry the language and dispose with it.

The Temporary Deputy Chairman (Hon. Omulele): We shall consider all the proposed amendments together so that we can move in a neat way. Let us have the Chair of the Departmental Committee on Communication, Information and Innovation.

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 16—

Cyber squatting.

16A. A person who, intentionally takes or makes use of a name, business name, trademark, domain name or other word or phrase registered, owned or in use by another person on the internet or any other computer network, without authority or right, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Wrongful distribution of intimate images.

16B. A person who transfers, publishes, or disseminates, including making a digital depiction available for distribution or downloading through a telecommunications network or through any other means of transferring data to a computer, the intimate image of another person commits an offence and is liable, on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding thirty years or to both.

Identity theft and impersonation.

16C. A person who fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to

Phishing.	imprisonment for a term not exceeding three years or both. 16D. A person who creates or operates a website or sends a message through a computer system with the intention to induce the user of a website or the recipient of the message to disclose personal information for an unlawful purpose or to gain unauthorised access to a computer system, commits an offence and is liable upon conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or both.
Interception of electronic messages or money transfers.	16E. A person who unlawfully destroys or aborts any electronic mail or processes through which money or information is being conveyed commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding seven years or to both.
Willful misdirection of electronic messages.	16F. A person who willfully misdirects electronic messages commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.
Cyber terrorism.	16A. (1)A person who accesses or causes to be accessed a computer or computer system or network for purposes of terrorism, commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term note exceeding ten years, or to both. (2) For the purpose of this section, “terrorism” shall have the same meaning under the Prevention of Terrorism Act, 2012.
No.30 of 2012.	
Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clauses immediately after Clause 16—	
Inducement to deliver electronic message.	16A. A person who induces any person in charge of electronic devices to deliver any electronic messages not specifically meant for him commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.
Intentionally withholding message delivered erroneously.	16B. A person who intentionally hides or detains any electronic mail, message, electronic payment, credit and debit card which was found by the person or delivered to the person in error and which ought to be delivered to another person, commits an offence and is

Unlawful destruction of electronic messages.

Wrongful distribution of obscene or intimate images.

Fraudulent use of electronic data.

Issuance of false e-instructions.

liable on conviction a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

16C. A person who unlawfully destroys or aborts any electronic mail or processes through which money or information is being conveyed commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

16D. A person who transfers, publishes, or disseminates, including making a digital depiction available for distribution or downloading through a telecommunications network or though any other means of transferring data to a computer, the intimate or obscene image of another person commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

16E. (1) A person who knowingly and without authority causes any loss of property to another by altering, erasing, inputting or suppressing any data stored in a computer, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(2) A person who sends an electronic message which materially misrepresents any fact upon which reliance by another person is caused to suffer any damage or loss commits an offence and is liable on conviction to imprisonment for a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(3) A person who with intent to defraud, franks electronic messages, instructions, superscribes any electronic messages or instruction, commits an offence and is liable on conviction a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(4) A person who manipulates a computer or other electronic payment device with the intent to short pay or overpay commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

(5) A person convicted under subsection (4) shall forfeit the proprietary interest in the stolen money or property to the bank, financial institution or the customer.

16F. A person authorised to use a computer or other electronic devices for financial transactions including posting of debit and credit transactions, issuance of electronic instructions as they relate to sending of electronic debit and credit messages or confirmation of electronic fund transfer, issues false electronic instructions,

Reporting of
cyber threat.

commits an offence and is liable, on conviction, a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

16G. (1) A person who operates a computer system or a computer network, whether public or private, shall immediately inform the Committee of any attacks, intrusions and other disruptions to the functioning of another computer system or network within twenty four hours of such attack, intrusion or disruption.

(2) A report made under subsection (1) shall include—
information about the breach, including a summary of any information that the agency knows on how the breach occurred; an estimate of the number of people affected by the breach; an assessment of the risk of harm to the affected individuals; and an explanation of any circumstances that would delay or prevent the affected persons from being informed of the breach.

(3) The Committee may propose the isolation of any computer systems or network suspected to have been attacked or disrupted pending the resolution of the issues.

(4) A person who contravenes the provisions of subsection (1) commits an offence and is liable upon conviction a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Employee
responsibility to
relinquish access
codes.

16H. (1) An employee shall, subject to any contractual agreement between the employer and the employee, relinquish all codes and access rights to their employer's computer network or system immediately upon termination of employment.

(2) A person who contravenes the provision of this subsection (1) commits an offence and shall be, liable on conviction, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

These are the new clauses which are in the Order Paper. In the new Clause 16A, a person who induces any person in charge of electronic devices to deliver any electronic messages which are not specifically meant for him commits an offence. On conviction, he is liable to a fine not exceeding Kshs200,000 or imprisonment for a term not exceeding two years or both.

In the new Clause 16B, a person who intentionally hides or detains any electronic mail, message, payment, credit and debit card which was found by the person who delivered to the person in error and which ought to be delivered to another person commits an offence.

Hon. Temporary Deputy Chairman, in some countries, if you have your credit card they do not need personal identification number or password to use it. Those who may get your credit card or debit card can use it.

