

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 6th November, 2018

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

PETITIONS

INSECURITY CAUSED BY CAMEL HERDERS IN TERI B RANCH, TAITA TAVETA COUNTY

Sen. Mwaruma: Mr. Speaker, Sir, I would like to present a Petition on behalf of the people of Teri B Group Ranch on insecurity caused by illegal camel herders in Teri B which is in Taita Taveta County.

Mr. Speaker, Sir, the Petition is as follows-

“We the undersigned;

Citizens of the Republic of Kenya, being representatives of Teri B Group Ranch Committee Members and the general membership, wish to present to the Senate, this Petition on the insecurity caused by illegal camels and cattle herders from North Eastern Kenya in Teri B Group Ranch.

We humbly draw the attention of the Senate on the following-

(1) THAT in the recent past, herders from North Eastern Kenya invaded Teri B Group Ranch with thousands of camels and cattle and settled there without the knowledge and consent of the group ranch committee, the group ranch members and the County Government of Taita Taveta.

(2) THAT the illegal herders have been claiming that they have contractual agreements with some individuals to graze in the ranch, but have failed to produce the same to the group ranch committee and members when requested to do so.

(3) THAT the illegal herders are not confined in any specific area but graze their animals all over the ranch, including, in the ranch members’ farms and have been attacking ranch members who attempt to stop them from doing so.

(4) THAT the illegal herders are suspected to be responsible for the deaths of the following Teri B Group Ranch members in a bid to silence them and instill fear among the members against agitating for them to leave-

(a) Patrick Mwandoe Mwanjala who was murdered on 5th November, 2012;
(b) Kea Mwafusi Kinyume who was murdered on 5th October, 2012;
(c) Siku Mghalu Mshambala who was murdered on 16th August, 2004; and,
(d) Mathew Gae Kitoro who was murdered on 15th January, 2013 while leading other group ranch members in an operation to flush them out.

(5) THAT the illegal herders injured the following Teri B Group Ranch members-

(a) Peter Mwadilo who was in May this year cut on the head, back and hands with a panga by a camel herder because of stopping him from grazing his animals in his farm;

(b) Anorld Mwakughu Mwanyasi who was in November 2012, beaten and his three teeth removed by camel herders for stopping them from grazing in his farm;

(c) Gilbert Mwambisi Mwanyasi who was in August 2016, attacked by camel herders but he raised an alarm which made the attackers to escape; and,

(d) Jacob Nzano who was attacked by camel herders in 2012 and his livestock stolen, but was lucky the livestock was later recovered at Mackinnon Road after he raised alarm.

(6) THAT the camels and cattle may spread diseases to our livestock since they come to a disease free zone area without movement permits, or getting a no objection notice from the veterinary department of the county government contrary to the Animal Diseases Act of Kenya of 2012.

(7) THAT the camels and cattle have caused overstocking in the ranch and are causing environmental degradation.

(8) THAT the county security organs have been reluctant to protect the Teri B Ranch citizens from the attacks by the camel herders, to investigate and prosecute the attackers and to flush them out due to the fact that the owners of the camels are purported to be influential people in the national Government.

(9) THAT by acting in a partisan manner while providing security, failing to investigate and prosecute the illegal herders who attacked innocent citizens, the county security organs violated Article 239(3)(a) and Article 244 of the Constitution.

(10) THAT we have made every effort within our means to resolve the matters raised in this Petition with the county security organs but have proved futile.

(11) THAT there is no case pending in a court of law, constitutional or any other legal body on the matters raised in this Petition.

THEREFORE your humble Petitioners pray that the Senate through its relevant Committee-

(1) Deals with this Petition immediately in a view of the urgency and seriousness of the matters raised herein.

(2) Investigates the circumstances that enabled the camel herders to move from their home counties and settle in Teri B Group Ranch without the knowledge and consent of the group committee and the County Government.

(3) Investigates the circumstances that influenced the failure of the county security organs to provide security to the citizens of Teri B Group Ranch members against attacks by the camel herders, their reluctance to investigate and prosecute the attackers and to flush out the illegal herders from the Ranch when requested to do so.

(4) Recommends that the illegal camel herders be flushed out of the group ranch forthwith and are made to pay for the time they have illegally been grazing in Teri B Group Ranch.

(5) Recommends that the Government compensates the families of the persons who were illegally murdered and those injured by the illegal herders during their illegal stay in the ranch.

(6) Take any other appropriate action it deems fit to restore the peace and tranquility enjoyed by the citizens of Teri B Group Ranch before the invasion of the camel herders.

Mr. Speaker, Sir, this is an issue that has been in both the print and social media. This Senate is praying that the whole country is in peace and tranquility. We would like this issue to be dealt with expeditiously for the sake of Teri B Group Ranch members and the people of Taita Taveta at large.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. Khaniri: Mr. Speaker, Sir, I thank you and I will be brief. Let me first of all take this opportunity to congratulate the members of the Teri B Group Ranch, through their Senator, for presenting this Petition to the Senate and for having confidence in the Senate of the Republic of Kenya. The fact that they have brought their issue here is a testimony that they have confidence in this House and that we will move expeditiously, as the Senator proposed, to resolve this matter.

The issues that have been canvassed in this Petition are grave because issues of land are emotive. This is something that I believe requires immediate attention or redress so that the matter is resolved. It is unfortunate that it led to death of about four people that the Senator has told us. I take this opportunity to send my condolences to the families that lost their loved ones in the crisis.

I know our rules are that the committee that will handle this Petition will have 60 days to deal with this matter. However, this is such a grave matter that we do not have the luxury of time to give it 60 days. It must be dealt with immediately to avert further destruction and loss of human lives.

It is a matter concerning security and I believe the Committee on National Security, Defence and Foreign Relations will handle it. As they look into security matters, an issue has been raised about compensation of lives that have been lost as a result of the crisis. That must also be addressed so that the families of the bereaved people are compensated.

This is unfortunate and sad. On my own behalf and on behalf of the people of Vihiga, I send our condolences to the people of Taita Taveta and the affected families.

I thank you.

Sen. Farhiya: Mr. Speaker, Sir, I also congratulate Sen. Mwaruma for bringing this Petition because there are always two sides of the same story. I also pass my heartfelt condolences to the bereaved families; whether they were killed by the herders or otherwise because it has not been proven by a court of law. Whoever killed, they should

know that killing is not right in any culture or religion and I condemn the person who killed those people.

It is good that this matter came to this House because what we heard from the media was a story from the side of the farmers. We do not know whether there was a contractual agreement or not. Sometimes it might not be in writing but even a verbal agreement is still an agreement. They might have paid for those farms with certain considerations. It is good that this Senate investigates. If there is anybody who sold land or leased for consideration, they should also be brought into the picture so that the ranchers also know where the buck should stop.

The other issue we need to understand is that in Kenya, everybody has a right to live anywhere in this country. I do not mean that they should encroach on other people's space. If there was an agreement for them to graze on that land, it shows that they were allowed by the owners and that should also come out.

The other sad thing is that animals were put in a concentration camp by the county government. I saw it in one of the clips that was shared by Sen. Mwaruma. The camels did not get themselves there because there are people who took them there. There is no point of punishing the camels that did not have any consent to go there in the first place. As a person from the pastoralist community, I find that strange in terms of what was done to the camels. I am not saying that what the herders did was right. If they are the ones who killed, they should know that it is wrong to kill people and whether they killed or not, the camels were taken there without their consent. So, there was no need to punish them by putting them in a concentration camp because that is against the rights of animals. The Senate should also hear from the other side.

There is also need for communities to co-exist. I also agree that families of the people who were killed should be compensated by the Government.

The other thing is that there is Taita Taveta County Government. Instead of punishing one side, they should have brought both parties together and hear from both sides. In my community, we say that if you see a bleeding head, you should check around because the stomach could be on the floor. We do not know what happened. People fight a lot where I come from. Somebody could have removed somebody's stomach which could be lying on the floor but we do not know that. So, it is always good to see the other side of the coin.

As a House of wisdom, because that is what I refer to this House, I am sure the investigations will be done in a manner that will not only be good for the farmers but also consider the interests of the other side.

I am sad that the county security organs did not deal with murder because it is a capital crime in this country. That should have been investigated. Maybe it is the herders who killed or somebody did it in the name of shifting blame to the herders.

The Speaker (Hon. Lusaka): Hon. Senator, you need to wind up.

Sen. Farhiya: A thorough investigation should be done so that whoever is culpable is brought to book. Everybody should get fair justice.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): For the rest of the speakers, let us keep it short. Let us now hear from Sen. (Dr.) Ali.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I wish to thank Sen. Mwaruma for bringing this Petition before this House. We had unofficial discussion in the Senate forum sometimes back. My stand was and is still the same that anybody who was wrong was not right and people should not kill one another or invade one's farm.

From what I know, people who were grazing in Taita Taveta County were not proper herders. Some of them had brought animals from other areas. Others were leasing the ADC farms because they realised the land is virgin and there are not many animals to graze on it. So, they decided to encroach it more.

Some people bought cattle and took them in that particular ranch. That is how it started. However, the number of animals increased. They started exporting some to Mauritius and other countries. In our areas, there is no proper vaccination and cure for these animals when they are sick. So, our animals do not sell. The business of selling animals had gone out of hand and it caused conflict among our people. As I stated in the previous forum, we are ready to participate in peace negotiation and make sure this conflict is resolved amicably. Our people should not die unnecessarily. The unfortunate thing with nomads is that they like their animals more than their own lives. Sometimes, they unnecessarily overreact to an issue.

I urge my friend, Sen. Mwaruma and the Committee, when they go there, they could involve some of us, so that we address this issue together and solve it amicably. I also urge the Taita Taveta Community to cool down and see how we can resolve this conflict as brothers and sisters.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. Before I get into this Petition, allow me to bring what I have noticed to your attention. Many Senators are not aware of the provisions of Standing Order No.112 (2). It says-

“No Senator shall pass between the Chair and any Senator who is speaking or between the Chair and the Table except in so far as it is necessary for the purpose of the administration of Oath or Affirmation of Officer.”

I am sure Sen. Khaniri has also noticed this over time that many Senators just pass between whoever is speaking and the Chair and they think that it is common or allowed. It should not be allowed.

On the Petition, first, I pass my condolences to those who lost their loved ones in Taita Taveta County and many areas where we are having these issues which are normally caused by drought which leads lack of pasture and water. I have a feeling this matter will be passed on to my Committee. So, I will not be prejudicial in terms of my opinion of it. However, just to draw the attention of the House these are issues that we have been dealing with for a long time even in the last Parliament. Every year when there is a short fall in rainfall and pasture, we deal with the same issues. We want to go to the root of it because many counties are not able to provide water and pasture for their animals. These resources are scarce and cause conflict. I do not think the herders want anything else.

Mr. Speaker, Sir, if you look at the hierarchy of our rights in the Constitution, there is the right to livelihood. Life is sacrosanct. In fact, there cannot be any excuse that

because you were trying to feed yourself, that is why you invaded land and so on. That cannot be an excuse.

We want to see how these communities can live together. There are certain communities in this country that are farmers and others are predisposed to pastoralism. All those are noble income earning activities. We, as a Senate, must find a way to specially provide funds to certain counties to cater for grazing and water for their animals. For example, we may provide them with water pans. Sometimes we experience floods. After that, there is drought and animals die in large numbers. It is sad that in this country we are unable to harvest rain water.

Mr. Speaker, Sir, I would like to inform the House that we are in the process of republishing the Penal Code (Amendment) Bill which we had sponsored in the last Parliament. It addresses many issues to do with cattle rustling. I know Senators from the north rift counties will be very interested in it. Many elements in cattle rustling have been treated so casually that, to certain communities, they know that if somebody dies or steals your livestock, all they need to do is bring *wazee* together to arbitrate over the matter. These are capital offences that must be dealt with and treated as so.

Mr. Speaker, Sir, if this matter is sent to us, we will deal with it with the urgency that it deserves. As a matter of fact, we are planning a tour of eastern counties. We will start with the tour of the Standard Gauge Railway (SGR) ending at Taita Taveta County. As we conclude the tour, we will combine those two issues so that we move to the ground with speed.

Sen. Boy: Asante, Bw. Spika, kwa kunipa fursa hii. Swala hili limeleta utata sana katika sehemu za Pwani. Kwa niaba ya Kaunti ya Kwale na mimi binafsi, natoa rambirambi zangu kwa watu wa Kaunti ya Taita Taveta kwa sababu ya maafa ya juzi.

Sen. Mwaruma amesema maneno mazito sana hapa kwamba watu wameuawa. Kama tunavyojua mwananchi akiuawa, watu hawapigi kilele nyingi. Lakini ingekuwa ni mnyama amapetikana ameuawa katika mbuga, wakati huu watu wangukuwa wameenda huko mbio kushughulikia jambo hilo.

Ninaomba hili swala lishughulikiwe kwa haraka sana na Kamati hii. Ningeomba Kamati hii itoe utaratibu wake haraka iwezekanavyo kwa sababu wananchi wanaishi kwa taharuki kubwa bila kujua mwelekeo wao ni upi.

Sisi ni majirani na maafa haya yametuhuzunisha muno.

Sen. Seneta: Thank you, Mr. Speaker, Sir, for giving me a chance to add my voice on this Petition. First, I pass my condolences to the affected families in Taita Taveta County.

There are quite a number of conflicts in those particular areas. We need to come up with a very formal agreement to address conflicts in Taita Taveta County. Communities with large heads of cattle and other livestock who want to graze and water them must sign a formal agreement so that they are accorded enough security by the authorities. It will be prudent to herders to register all animals they are grazing in that county, so that they can account for them in case of conflict.

I am talking out of experience because we had a similar situation in Kajiado County. There was this individual who agreed with camel keepers to bring a few of them

to his farm for grazing and watering, but he brought many camels which could not be accommodated in his small farm.

It is important for the Committee to tour Taita Taveta County and prevail upon communities to live in peace.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I rise to support this Petition and to add my voice to what seems like a conflict between the illegal herders, as they are called in the Petition, and the people of Taita Taveta. Thank you, Sen. Mwaruma. I congratulate you for standing up for your people even as I sympathise with the camel owners, who may not have a place to herd their camels.

