

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 29th October 2019

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

NOMINATION FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF NCIC

Hon. Members, pursuant to the provisions of Standing Order No.42, I wish to convey to the House a Message from His Excellency the President relating to the nomination of persons for appointment to the offices of the Chairperson and Members of the National Cohesion and Integration Commission (NCIC).

The Message, which was received in my Office on 25th October 2019, conveys that in exercise of powers conferred by Section 17 of the National Cohesion and Integration Act (No.12 of 2008) (as amended in 2019), and Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011, His Excellency the President has nominated the following persons for appointment to the respective offices in the National Cohesion and Integration Commission:

- | | | |
|----------------------------------|---|-------------|
| 1. Rev. (Dr.) Samuel Kobia | - | Chairperson |
| 2. Mr. Samuel E. Kona | - | Member |
| 3. Hon. (Eng.) Phillip O. Okundi | - | Member |
| 4. Ms. Peris W. Nyutu | - | Member |
| 5. Hon. Abdulaziz Ali Farah | - | Member |
| 6. Dr. Danvas O. Makori | - | Member |
| 7. Ms. Fatuma S. Tabwara | - | Member |
| 8. Hon. Dorcas L. Kedogo | - | Member |

In this regard, His Excellency the President now seeks the approval of the National Assembly on the said nominations.

Standing Order 45(1) requires that upon receipt of notification of nomination for appointment to a State Office required to be approved by the House, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. However, under Standing Order No.212(C) providing for the mandate of the Committee on National Cohesion and Equal Opportunity, you will agree with me that the relevant Committee of the House charged with the mandate of considering matters related to national cohesion is, indeed, that particular Committee as opposed to a Departmental Committee. In this regard, I hereby refer the Message from His Excellency the President together with the Curriculum Vitae and

testimonials of the nominees to the Committee on National Cohesion and Equal Opportunity for consideration.

Paragraph 9 of the First Schedule to the National Cohesion and Integration Act (No.12 of 2008), requires the National Assembly to either approve or reject any or all of the nominees to the respective positions within 21 days of the day it next sits.

In view of this, the Committee should expeditiously notify the nominees and the general public of the time and place for holding the approval hearings in, at least, two newspapers of national circulation, inviting any person with representation regarding the process of nomination of the candidates and their suitability for appointment to the offices so nominated, to make submissions before the Committee. Thereafter, the Committee should commence the necessary approval hearings and submit its report to the House by 19th November 2019 to enable the House to consider the nominees within the statutory timelines.

I thank you, Hon. Members.

Next Order!

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

2019 Budget Review and Outlook Paper for the Financial Year 2020/21 and Medium-Term Budget from the National Treasury and Planning.

The Statutory Six Months Preferences and Reservation Report from the Public Procurement Regulatory Authority.

Report of the Board of the National Government Constituencies Development Fund on Project Proposals, Approvals, Disbursement Status and Restrictions imposed on Constituency Account for the First Quarter of 2019/20 Financial Year for the period 1st July to 30th September, 2019.

Sessional Paper No. 2 of 2019 on National Policy on Gender and Development from the State Department for Gender.

Sessional Paper No.3 of 2019 on National Policy for the Eradication of Female Genital Mutilation from the State Department for Gender.

The Report of the Auditor-General on the Financial Statements of Mandera North Constituency for the year ended 30th June, 2018 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Northern Water Services Board for the year ended 30th June, 2018, and the certificate therein.

Thank you.

Hon. Speaker: Let us have Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

A Report of the Departmental Committee on Finance and National Planning on its consideration of the Presidential Memorandum on the Finance Bill, 2019.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Deputy Speaker, you have the Floor.

Hon. Moses Cheboi (Kuresoi North, JP): I thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

The Third Report of the Procedure and House Rules Committee on the translation of the National Assembly Standing Orders to Kiswahili.

I hope that the Leader of the Majority Party will be sitting very closely with Ali Mohamed.