The new Clause 16D talks about the wrongful distribution of obscene or intimate images like what Hon. Sankok was telling us this morning. Some people can send you some obscene photos. Our children are experts in IT. The moment they take your phone, they will see many things.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Chair, I am sorry to interrupt you. You are proceeding well. However, the things which you are explaining are in the Order Paper and we need to save time.

Hon. Kisang: I will move the amendments and say that they are in the Order Paper.

The Temporary Deputy Chairman (Hon. Omulele): Unless a Member has a very contrary view, do not read them so that we can move on. The Members will concur or disagree with you.

Hon. Kisang: You can give the other Members a chance to contribute, Hon. Temporary Deputy Speaker.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

The Temporary Deputy Chairman (Hon. Omulele): Chair of the Departmental Committee on Administration and National Security.

Hon. Koinange: We concur with the Chair.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba.

Hon. Musimba: I concur as well.

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

(The new clauses were read a Second Time)

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

Schedule

Hon. Kisang: Hon. Temporary Deputy Chairman, before I move the Schedule, we are consulting here. There is something which is missing in new Clause 16A. For the purpose of this section, “cyber terrorism” shall have the same meaning as the Prevention of Terrorism Act, 2012. There is a definition of “cyber terrorism” that is not in the Order Paper.

The Temporary Deputy Chairman (Hon. Omulele): You will have to recommit the clause because the House has already expressed itself on that. The Schedule is on page 413 and you have a proposed amendment.

Hon. Kisang: Hon. Temporary Deputy Chairman, the Leader of the Majority Party will recommit Clause 23.

The Temporary Deputy Chairman (Hon. Omulele): The recommittal is in order but the business that you are dealing with is the Schedule.

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended by inserting the following item in its proper sequence—

Written law *Provisi on* *Amendment*

Sexual Offences Act, 2011 16 Delete and replace with the following section—
Child pornography

16. (1) A person, including a juristic person, who knowingly—

- (a) possesses an indecent photograph of a child;
- (b) displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in a sexual act;
- (c) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession an indecent photograph of a child;
- (d) imports, exports or conveys any obscene object for any of the purposes specified in subsection (1), or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;
- (e) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;
- (f) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
- (g) offers or attempts to do any act which is an offence under this section, commits an offence and is liable upon conviction to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, to imprisonment to a term of not less than seven years without the option of a fine.

(2) This section shall not apply to—

- (a) Publication or possession of an indecent photograph where it is proved that such publication or possession was intended for bona fide scientific research, medical, religious or law enforcement purpose; the indecent representation of a child in a sculpture, engraving, painting or other medium on or in any ancient monument recognised by law; and
- (b) activities between two persons above eighteen years of age by mutual consent.

(3) For the purposes of subsection (1),—

- (a) an image is obscene if—
 - (i) it is lascivious or appeals to prurient interest; or
 - (ii) its effect, or where it comprises two or more distinct items, the effect of any one of its items, if taken as a whole, tends to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.
- (b) an indecent photograph includes a visual, audio or audio visual representation depicting—
 - (i) a child engaged in sexually explicit conduct;

Insert a new section immediately after section 16 as follows—

New Sexual communication with a child

16A. (1) A person of eighteen years and above who knowingly communicates with a child in—

- (i) a sexual manner; or
- (ii) a manner intended to encourage the child to communicate in a sexual manner, commits an offence and is liable, on conviction, to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than five years, or to both.

(2) For the purposes of this section, a communication is sexual if—

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would consider any part of the communication to be sexual.

(Question of the amendment proposed)

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

(Schedule as amended agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Omulele): Chair, you have an amendment in Clause 2.

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 2 of the Bill be amended—

(a) by deleting the definition of “authorised person” and substituting therefor the following new definition—

““authorised person” means an officer in a law enforcement agency or a cyber security expert designated by the Cabinet Secretary responsible for matters relating to national security by notice in the Gazette for the purposes of Part III of this Act.”

(b) by deleting the definition of “Authority” and substituting therefor the following new definition—

““Authority” means the Communications Authority of Kenya”;

(c) by deleting the definition of “Central Authority” and substituting therefor the following new definition—

““Central Authority” means the Office of the Attorney General”;

(d) in the definition of “premises” by inserting the words “a physical or virtual space in which data is maintained, managed, backed up remotely and made available to users over a network” immediately after the word “structures”;

(e) by deleting the definition of “requested state” and substituting therefor the following new definition—

““requested state” means a state being requested to provide legal assistance under the terms of this Act”;

(f) by deleting the definition of “requesting state” and substituting therefor the following new definition—

““requesting state” means a state requesting for legal assistance and may for the purposes of this Act include an international entity to which Kenya is obligated”;

(g) by inserting the following new definitions in the proper alphabetical sequence—

“critical information infrastructure system or data” means an information system, program or data that supports or performs a function with respect to a national critical information infrastructure;

“cybersquatting” means the acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, or deprive another from registering the same, if the domain name is—

(a) similar, identical or confusingly similar to an existing trademark registered with the appropriate government agency at the time of registration;

(b) identical or in any way similar with the name of a person other than the registrant, in case of a personal name; or

(c) acquired without right or intellectual property interests in it.