We cannot compare the life of a human being with that of an animal. I cannot believe that we can even talk of having those people talk and figure out what is going on and that sort of stuff, especially when the herder is illegally herding his animals in the land. In that case, they should not get away with this sort of things. We have seen it happen across the country in Laikipia and other areas and these issues must be addressed at some point.

One should not have more than what they can afford to keep. I know that my sentiments may sound insensitive, probably because I do not come from a pastoralist community, but I say that in all sensitivity because I hold human life sacred. There is no reason this should be happening. I believe that the Committee to which this Petition will be forwarded to will do justice to the people of Taita Taveta because human life is sacred and must be held above that of animals.

The Speaker (Hon. Lusaka): Proceed, Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir.

(Loud consultations)

The Speaker (Hon. Lusaka): Members, let us consult in low tones.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I want to support this Petition. It is timely and important. In as much as human life is sacrosanct and must not be taken away, except as provided for by law, it is also important for the Committee that will look into this matter to look at the interests of the camel owners for them not to wander all over the place.

On the face of it, it may appear that they are invading Taita Taveta but I believe that what is causing or actuating that invasion is their need for economic and social survival. This Petition is timely for it is the work of the Government and institutions like Parliament to ensure that there is harmony, peaceful coexistence and protection of life.

I support the Petition by my brother from Taita Taveta.

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. I thank the Senator for Taita Taveta for bringing this Petition.

We must acknowledge the fact that Taita Taveta is endowed with a lot of ranches. Not many parts of this country have those ranches. Many years back, the Government policy was to develop those ranches for fattening animals. Many years back when the United States Agency for International Development (USAID) had programmes in Northern Kenya, animals were bought from there and were fattened in the ranches. There

is no reason those ranches should be idle. The attraction that is there is caused by the fact that there are a lot of ranches available that are good for grazing but they are not functioning.

My recommendation would be that Taita Taveta commercializes those ranches as we go ahead. In fact, they must be commercialized for the herders to use them. I hate to call the herders illegal herders. The word is not right. I also do not think that people who are herding animals kill people for the sake of the animals. The Committee on Labour and Social Welfare can look at the property and get to know the reason people are attracted there but in the course of time, Taita Taveta County should commercialize those ranches for them to be available for use by people who they will agree, even as they benefit from them.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I support the Petition by Sen. Mwaruma. I saw the tone of the exchange between him and I think Sen. Farhiya in the official WhatsApp group. From it, you are left to wonder what can happen between communities if left without a solution if Hon. Members could get that passionate about these issues.

I, therefore, call upon the Committee that will look into this matter to try and resolve it as a matter of extreme urgency with a view of considering the proposals made by our senior colleague, Sen. (Eng.) Mahamud. They could perhaps recommend that Taita Taveta County commercializes these ranches. If the avenue is available for the herders to bring their animals, they could perhaps bring ten animals to graze for a year then give two animals to the owner of the ranch when they are leaving at the end of the year. When this is done, we would have sorted the conflict. I am sure they can find a solution out of it.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir.

(Sen. (Dr.) Ali spoke off the record)

I have heard some comments from Sen. (Dr.) Ali, who is seated right here. I stand to support this Petition by my friend, Sen. Mwaruma, the Senator for Taita Taveta County. In the diplomatic world, they have said that the third world war, God forbid, will be fought over meager resources and it has started to manifest here in Kenya, where parties are fighting over resources like water or grazing fields. It is high time that this Senate takes the opportunity and crafts relevant legislation to find a solution to this time bomb. I stand to support.

The Speaker (Hon. Lusaka): Hon. Members, our time is up on that. In terms of Standing Order No. 232(2), the Committee is required in not more than 60 days, though they can take two days, from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

I thank you.

Let us move on to the next Order.

Sen. Mwaruma: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Mwaruma?

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I would like to put some issues into perspective. Especially the issue about---

The Speaker (Hon. Lusaka): Order Member. You are out of order. You have raised your Petition. You cannot put some things now into perspective. It has already been committed to the Committee and we will wait for a report. Thank you.

Hon. Senators, pursuant to Standing Order No. 232(1), the Petition stands committed to the Standing Committee on National Security, Defence and Foreign Relations.

(The Petition was referred to the Standing Committee on National Security, Defence and Foreign Relations)

Hon. Members, let us move on.

PLIGHT OF EMPLOYEES OF NOL-TURESH LOITOKTOK
WATER AND SANITATION COMPANY

The Petition by Sen. Seneta will come at another time.

(Petition deferred)

Let us move on to the next Order.

PAPER LAID

REPORT ON FINANCIAL STATEMENTS OF
WAJIR COUNTY ASSEMBLY

Sen. Kihika: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 6th November, 2018-

Report of the Auditor-General on the financial statements of the County Assembly of Wajir for the year ended 30th June, 2017.

The Speaker (Hon. Lusaka): Next Order.

STATEMENT

ISSUANCE OF TITLE DEEDS TO RICE
FARMERS IN MWEA

Sen. Kibiru: Mr. Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Land, Environment and Natural Resources on the status of the issuance of title deeds for Mwea rice farmers in Kirinyaga County.

In the Statement the Committee should-

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(a) State the actual acreage of Mwea Irrigation Scheme land in Kirinyaga County;
(b) Provide a brief on the status of surveying, beckoning and mapping of Mwea Irrigation Scheme land; and finally,

(c) Provide a brief on the status of preparation of title deeds for parcels of land owned by Mwea rice farmers and consequently explain the reasons for the undue delay of the issuance of title deeds to the farmers.

Mr. Speaker, Sir, Mwea Rice Growing Scheme is a 100 kilometers from where we stand and is the oldest irrigation scheme in this country which was started during the colonial days in the early 1950s. As we speak, it is the highest producer of the best rice in the country. It is an economy of an estimated Kshs7 billion and with the completion of Thiba Dam, we will have double of that.

Mr. Speaker, Sir, during the election time, top presidential contenders, for example, the second President of this Republic, promised the people of Mwea that they will get title deeds. Therefore, due to the nature of the scheme, they could be given conditional sub-leases. The people of Mwea need the titles for several reasons. For example, to secure facilities in the banks, to clear hospital bills or act as a bail in the unfortunate event that they are arrested or presented in a court of law.

Mr. Speaker, Sir, I, therefore, urge the Committee to tell the people of Mwea when they will get their titles which have been promised to them. If that is done, the people of Mwea will be happy and will continue to produce the best rice and sustain the County of Kirinyaga as one of the greatest contributor to the Gross Domestic Product (GDP) of the country.

The Speaker (Hon. Lusaka): Hon. Members, pursuant to Standing Order No. 48, the Statement is referred to the Committee on Land, Environment and Natural Resources.
Next Order.

BILL

Second Reading

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) (SENATE BILLS NO.18 OF 2018)

(Sen. Olekina on 23.10.2018)

(Resumption of debate interrupted on 24.10.2018)

The Speaker (Hon. Lusaka): Sen. Olekina, you have 27 minutes. Please use them well.

Sen. Olekina: Thank you, Mr. Speaker, Sir. From the onset, I thank all the Senators who rose and contributed to this Bill.

This is a good Bill that will enable counties to raise enough revenue and put order in our roads. Sen. Farhiya and Sen. Halake spoke heavily about the importance of

counties to look at various avenues to raise revenue so that we can stop the dependency on the national Government.

Mr. Speaker, Sir, most of the planning of roads in the country was done before and most people have invaded our roads reserves. With this Bill in place, it will be clear that every county government will designate areas where people who would like to park their trucks and tankers can do so without interfering with the flow of business.

Sen. (Dr.) Musuruve raised an issue on the Bill regarding the provision of People Living with Disabilities (PWDs). I confirm to her that this matter has been dealt with by the Bill in Clause 5(2) which states that-

“The County Executive Committee Member shall, in performance with the functions under this Act, make provision for the access and the use of buildings, roads, streets, lanes, alleys, parking bays and pavements by persons with disabilities in accordance with Section 21 of the Persons with Disabilities Act, 2003.”

Mr. Speaker, Sir, I am happy to engage the Senator to be more specific on areas that she may be interested in to ensure that PWDs have access to these buildings.

The other day, I left the Chamber at around 6.30 p.m. and went to Upper Hill. I felt the need to run. Ordinarily, you would expect that all roads which are constructed in Upper Hill, which is a new developing city within a city, have alleys and walkways. However, I was surprised that many taxis were parked along the alleys. Therefore, when a person is walking, they are forced to walk on the road. This is because there are no laws which prohibit such things.

Mr. Speaker, Sir, I hope that the Senate will support this Bill and once it is enacted, it will become illegal for anyone to park on an alley where people are supposed to walk in. This is a country where there is a lot of rural-urban migration. If you look at the population of people who move into Nairobi, if we do not have this Act in place, a lot of people will continue to be hit. This Bill addresses issues of illegal kiosks which are being constructed near roads and will entirely help The National Transport and Safety Authority (NTSA) and the State Department for Transport. It will also encourage a sense of responsibility on the County Executive Committee (CEC) Member in charge of transport in county governments where at the moment; they are not clear on what their roles are. Therefore, we do not want to deal with these issues again.

I am grateful to all Senators who contributed because they are able to see the importance of putting order in our streets. There is also the importance of ensuring that the Private Public Partnerships (PPPs) are entered upon by our county governments in a way that does not only expose but supports the public and the Government.

Mr. Speaker, Sir, for example, if we have a law, we will not allow a person to put up an illegal kiosk along Waiyaki Way next to Kangemi or a tanker to park in front of a building. With this law in place, we will see county governments increasing their parking revenue. We will also see county governments being able to work with companies such as the one I mentioned earlier when I was initially replying; that deals with location-based analytics.

Mr. Speaker, Sir, it will be important when the County Executive Committee (CEC) Member in charge of transport and the County Governor are sitting in their office,

to clearly tell, for instance, that Narok Town has 50 commercial buildings and, the way to enter them is clearly defined in our spatial plans. We can also tell that in those buildings there are these number of parking spaces.

One of the things I find very disturbing is that, even in my own county of Narok, the roads are so narrow. We will then find about a 20-wheel tanker blocking the road as it is being offloaded in a wholesale shop, while opposite, there is a gas or petrol station. There is no place for people to walk. That is all as a result of not having proper legislation that can empower county governments and for the whole country to put the interests of their people first.

Mr. Speaker, Sir, finally, I find that in most cases, buildings either in the urban or rural areas, the only shops that are viable are the front ones. All the others at the back. In fact, where I come from, some people have turned them into living quarters. With this Bill in place, it can engage the planning department of county governments so that when somebody goes there with a plan and they want to construct a big building, all steps have to be followed. It will also encourage these departments to be current with the way buildings are designed, their access and how those who violate the law will be penalised.

Mr. Speaker, Sir, with those few remarks, I thank all the Senators who contributed to this Bill. I think, about 14 of them. This shows the importance of us generating legislation that can increase revenue collection in our counties.

I beg to reply.

Mr. Speaker, Sir, because I see that we do not have the numbers, pursuant to Standing Order No. 61(3), I request that we defer putting of the question to another date.

I thank you.

The Speaker (Hon. Lusaka): Hon. Members, we will put the question at an appropriate day when we have numbers to take the vote.

(Putting of the Question on the Bill deferred)

Let us move on to the next Order.

BILL

Second Reading

THE DATA PROTECTION BILL (SENATE BILLS NO.16 OF 2018)

Sen. Halake: Thank you, Mr. Speaker, Sir. I beg to move that the Data Protection Bill (Senate Bills No. 16 of 2018) be now read a second time.

It is my pleasure to move this Bill. The principal object of this Bill is to put in place a legal framework for protection of personal data which recognizes that protection forms an integral part of expectation of rights to privacy provided for under Article 31 of the Constitution.

This Bill, therefore, seeks to operationalize this Article and regulate the manner in which personal data is collected, used, stored and processed. It also provides for the rights and remedies in relation to protection of personal data.

Why is this Bill very important? This Bill will have a big impact on the lives of Kenyans, for it will expand their individual rights. It has provision to require an organisation to delete your data if it is incorrect and to object to certain data from being held in custody for any person or organisation.

It also provides citizens of this country with the right to require that incomplete data be completed or corrected. It also provides the right to access, which is a constitutional requirement; the right to know that data about the individual is being processed and how it is being processed.

The clauses in the Bill set out the rights of individuals and obligations placed on organisations that handle processed data on our behalf. These rights include and allow people to have easier access to data that companies hold on us. It also provides for new regimes and a clear responsibility for organisations to obtain the consent of the people they collect information about.

Mr. Speaker, Sir, as you will see in this Bill, it has an international obligation as well. You will notice that, for example, in the European Union (EU), they have general data protection regulations which set out the framework for doing business within the EU, protecting individual data and putting responsibilities on data subjects, which is the person whose data has been collected, as well as data processors or handlers; the organisations or individuals both public and private that usually hold data about us.

We have seen a lot of misuse of data and intimidation using data that we give to people. This framework that the Senate is putting in place through the Committee on Information and Communication will provide not only the economic side of things, but also the right side of things for individuals.

Mr. Speaker, Sir, under Clause 3 of the Bill, personal data touching on national security and prevention, investigation and prosecution of crimes will be exempted from the application of parts of this law. An entity responsible for national security, maintaining law and order may process personal data without following the procedure set out in the Bill. There are, therefore, certain exceptions and limitations that have been put in place to protect our national interests and security.

This Bill, therefore, seeks to ensure that there is strict data processing and the fact that people have a right to demand consent for information that is received. It also provides strict requirements for accountability and compliance.

Mr. Speaker, Sir, sometimes people hold information about us but they use it the way they wish. We see what happens during elections; how data is used to either influence or not influence certain things. The Bill, therefore, puts accountability and ensures that there is compliance to the laws and regulations that govern personal data.

Additionally, the right to privacy as regards personal data may be limited with the view to safeguard the rights and legitimate overriding interests such as public interest. This Bill has looked into exceptions and limitations as pertains to our national interests, security and greater good. This is such an important Bill. While it relates to personal data,

we also have provisions that are particularly relevant to our citizens because of the rights that are mentioned.