(Laughter)

Hon. Speaker: Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT OF THE PROCEDURE AND HOUSE RULES COMMITTEE ON THE TRANSLATION OF THE NATIONAL ASSEMBLY STANDING ORDERS TO KISWAHILI

Hon. Moses Cheboi (Kuresoi North, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Third Report of the Procedure and House Rules Committee on the translation of the National Assembly Standing Orders to Kiswahili laid on Table of the House on Tuesday, 29th October 2019, and approves the Kiswahili version of the National Assembly Standing Orders, and further resolves that the Kiswahili version of the Standing Orders take effect at the commencement of the Fourth Session of the Twelfth Parliament.

Hon. Speaker: What is your point of order, the Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, the Deputy Speaker and Chair of the Liaison Committee is tabling the new version of the Standing Orders which is in Kiswahili. He should say it in Kiswahili, when he is tabling and when he is giving notice. You cannot table Kiswahili matters and you are speaking in English.

(Laughter)

So, can he tell us what it means in Kiswahili? He should tell us *kama ni Kanuni, sijui ya nini...*

(Laughter)

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Speaker. For the comfort of the Leader of the Majority Party, *inaitwa Kanuni za Kudumu za Bunge la Taifa. Sio Amri za Kusimama* like Hon. Sankok is saying. These are *Kanuni za Kudumu za Bunge la Taifa, sio Amri za Kusimama*.

(Laughter)

Hon. Speaker: *Mhe. Sankok, lazima ujifunze Kiswahili mufti.*

Mhe. Kathuri, I will re-arrange the Orders and allow you to table the documents. Proceed, Hon. Kathuri Murungi, Chair of the Specials Funds Account Committee (SFAC).

PAPER LAID

Hon. Kathuri Murungi (Imenti South, Independent): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Reports of the Specials Funds Account Committee on its consideration of:

- (i) Audited Financial Statements for the Commodities Fund for the year ended 30th June, 2016 and 30th June, 2017;
- (ii) Audited Financial Statements for the Agricultural Settlement Trustee Fund for the year ended 30th June, 2016;
- (iii) Audited Financial Statements for the Universal Service Fund for the year ended 30th June, 2017; and,
- (iv) Audited Financial Statements for the Water Sector Trust Fund for the year ended 30th June, 2017.

I thank you, Hon. Speaker.

Hon. Speaker: Are you supposed to give notice of motion?

NOTICES OF MOTIONS

ADOPTION OF REPORT OF SFAC ON AUDITED FINANCIAL STATEMENTS OF THE COMMODITIES FUND

Hon. Kathuri Murungi (Imenti South, Independent): Yes, I am in a position to. Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Special Funds Accounts Committee on its consideration of Audited Financial Statements for the Commodities Fund for the years ended 30th June 2016 and 30th June 2017, laid on the Table of the House on Tuesday, 29th October, 2019.

ADOPTION OF THE REPORTS OF SFAC ON AUDITED FINANCIAL STATEMENTS OF VARIOUS FUNDS

THAT, this House adopts the Report of the Special Funds Accounts Committee on its consideration of the Audited Financial Statements for the Agricultural Settlement Trustee Fund for the year ended 30th June 2016; the Universal Service Fund for the year ended 30th June 2017, and the Water Sector Trust Fund for the year ended 30th June 2017, laid on the Table of the House on Tuesday, 29th October, 2019.

Hon. Speaker: Very well. Now that we appear to be slightly more than when we began, allow me to do something before we go to the next Order.

(Several Hon. Members walked into the Chamber)

It would be good if Members could take their sits. I have a Communication in light of what the Deputy Speaker has just laid on the Table.

COMMUNICATION FROM THE CHAIR

INAUGURAL PARLIAMENTARY FORUM FOR COMMITTEES

Hon. Members, I wish to take this opportunity to welcome you all from the short recess. It is my hope that the break granted you sufficient time which you needed to re-energise for the third stretch rest which is also what you may call “the homestretch for the Third Session”.

As some of you may be aware, the National Assembly is scheduled to hold the Inaugural Parliamentary Forum for Committees. This event will take place at the Parliament Gardens on Thursday, 31st October 2019 from 9.00 a.m. to 4.00 p.m.

As we all know, the bulk of the business considered by the House in plenary is first processed by committees before it is submitted to the House. Committees are, therefore, very critical organs in the operations of legislatures the world over. It is for this reason that the Liaison Committee, chaired by the Deputy Speaker, has organised this forum which is meant to showcase the committee system of the National Assembly and to demystify the role of committees to the public.