“national critical information infrastructure” means a vital virtual asset, facility, system, network or process whose incapacity, destruction or modification would have—

- (a) a debilitating impact on the availability, integrity or delivery of essential services including those services, whose integrity, if compromised, could result in significant loss of life or casualties; or
- (b) significant impact on national security, national defense, or the functioning of the state.

“network” means a collection of hardware components and computers interconnected by communications channels that allow sharing of resources and information;

“password” means any data by which a computer service or a computer system is capable of being obtained or used;

The Leader of the Majority Party has said that national security should be the vessel that will carry this particular Bill. A simple reading of the Long Title reveals that the Bill provides for offences relating to computer system to enable timely and effective detection, investigation and prosecution of computer and cybercrimes. Accordingly, this can only be spearheaded by national security organs such as National Police Service and the National Intelligence Service (NIS). According to Article 239 of the Constitution, national security organs are co-ordinated by the Executive under the Ministry which is responsible for national security.

We have been doing a lot of research with other countries. We noted that Jamaica has tried to put the Cybercrime Bill under the Ministry of Information but it has failed. They have not been successful because they need national security to implement it all the time. I really appeal to the Hon. Members that we change and make sure that the legislation is under national security. This will make things very easy for us to implement this particular Bill.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Osotsi, what is out of order?

Hon. Osotsi: Hon. Temporary Deputy Chairman, I have an issue on the Ministry which is responsible for the implementation of the Computer and Cybercrime Bill. I know the Leader of the Majority Party has explained that.

The Temporary Deputy Chairman (Hon. Omulele): That is not a point of order.

Hon. Osotsi: I want it to be put on record.

The Temporary Deputy Chairman (Hon. Omulele): Is that your contribution?

Hon. Osotsi: Yes.

Hon. Osotsi: Looking through the Bill, the new amendments we have proposed especially to Part IA are functions of the Committee. If you look through some of those functions, they conflict with the functions of the Ministry in charge of ICT. Let me give an example. When they say the committee shall develop a framework to facilitate availability, integrity, confidentiality of the critical national information infrastructure including telecommunication and information systems of Kenya that conflicts with a critical function of the Ministry of ICT.

Secondly, to develop and manage national public key infrastructure framework is also conflicting. Globally, that is the function of ICT. The Chairman of the Departmental Committee

on Administration and National Security has talked about experiences from other countries. I want to give experience of an African country.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Osotsi, we do not have much time. I will give you two minutes. Every Member who is going to contribute will get two minutes.

Hon. Osotsi: In Nigeria, for example, they came up with a cybercrime law more than five years ago and put the responsibility in the Ministry of Security. They are having challenges because of capacity issues. We will pass the Bill as it is, but I assure you that there will be need for amendments after six months.

Thank you.

The Temporary Deputy Chairman (Hon. Omulele): Hon. Kiarie.

Hon. Waweru: Thank you very much, Hon. Temporary Deputy Speaker. I would not want this House to be drawn into a tug of war as to where the Bill should be domiciled because what we are seeking to do is to create a Bill that will mitigate some of the problems we are facing with the fast development in the ICT space. As it is now, we are playing catch-up because ICT is developing way faster than we can legislate and way faster than our security bodies can keep up. Knowing how our Government works, we are better off having this Bill domiciled in a place where there is research being done continually on matters to do with information, communication and technology. To bring it to context with examples from elsewhere in the world, I want to quote one of the finest performing ICT expert in this country, Michael Joseph, who said that Kenya is a peculiar country. It is peculiar in a sense that we leapfrog in terms of technology. We do not follow the normal procedure of growth in technology advancement as other parts of the world.

As such, I believe the amendment to bring in the Cabinet Secretary for Interior and Coordination of National Government is not well placed. As we understand the situation right now, the Ministry of ICT is investing heavily in keeping up with technology and more in innovation.

Thank you very much.

The Temporary Deputy Chairman (Hon. Omulele): We shall have the Leader of the Majority Party and then I shall present it to the House to decide one way or the other.

Hon. A.B. Duale: Hon. Chairman, there is no Bill that belongs to the ICT Ministry. The Bills are brought into this House from the Cabinet through the Attorney-General and the Leader of the Majority Party who appends his signature. So, there is no law we make for a specific ministry. We make laws for the people of Kenya. The Government is one and the Government and the Cabinet act as one.

Let me answer my friend, Hon. Osotsi. There is an element of the title of the Bill that talks about cybercrime. The ICT does not deal with crimes. That is why we have the Director of Public Prosecutions (DPP). The moment the Communications Authority of Kenya (CAK) and other agencies identify a crime, it is for the Directorate of Criminal Investigations (DCI) and the DPP to do the prosecution through the said office. That is why we have the Governor of the Central Bank of Kenya being a member of that committee. He represents the fraud that takes place in the financial sector. You cannot have this Bill without the Governor of the Central Bank. That is why we have the Director-General of the National Intelligence Service.

This is a multi-sectoral committee. You also find it in many other Bills that this House has passed. We have it in many other pieces of legislations that we have passed. So, there is nothing peculiar this time. That is why for the ICT Ministry we have the Principal Secretary, ICT

and the CAK's Director-General sitting in this board to take care the interests of the Ministry. We are creating a mountain out of a molehill. We have done it and let us move on.