What are some of the principles that guide this Bill? They are quite elaborate. Clause 4 makes provisions for the principle to guide persons in the interpretation and application of the law. A person making a decision concerning personal data will be required to collect, store, use or process data for only lawful and explicitly defined purposes. We will not have people snooping on you without your consent. We also have principles on collecting information directly from a data subject as opposed to somebody going behind your back to look for your name, age, *et cetera*. You will be required to collect where possible, directly from the data source.

Mr. Speaker, Sir, we also have regulations governing how third parties should handle individual data. We have provisions that show the information is accurate, up-to-date and complete. We also have provisions to ensure security of the information that is collected. This Bill is very elaborate in terms of collection, use, storage and processing of personal data. I do not wish to go into that because I know that Senators have read some of these provisions or will do so as we continue to debate.

Clauses 7 to 14 provide for personal data that can only be collected from a data subject; complying with the law for prevention, investigation or prosecution of a crime; or protection of human rights. We have robust provisions on how you collect the personal data and obligate a person collecting the same, to ensure that it is complete and not misleading.

Mr. Speaker, Sir, the most important part of this Bill is the rights of the data subject. As I mentioned earlier, a data subject is a person whose information is being collected by either a public or private institution, or another person. Clause 9 of this Bill is very elaborate and clear on how the data subject should be treated. It outlines the rights of the data subject, which include the right to be informed by the agency of the use to which the data is to be put when you are collecting. We also have very elaborate provisions on security of personal data and processing of special information.

Mr. Speaker, Sir, allow me to explain what special information is because it is important to that we know what it means. Basically, both personal and sensitive personal data are covered by the Bill. Personal data refers to the category of information that broadly means a piece of information that can be used to identify a person, in terms of name, IP address and so on. Sensitive personal data refers to genetic data, for instance. It includes information about your religious and political views, sexual orientation and other kinds of pertinent data that is personal.

This Bill will help us in very many ways. It will keep pace with the technological changes that are taking place, for instance, how we do business and how e-commerce will be conducted. Some of the data that will be used either for marketing or providing personal preferences. It also alters how business and public sector organizations handle information of the customers. We are looking at a time when everything is being done online, that is, e-commerce. It will also boost the rights of individuals and give them more control over their personal data, as earlier described.

Mr. Speaker, Sir, we also have very elaborate provisions in this Bill in regard to oversight and enforcement. We have very robust laws in our country, but what we lack is

oversight, compliance and enforcement. This Bill takes care of that by making sure that several clauses have owners; for instance, who will implement, do oversight and ensure compliance to these laws. We have provided under Clause 32, that the Kenya National Commission on Human Rights (KNCHR) shall be the entity responsible for overseeing the implementation of the Act. In performing this function the KNCHR will require to promote the protection and observance of the rights to privacy. It may investigate any infringement pursuant to a complaint or on its own initiative.

(Loud consultations)

The Speaker (Sen. Lusaka): Order, Members! Let us consult in low tones. I want to draw your attention to Standing Order 113, which says-

“Except when passing to and from his or her seat or when speaking, every Senator when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways.”

As much as we do not want to remain very stiff, let us try to be moderate in the way we move.

Proceed, Sen. Halake.

Sen. Halake: Thank you, Mr. Speaker, Sir. With regards to enforcement and oversight, this Bill has elaborate plans for compliance and ensuring that infringements will be dealt with. This Bill caters for personal, social and economic aspects. It will also enable us, as a nation, to trade with others on the online space, which is the future of commerce. This will lead to economic success in our country. Going forward, we will be looking at it in terms of direct foreign investment in our country. More requirements will be placed on our companies to ensure that they have data protection laws.

More importantly, even as we go into economic partnership agreements with other countries, the data protection law will play a major part in whether or not other countries want to do business with us. Therefore, this is a very timely Bill and we hope it will be a game changer for us, in terms of digital space. This Bill will definitely make sure that rights to portability of data are catered for. For instance, one will be able to move with their data wherever they want or request that their data be moved or retained in a certain state.

This Bill also provides for certain strict requirements on content. However, what is very important is that it is an enabler of our economic development. As a country, we talk about the Big Four Agenda, which includes universal health care. Major parts of information within the health system are held electronically. It is about time that we have laws and frameworks that govern how our health information is handled. Therefore, this Bill will not only cater for the commerce aspect, but also enable personal restrictions on our health and economic data. In addition, as an organization we will have robust systems in place.

Mr. Speaker, Sir, the European Union is very strict when it comes to working with other countries. They have said that there is no more working with countries that do not have frameworks within which personal data is handled, e-commerce will be

conducted and within which certain provisions will be given for processing, oversight and enforcement.

The Senate Committee on Information, Communication and Technology is very pleased to have worked on this Bill. We look forward to passing it, so that it opens the way for economic activities. Many companies that came before us to give their inputs during the public hearing were very proud of the fact that we have made this first bold step. This was in line with what the Bill provides; that our personal data and space for e-commerce have an enabling environment and framework within which the country can trade with others.

With regard to economic partnership agreements with other countries, right now everybody will be asking--- The other day, I had to fill a form on personal data online for a certain graduation. It included a photograph which will be used on the said event. These are good things and the way to way to go. We are looking forward to a situation where Kenya will have a framework within which we can do all these things. This goes hand in hand with cybercrime and other terrorist related issues. We have made very good provisions, such that nobody can impersonate. There will be strict personal data protection laws that will be guided by this Bill.

Mr. Speaker, Sir, I do not wish to belabour this because we all know the importance of data. Data is big money, power and even politics. Big data analytics is the way to go, both in terms of socioeconomic development, politics and everything else, including education and healthcare.

I am proud to have been part of this process and the Senate Committee that worked on this. Quite a lot of input has been given to us by many stakeholders. We had one of the most robust stakeholder input. We have finished the report on this. This is a very good piece of legislation that will enable economic development, security, health and all the systems in our county.

Mr. Speaker, Sir, with those remarks, I beg to move and request Sen. (Dr.) Milgo to second.

Sen. (Dr.) Milgo: Mr. Speaker, Sir, I rise to second this important Bill. It came from our Committee on Information, Communication and Technology. With the advent of technology, we have realised that many people use personal or economic data and very many others, to fight wars.

This Bill is very important based on the fact that it provides a principle framework to protect personal data, in line with Article 31 of the Constitution. It states that every individual has a right to privacy in terms of data and private communication and their family affairs not to be revealed.

Mr. Speaker, Sir, this Bill will go a long way to help this country. Clause 4(a), (b), (c) and (d) explains very well how information will be collected, how it should be used and how it should not be used without the consent of the individual. It further stipulates how important information, for example, which is required in cases of crime, corruption, national security and maybe of public interest, is handled. Therefore, this Bill clearly states how this data will be treated so that while an individual has a right to data protection, there is such data which is important to the public.

As I said, this Bill will go a long way to solve very many issues in this country. Clause 19, for example, provides the stipulated time within which data that is collected for a particular reason is supposed to be stored. Normally, in law it is supposed to be kept between six to 10 years. However, if one wants to continue to retain that data after its use, the owner of that data has to be notified. This Bill has also lined up data that must be continuously kept, for example, historical data and data for research. It sets aside individual data that should be discarded after a given period of time.

Part III of this Bill goes a long way to explain the processing of special data. While processing special data, certain rules have to be followed. For instance, consent must be sort from the owner of the data in case one is required under national law to release data. This, indeed, shows that the Bill has been well prepared.

Clause 29 states that an agency shall not process personal data of a child unless the processing is carried out with the consent of the parent. We have had cases in the past where data for children has been misused and many a times without the parents' consent. This Bill states that unless one has the consent of a parent, data obtained from a child cannot be used.

This law also provides a clause that will ensure that there is proportion when it comes to transfer of data, especially when it involves international trade and businesses, including immigration to another country. In the past, there have been issues with immigration, where an individual may be deported due to lack of data. This Bill ensures that the necessary data that might be required by different countries is available and can be transferred.

Part IV of this Bill ensures that an individual's data is protected from a third party who might want to get another person's data for malicious purposes by providing ways of securing the data. Furthermore, this Bill outlines different penalties that shall be meted on the various culprits.

My colleague has already stated how the European Union (EU) is interested. Recently, we had a visit from the Estonian Ambassador to Kenya. He explained to us how data protection is important. We pray and look forward to a time when our country will go to such a level or even halfway. If that will happen, this country will be a great place to live in. I was fascinated by how, in the EU, the law protects even persons with data, regardless of the technology that was used to collect it; whether manual or otherwise. This data is protected and the culprits are severely punished if they infringe on this law.

Mr. Speaker, Sir, this is one of the greatest Bills. It is my prayer that it will pass and be used in our country. With those remarks, I beg to second this Bill.

(Question proposed)

Sen. Shiyonga: Thank you, Mr. Speaker Sir for giving me this opportunity to support the Data Protection Bill (Senate Bills No.16 of 2018), which is before this House. I congratulate the Senator who has come up with this Bill, together with other colleagues who have worked on it. It is a timely Bill that has come with the right framework.

Mr. Speaker Sir, data or information is very important, especially in this era of technology and social media. It is, therefore, important and relevant to discuss this Bill within the framework that it is holding right now. Regulations, frameworks and penalties that have been awarded in this Bill have been long awaited for. With social media and current technology, information of individuals has been misused and misunderstood; it is all over without their consent. This is very dangerous. Therefore, it is important for us to pass this Bill, so that it can protect individuals who have been in conflict as a result of their data being misused.

Mr. Speaker Sir, I thank the Senator who brought this Bill because it provides a framework that enables data to be facilitated if it is needed, especially in electronic format. There are many victims who find their data all over, through different platforms, without their consent. In addition, images of many people have been unnecessarily manipulated, because of lack of protection. I come from a part of Kenya where the pronunciation of data matters, but I mean data which stands for information. It is very important for personal information of a child, where consent is given by the parent, or an adult who is illiterate, to be protected.

Mr. Speaker Sir, in Europe, as my colleagues have mentioned, banks are required to seek customers' consent before sharing their data with a third party. That is what we need in Kenya. Currently, personal information is given in terms of monetary, education and personal life. When somebody gets access to this information and has ill motives, it is shared further than what one expects. Therefore, this Bill should be supported and passed by Members, so that everyone can give the information with their consent.

Mr. Speaker Sir, we have social media platforms like *Mzalendo*, which has information of Members here. You will find somebody taking information, like phone numbers, from there and misusing it. If this Bill is passed, we stand to be protected as Members of Parliament.

Mr. Speaker, Sir, I, therefore, support and congratulate the Senator who has brought this Bill.

The Speaker (Sen. Lusaka): Sen. Cheruiyot Aaron.

Sen. Cheruiyot: Thank you, Mr. Speaker Sir. I support this Bill, but with so many amendments. I must apologize because I cannot run away from responsibility. I am a long serving Member of the Committee on Information and Technology and, therefore, consider it as a failure when the House discusses a Bill without the Committee's Report.

To be sincere, we had many submissions made before us by various stakeholders from the ICT sector, the banking world and private entities among others that have interest in this matter. The last time I checked, we had over 60 pages of proposed amendments and data that was presented before us for consideration as a Committee.

Mr. Speaker Sir, as I make my submissions, overall, I agree with the thoughts and ideas of us protecting our data and ensuring that we provide the necessary legal framework. This is to ensure that after passage of this Bill, it now becomes criminal to share very personal information about members of our society, without seeking their consent.

Colleagues here, who are Members of Parliament, know for a fact that on many occasions, because of the nature of the work that we do, we find that our privacy invaded

times on end by either members of the public or the media. You read very private information about different Members of this House and wonder whether the person who drafted that information knew that it would be injurious to the character and person of that human being that is targeted.

Mr. Speaker Sir, we have even read stories in the past that have listed medical data. I consider medical records to be amongst the top private issues of a human being. However, we have woken up in the past to read that so-and-so has a certain disease. When you ask them, they will tell you that they did not reveal and come out publicly on the same. In developed and modern working societies, before you can share any kind of information, there is a process you must go through. Even when a media house wants to do a story on a certain Senator, for example, about an illness they are battling, they must first seek their consent and say: “We know through our sources that you are battling such and such an issue. Will you be free to share this story?” If that person is free and feels that they want to share their story, so that others can learn from their struggle, they can go ahead and give the consent.

Mr. Speaker Sir, those are amongst the issues that are being proposed in this Bill; to provide a framework and an avenue to ensure that personal data is protected. This even goes down to how we protect our businesses as a country. If you file your information with your bank and give all the details that they take down before they give you an Automated Teller Machine (ATM) card, unknown to all of us here is that there are many third party institutions that get to access that personal data about you, because of the nature of work that banks do. They share that information either to possess your card and send it to different countries, yet locally, we have companies that can produce these ATM cards.

Mr. Speaker Sir, I listened to proposals that were presented before us by very brilliant Kenyans, who came and shared with our Committee. They asked us: “Why are you allowing banks to take away businesses from us? Even though they produce the cards cheaply, what about the data they are sharing out there?” Data is money. It is not unusual nowadays to go to certain cities of this world and instead of paying with money, you pay using personal data.

You just fill your name, age, height and other information, which is put together in the databank. It is equivalent to barter trade transactions, only that unlike in the past where we used to exchange eggs for soap, you exchange data for either coffee or a meal. Therefore, data is extremely important. It is the language of the 21st Century.

[The Speaker (Hon. Lusaka) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

Mr. Deputy Speaker, Sir, it is so sad and unfortunate that, as a country, we have not thought of a way of ensuring that we protect the data of our citizens. Today, if somebody wanted to make an informed decision, even very private information will benefit and advance their business interests. For example, if you wanted to find out the number of Kenyans suffering from cancer, that information should be freely and readily

available. People can make their business projections out of the data, yet those who keep those records do not benefit out of them because we have not provided the legislative framework for it to be done. Therefore, this is an extremely important Bill.

Lately, there has been a lot of debate about the influx of Chinese businesses or enterprises and the kind of the work they are doing. With the passage of this Bill, it will make criminal some of the activities that they are involved in because our Government entities will be forced to provide, upon immediate request, data to members of the public; to understand certain data that is up to now considered to be extremely private, yet it is of public nature.

If for whatever reason, you want to find out, for example, the number of Chinese doctors practicing in Kenya it might be difficult to access that information. Once we ensure that the commission that is responsible for the protection of both personal data and what will be considered national data, the information will be easily and readily available for us, so that as a country, we can make sound decisions and know the things we speak about.