During this forum which will henceforth be held annually, the Chairpersons of all Committees will make presentations about the mandates of their respective committees. They will highlight a few that have had a significant impact on the economy of the country and the lives of Kenyans in general as well as those that have influenced Government policy towards the fulfillment of the Big 4 Government Agenda.

In addition to the presentations, the following parliamentary documents shall be launched on that day:

- (i) The Committee Chairpersons’ Manual.
- (ii) The Committees’ Performance Reports, and
- (iii) The Kiswahili version of the Standing Orders.

This important forum will be graced by the Speaker of the National Assembly of the United Republic of Tanzania, the Rt. Hon. Job Yustino Ndugai, as the Chief Guest. It also presents an opportunity for the launch of the Live Broadcast of Committee Proceedings.

Due to the significance of the event in the Calendar of the National Assembly, I will expect the Leader of the Majority Party to move a Motion to alter the Calendar of the House, at an appropriate time in the course of the week, so as not to hold a Sitting of the House on the afternoon of Thursday, 31st October, 2019. Furthermore, other than the Departmental Committee on Health which I have allowed to hold a meeting to consider a Petition presented by Hon. Gladys Boss Shollei, MP, any sittings of other committees scheduled for that day are hereby suspended.

This is, therefore, to inform the House of this important occasion and invite all to participate in the event which will also be aired live on television.

I thank you, Hon. Members. Let us move on to the next Order.

ORDINARY QUESTIONS

Question No. 453/2019

MEASURES BY NEMA TO HALT POLLUTION IN MAGARINI CONSTITUENCY

Hon. Michael Kingi (Magarini, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for Environment and Forestry the following Question:

Could the Cabinet Secretary explain the measures that have been put in place by the National Environment Management Authority (NEMA) to ensure that pollution and other health hazards caused by chemical wastes and emissions by M/S Krystalline Salt Factory at the Gongoni Salt Works in Magarini Constituency of Kilifi County, which continues to affect the area residents, are mitigated?

Thank you.

Hon. Speaker: The Question is referred to the Departmental Committee on Environment and Natural Resources to prioritise for the appearance of the Cabinet Secretary.

The next Question is by the Member for Malava, Hon Malulu Injendi.

Hon. Members, there is a proposal to take you for further training for the purposes of familiarisation with the system. Several documents will be in the machines. Hon. Injendi, are you ready to proceed?

Question No. 459/2019

FAILURE TO ESTABLISH EDUCATION STANDARDS
AND QUALITY ASSURANCE COUNCIL

Hon. Moses Injendi (Malava, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

(i) Why is the Cabinet Secretary yet to establish the Education Standards and Quality Assurance Council as provided for in Section 64(1) of the Basic Education Act, 2013, which has led to the current crisis in quality assurance, infrastructure and management in the education sector since the said Council is charged with the responsibility of ensuring standards and maintenance of quality in the sector?

(ii) When will the Cabinet Secretary commence the process of appointing substantive members to the said Council as required by the said Act?

Thank you.

Hon. Speaker: The Question is referred to the Departmental Committee on Education and Research to prioritise for the appearance of the Cabinet Secretary.

Question No.460/2019

RELEASE OF KINYUA M'MUMBWIKWA

Hon. Kubai Iringo (Igembe Central, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Foreign Affairs the following Question:

(i) What circumstances led to the arrest of one Kinyua M'mumbwika, a young man aged twenty (20) years from Hitwamwahi village, Njia Ward, Igembe Central, Meru County, who has been detained in the United Republic of Tanzania since the year 2015?

(ii) What steps has the Ministry taken to ensure that this young man, who has been illegally held for over four years without any charges being preferred against him, is released?

Thank you.

Hon. Speaker: The Question is referred to the Departmental Committee on Defence and Foreign Relations to prioritise for the appearance of the Cabinet Secretary.

The next Question is by the Member for Bura, Hon. Ali Wario.

Question No.461/2019

RECRUITMENT OF PRISON WARDENS IN TANA NORTH SUB-COUNTY

Hon. Ali Wario (Bura, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) Could the Cabinet Secretary explain the criteria used in the recruitment of prison wardens in Tana North Sub-County?