The Temporary Deputy Chairman (Hon. Omulele): Let me present this to you to deal with in the best way.

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

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

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

There are two more proposed amendments, one from Hon. Koinange and another one from Hon. Shamalla.

Hon. Koinange: Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 2 of the Bill be amended—

(a) in the definition of the word "Cabinet Secretary" by deleting the words "Information, Communications and Technology" and substituting therefor the words "internal security"

(b) by inserting the following new definition in proper alphabetical sequence—
"blockchain technology" means a digitized, decentralized, public ledger of all crypto currency transactions;
"Committee" has the meaning assigned to it under section 5;
"critical infrastructure" means the processes, systems, facilities, technologies, networks, assets and services essentials to the health, safety, security or economic well-being of Kenyans and the effective functioning of Government;
"mobile money" means electronic transfer of funds between banks or accounts deposit or withdraw funds or pay bills by mobile phone;
"trust accounts" means an account where a bank or trust company is holding funds in relation to mobile money on behalf of the public depositors;

(Question of the amendment proposed)

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

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

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

Hon. (Ms.) Shamalla Jeniffer: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by inserting the following definition in proper alphabetical sequence —

“pornography” includes the representation in books, magazines, photographs, films, and other media, telecommunication apparatus of scenes of sexual behaviour that are erotic or lewd and are designed to arouse sexual interest”;

It is with regard to the definition of the word “pornography”. In all the legislations that I have perused, there is no definition of the actual word “pornography”. Definitions are important as they enable us to have a common understanding of what they express and the essential nature of the word.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

Long title

The Temporary Deputy Chairman (Hon. Omulele): Hon. Musimba.

Hon. Musimba: Hon. Temporary Deputy Chairman. I beg to move;

THAT, the Bill be amended in the long title by inserting the words “prohibition, prevention, response,” immediately after the word “detection”.

In the other amendments we made, prevention is a key thing. We do not wait for offences to be committed. We want to make it explicit in the objects of the Bill that we need prohibition, prevention and response so that it is in congruence with the other amendments we have already made in the Bill.

(Question of the amendment proposed)

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

(The Long Title as amended agreed to)

Title

Hon. Kisang: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the title to the Bill be amended by inserting the word “misuse” immediately after the word “Computer”

(Question of the amendment proposed)

(Question, that the word to be inserted be

(inserted, put and agreed to)

(Title as amended agreed to)

(Clause 1 agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Computer and Cybercrimes Bill (National Assembly Bill No.36 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) in the Chair]*

REPORT

THE COMPUTER AND CYBERCRIMES BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Can we have the Chairperson of the Committee of the whole House to report to the House?

Hon. Omulele: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Computer and Cybercrimes Bill (National Assembly Bill No.36 of 2017) and approved the same with amendments.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report.

I request Hon. Koinange, the Chair of the Departmental Committee on Administration and National Security to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Koinange: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to re-committal of Clauses 23 and New Clauses 16A to 16H.”

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Before I make a decision on that, can we have two or three people to make some comments?

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I have to confirm whether we have the numbers.

I confirm that we do not have the requisite numbers for us to put the Question to the re-committal. I order that this Question be put in the next appropriate time.

(Putting of the Question deferred)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, next is a Motion for adjournment by Hon. Keter.

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO. 33

DESTRUCTION CAUSED BY HEAVY RAIN IN THE COUNTRY

Hon. Alfred Keter: Hon. Temporary Deputy Speaker, pursuant to Standing Order 33(1), I seek leave for the adjournment of the House for purposes of discussing the disasters that have been caused by the heavy rains being experienced across the country.

This is a very crucial matter that touches on national security. There are so many people who have died so far since heavy rains started last October. Last night, there were so many reported incidents all over the country, including Machakos County, Tana River, Isiolo and Marsabit counties. Even in Nairobi, I know of so many roads that have been closed because of the same issues touching on heavy rains.

I congratulate Members for supporting me early this morning when I gave notice of the Motion. We need to give solutions. Let us look for ways and means of curbing the incidents so that we check on the losses. We have lost so many Kenyans. I have heard many ministries and departments telling Kenyans to move to higher grounds but I do not know whether they have the financial capacity to move the affected Kenyans who have been advised to move. In my constituency, for example, along the Nandi Escarpment in Kapchorwa Ward, I have over 100 homesteads that have been told to move. Some have since been forced to move by landslides.

We have so many departments under the Ministry of Devolution and Planning. One of them is the State Department for Special Programmes.

We have the National Disaster Management Authority (NDMA) that is directly concerned with disasters. One thing that is very unfortunate is that they do not have the resources. I appreciate the efforts that have been made by the Kenya Red Cross Society (KRCS) and many other organisations that have helped so many Kenyans. Without them, we should have lost more Kenyans. We have so far lost so many Kenyans. Were it not for the efforts made by the KRCS and the very few organisations that have tried to help Kenyans, we would have lost so many. I call upon Members of this House that as you support this Adjournment Motion, let us give a solution. We can even set up a special committee of this House to look into these matters. They touch on many other departments. It is not just about security. It touches on health. The issue of mosquitoes at the moment is a disaster. Many Kenyans are at risk of contracting malaria.