We make a lot of noise as parliamentarians, leaders and members of the society about, for example, the influx of Chinese. Imagine how beautiful it would be if today we speak about exact and specific numbers. If somebody said that we have 345,000 Chinese in this country doing work that ordinarily would have been done by fellow Kenyans, the whole country will be in uproar. As you understand, the only time the Government seems to listen is when the whole country is up in arms. They can get away with that problem right now because all we are quoting are statements without numbers or exact figures. We are giving businesses away.

There is a gentleman who appeared before us from a company that manufactures Automatic Teller Machine (ATM) cards and urged us to protect them because we are their legislators. He said that they have put us to offices and wondered why we are allowing people from other countries such as Malaysia and Singapore to have access to information, yet if you ask them about citizens of their country, that information will not be readily available. Therefore, this is an extremely important Bill.

Part II of the Bill is about objects and principles of protection of personal data. Clause 4 states as follows-

“The following principles shall guide the interpretation and application of this Act-

- (a) information shall be collected, processed, stored or dealt with in any manner if it is necessary for or directly related to a lawfully, explicitly defined purpose and shall not intrude on the privacy of the data subject;
- (b) information shall be collected directly from and with the consent of the data subject;
- (c) where information relating to the data subject is held by a third party, the information may only be released to another person or put to a different use with the consent of the data subject;
- (d) the data subject shall be informed of the purpose to which the information shall be put and the intended recipients of that information at the time of collection;

- (e) information shall not be kept for a longer period than is necessary for achieving the purpose for which it was collected;
- (f) information shall not be distributed in a manner that is incompatible with the purpose for which it was collected with the consent of the person and subject to any notification that would attract objection;
- (g) reasonable steps shall be taken to ensure that the information processed is accurate, up to date and complete;
- (h) appropriate technical and organisational measures shall be taken to safeguard the data subject against the risk of loss, damage destruction of or unauthorized access to personal information; and
- (i) data subjects have a right of access to their personal information and a right to demand correction if such information is inaccurate.”

Also included in Clause 25 of the Bill is the processing of information concerning religious or philosophical beliefs.

We had interesting statistics being read to us two weeks ago, where leaders from a certain region emerged and said that they contribute 60 per cent to the Gross Domestic Product (GDP) of this country. Of course, that is hot air. With the passage of this Bill, such a debate can easily be concluded because this law will give the framework for processing what is being considered as special information.

If, for example, you want to find out how many people were born Muslims and have now converted to Christianity or vice versa, make the information easily available. Such information should easily be processed by a person whose function relates to special information if under the law it is publicly available or for research and statistical purposes. It is important so that even when our policy makers sit down to determine what is good and right for the country, they are properly informed. Of course, our institutions will greatly benefit.

Clause 32 provides that the Kenya National Commission on Human Rights (KNCHR) shall be the entity responsible for overseeing the implementation of the Act. Clause 33(1) states that-

“The functions of the Commission shall be to-

- (a) promote the protection and observance of the right to privacy;
- (b) monitor, investigate and report on the observance of the right to privacy;
- (c) formulate, implement and oversee programmes intended to raise public awareness of the right to privacy and obligations;
- (d) receive and investigate any complaint relating to infringement of the rights of a person under this Act;
- (e) provide a framework or mechanism for the effective management of conflicts and the resolution of disputes under this Act; and,
- (f) perform such other functions as may be prescribed by any other law or as the Commission may consider necessary for the promotion and protection of human rights.”

Privacy is one of the most violated rights in this country, especially for us who do our work in the public space. I like it that this law will be housed under the KNCHR, so that people know that it is an issue of human rights violation. A few days ago, we woke

up to the headline that 65 MPs suffer from cancer. That might be true or not, but of what use is it to the country for someone to reveal the health status of people without getting their consent? Therefore, it is proper for it to be housed under the KNCHR, the body that takes care of all the other human rights under our progressive Constitution, in Chapter Four on the Bill of Rights. This is a cardinal one and I think it is important.

Part V of the Bill is about Miscellaneous Provisions. Clause 38 (1) states that-

“A person who collects or processes personal data in any manner contrary to the provisions of this Act commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years, or to both.”

This is something that we need to remind all colleagues about. Almost all the institutions that appeared before us said that given the importance of data and the role it will play from now going forward, Kshs500,000 or five years imprisonment is a slap on the wrist. It could be someone who engaged in phishing practices. I need to distinguish this. It is not fishing like what my neighbours from the lakeside do, but phishing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Who are your neighbours?

Sen. Cheruiyot: Sen. Nyamunga and company.

The Deputy Speaker (Sen. (Prof.) Kindiki): And where is the Mover?

Sen. Cheruiyot: The people of Kisumu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Since you seem to have many neighbours, I want your right neighbours to know what you are saying about them.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, I want to distinguish between the phishing of data and fishing of fish. Therefore, I chose to use the economic activity mostly undertaken by my neighbours.

Sen. (Dr.) Kabaka: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. (Dr.) Kabaka?

Sen. (Dr.) Kabaka: Mr. Deputy Speaker, Sir, he should talk about the fishers of men and fishers of fish.

Sen. Cheruiyot: No, Sen. (Dr.) Kabaka. At this moment, I do not want to talk about fishers of men and women. This is because Justice Wakiaga told us that those fishers of men are mainly the “slay kings” and “slay queens”. Those are not the ones I am referring to this afternoon. People who engage in such vices should be thoroughly punished.

Mr. Deputy Speaker, Sir, a fine of Kshs500,000 and five years in prison or both is a slap on the wrist based on the offence. We are all aware of a classic case that went to the Supreme Court of the United States of America, where a terrorist used an Apple mobile phone and the Federal Bureau of Investigations (FBI) tried to force that company to reveal the text message. However, because of their advancement in personal data protection laws, the Supreme Court of the United States of America refused and agreed with the company that it was personal data that could not be revealed whatsoever.

The point of debate was that the court would have forced an organization to reveal personal data under the guise of matters of national security. We have proposed it as one of the open windows that can be exploited by the Government when they want to access your personal data. I may be convinced to disagree with it, but support it.

With those many remarks, I support and thank the Vice Chairperson of the Committee on Information, Communication and Technology. I am aware that the Bill is published in the name of the Chairperson. However, if there was a name that needs to have been on this Bill, it is that of the Vice Chairperson, Sen. Halake.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order!

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to support this Bill. I believe it will stand the test of time. I commend its sponsor and the Committee on Information, Communication and Technology. They have done a commendable job.

Data is very important to all of us because we use it on daily basis. It informs us about economic development, how many people are employed, unemployed youths, persons with disabilities in a county or country and so on. It helps to do an intervention at the right time and find lasting solutions to myriads of problems bedeviling our country.

Article 43 of the Constitution spells out clearly that every person has a right to health, education *et cetera*. If we do not collect data on persons in a county, we may not know the kind of intervention to employ in terms of health centres, schools and ensure that people enjoy their socioeconomic rights.

It is important to know how many children are in a county and identify the number that is attending schools, so that we plan for their education. For example, we need to plan for children with disabilities in every county. This can only be possible if we have collected all data on them for intervention to be done at the right time. The issue of inclusivity is very cardinal.

The Bill talks about the need for consent of the subjects. This is very important and I like it. If you are collecting data, there is need for the subjects to know and give a nod to the exercise. For example, if you are collecting data with regard to their life, it is important to seek for consent. Once consent is given, they will be free to give as much information as you possibly want.

Data collection is also very important in research. It is possible through data collection to know the gaps that exist. They can be mitigated through future research.

It is also good that the Bill shows that the subjects will be told why the data is needed. In addition, the subjects have a right to the information that has been collected about them and to correct any information they feel is not appropriate about them. When there is consensus between data collectors and subjects, the information will be used for the intended purpose.

I also applaud that the Bill says that the information should be specific and used for a specific purpose. There are times when people collect information about others and use it for other purposes, which can embarrass the subjects. Therefore, there is need for a fine in situations where data is collected from the subjects and used in ways it was not intended for. This will ensure confidentiality and adherence to ethics with regard to data collection.

I support this Bill because data collection will inform policy decision making. Without accurate data, it becomes difficult to come up with informed decisions that will help this nation. The Bill says that information given must be accurate. There are times when information on social media about legislators is embarrassing. Somebody wakes up

one morning and decides what they will say about Sen. (Dr.) Musuruve, and it will go viral. It is not fair at all. This Bill ensures that people will not wake up one morning and decide to say this or that about a certain person.

Moreover, when it comes to data, firms should desist from collecting information from social media and using it without verification. There is need for authentic information to be received, empirical evidence about the data and evidence-based data. This is the kind of information we want our people to access it. Data collection can help us, as a nation, if it is authentic, true, used objectively and for the purpose of which it is intended.

Mr. Deputy Speaker, Sir, the other thing that this Bill addresses is the issues of children. There are instances where cunning people can decide to get information from children and use it in a manner that is not right. In a situation where children are used, the Bill says clearly that there is need for consent from parents. Bringing parents on board and informing them of the data that is being collected about their children is good. For example, it is wrong for a parent to read or see in the media their children being used as subjects without their knowledge. When consent comes from the family, it authenticates the data. That data even becomes verifiable and can stand the test of time.

Mr. Deputy Speaker, Sir, I support this Bill, which should be lauded not only in this House, but even in the public.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Dr.) Musuruve.

Sen. (Prof.) Kamar, proceed.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this important Bill on data protection. I congratulate the Committee and particularly the Vice Chairperson, who has done an eloquent presentation of the Bill.

Data is extremely important. The process of collecting personal data is even more important than the data itself. There is a saying that if you put junk through a water pipe, the exit will be junk. In this case, as we are talking of protection of data, we need to be looking at the quality of data, the quality and integrity of the data collector and the protection of the person.

I congratulate this Committee for being extremely insightful in the way that they have drafted the Bill. In the principles of data protection, they have outlined guidelines that will be used. The data subject shall be informed of the purpose for which the information is being collected. This is an important and fundamental right to the subject.

Mr. Deputy Speaker, Sir, we have had occasions where scientists from outside this country have come and set out to do experiments disguised as data collection. They pay their subjects and tell them to take certain pills and eventually come up with reports. For example, they say that they have done a lot of research on HIV/AIDS in Kenya. This is extremely dangerous for our country. If you remember the case of the University of Nairobi and Majengo slums, the subjects were not even aware of what was going on. In fact, they were not even asked for permission. Rather, they were paid to be used for an experiment.

This Bill will eliminate activities where a subject is given very scanty information about what is going on with themselves, let alone the fact that some experiments go

further and administer certain processes or procedures on an individual. This Bill puts a lot of prominence to the privacy of the subject. Where a human being is a subject, we know that our research institutions and even universities have regulations on research. However, the protection of the subject is still wanting in most of the current regulations that exist.

Mr. Deputy Speaker, Sir, Clause 8 of this Bill, therefore, becomes extremely important. It says-

“An agency that collects or processes personal data shall ensure that the data is complete, accurate, up-to-date and not misleading, having regard to the purpose for the collection or processing of the personal data.”

When this Bill becomes operational, we will need to agree as a country on who will ascertain that the data is complete, accurate, up-to-date and not misleading. This is because in most cases data is collected from individuals who are not aware of the accuracies, completeness and whether or not the data is misleading.

Again, in the case of Majengo slums, a publication was done in the United Kingdom (UK). It was said that the subjects were informed that they were being tested on a drug that was supposed to help them as HIV/AIDS patients. Whether the data was complete, accurate and not misleading is another story. If that data was not misleading, today, HIV/AIDS could have been wiped, not just in Kenya but in the whole world. This is because the excitement that came with that experiment was that there was a breakthrough. There was a pill that was tested on prostitutes in Kenya and it was claimed that there were positive results. Today, we do not know where the subjects are and whether or not they are alive. We do not know whether their rights were violated when these drugs were administered on them.

Mr. Deputy Speaker, Sir, this Bill is important especially as far as the process is concerned, so that people are protected. We need to understand who will ascertain the completeness, accuracy and whether the data is not misleading. Therefore, there will be need to have another body in this country that will regulate data collection. There has to be an independent body, like the Kenya Bureau of Standards, whose results can be believed by everybody. The body will be able to say that a collection has been done.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Prof.) Kamar, I am sure you mean the Kenya Bureau of Statistics and not Kenya Bureau of Standards.

Sen (Prof.) Kamar: No, Mr. Deputy Speaker, Sir. I meant the Kenya Bureau of Standards (KEBS) in terms of testing of the quality of products in this country.

The Deputy Speaker (Sen (Prof.) Kindiki): Very well.

Sen (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir. The KEBS is one such body whose data when we receive it, we all trust it. I know that our medical boards have bodies that look at these. This kind of assignment being given by this Bill is a major one. It will require another body that will look at the quality and how subjects are being handled when data is being collected.

Mr. Deputy Speaker, Sir, the agencies that will be allowed to collect data must be tested in advance for quality of researching, data collection and integrity. This is important because when researching on human beings, we want to avoid a situation

where the researcher rounds up students who are desperate for research funding and use them as researchers.

It is good that we be clear that, for data collection, the individuals that are allowed to collect data must be vetted in advance. This is the only way we shall be sure that the quality of the data collected can be trusted and that they also understand the regulations that go with it or the rights of the subjects as articulated in this Bill.

Mr. Deputy Speaker, Sir, Clause 9 (a) of this Bill states-

“A data subject has a right to-

(a) be informed by the agency of the use of which the data is to be put”.

Again, as I said, most of the subjects that are normally affected may not even know their rights. Therefore, they must be protected by a Government body.

Part (9)(b) says-

“access the data with respect to the data subject which is in possession of an agency.”

Mr. Deputy Speaker, Sir, I would like to persuade the Committee to include a sub-clause---

(Loud consultations)

I want the Vice Chairperson to be given a chance to get this point.

The Deputy Speaker (Sen (Prof.) Kindiki): Order, Senate Majority Whip!

Sen (Prof.) Kamar: Mr. Deputy Speaker, Sir, I want the Vice Chair to take note of one area in this Bill. That it is not just a right to access the data with respect to the data subject, but we must have a mandatory sub-clause that requires the agency to present the data to the subject.