(ii) Could the Cabinet Secretary confirm that the exercise was conducted in a fair and transparent manner?

(iii) Could the Cabinet Secretary explain whether the Ministry took into account the interests of all the communities living in the area during the exercise, considering that four (4) out of the six (6) recruits belong to one community despite the existence of more than eight communities in the Sub-County?

Thank you.

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security. The Committee will prioritise for the appearance of the Cabinet Secretary.

There is also a request by Hon. Ali Wario.

NOTICE OF STATEMENT UNDER ZERO HOUR

DESTRUCTION OF PROPERTY AND DISPLACEMENT OF PEOPLE

Hon. Ali Wario (Bura, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.43, I wish to make a Statement regarding the destruction of homes and displacement of people living along the border of Kitui and Tana River counties.

On 22nd and 23rd October 2019, the National Police Service...

(Loud consultations)

Hon. Speaker, please protect me.

Hon. Speaker: Are you making a statement?

Hon. Ali Wario (Bura, JP): I am seeking an opportunity for Zero Hour, Hon. Speaker.

Hon. Speaker: Very well.

Hon. Ali Wario (Bura, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.43, I seek your leave to make a statement regarding the destruction of homes and displacement of people living along the border of Kitui and Tana River Counties.

On 22nd and 23rd October 2019, the National Police Service, in conjunction with the County Government of Kitui, raided three villages of Inyali, Kiwanja and Kalalani inhabited by the pastoralists communities from Tana River County and demolished homes and schools, and destroyed business premises including shops.

As we speak now, more than 5,000 families have been rendered homeless with no food, clothing, water and all other basic human essential needs. In addition, pupils of Kalalani, Inyali and Dida Ade Primary schools have nowhere to call school. The Constitution protects all

Kenyans from inhuman or degrading treatment thus this act by the National Police Service and the County Government of Kitui amounts to a violation of this principle.

As other pupils across the country sit for their Kenya Certificate of Primary Examination, it is not clear whether the students at Kalalani Primary School will sit for the Kenya Certificate of Primary Examination as all have been affected by the said displacement. The affected schools are now staring at a bleak future.

Thank you.

Hon. Speaker: Hon. Ali Wario, I have looked at your request and yes, it is one that can be debated. I will only urge that during the debate, Members use moderate language that may not heighten tensions in the affected areas or, indeed, that may tend to excite passions negatively in the country. I urge for caution. So, it will be at 6.30 p.m.

Hon. (Dr.) Robert Pukose (Endebess, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Pukose, what is your point of order?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I have looked at the Question that has been asked by Hon. Kubai Iringo, Question No.460/2019. Considering that the Vice-President of the Republic of Tanzania will be our chief guest on Thursday, can your Office look at how that issue can be handled so that Hon. Iringo's constituents can be assisted? I am just thinking aloud.

Hon. Speaker: Did he ask a question? Did you say that the Assistant Minister will be here?

Hon. (Dr.) Robert Pukose (Endebess, JP): No, Hon. Speaker. The Vice- President of Tanzania will be our chief guest on Thursday.

Hon. Speaker: No!

Hon. (Dr.) Robert Pukose (Endebess, JP): Okay, I was just thinking loudly.

Hon. Speaker: Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. With your permission, I have some documents which I would like to table. You remember last week there were allegations by the Member for Homa Bay Town...

Hon. Speaker: Last week?

Hon. Didmus Barasa (Kimilili, JP): The other week, before we went on recess, the Member for Homa Bay Town indicated that I am a vice-chair of a sub-committee that was to deal with a statement that I had sought through the Committee on security. The official record that I have here affirms my position that the sub-committees were proposed but not even a single sub-committee has sat to elect a chair or a vice-chair. Therefore, I want to ask you to give me permission to table this so that the Member for Homa Bay Town and the Vice-Chair of our Committee can either apologise or be named. Now that the Chairman of the main Committee is here, let him tell me when I am going to receive the Statement that I sought through him.

I wish to table the documents.

Hon. Speaker: You table the report.