Because of time and I want many Members to contribute on this matter, let us give a way forward. We are very hysterical of these issues of floods. We have seen so many in Nyando, Nyanza and many other regions four or five years ago. Our NDMA is not ready; even after we have faced this challenge over and over again. We should now come up with a permanent solution. That is so that in future we have a disaster management authority that is ready to address these issues so that we stop losing Kenyans.

As I conclude, I want to send a message of condolences to the families that have lost lives. As I speak, over 100 families have lost individuals in their homes. I think it is over 100 people who have lost lives. It is very unfortunate. As I move, I ask the Hon. Members from Mugirango South to second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): We do not second Motions like this. It is a Motion for Adjournment under Standing Order No. 33. Of course, the Mover sought leave for this and the Speaker gave this hour to discuss this matter of urgent national importance. The other Members will have only five minutes to speak to this as per the resolution of the House.

I will give you a chance to speak, not as a Seconder as proposed by Hon. Keter. Just speak to it.

Hon. Onyiego: Thank you, Hon. Temporary Deputy Speaker. Actually, I was rising on a point of order. I was not really going to second the Motion. I was to propose the timing and the timelines or time allocations for contribution considering that this is a matter of grave concern and the time allocation is about 60 minutes or even less. Members want to contribute. I propose that we limit contribution time to about a maximum of three minutes, kindly.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, this being a matter of national importance and, I am sure every Member wants to speak to it, the vote lies on you Members; therefore, he has rightfully done it at the start.

(Question, that debating time be reduced, put and agreed to)

Hon. Hulufo Oda, Member for Isiolo North.

Hon. Hulufo: Thank you, Hon. Temporary Deputy Speaker. I would like to thank Hon. Keter for bringing up this Adjournment Motion. As Kenyans, we should realise that we are facing a very serious humanitarian crisis occasioned by the heavy rains we have received across the country.

I want to draw attention of the Members to a Press release by the Kenya Meteorological Department (KMD) in form of a seasonal forecast which I feel was very misleading. The Press release was done on 19th February. It painted a seasonal forecast of depressed rainfall. What we have received is contrary to what they forecasted. Probably, this came about as a result of use of obsolete equipment in which case the Departmental Committee on Environment and Natural Resources needs to consider proper funding for that institution. Of course, they corrected that when they gave us updates of rain forecasts in March, April and so on and so forth.

As we speak, the office for coordination of humanitarian assistance of the United Nations, stated that 211,000 Kenyans are displaced while 72 are reported dead. I am sure there are many deaths which are not reported, especially from Arid and Semi-Arid Lands (ASALs) where the media has no access. Out of these, it is only 10,000 Kenyans who have been reached by some form of support through the KRCS. That accounts for only 4 per cent. This tells us the importance of us discussing this as an issue of concern. About 8,450 acres of land are already submerged.

Hon. Temporary Deputy Speaker, because my time is up and I have a lot of important data, most importantly, from past experiences we are likely to have an outbreak of Rift Valley Fever. We need to be on the alert. We need to support the relevant Government agencies with adequate resources as we look at the Supplementary Budget. We need to allocate adequate

resources to the Ministry of Interior and Coordination of National Government and those other ministries which deal with disaster responses.

Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Hon. Iringo Kubai, Member for Igembe Central.

Hon. Kubai Iringo: Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to support this Adjournment Motion by Hon. Keter. I thank him for the same. We have a problem in Kenya. We cry every time. We had an Adjournment Motion in February when we were crying over drought. Now, we have another Adjournment Motion crying of rain. I do not know where we fit. All in all, it is a disaster as it is being said. I have just read in the breaking news today that around 200 students will not be reporting to school in Tana River because they cannot access their schools. The schools are submerged. This is happening all over the country. There is no road in Suswa, Mai Mahiu and many other places.

We need to have a proper disaster management committee in this country. More so, because of the much rain, I request the Government to use the Kenya Defence Forces' officers and their equipment to assist where possible. Let them provide choppers. The National Youth Service (NYS) and their machinery should be used to mitigate this disaster. The National Treasury should be compelled to set aside funds for every constituency to repair roads. I believe there is no constituency which has any passable earth road as we talk. Most of the roads have been swept. As a way of mitigating the same, in this Supplementary Budget and the Budgets to come, we should put extra funds as an emergency fund so that each constituency gets money to repair these roads. Once the rains subside in June as it is said, we will have no roads in our constituencies. It is important we get that money to do the roads.

There are those schools that have been marooned. There are families which have been marooned. They need to be compensated in one way or another. At the end of the day, let us not only rely on the KRCS. The Government has to come in strongly.

Because of time, I support the Adjournment Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Saboti, Hon. Luyai Amisi?