Even if you have the right to access data, where will you access it? How will you know the data is ready for access and who will tell you that your data is ready for access?

It is only fair to ensure that once the data has been collected, it is presented to the subject so that we are not saying that you have a right to access and correct it, because you have been allowed to collect false and misleading data. At what point can they do these corrections? At what point will they access the data? Who will tell them when to access it?

Mr. Deputy Speaker, Sir, it is important that we clarify that within the Bill. If we will not so, you will find that an agency will collect data and at the point of collecting it, they say they will take one month to do so, because they have 100 subjects and you are only one of them. When it is ready, you will have a right to access it because the Bill says that you will have a right to do so. However, they will not tell you when they finish.

If they finish and publish it, they will say the Bill gives you the right to access it, but you did not come to access it. So, if you have a right to access the data and you are not aware of how to access it because some of the subjects may be illiterate, like our mothers, it is important that there be something else that demands from the agency that they take this information back. They must take the information back, read it to the subject, explain it to them and ensure that the subject understands what has been collected from them and how it has been processed.

It should be mandatory to present the data to the subjects before publication. Again, once it has been published, if corrections are done once it has been published and the subjects are ignored, it would be difficult for the subjects to come back for correction. My very humble suggestion to the Vice Chairperson is that they should make it mandatory. We can re-introduce this as we are correcting the Bill. We should make it mandatory for the data to be presented to the subject before publication so that they are signed off by the subjects themselves.

Mr. Deputy Speaker, Sir, Article 10(2) states-

“An agency shall not collect personal data from a data subject unless it has taken the steps specified in subsection (1).”

Collection of data directly from a subject where the agency shall in so far as is reasonable or practical, inform the subject about all those items that are there.

That is why I was saying that they must be mandatory after that.

Clause 10 (3) states that-

“Despite subsection(2), where-

(b) the whereabouts of the data subjects are not known, the agency shall, as soon as practicable after the information is collected, comply with the provisions of (1).”

This is assuming that at some point, the agency might not know where the subject is.

If that assumption can be carried, it will allow the agency to collect data and say that they have not found the subjects and that is why they were not able to inform them. It is important that we come out clearly that they must search or find the subjects and give them the rights that have been articulated in Clause 1(10).

If we allow a weak point, it is possible that anyone can use or misuse it. I am again persuading the Committee to re-read the (3) in relation to (1), but bear in mind that if somebody has chosen a certain subject or subjects or a range of individuals, they already know where they are and there should be no excuse that they are not finding them because if you give them the excuse, a lot of data will be collected.

I gave the example of what happened with our HIV/AIDS testing in Majengo. To date, we do not know where the data or the subjects went and we do not know whether it succeeded. If that had succeeded, HIV/AIDS scourge would have been over in this country.

The excitement that we saw from the Oxford University that they had discovered something out of HIV/AIDS subjects that would not make them die of the disease never came back to us. We would have expected them to tell us five years later, that they are still well. Ten years later, they would have told us that it is perfect and that medication would have been subjected to everybody else, but it did not.

It is important that they take responsibility for the data they are collecting and be forced to collect that data properly.

I know that I have dwelt more on the medical aspect of data collection because that is where our people become victims. Human beings are used to collect data that would have been collected from rats or mice and it becomes dangerous if we do not

protect them. The Bill has a lot of details on protection. It is one Bill that has highlighted the human face. It has also protected the subject, except for what I have raised.

I support this Bill. I believe it will go a long way in protecting our people from misuse by data collectors.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Thank you, Sen. (Prof.) Kamar. I now give the Floor to the Senator for Kakamega County, Sen. Malalah.

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. I stand to support this Bill. I also want to congratulate the Members of the Committee who elaborately tackled all the issues that pertain to data protection. I also want to extend my congratulatory remarks to the Senator who introduced this Bill to the House, Sen. Halake because she simplified its content.

This Bill provides for collection of data, how it should be handled and protected. The most important bit in this Bill is the issue of misuse of personal data and general data. In the past, we have seen people collecting data and using it in an awkward way. During elections, we have seen our phone numbers being misused. We end up receiving funny promotional messages. This Bill will cure that disease.

We have been visiting schools, hospitals and institutions and when you get to the gate, we find a gate keeper with a black book. He demands to record your name, National Identity (ID) Card, phone number, marital status and among other details. You wonder---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah. Is the book always black?

Sen. Malalah: Most often, Mr. Deputy Speaker, Sir. That is why it is called a black book.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you have that data?

Sen. Malalah: Mr. Deputy Speaker, Sir, I have the experience of encountering black books with the gate keepers.

You will find that the data is, probably, used by people who want to do promotions. You then wonder as to why a gate keeper would demand for your ID and phone numbers. We should restrict the data that we give at that juncture. If you go to the *M-pesa* vendors, they will insist that you give them your ID number and yet you had already given out your ID numbers, phone numbers and names during the registration of the SIM card. That is the beginning of our data being misused to a point where it trickles to the prisons of this country. You find yourself receiving a phone call from a prisoner telling you that you have won Kshs100 million.

Last week, I received a phone call from a place that I do not want to mention telling me that I had won the SportPesa jackpot. I was broke at the time. I called people that I owed money and told them 'can we meet at a certain place; I want to assure you that I am willing to pay your debt.' Unfortunately, the caller was a conman. I did not know where he had gotten my number from and yet he was telling me that I had won some money. This Bill will provide a platform or an engagement where we will regulate such instances.

I have an issue with how data is collected unnecessarily. I do not see the need for disclosing the father of a child when you want to process the birth certificate. On that

birth certificate, we have seen a provision where the details of the father are entered. The same birth certificate---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah. Do you not think that it is the law that requires that both parents be disclosed for purposes of giving effect to the Children's Act?

Sen. Malalah: Mr. Deputy Speaker, Sir, where I come from---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! I asked you about the law and not where you come from. Those are two different things. Unless you are talking about the law of where you come from and not the law of Kenya.

Sen. Malalah: Mr. Deputy Speaker, Sir, I was trying to build my case.

You will find that the same birth certificate is a requirement for registration of examinations. At that juncture, it is unnecessary for teachers to ask students to bring their birth certificates for them to be registered for exams. During that presentation, my data is exposed yet I might not have wanted the community to know the number of children that I have. Why should my personal data be exposed to a teacher just because he wants to register my child? Our data should not be collected unnecessarily for purposes that are not required.

When you apply for a passport, they ask you a lot of questions, including your tribe and clan. Is it in order for one to be profiled ethnically? Is it necessary to disclose the clan or the door of the clan that you come from for you to get a passport? Such data is unnecessary.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you say a door or a gate?

Sen. Malalah: Mr. Deputy Speaker, Sir, where I come from, it is called a door. That ethnic profiling of citizens is what we are discouraging.

Next year, we will have census and you will find people being asked about their tribes in order for them to know the number of Luhyas and Kikuyus who are there. This is what has caused division in this country. I want to discourage the collection of data for purposes of ethnic profiling. We need to shun away from this. I am a Kenyan and there is no need for you to know my tribe. We need to have a nation that is united. The only way we can achieve this is by avoiding tribal profiling.

There are certain institutions in this country which share our information to security agencies. That is demeaning to the stature of such institutions. During the resist period, I encountered a situation which was---

The Deputy Speaker (Sen. (Prof.) Kindiki): What period was that, Sen. Malalah?

Sen. Malalah: Mr. Deputy Speaker, Sir, that was the period when this country was experiencing political animosity after the August 'stolen' elections.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, who calls it resist period? Is it a historic fact?

Sen. Malalah: Yes, it is a historical fact, Mr. Deputy Speaker, Sir

The Deputy Speaker (Sen. (Prof.) Kindiki): To whom?

Sen. Malalah: To us who were resisting

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Malalah, you should have said “during our resist period” so that you own it.

Sen. Malalah: Mr. Deputy Speaker, Sir, I stand to be corrected, the point is home.

During that period, I was newly elected Senator and nobody knew where I was staying. It was very unfortunate for a police officer to go to Kenya Power to search for my meter number. They went to Western Water Services and searched for my meter number. They used those numbers to locate where I was staying. Therefore, this Bill will seal such loopholes in as far as personal data is concerned.

I support this Bill because it provides for compulsory acquisition of data. It has specifically stated that whereas there is need for data to be requested compulsorily, the agencies dealing with the same are mandated to collect it in that manner. We need to have enough data that will help and protect our security and economy.

In the recent past, we have seen people moving around with huge amounts of money in *harambees*. We have banking regulations which regulates how much an individual can withdraw from the bank in a day. For example, you cannot withdraw more than Kshs1 million or more than Kshs999,000 in a day. However, over the weekend, we see prominent people in this country moving around with bags and sacks of money. If a certain person can contribute Kshs10 million in one *harambee*, or buy goats worth Kshs14 million; we want to know how many days it took him to withdraw that money from the account.

This Bill will also be helping the Director of Criminal Investigations (DCI) to ensure that such people justify---

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senator, is there a law that requires people to bank money?

Sen. Malalah: Yes, Mr. Deputy Speaker, Sir. We have Anti-Laundering Act.

The Deputy Speaker (Sen. (Prof.) Kindiki): Does it forces people to bank money?

Sen. Malalah: Not banking. I did not say it forces people to bank money.

The Deputy Speaker (Sen. (Prof.) Kindiki): You said you would want persons who spends huge sums of money to explain how many days they took to withdrawing it from the bank.

Sen. Malalah: Yes, it says that you can only withdraw Kshs999,000 in cash---

The Deputy Speaker (Sen. (Prof.) Kindiki): If it is banked?

Sen. Malalah: Yes, Mr. Deputy Speaker, Sir

The Deputy Speaker (Sen. (Prof.) Kindiki): Supposed it is not banked?

Sen. Malalah: Mr. Deputy Speaker, Sir, people who do not bank money are the thieves we are looking for. If you have that information, please, share it with the relevant authorities.

I encourage the CS to provide an information system platform whereby certain data are clustered in one portal. For example, during registration of voters, the Independent Electoral and Boundaries Commission (IEBC) tends to overlook some requirements. This is because they do not have the capacity to retrieve certain data to inform their decisions.

One of the requirements for one to be cleared to vie for a position of the governor is possession of a university degree. However, the IEBC normally has a day to issue certificates of clearance to people who want to vie for a position of governor in the whole country. They walk to IEBC offices carrying their degree certificates. It is not possible for the IEBC officers to ascertain whether those degree certificates are original or fake. We would want an information system platform whereby IEBC officers can log in and ascertain whether this person went to Punjab University or Mount Kenya University (MKU).

With regard to certificate of good conduct, we need a clustered information platform to ensure we can access it information for convenience.

Finally, I am a bit uncomfortable with Clause 34(2) on the issue of inquiry into complains. It says-

“A person who intends to lodge a complaint under this Act shall do so orally or in writing addressed to the Secretary to the Commission.”

Mr. Deputy Speaker, Sir, if we allow people to complain orally, then that privilege will be abused. I want to ask the Committee to consider deleting the word ‘orally’. We live in Kenya and we know Kenyans can abuse privileges given to them. If the complaint is legitimate, let it be in writing for future reference.

This is a good Bill that will protect us from cyberbullying and so on. Recently we saw prominent people in this Republic trying to engage in childish photoshop gimmicks to paint certain leaders in bad light. We need---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Senator Order! The House is not privy to the details you are giving.

Sen. Malalah: I am now informing the house on that.

The Deputy Speaker (Sen. (Prof.) Kindiki): Who are these prominent people you are referring to?

Sen. Malalah: Mr. Deputy Speaker, Sir., you want me to mention them? Are you sure you want me to mention them?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Senator, Order!

(Laughter)

You may conclude.

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. The matter is before the court and I do not us to discuss it. That is why I was trying to be figurative in my approach.

With those few remarks, I support this noble cause. We shall stand with the Committee to ensure that this Bill is passed and assented to.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Ochillo-Ayacko, you may proceed. Is this your maiden speech?

Sen. Ochillo-Ayacko: No, Mr. Deputy Speaker, Sir. I have spoken---

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay, you may proceed. I needed to know so that I could apply the Standing Orders accordingly.

Sen. Ochillo-Ayacko: Mr. Deputy Speaker, Sir you will apply them softly because I am still learning---

The Deputy Speaker (Sen. (Prof.) Kindiki): No, you are a veteran legislator. I wanted to know if this is your maiden speech so that we give you uninterrupted time. However, if you have spoken before---

Sen. Ochillo-Ayacko: Yes, I have, Mr. Deputy Speaker, Sir. Thank you very much for the compliments, but I am still learning. This is a new experience for me.

This is a wonderful proposed piece of legislation that recognizes the fact that society is using information which must be collected and stored. Decisions have to be made based on information so that informed choices or propositions are made by entities concerned. This Bill confirms the fact we, as a developing nation, we are collecting, storing and using accurate data so that we benefit from it.

This Bill seeks to protect personal data which has been misused by various agencies, entities and people. The misuse of personal data has been discussed in places like the United States of America (USA). If you remember, in the 2016 elections, data was misused. There were credible claims which were disputed by the current President of the USA that information was misused to misinform voters about certain things in the USA which is a developed country.

During the Brexit period in the United Kingdom (UK), there was assertion that a certain organisation that is suspected to have been involved in unlawful activities in Kenya also misused data that they had collected from people. It is claimed that with the misuse of such data, they were able to sway the Brexit decision.

Mr. Deputy Speaker, Sir, this confirms that the misuse of personal or any form of data can be dangerous and need to be regulated. People who potentially do this must be held accountable. An institution, body or law enforcement agency must be empowered to check this kind of violation.

Mr. Deputy Speaker, Sir, this is a good Bill that will start us off on a firm footing where we need to protect ourselves from people who scavenge for information in order to occasion harm to us.

It is clear that security agencies require data. We also require data for planning and for scientific activities. All these are done in good faith and for purpose of prospering our entities and country which is good. However, we must take bold measures that are proposed by this Committee to ensure that the data that is collected is not misused to our detriment.

Mr. Deputy Speaker, Sir, Sen. Malalah spoke before me and mentioned the issue of birth certificates. For purposes of the rights of the child, it is important for a child to have a name of its parents. I am sure if we were to reverse positions and become children who do not know our parents, it will be harmful to us.