Hon. Luyai: Thank you, Hon. Temporary Deputy Speaker. I also rise to support this Motion by Hon. Keter. It is timely. Mother Nature has once again unleashed wraths to our nation, and this time it is very devastating. It is not just the usual victims of such calamities. We have had constituencies like mine, Saboti Constituency, where a bridge that was under construction collapsed and we had serious effects and even one person died. Somebody may wonder why we are talking about disaster management when we have metrological department, a full-fledged parastatal which is under operation using States resources and taxpayers' money. Are they doing their work? What is the role of the meteorological department in weather forecast and in trying to predict the climatical and weather changes in this country? If they are doing their work and if they are giving the information, how is the dissemination of the information to the public? Are we made aware of the weather forecast? Those are the questions we should be asking. I support this because where I come from learning has been paralysed. Students are not accessing schools. The bridges that connect the roads have become impassable; the *boda boda* operators cannot do that anymore. So the effects are beyond measure. We are looking at a country that never learns from history. We should not be a country that never learns from history. They say, if you do the same mistake over and over again and expect different

results, you can only be termed stupid. We are wondering whether Mother Nature is feeling lonely and needs father nature.

I support this Motion and I call upon the relevant departments especially the Meteorological Department to explain as a matter of urgency.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well said. For Members who were not present in the morning, this Motion of Adjournment pertains the heavy rains in most parts of the country and the Member was seeking for the State Department of Special Programmes to look at precautionary measures that can be employed to deal with such disasters.

The Motion is by Hon. Keter. Hon. Cecily Mbarire.

Hon. (Ms.) Mbarire: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion and congratulate the Mover, Hon. Alfred Keter. It has been a very tough time for Kenya to watch Kenyans die due to floods, to watch little being done in terms of mitigation and to see that as Government, we are reacting other than being proactive in protecting our people. Obviously, the Metrological Department has a role in ensuring that they give a clear picture of what to expect. They said that we would have heavy rains in parts of this country. In most parts of this country the rains have turned out to be heavier than they had predicted. Going forward, we need clear mitigation efforts by Government because we know with climate change we are likely to witness this kind of excess and extreme weather conditions going forward, so that we are not caught off guard or we are not saying that we are unable to deal with situations. We now know that we have a real problem that we have to deal with going forward. I think it is upon the responsible ministries to prepare themselves adequately when we expect these heavy rains. I remember in the last Parliament we still had the same heavy rains and we passed Supplementary Budget to ensure that the Ministry in charge of infrastructure had adequate money to respond to the various infrastructural challenges that came because of the heavy rains. The question is, why do we have to wait until the rains are here, then we start to cry and ask for money? Going forward, we need to make sure that we have more money in our Budget for such moments so that we take care of farmers. Now most of the crops are rotting. We are likely to witness serious drought and hunger in the near future because most of the crops especially where I come from, are rotting in the farms because of excess rains. So we need to prepare ourselves and stop coming back to this House to complain about certain things not going right, when we should have done something about it.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Lamu.

Hon. (Ms.) Obo: Asante sana, Naibu Spika wa Muda kwa kunipatia nafasi hii ili niweze kuchangia Hoja hii. Kwanza ningependa kumpongeza Mhe. Alfred Keter kwa kuileta.

Lamu County iko na tatizo hili. Wabunge wakisimama wanataja Tana River, Garissa na sehemu nyininge, lakini hawataji Lamu. Kuna miji mitatu pia ambayo inafurika kule Lamu; Moa, Chalaluma na Dide Waride. Kama majirani wa Tana River Kaanti wakipata tatizo, inabidi waje Lamu. Kwa hivyo, Wizara ikifanya mipango yoyote wajue kuna Lamu County. Tunashukuru Red Cross kwa usaidizi wao kwa wananchi. Kuna wanyama kama ng'ombe na hata binadamu ambao walikua wamefungiwa na maji, imebidi watolewe. Mashamba yameharibika na maji yamefika kwa manyumba. Kuna watu wanatolewa sasa hivi, wamepewa ilani watoke maeneo yao na waende maeneo mengine. Serikali kuitia kwa Wizara ya Special Planning inafanya kazi nzuri. Wizara inayohusika na usalama ni kubwa sana, ikipewa majukumu kama haya, yatapotelea humo. Ningemba Wizara ya Special Planning ipate kusaidia

watu wetu. Watu wana shida, watoto hawaendi shuleni, watu wana njaa, kuna shida ya mbu na tunahitaji neti na chakula pia.

Naunga mkono Hoja hii. Asante.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Kibwezi West, you are the next on my request list. I am aware some of your people are on the tanks.

Hon. Musimba: Thank you, Hon. Temporary Deputy Speaker. I must thank Hon. Keter for coming up with this Adjournment Motion. It is true that parts of our shared constituency are under water. The concern is about mitigation. We have seen these cycles for the last 100 years. The issue is about documentation and anticipation on how to best deal with it. Within every Budget, we should leave a certain percentage to deal with emergencies. What we are not defining is how to deal with the disaster as and when it kicks in. I would like to implore on the State Department for Special Programmes to step up. As we move forward, we should come up with mechanisms which deal with what is critical. Is it infrastructure in terms of roads or insecurity which should come first? We should pursue this as matter of urgency that as we have taken leave to discuss this issue, we should simply say that even NG-CDF can respond and partner with State Department for Special Programmes. That would be immediate and right across the board, so that all the Members are able to bring their proposals which will be acted upon by the Government. As we move forward, we need to propose as a House and within the committee of NG-CDF that State Department for Special Programmes immediately disburses funds that address what has just happened within the Republic.

Without further ado, I would like to allow other Members to contribute to this important Motion. That is where I will leave it. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Hon. Musimba. Hon. Rasso.

Hon. Dido: Thank you, Hon. Temporary Deputy Speaker. I also want to take the shortest time possible. I think what we lack is leadership. In this House we have a committee that should be able to summon both interior and special programmes. Coming from northern Kenya, I think the face of disaster response is Red Cross Society. I think it is high time this House approved that Red Cross should be given funds so that they are able to work for this country, because at any time instead of seeing a CS, you see the face of Abbas Gullet. That is how important Red Cross has become.

More importantly, I think there are issues of health. There are no roads. Many of the settlements, particularly in northern Kenya, are impassable now. They can only be supported through lifts by helicopters, which we cannot afford, leave alone the people. Even we as leaders are actually very helpless. So, we call upon the Government to show leadership in this particular instance.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Ms. Mbalu): The Member for Mandera North is next on my list.

Hon. Abdullahi: Thank you, Hon. Temporary Deputy Speaker. I want to thank Hon. Keter for bringing this Motion. This is very critical. We have come from a period of drought, now we are in a period of flooding. We have had too much of drought, now we are having too much of rain. The unfortunate part is that we are not thinking so much about the catchment measures for the heavy rains that have occurred.

In Mandera North, where I come from, and north eastern in general, we never used to have roads. Now the few ones that we thought we had have now been washed away. Imagine

that kind of situation where you have no roads, you had something similar to roads and they have been washed away. This is really a disaster. Places where they have had tarmacked roads have also been hit hard. You can imagine tarmacs have been hit hard, what about places where there is no tarmac?

The other aspect on which I want to support my colleague from Marsabit is that Red Cross is actually the face of responding to these disasters. The unfortunate part is that they do not get any government funding for these kinds of actions. It is time, as he said, that we must appropriate funds for the Kenya Red Cross, because they are in every village and every location of this country. So as a House we need to stand with the Red Cross so that they can be in the forefront addressing these matters.

Above all, we also have equipment belonging to KDF. The other day, the Suswa-Mai Mahiu Road was cut off. We have capacity for mobile bridges that can be deployed for people not to be stranded. It is high time some of these big machines lying in warehouses and yards were used. They have also been bought by taxpayers' money. In Mandera, we had people being cut off; they cannot reach the other side because the bridge was washed away. And we have no equipment to respond. So, this is very critical. We need to talk about how to make use of these heavy rains and flooding so that we can use them positively.

Thank you. I support.

The Temporary Deputy Speaker (Hon. Ms. Mbalu): The Member for Mwea.

Hon. Josphat Wachira: Thank you, Hon. Temporary Deputy Speaker.

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

The Temporary Deputy Speaker (Hon. Ms. Mbalu): No. You just came in; I saw you come in. We follow a request list which is here. It is not about a handshake.

Hon. Josphat Wachira: Thank you, Hon. Temporary Deputy Speaker, for protecting us against people who pop in and just press a button for a point of order for the purpose of contributing before others. I want to support this Adjournment Motion and in particular I would want to bring to the attention of this House...

The Temporary Deputy Speaker (Hon. Ms. Mbalu): Hon. Simba Arati, I can tell you from where I sit there is nothing which is out of order. But let me hear what you have to say.

Hon. Simba: Thank you, Hon. Temporary Deputy Speaker. Is it in order for you to be too biased the way you are in terms of giving opportunity? I know you have all the discretion to decide that one side of the House will contribute to this Motion.

Hon. Temporary Deputy Speaker (Hon. Mbalu): Hon. Simba Arati, you are actually out of order. Hon. Simba, you are the one who is out of order. You have just walked into this Chamber and you cannot be given preference. There is a list of requests and you cannot purport to say that I am biased. We have a free sitting in this Chamber. So, you can sit on either side of the House. You are a Member and we have requests.

Hon. Member for Mwea, sorry for interruption.

Hon. Josphat Wachira: Thank you. You have saved us from the agony we normally undergo from some of the guys who walk in and they want to talk before...

(Loud consultations)

Now I am not sure when I will start my three minutes.

The Temporary Deputy Speaker (Hon. Mbalu): I am monitoring your three minutes. Just carry on. Hon. Simba Arati, can you put your microphone off?

Hon. Josphat Wachira: I would like to speak on this Adjournment Motion specifically about some of the low level disasters that we have out there that go unnoticed. I say this knowing that we have large scale effects of the ongoing rains in Tana River and elsewhere but we also have some low level effects.

In my constituency, we have settlement setups in form of villages and what we refer to as canals for rice growing. We have a lot of adverse effects from the ongoing rains and as we speak, I have an area in South Ngariama where more than 20 families have been displaced. We have areas called Wamumu, Kiandegwa, Siagini and Gaturi where families have been displaced. Because these are low level areas where people do not expect that we have these adverse effects from the ongoing rains, we normally do not get assistance when others do.

I support this Motion and request that even as we look for solutions, we must also look at some of these areas. I am struggling with my emergency fund in the NG-CDF to see what I can do but that is not enough and I cannot help my constituents. So, I support and propose that we make a budget that we can be drawing from when we come to some of these effects of the rain as well as prepare ourselves and not wait until we do the fire fighting.