(Applause)

Since we are here to legislate and protect interests of children, spouses, both male and female, it is important to be transparent when it comes to this very holy activity of

giving birth, mothering and fathering children. Therefore, we ought to be bold enough to own up to the activities we have been involving in and ensure that we are proud our children and they will be proud of us.

(Applause)

That is why if we have children, we should be happy to disclose them. Similarly, a child should be happy to be associated with a particular parent.

Sen. Malalah: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Malalah?

Sen. Malalah: Mr. Deputy Speaker, Sir, I want to be on record. I did not say that it is bad for my name as a father to be on a birth certificate. I meant that if my name is on a birth certificate as a father of a child, it is not necessary for the child to be asked to present a birth certificate for Kenya Certificate of Secondary Education (KCSE) or Kenya Certificate of Primary Education (KCPE) registration. This is because my personal information will be exposed to people who are not required to know such information.

Information on birth certificates should not be changed. However, the birth certificate should not be used for registration of examinations, baptism and such other activities. However, I support the issue of parent's names being on the birth certificates. I am a father of three. I can say it on a national platform. I do not want to look as if I was trying to escape that route of declaring my wealth in a birth certificate.

The Deputy Speaker (Sen. (Prof.) Kindiki): You appeared so.

Proceed, Sen. Ochilo-Ayacko.

Sen. Ochilo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. Sen. Malalah actually appeared so.

Some of us who are fortunate enough to have legal background know that there are succession matters that are very contentious, for example, when parentage of people and relationships are not clear. When we all pass on at some particular time, what we leave behind may be worse than the Third World War. Therefore, it is important for people to be very explicit in their documents as to who is related to them and what beneficial interests they have in their estate. Therefore, this is important so that people do not appear in a funeral like they do where I come from and claim that it was disclosed to them by their late mother that the deceased was their father and vice versa. It becomes a major problem. That is why I brought that point.

For purposes of schools, it is important for State agencies concerned with education to be certain that children who benefit from our public schooling system are legitimate Kenyans. Therefore, there should be a document that is able to authenticate or verify their origin or identity. That is why issues like birth certificates are important. It is also important in terms of providing information as to their ages.

There is a particular policy which has been legislated to the effect that a child has certain rights up to the age of 18. A child is also described as person below the age of 18. When they get to school, there is prescription as to what age they are. All this information must be availed to schools.

This Bill is about protection from the misuse of such information. If the school or any institutions collect information from a child or a potential parent, it must be protected in the manner that is prescribed in this proposed legislation so that information is not bandied around in the wrong fora now that we have things like WhatsApp, Facebook and others where we have online bullies that can misuse information that relates to people.

Mr. Deputy Speaker, Sir, I have looked at the proposed penalty for violation of this Bill, if it becomes law. I am of the opinion that it is a little light. The misuse of information, damage or suffering that might visit somebody whose personal data is misused is grave. I propose to Members that at the appropriate time, we should consider tightening and enhancing sanctions that are visited on violators when this Bill eventually becomes law.

There is also a provision in this Bill that removes liability from non-wilful violation. In my view, it is possible to create a situation where certain people escape liability. There is, therefore, need to look at that aspect of the Bill that is trying to take away the strictness with which a person becomes liable if the information is misused, so that we do not seem to give with one hand and take it away with another. That would negate the entire purpose of the Bill.

Mr. Deputy Speaker, Sir, I am otherwise abundantly supportive of this Bill. I hope it will see the light of day. It is my prayer that we, as Kenyans, will learn to enjoy following and being law abiding people.

Mr. Deputy Speaker, Sir, I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Sen. Ochillo-Ayacko. I now give the Floor to Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir for allowing me to contribute to this important Bill which should have been passed ages ago because of its importance. Now that it is here, let us give it service.

It is great that we are now creating a legal framework to ensure that peoples' information is not misused. We agree that data collection is important for planning, research, knowledge gathering and making decisions. However, people like me who have a finance background, know the importance of data in making appropriate decisions at all levels whether it is Government, public institutions, companies and institutions of higher learning. All those need data to ensure that they make appropriate plans.

Let me also contribute in terms of the birth certificates that are required for schools. Since the Jubilee Government came into power, President Uhuru Kenyatta waived national examination fees for pupils in secondary and primary schools. That is not extended to foreigners. As we are aware, we also have foreigners who live in this country. If they did our examinations, they need to pay for it. For that reason, a birth certificate is required to establish that the person is a Kenyan.

In addition to what Sen. Ochillo-Ayacko articulated, in terms of Clause 6, there is the right to privacy under Article 31 of the Constitution. There is a list of things that have been enumerated. To me, one of the things I want to add is that nobody should hide under that data protection where corruption is involved. I urge the Committee to also add corruption in that list. I know there is prevention, detection and investigation. However,

corruption being one of the problems bedeviling this country, there is a need to have a specific sub-clause under Clause 6 singling out corruption.

Mr. Deputy Speaker, Sir that is my humble contribution.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us have Sen. Faki.

Sen. Faki: Asante sana, Bw. Naibu Spika kwa kunipa fursa hii kuchangia Mswada wa *Data*. Kwanza, naipongeza Kamati ya---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. "Data" is not Kiswahili.

Sen. Faki: Bw. Naibu Spika "*Data*" ni Kiswahili. Angalia Kamusi ya---

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you sure?

Sen. Faki: Naam, Bw. Naibu Spika. Nina uhakika.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will give you the benefit of doubt. Proceed.

Sen. Faki: Bw. Naibu Spika, nimefanya utafiti wa kutosha. Kwanza naipongeza Kamati ya Seneti iliyo kuja na Mswada huu ambao umekuja kwa wakati mwafaka kwa sababu tumeona kwamba kadiri tunavyoendelea, mambo yanayoibuka ni mengi. Jambo moja lililoibuka ni maendeleo katika maeneo ya teknolojia. Kwa hivyo, tunaweza kukusanya *data* nyingi za wananchi wa Kenya na taasisi nyinginezo na ipo haja ya kulinda *data* hiyo ili isitumiwe vibaya, kwa mfano, wanaweza kuitumia kwa uhalifu au mambo mengine ambayo haifai kijamii.

Jambo la pili ni kwamba Mswada huu pia unazingatia Kifungu Nambari 31 cha Katiba ya Kenya. Ni jukumu la Serikali au nchi kulinda *data* ya kibinafsi ya watu na kuangalia ni njia gani inaweza kukusanywa, kuwekwa na kuzingatia haki za watu.

Bw. Naibu Spika, hapo nyuma tumeona kwamba *data* imetumika vibaya mpaka ikabidi wakurugenzi wa *Face Book* kwenda katika Bunge la Congress la Marekani kujieleza ni vipi watu ambao hawa kuruhusiwa walitumia *data* ya watu binafsi bila kuomba ruhusa kwa wahusika. Hili ni jambo ambalo liko wazi na ni lazima tuweke msingi wa kulinda *data* ya watu.

Nimepitia vipengele kadhaa katika Mswada huu na ninaona kwamba vyote vina jaribu kulinda haki za kibinadam. Kwa mfano, haki ya kuwa na siri au *privacy* kwa Kiingereza, katika *data* yako.

Bw. Naibu Spika, Mswada huu unalinda wananchi wasifanyiwe ubaguzi wa kidini, kijinsia au kitabaka. Kifungu 13, kinalinda watu kutokana na *data* yao kutimika kuwabagua kibinadamu, kidini, kirangi, kikabila na vingenevyo. Hapo nyuma hasa jamii ya Waisilamu, wale wanaotoka sehemu za Kaskazini Mashariki mwa Kenya wamefanyiwa ubaguzi na wakakusanywa pamoja na kuchunguzwa ilhali wengi wao hawakuwa wahalifu. Mswada huu unaweza kusaidia sana kuhakikisha ya kwamba haki za kibinadamu zinalindwa katika nchi ya Kenya.

Mswada huu unazingatia pakubwa *data* isitumike kwa njia ambayo si sawa. Katika Kifungu cha 14, wanasema kwamba *data* ichukuliwe ikizingatia usiri wa mtu anayechukuliwa na vile vile pia isitumike kwa njia ambayo si ya kisheria.

Usalama wa *data* umsezingatiwa katika Mswada huu. Unakwenda pakubwa kuhakikisha kwamba usalama unatekelezwa. Ningependa kujiunga na wenzangu ambao walizungumza awali. Kwa sasa nchi inapoteza raslimali nyingi kuagizia, kwa mfano, zile

kadi zinazotumika katika benki wakati kazi zile zingeweza kufanyika hapa nchini na wananchi wakaweza kupata ajira na mashirika yetu pia yakazidi kuendelea.

Bw. Naibu Spika, hapo awali, *data* pia imetumika vibaya kwa wananchi kwa sababu watu wanapata zile data kutokana na mashirika mbalimbali na kuzitumia vibaya, kwa mfano, wakati wa kupiga kura, watu wanapata ujumbe au *email* za kueneza *promotion* nyingi ambazo hawakutarajia kwamba watu wale wataweza kupata habari ama *data* ya watu binafsi na kuitumia kwa mambo yao ya biashara.

Kwa hivyo, naunga mkono Mswada huu kwa sababu utaenda pakubwa kuhakikisha kwamba *data* za raia wa Kenya na mashirika kadha wa kadha zitalindwa na kuhakikisha kwamba kuna usalama na uwazi zinavyokusanywa.

Bw. Naibu Spika, kuna vipengee vya kuwahukumu wale ambao watapatikana na hatia. Najiunga na Seneta wa Migori kusema kwamba ile hukumu ambayo imepeanwa ni nyepesi kwa sababu matatizo ambayo yatatokea wakati data itatumika vibaya ni makubwa kulingana na vile ambavyo yule ameiba ataitumia.

Kuna haja ya kulinda *data* ya watoto na wale ambao hawajafikia umri wa miaka 18 kwa sababu data inaweza kutumika vibaya, hasa kwa wakati huu ambapo kuna visa vingi vya kutumika katika filamu chafu na mambo ya ngono kwa watoto ambao hawajatimia umri wa miaka 18. Kwa hivyo, ipo haja ya kuilinda kikamilifu na kuhakikisha kwamba *data* hii inalindwa.

Nimefurahi pia kwamba kutakuwa na tume kuhakikisha kwamba hii sheria inatekelezwa kwa ukamilifu zaidi.

Bw. Naibu Spika, kwa hayo mengi naunga mkono Mswada huu. Ni wakati mwafaka kuhakikisha kwamba umepitishwa. Nampongeza Sen. Abshiro kwa kuchangia pakubwa katika Mswada huu na pia kuleta mbele ya Seneti na kuhakikisha kwamba umesomwa na ukajadiliwa.

Asante sana, Bw. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana, Sen. Mwinyi.

Proceed, Sen. Kabaka.

Sen. Kabaka: Mr. Deputy Speaker, Sir, I thank you again for giving me this opportunity to contribute to this important Bill which I support, but with some reservations which I will articulate here.

First, I thank the Mover of this Bill for this good intention. As most of my colleagues have said before me, this Bill is long overdue. The objects and principles of protection of personal data are very well articulated. Of necessity, I emphasize on the issue of the consent of the data subject or the person giving the consent. Consent is of very paramount importance in any information touching on the fundamental rights of an individual.

Data is important for research, not only in institutions of higher learning where parties are doing research for their undergraduate, masters and even PhD researches. You know as much as I do, being a scholar, that anytime students are sent to body corporates or even to face individuals or persons to be interviewed, institutions are supposed to craft a pleasant letter which definitely is presented seeking consent from the person or institution from which the information is being sought. So, consent is of paramount importance. There is no doubt about that.

Purpose is also important. Why should a person seek the information? At the end of research, we are trained to say that; at the end of this research, this information, other than being treated confidentially, it can also be ploughed to the data subject for their perusal and even use if it will add any value to their objects.

I am happy that the Mover of this Bill has given the timeline within which the data can be kept. You cannot keep data in perpetuity because we do not know who will get hold of it and misuse it. The time limit is not given, but I understand the law defines time as reasonable time which is relative. It could be five or 10 years. It would have been good if we can maybe, borrow wisdom from the banking institution. Anytime, you want a bank statement which is older than about two or even three years. Once you go to the financial archives, they will tell you that information has been discarded unless they go to the mother computer. So, I suggest that maybe five years would be reasonable for such data to be discarded.

Another area which they touched on is that data which is being given should be compatible for the purpose for which it was collected with the consent of that person. Parties must give some reasons they want the data for, but it is not easy to realise that indeed they have some ulterior motive in that, you may want the data to compete against the company which is providing the data subject. To that extent, that would be a misuse if that data will not be compatible with the purpose for which it is intended. Of course, legally that would be legal recourse which may attract damages if not another sanction.

I also like where they have given that the data which is being given need to be appraised, accurate, up to date and complete. You do not give data which is half baked or information, which will not, if subjected to the test, would collapse or give misleading findings.

Mr. Deputy Speaker, Sir, as a lawyer, I also wish to give an opinion regarding Clause 5 which says that every person has a right to privacy with respect to their personal data.

As much as that law will protect individuals, it is imperative for the Mover of the Bill to know that such protection is of paramount importance especially during a marriage period. Where parties are divorcing or they intend to separate and divorce, of course one party may want to disclose certain information or data which occurred during the time of tranquil moments or marriage.

[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]

[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]

The Evidence Act, Cap 80, of the laws of Kenya protects any data or information which was transacted during marriage of the parties. That information is privileged in law and none of the parties in a marriage can use it against the other in the proceedings of divorce except in criminal liability because there is a proviso to that.

Madam Temporary Speaker, another aspect is that the objects and principles of this Data Protection Bill, 2018, are clearly premised on Article 31 of the Constitution of Kenya, 2010, which gives some overriding legitimate interests. That is an area where my

friend Sen. Cheruiyot has talked about. He said that he has no problem that when it comes to matters of security, the State can obtain the data and I beg to differ with him on that. This is an area that could be challenged in court on constitutionalism because any time the State may want to visit certain areas and get information.

We know there are areas prone to terrorists. There is a time every agency was going to Eastleigh and we saw the State taking advantage of the lacuna in law to harass certain sections of Kenyans. We need to clearly define this area. When you give the State a blank cheque on matters of national security, it may end up violating the fundamental rights of individuals. So, this should not be an absolute right especially to the State because even the police and the National Intelligence Service (NIS) will violate individual rights in the name of national security. That is an area that some legal explanation needs to be put.