I support.

The Temporary Deputy Speaker (Hon. Mbalu): For record purposes I must correct Hon. Simba Arati. You can sit anywhere in this House. Any Member can sit on either side of the House, it does not matter where.

(Hon. Simba consulted loudly)

Hon. Simba Arati you are out of order. You have just come in this Chamber. Hon. Simba Arati, I will throw you out of this House.

(Hon. (Ms.) Mbarire consulted loudly)

Hon. Cecily Mbarire, it is the Speaker who is in charge. Let us have the Member for Tigania West.

Hon. Mutunga: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Motion.

I came from Tigania West this morning and I ran away because the situation is impossible for me to handle because the effects of the rains are too much. There are floods all over, people have lost property, houses and livestock. They have been displaced. There is destruction of infrastructure and bridges have been washed away. I speak from a region that is not very famous with the Red Cross. Most of the time, the Red Cross does not respond to some of these areas. They may not know what is happening in Tigania West. I have more than seven locations which have already been affected and more than 300 families have been displaced. Some of them have been ring-fenced by the rains. They do not know how to swim. They do not have canoes. They have never lived in such conditions and so they do not know what to do.

Another issue which is devastating is the fact that the effects will last longer because crops have been destroyed by the extended rains. As a country we should look into this and ask ourselves whether we are prepared to feed our people. All the beans are destroyed and maize has stunted. As we consider how much to give the relevant Ministry, we should ask ourselves whether it will take care of this situation right now. We should look for long term solutions because we are likely to face food insecurity due to the prolonged rains. Healthcare has

deteriorated and people are suffering from malaria and bilharzia because of floods. We need to declare this a national disaster so that a national disaster response mechanism can be put in place to salvage our people.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, at my own discretion I will add five more minutes to the adjournment time of the House. Let us have the Member for Rangwe.

Hon. (Dr.) Gogo: Thank you, Hon. Temporary Deputy Speaker. Allow me to take this opportunity to thank Hon. Keter for this beautiful Motion and I rise to support. It is unfortunate that Kenyans are forgetful. It is not the first time we are having flash flood problems, this keeps recurring but we have never put in place serious and sustainable measures to mitigate this. Allow me to also challenge our engineering system because they do work that cannot sustain some of these basic natural causes.

For example, the basic box culverts usually in my constituency have gone with the floods. Money is paid towards this work and it is inspected but anytime it rains, areas are not accessible. I want to urge our technicians in the engineering field and contractors to do a good job because it always rains and drought follows. I also take this opportunity to thank the Kenya Red Cross, during these times we remember it exists because we need help in managing disaster. We also forget that the Kenya Red Cross also does other beautiful projects during drought. I want to inform my colleagues that they are co-funding projects in water, sanitation, health and food security. This is a good Motion and I support it. I can see my time is up but as Kenyans we should come up with sustainable mitigation measures.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Member for Galole, one minute.

The Member for Galole (Hon. Said Buya Hiribae): Asante sana, Mhe. Naibu Spika wa Muda, kwa kunipatia fursa hii. Jambo la kwanza kabisa, kwa sababu ni mara yangu ya kwanza kuzungumza hapa Bungeni ni kuwashukuru watu wa Galole kwa kunichagua. Pili, kwa sababu ya muda, vile unavyojua Kaanti ya Tana River kila wakati kuna janga la mafuriko ama ukame. Shida imetupata huko Tana River na imetuathiri sana. Hivi sasa, asilimia sabini ya kaanti yetu iko ndani ya maji. Nilitoka huko jana na watu wengi katika eneo Bunge langu katika wodi za Wayu, Mikinduni, Chewani na Kora wako ndani ya maji. Hivi sasa, watu wamezungukwa na maji na watu kumi na nne hawajulikani waliko.

Kuna sehemu nyingi ambazo barabara pia zimeharibika. Tumepewa chakula kidogo na Serikali lakini hatujui vile chakula hicho kinaweza kuwafikia walioathirika. Tumepewa *chopper* na Serikali lakini imeharibika. Mpaka sasa watu wako kwa shida. Kwa hivyo, tunaomba kitengo cha Serikali kilichopewa nafasi hii wasaidie sehemu zilizoathirika katika kaanti ya Tana River.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Hon. Member for your maiden speech.

Hon. Members, I must appreciate that this is indeed a matter of national importance. Every hon. Member present wants to speak. I have nine more requests despite the fact that I did add five more minutes to this session. I have requests from the Member for Runyenjes, the Member for Nandi Hills, the Member for Kajiado, Hon. Teiyaa; Hon. Ongera Janet, Hon. Waweru Kiarie, the Member for Buuri; Hon. Leshoomo; Hon. Oluoch, Member for Mathare; Hon. Muturi King'angi, Member for Mbeere South; and Hon. Ibrahim Abdisalan, Member for

Wajir North. All these Members are ready to contribute to this Motion. Thank you for the requests, but our time has lapsed.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, it is now time for interruption of our business. Therefore, the House stands adjourned until Thursday, 26th April 2018 at 2.30 p.m.

The House rose at 1.05 p.m.