Another area which parties have attested is information regarding the children. The distinguished Senator for Migori County, Sen. Ochillo-Ayacko, clearly said that there could be a third world war if especially a parent passes on without having given a clear direction with regard to distribution of his estate. I am sure that even here in the Senate and also in the National Assembly, we have people with big means but you will be shocked that they have not written wills or done testamentary instruments. They do other things but they forget that death is a reality.

I recommend that we write wills so that we give direction in the event death occurs. If Members of the Senate or the National Assembly are afraid of their names being included in the birth certificates, it is foolhardy especially for men when we have children outside marriage and we do not want to consider them.

I support this law which will legitimize that because there can never be a child who is illegitimate. There is no human who can be born without two parents. Whether you marry or not, that is not the issue. What is important is that a child belongs to parents who are male and female.

I would like to give the definition of a child under the Children Act and also under the Interpretation and General Provisions Act, Cap 2, laws of Kenya. A child is defined as somebody from zero to 18 years but we have the decision of the Court of Appeal in Kenya. For purposes of extenuating or extending that period, it could be when the so-called minor joins a university but they may need support for the period for which they pursue their education even at the Masters level.

If he or she is not working, the court provides that for purposes of financing that child who is beyond 18 years, they are deemed to be children to that extent. So, 18 years is not cast in stone and it is not kind of a fixed invariant figure or mathematical statistic.

Another area where other Members of the Senate who have contributed before me mentioned but somehow, I did not get it clearly, is Clause 38(1) which provides the penalty. I do not agree with a fine of Kshs500,000. The reason we are saying that a fine of Kshs500,000 or a term of imprisonment not exceeding five years is lenient in this country is that, compared to other jurisdictions like the United States of America (USA) and Australia, the penalty is equivalent of Kshs1 billion. I have consulted and perused the laws.

They say no trouble in Africa. In terms of doing business in Africa, they say we should provide an enabling environment. I think this is an enabling environment which is wrong in law. Where body corporates come, Kenyan lawyers will tell them that in the event of breach of a certain provision, they can only pay a paltry Kshs500,000. That is nothing to body corporates. They need to feel the pinch. Therefore, Kshs1 billion plus will be important for body corporates. We need to distinguish that. For individuals, it is relatively reasonable but for body corporates, they should suffer the penalty because some of the data they will obtain will generate a lot of wealth.

Just to go back, another area is Clause 37(1) which talks about an agency disclosing personal data in good faith. However, “good faith” has not been defined. More often than not, people can camouflage to be acting in good faith but in reality, they are not. They may seek information for ulterior motives.

(The amber light at the Clerks table was switched on)

I thought I had 15 minutes but I can see the amber light has been switched on.

The Temporary Speaker (Sen. (Prof.) Kamar): Wind up.

Sen. (Dr.) Kabaka: Madam Temporary Speaker, Clause 38(1) is well done. It does not limit the civil liability which is a common law claim that has no limit.

We have heard parties being defamed in this country depending on their status. If you have a name worth to be defamed, it depends on how your lawyer convinces a judge in a court of law. We have had many cases where parties have been paid Kshs35 million or even Kshs500 million for defamation. If someone defames my name – of course, you know I am worth a billion shillings plus – I would sue that person.

(Laughter)

It is important that this law be retained as it is.

This is a good Bill if only some panel-beating can be done legally. It is long overdue and, indeed, it is aimed at protecting not only privacy of individuals or institutions as to when by extension, but also protects information relating to the family and private affairs which unnecessarily may not be disclosed without the consent of the family.

I support.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Kihika, proceed.

*(Sen. Mwaruma crossed the Floor
without bowing to the Chair)*

Order, Sen. Mwaruma.

Sen. Kihika: You just crossed the Floor.

The Temporary Speaker (Sen. (Prof.) Kamar): We do not have shortcuts in this House. Go to the Bar and bow to the Chair.

(Sen. Mwaruma went to the Bar and bowed to the Chair)

Sen. Kihika: Thank you, Madam Temporary Speaker. I also rise to support the Data Protection Bill 2018. Like all my colleagues, I congratulate the Vice Chairperson of the Committee on Information Communication and Technology, Sen. Halake, for the good work in moving that Bill. It is extremely important and informative. It is one Bill whose time has come.

All of us who live in this country know how much it seems as though there is nobody being held accountable for misusing data. I believe that is one of the major things that will be accomplished if the Bill becomes an Act. Looking at the Bill, like others have said, when we think of even personal information regarding health, there is room for misuse and leaking people's information. It could even be from credit bureaus about their credit worthiness or whatever the circumstances may be. There may be different laws that may have been applying to different areas, however, this one will be quite comprehensive and make sure that the principles of data protection are followed.

Madam Temporary Speaker, it is important that the consent for the data subject is primary in everything that goes towards data collection. Looking at the Bill, I see all the areas require consent from the data subject but in one of the areas where they have given exception – such as law enforcement, when crimes have been committed and so forth – I believe that we also have to be careful.

We should not have a scenario where in the pretext of doing so for maybe law protection purposes or fighting crime, that then there is an intrusion and misuse of personal data. As much as it is important that there is exception because that is going to be sometimes necessary, we must be very strict with those exceptions. We should not give room for abuse of these important and timely Bill when it becomes law, which I hope it will.

Most of us in this House are here by virtue of being politicians, if that is the right word. We know that there has been extreme abuse on social media or other forums where there is a lot of abuse – if I would call it so – of public figures in this country. A lot of it has happened without people being held accountable.

Last year, there was the Computer Misuse and Cybercrimes Act, 2018 which touched a bit on data protection. It was temporarily suspended following some contentious clauses that were seen to infringe on the freedom of expression. My only concern on this Bill is for the Committee to make sure that all the stakeholders have been brought to the table as we move on with the process and as the amendments come on board, so that there is real and true public participation on the Bill.

That way, we will not end up having civil societies or other stakeholders running to court to get the Bill invalidated on, for example, freedom of expression issues. It is quite important to take into account the views of the media, bloggers, civil rights groups and all other stakeholders so that we do not have the same fate for this Bill like we had on the Computer Misuse and Cybercrimes Act, 2018. Granted, that one never came to the Senate, so for Senators, we agree that such Bills must also have the input of the Senate.

Madam Temporary Speaker, as we continue looking at the Bill, I am also concerned about the leniency with regard to penalties on this Bill. First of all, there are some that are a conviction or a fine not exceeding Kshs500,000 or imprisonment for a term not exceeding two years. I personally feel that that is extremely lenient. As some have said, I concur that some of the people will just do the calculation and decide that it is worth the risk since the penalties are not as high as they probably should be and continue with the misuse of data especially where maybe there is profit or they do not feel the penalties are as stiff. So, they would not feel the need to not go ahead and misuse the data.

In Clause 37(1) it states-

“Where an agency discloses personal data in good faith pursuant to this Act-

(a) no civil or criminal proceedings shall lie against the agency in respect of disclosing the data, or for any consequences that may arise as a result of disclosing the data;”

I strongly feel that this is not the right way to go. Agencies will then plead this vague good faith. We do not know what good faith means. This might become a way for them to get around the law and continue disclosing personal data, claiming good faith and getting away with it.

To the Committee, I believe that this should be amended so that they are also held liable. Let them go plead whatever they will to the court without giving them this kind of black out. I feel that there is no deterrence here. They will go on with business as usual and just claim good faith. We do not know what good faith means.

Madam Temporary Speaker, as I also said with regard to leniency, you also see some of these offences where a person is convicted for a fine not exceeding Kshs100,000 or a term of imprisonment not exceeding two years. Again, I honestly think that is way too lenient. The Kshs100,000 is not much for some of those who are breaching data laws and who also stand to profit from that breach.

One colleague commented about some studies that were done without disclosing or getting consent of the subjects. I think in this case where maybe it is big multinational companies who want to do some research – where ordinarily, the law must require consent – then you give them a way out. They will be able to do these things without disclosing and without consent and then get these minimal fines. In some cases, like I said, where they have no civil or criminal liability, I think those are the few things that I would want to be amended. We should have stiffer penalties to make people to think twice before breaching the law on data protection.

We have also seen that despite having the Kenya Information and Communications Act, 2008, the National Police Service Act, 2011 and the National Intelligence Service Act, 2012, there is no comprehensive data protection legislation. Having pointed out those weaknesses to the Committee, I still believe that it is an extremely important Bill that will go a long way in setting limits and making sure that there is consent whenever personal data is taken.

I was also a bit concerned or thought that Clause 11(1) seems a bit off. The Committee needs to review that Clause probably with the purpose of amending it. The Clause says that-

“An agency shall not be required to take the steps under section 10 if that agency has, prior to collecting the information, taken those steps in the recent past when collecting the same information or information of the same kind from that data subject.”

I would want to know how to interpret Clause 11(1) when it is read with Clause 11(2) which states that-

“Where an agency collects information under subsection (1) to be used for a different purpose from the one for which the information was first collected or where the circumstances of the data subject has changed, the agency shall notify the data subject of the use to which the information shall be put to.”

When you look at Clause 11(1), it seems to be alluding to the fact that if they had recently collected the same information, then they do not need to go back to the data subject to get consent or even to inform them. However, when you look at Clause 11(2), it states that they have to inform and notify the data subject.

I believe that this should be amended to reflect that you must get permission or consent from the data subject even if it is the same data that you are using. If the use has changed, then you must get consent and not just inform.

Clause 11(3) states that-

“An agency shall notify a data subject that a waiver of his or her rights under this Act shall be construed as consent and authorization for the agency to collect the information.”

I would like the Committee to state that the waiver must be in writing. You cannot say that I waived verbally. Since it does not say anything here about a waiver being in writing, I am worried for we have some very unethical companies or people in this country and this might be misused then claimed that a waiver was given. I would like to see an amendment brought where it shows that the waiver must be in writing where a data subject waives his or her rights.

In conclusion, I believe that this Bill is extremely necessary. It will go a long way in safeguarding the rights of data subjects in this country. This is a Bill whose time has come. As a country, as we continue to advance in technology, it is important for us to have laws that define what is lawful and what is unlawful. We should also have laws that give data subject power in their hands to determine how their data is used or not used.

As a country, we have moved to being digital by having biometrics, integrated population registration systems, eCitizen, eHealth and Integrated Public Safety Communication and Surveillance Systems. A lot has been done in these areas in terms of data advancement due to technology but with that, there is also a lot of room for abuse technology hence it is important to have this Bill become law for us to get safeguards as we continue in our technological advancements.

We have seen data breaches in this country which include the espionage by the Chinese nationals back in 2014. We saw the hacking of the Ministry of Foreign Affairs

back in 2016 and unregulated surveillance leading to extra-judicial torture and killings. That is why I insist that as we give exceptions to these consents when collecting data especially in cases where we are fighting crimes, terrorism and such exceptions, we must be careful so that we do not open the door for abuse of this good Bill.

I support.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Hon. Senators, I do not see more requests. Therefore, I ask the Mover to reply.

Sen. Halake: Thank you, Madam Temporary Speaker. I rise to reply. In my reply, please allow me to thank all Senators who have contributed to this important Bill, for the amazing input and diversity to the different perspectives that they have provided. This House definitely has got a lot of brains.

I thank my seconder, Sen. (Dr.) Milgo who is a Member of our Committee. She covered a wide range of Clauses some of which I had not captured because of the fact that I was looking at the broad areas. She looked at everything from the right to protection, collection of personal data and access to information. I thank her for the thorough work that she did in seconding and ensuring that the gaps that were occasioned by my keeping to bold highlights were captured to make sure that all Senators understood the details of this Bill.

Madam Temporary Speaker, I also thank Sen. Shiyonga for pointing to us important issues around the principle objects. She also provided a lot of good personal experience and examples as to how data may be misused and how this Bill will come not just to give effect to Article 31 but also protect individual rights and freedoms. Therefore, I thank her for the very good input.

The other Senator that contributed is Sen. Cheruiyot who is a Member of our Committee on Information, Communication and Technology. He was very pertinent and had good information and input with regard to some of the areas or gaps that he identified. I would like to assure him that a lot of the things that he has mentioned have been taken care of.

Allow me to apologize because this Bill has been brought to the House before the report of the Committee. I would like to report that the Committee had over 200 pages of submissions. This Bill attracted tremendous interest because of the economic aspect of things that it alludes to.

Madam Temporary Speaker, banks, credit cards companies, for example, Master Card, Visa Card and *Facebook* sent their legal teams. Therefore, we had an amazing array of people from the business perspective because this Bill has a lot of bearing on how these companies use our personal data for their own personal gains. That is one of the things that we sought to take our time on given the complexities and technicalities of this Bill.

We went through each and every submission with a toothcomb. We also sought to get our own legal interpretation of some of these things, so that we are not disadvantaged. For that reason, we have the amendments ready. In fact, I am glad that a lot of issues that Sen. Cheruiyot and other Members have pointed to us have been considered. Most of the issues that have come up on the Floor of the House with regard to how the banking and insurance sectors, credit card companies, social media platforms use our personal data

have all been considered. That said, there is a lot of input from the rest of you in different areas. I will go Senator by Senator because I found that very useful.

Madam Temporary Speaker, I thank Sen. (Dr.) Musuruve for her input. As usual, she is the champion for Persons with Disability (PWDs). In her usual passionate manner, she alerted us to the fact that personal data, as concerns PWDs and other vulnerable groups should be taken care of as well.

We have taken note and reassure her that every person, be they PWDs, women or children will be considered and holistically taken care of in this Bill. She also spoke about the authenticity of the data, its evidence base and the issue of minors, which has been repeated by other Senators as well. I thank her for always highlighting issues pertaining to vulnerable groups.

Madam Temporary Speaker, I thank you for your very detailed and passionate contribution. It was very enlightening, using very authentic and real examples of how our medical data could very easily be misused or used for purposes which were not the original intention. You spoke to the quality and integrity of our data with regard to the medical records and data that has been used for research and other purposes, especially in the fight against HIV/AIDS. For instance, sex workers have been used as data subjects and we do not know the outcomes. Was it just for fundraising by researchers or was there useful information? Sex workers in Majengo area in Nairobi were used as data subjects for HIV/AIDS prevention and research, and we do not know how far it went. These are some of the things that give us real examples and not just abstracts.

We take note of the principles, guidelines and experiences of medical research subjects. I reassure you that we have amendments that will come with regard to this area, based both on the interaction within the Committee and also inputs from different stakeholders. There was very robust public participation designed in stages, first, to take care of the business perspective and then the people that would be data subjects or just normal citizens; the 'Wanjiku' as we like to call them. We also had stakeholders, including the Government and other agencies that do similar things. We assure you that this is all taken care of.

With regard to the data protection and mandatory sub-clause that you proposed, we will definitely make sure that, that is considered within the Bill.

There was also something about taking the information back to the data subjects if there are any changes, even after the mandatory disclosures have been made. This will ensure that at any point, whenever there is change either with regard to the use of the data, be it for publication or otherwise, that will be taken care of.

I thank Sen. Malalah for his good contribution with regard to collection, protection and handling of data. In addition, he has spoken on misuse of data, which he articulated for us, using pertinent and real examples citing instances where personal data has been misused. What I took from his submission is the putting of mass subject data as a responsibility, to restrict the content that we share. It is our personal responsibility to ensure that as we share out information, we also know its purpose.

Madam Temporary Speaker, from Sen. Malalah's contribution, I also picked the use and necessity of sharing information. He talked about the use of birth certificates for registration, even in nursery schools. I know that there have been pros and cons around

this, but Sen. Ochillo-Ayacko mentioned that it is necessary. With that said, there are instances where necessity of information is sometimes overlooked. For instance, sharing information when we are requested, only to realize later on that it was misused and it was not even necessary to provide it. Sen. Malalah will make sure that this is taken care of in this Bill, where possible.

Sen. Malalah also spoke about ethnic profiling through data. This is something that is very pertinent. It broadly speaks on how data can be misused for unintended purposes such as religious and political profiling, and others as other Senators have spoken to.

Madam Temporary Speaker, we take note of the proposal by Sen. Malalah to provide a portal where important information of an individual is accessible by relevant Government agencies. Having such a platform will enhance quick access of information by these agencies, which they may want to use to verify credentials, be it during elections or in any other situation.

There is also a proposal to delete, where it says: “to orally submit.” This was necessitated by the fact that not everybody in our society is literate and is able to write sometimes, but it does not mean that there will be no record. It means we have discussed this. For instance, someone can come and inform us orally, but the agency to which that oral submission is made must have a record.

Therefore, within this Bill, we will make sure that we precisely spell this out and indicate that while we welcome any submission be it oral or written, the agency to which that submission is made must ensure that a record is made of all that submission. That is the flexibility that we are trying to build into, so that we do not leave anybody behind. We definitely take note and we shall make sure that these kinds of gaps are taken care of.

In terms of cyber bullying, we take note of this as well. It will form part of the amendments. We will definitely consider and ensure that it is done as well.

Madam Temporary Speaker, I would also like to thank Sen. Ochillo-Ayacko for his brilliant input which was based on the legal perspective. He talked of certain provisions on the need for everybody to have identity, base and belong to somebody. That is well taken.

We also take note of cyber crimes and cyber bullying with regard to penalties. I am aware that this is something all Senators here, among them, Sen. Kihika and Sen. Farhiya have contributed on. This has to do with lenient penalties. This too is subject to the amendments. The Committee felt that we needed to do something about this, but we came on the floor of the House to make sure that we do not lose too much time.

Even as we deal with the enormous amount of input that we received through the various stages of our public participation, we shall make sure that we tighten and enhance these provisions on penalties so as to make a distinction between penalties to individual natural persons and companies.

Madam Temporary Speaker, I would also like to mention that there was a suggestion by Sen. Ochillo-Ayacko to remove liabilities from non-willful violation, so that we do not open ourselves to undesired consequences of being too lenient and then create other outcomes. We shall definitely look at that as well.

I would also like to thank Sen. Farhiya for her input and submissions. She did put this in perspective as to how important data is for planning and decision-making purposes. She would know that as a finance expert because she deals with that every single day. I thank her for her contribution on the issue of corruption under Clause 6. She says it should be added on the list of things for which data protection will be alluding to.

Madam Temporary Speaker, I would like to thank Sen. Faki very much for his eloquent Kiswahili submission. I hope I understood and captured all of it. If I did not, I will go back and ask him to help me with some of it. He did speak on development in technology with regard to protection and misuse of data as this Bill gives effect to Article 31 of the Constitution. As a fine lawyer that he is, he talked about the human rights issues that this Bill will enable and the mitigations against abuses of the rights and freedoms of people.

Again, he also spoke about profiling on the basis of religion. Furthermore, he spoke about the issues around security to profiling certain communities based on their data that they provide or perceived profiles of their religion and other personal data as described in the Bill. He did speak to the fact that penalties are lenient. We take note and we will make sure that they are punitive as they should be. We take note of all these things and we will make sure that this Bill speaks to every of these inputs and responds to them.

Madam Temporary Speaker, I would also like to thank Sen. (Dr.) Kabaka who very articulately put for us in perspective, the principles and objects of this Bill. He gave us the emphasis on the consent of the data subject which he felt was fundamental. In addition, he spoke to us on the research data integrity and how long data should be kept in perpetuity for five or seven years. I will not say the time that we will settle on, but we will make sure that we look at that.

We have had this discussion in the Committee, where we looked at data from a different perspective that is the banking, school, and health records. We thought that different agencies will need different timelines. So, we felt that we should not be too prescriptive in this law, but to allow other laws to guide us. We fully understand that we may create an undesired consequence if we leave it open. However, the Committee is willing to look at this and come up with something that will lend itself to the different aspects of the data use and ensure that we take care of that.

Madam Temporary Speaker, Sen. (Dr.) Kabaka brought in issues to do with privacy and protection, marriage, divorce and succession that would bring either deserved or undeserved consequences with regard to data protection and use of data. We have noted those sentiments and will make sure that every aspect of the life of Kenyans with regard to their data, either in marriage, divorce, succession or birth certificate is definitely taken care of.

We have taken note of the limitations that have been talked about by all Senators and the potential for these limitations, especially under the guise of national security and interests. I would like to inform the House that this was an area we debated and you will see that in the amendment in the Committee Report, it is an area that we are going to speak on in much detail.

Therefore, we would like to reassure this House and all the Senators that you have a very good point on the limitations that we have provided for in this Bill on national security and interests. We need to define that closely to ensure that it does not get abused and that we do not open it up to other consequences and give a *carte blanche* to security agencies or others to misuse that provision. I am aware that Sen. (Dr.) Kabaka and other Senators spoke on this limitation.

In reiteration, on information around distribution of estate and definition of a child, we sought not to define some of the things that seemed very obvious like the definition of a child. On our part, it was an attempt to ensure that our law is not too prescriptive. As Sen. (Dr.) Kabaka rightly said, sometimes the flexibilities that are brought into what constitutes age limits for our child, for example, our children who are in school, especially those in higher learning even though they are 18, they may be considered children. Therefore, in the spirit of not being too prescriptive with the national law, we left those definitions to what already exists in the Constitution and, hence, the reason why we did not define “child”.

On another note, we are grateful to Sen. (Dr.) Kabaka’s input on the differentiation between criminal versus civil liabilities. We did not go into details of criminal versus civil liabilities in the Bill. It is a good point because the penalties can speak to either criminal or civil, natural person or other person accompanying the rest of it. We noted that and we shall make sure that the subsections under criminal versus civil liabilities are enhanced.

I take note of the use of the word “good faith”. We debated this as well, however, we settled on that with regard to certain provisions. This is because we said that sometimes in a court of law, we have seen certain precedence where the judges have used good faith or reasonable effort. Thus, for lack of a better word choice, we have used “good faith” in certain places where we were not able to state specifics. We will revisit this and make sure where we have said “good faith”, certain provisions are made to ensure that undesired consequences are not created by living it too open.

I would also like to thank Sen. Kihika, who was the last to speak, for her usual way of managing the House. She is a leader who I have a lot of respect for. I thank her for her support in the Bills that have come to this House including this Bill and also ensuring that she is present to ascertain that the House business is conducted qualitatively. She spoke on the aspect of accountability in data misuse.

I am aware that she was seeking not to go into what the other Senators had said. However, she flagged out the aspect of accountability and how this Bill will be an instrument of accountability for people with data processors, data users; we who are giving out this data or individuals. We take note of your input Sen. Kihika on ensuring that the areas around accountability and the misuse of data is taken care of.

Also, she spoke on data misuse on health data. This is important and goes to the heart of what can be high risk in data use and misuse; the aspects around your creditworthiness being linked to your health or your employability being linked to your health.

She went to the genesis of not just the misuse itself, but the determinant of the misuse and linking it to the fact that what determines the misuse is not just the health, but

the data. Thank you very much, Senator, for bringing that connection between the centrality of the data subjects, their rights and the fact that the determinants of this misuse, is the data itself. If you did not have this data, you would not deny the rights to health, employment, credit and so on. Going forward, in the amendments we will make sure that we think through this Bill knowing that data is the determinant of all these things.

Madam Temporary Speaker, from Sen. Kihika's submission, we have taken note that at times there was abuse of personal data of public figures. This is a known fact, where people are now living in fear. This is precisely the principle of this Bill and it will take care of some of these things. Everybody will be treated equally.

Sen. Kihika also brought out the issue of ensuring robust stakeholder participation. I would like to assure her and the House that we had several levels of stakeholder participation. As I said, there was public participation involving the general public and key stakeholders, including the business community, media and rights groups. We actually opened this to even late submissions by these groups.

Again, I would like to assure Sen. Kihika that we will look at the issue around the penalties, use of the words 'good faith,' need for consent for different uses and the waivers that she proposed. Even if the waiver is done orally, somebody to which that waiver is written must ensure that it is done.

I have gone through most of the submissions by the Senators and I thank them very much. This is amazing information that will go a long way in ensuring that this Bill is more robust than it was. It will also add credibility to some of the things that have already been given to us. Every effort was made to ensure that the public has participated and that special interests were also taken care of with regards to individuals, companies and others.

Madam Temporary Speaker, with those few remarks and a lot of gratitude to all the Senators, I beg to reply. Pursuant to Standing Order 61 (3), I request that the putting of the question on this Bill be deferred to a later date.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator. I accept that request and order that the putting of the question will be done in the next sitting.

(Putting of the Question on the Bill deferred)

Let us move on to the next Order.

Hon. Senators, for the convenience of the House, I would like to reorganise the Order Paper. I defer Order Nos.10, 11, 12, 13, 14, 15, 16,17, 18 and 19.

BILLS

Second Reading

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO.19 OF 2018)

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(Bill deferred)

Second Reading

THE COPYRIGHT (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILLS NO. 33 OF 2017)

(Bill deferred)

Second Reading

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 52 OF 2017)

(Bill deferred)

Second Reading

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2018)

(Bill deferred)

Second Reading

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILLS NO. 21 OF 2018)

(Bill deferred)

Second Reading

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL
(SENATE BILLS NO. 23 OF 2018)

(Bill deferred)

Second Reading

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 24 OF 2018)

(Bill deferred)

*Second Reading*THE COUNTY COMPLIANCE AND ENFORCEMENT BILL
(SENATE BILLS NO. 25 OF 2018)*(Bill deferred)**Second Reading*THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILLS NO. 26 OF 2018)*(Bill deferred)**Second Reading*THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT
OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO. 27 OF 2018)*(Bill deferred)*

The Temporary Speaker (Sen. (Prof.) Kamar): Let us move on to the next Order.

Sen. Mwaruma, I would like to warn you that as you move your Motion, you have four minutes. You will continue to move the Motion tomorrow.

Sen. Mwaruma: Thank you, Madam Temporary Speaker, for allowing me to use the four minutes that are remaining before the close of the House. When the House began, I gave a Petition on behalf of the Teri B Branch in Taita Taveta County. It is interesting that I am also closing today's sitting.

I would like to move this Motion by stating that tourism is amongst the key sectors of Kenya's economy contributing billions of shillings to the country as well as generating employment and livelihoods to millions of citizens. It is true that records and data are there. Globally, we have nine per cent of the global Gross Domestic Product (GDP)---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. Mwaruma. Please move the Motion first.

MOTION

COMPENSATION FOR VICTIMS OF HUMAN-WILDLIFE CONFLICT

Sen. Mwaruma: Madam Temporary Speaker, I beg to move the following Motion-

THAT, AWARE THAT tourism is amongst key sectors of Kenya's economy contributing billions of shillings to the country as well as generating employment and livelihoods to millions of citizens;

FURTHER AWARE THAT, Kenya is endowed with different wildlife species which contribute substantially to the national economy through tourism;

NOTING THAT, cases of human-wildlife conflict are on the rise as a result of many factors key among them climate change and encroachment on parks and nature reserves leading to deaths and maiming of people by wild animals;

FURTHER NOTING THAT there is need to create a conducive environment for peaceful coexistence of humans and wildlife in the same space given the importance of wildlife not only to our economy but to ecology as well;

CONCERNED that victims and families of victims of human-wildlife conflict are not being compensated for loss of lives, being maimed or loss of their means of livelihood due to failure of the Treasury to allocate adequate funds for this purpose contrary to the Wildlife Compensation Management Act, 2013;

FURTHER CONCERNED that the regions and communities hosting the wildlife are marginalized and do not benefit from the proceeds of tourism in their area;

NOW THEREFORE the Senate resolves to urge the National Government to-

(1) Compensate victims of human-wildlife conflict within the next 90 days;

(2) Allocate adequate funds and wildlife compensation schemes in this financial year and subsequent years;

(3) Ensure that victims and families of victims of human-wildlife conflict are always compensated within 90 days of submitting their claims; and,

(4) Come up with innovative ways of ensuring host communities benefit from the revenue accruing from wildlife tourism.

As I alluded earlier, wildlife is very important in as far as tourism is concerned. People are losing their lives, they are getting maimed and losing their livelihoods in terms of crops and animals. There is a law to the effect that when we lose livelihoods, animals and human lives---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. Mwaruma. You have a balance of 16 minutes when debate on this Motion resumes tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday, 7th November, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.