(Hon. Didmus Barasa laid the document on the Table)

I have this document in my office. Indeed, it shows that a meeting of the main committee took place on 24th September and formed sub-committees. And that appears to have been the last about sub-committees. So, Hon. Kaluma, the information which I have, even from the Director of Committees, is that the sub-committees have not sat to elect their chairs or vice-chairs. Hon.

Kaluma, this is the record. I will give you a chance and Hon. Waluke, who also made the same claims. It is important because Hon. Mutua Barasa indicated that he was willing to resign his seat if it is proved that, indeed, he is a vice-chair of a sub-committee.

Hon. Kaluma, you have the Floor.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, let me thank you for giving me the opportunity to clarify this matter again. I am happy that Hon. Didmus now confirms the sub-committees exist. He also confirms that he is in my sub-committee.

If you look at the deliberations during the Committee Sitting where the sub-committees were constituted, you will find that the direction - and the Chair of the Committee is here - was that each sub-committee should go and organise their leadership. We met and determined the leadership of the sub-committee dealing with Bills, petitions, request for statements and other things. I was made the Chair and Hon. Didmus the Vice-Chair. I did say when I was before you that the problem we have with Hon. Didmus is that he never attends those committee meetings. So, what we could be arguing is that he was not in the meeting where he was made the Vice-Chair. Hon. King'ang'i confirms.

My position on this matter is simple: I think we are tired of this thing that matters of this Committee are being debated in this House as if we do not know what we are doing. I proposed to the Chair of the Committee that if Hon. Didmus does not want to be a vice-chair, we are not only removing him, but also removing him from that sub-committee. And we will take it up in the Committee itself so that Hon. Didmus also leaves the Committee under the Standing Orders so that the dramas he is bringing here can be elsewhere.

This is a Government Committee. The Departmental Committee on Administration and National Security is Government Committee. We cannot have a person who consistently.... If I am not truthful, then all the members of the sub-committee are here. Hon. Mbai, who sat on the sub-committee confirmed as a member. He confirmed that we made Hon. Didmus the vice-chair. So, if he fails not to be there, it is not my business. We did what we did. If he is not interested, we can sit again and remove him immediately and we forget about him.

(Loud consultations)

Hon. Speaker: Just a minute! What I would like to know, because this document is the same one I have in the Office, and the meeting happened on 24th September at 10.00 a.m. in the boardroom of 2nd Floor, Protection House... Among the people present was Hon. Didmus Barasa Wekesa Mutua. That is the meeting of the main Committee. Those absent are shown as Hon. Ngunjiri Wambugu, Hon. Ahmed Kolosh, Hon. Wafula Wamunyinyi, Hon. Makali Mulu, Hon. Aduma Owuor and Hon. Josphat Kabinga Wachira. This is what the minutes read:

“The Committee deliberated and:

1. Resolved to establish sub-committees to bring experience and expertise in certain subjects within its mandate and also fast-track the transaction of business. A list of sub-committees, as proposed by the Chairperson, was circulated to members, considered and adopted. Each sub-committee would elect a chairperson and vice-chairperson and also develop its programme of activities. Each sub-committee would be reporting to the main Committee. The list of the sub-committees as constituted is attached.”

That is the list that shows Hon. Barasa as being a member of the sub-committee, as well as Hon. Opondo Kaluma, Hon. Ahmed Kolosh, Hon. Geoffrey King'ang'i Muturi and Hon.

Joshua Aduma Owuor. Areas to deal with are legislation, reports, questions and answers, statements, petitions and undertake any other role as may be delegated to it by the main Committee from time to time.

Hon. Barasa, you may not have been aware that, that was done. It says the sub-committees would elect their chairs and vice-chairs. The other sub-committees are also listed and the areas they were to cover. Did this sub-committee meet and if it did, were there minutes? These are the minutes of the main Committee. Leader of the Majority Party, you want to weigh in on this one?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, you remember this matter was very hot last Thursday before we went on recess. The bone of contention - and Hon. Kaluma cannot run away from it and he said he would provide evidence - was that he said he was the Chair of the sub-committee and Hon. Didmus was the Vice-Chair. Hon. Didmus has now presented to you, and you have confirmed, the minutes of the meeting of the main Committee.

Hon. Speaker, from your Statement, it is now very clear that the various sub-committees have not sat to elect their leadership. That is according to the minutes that the Speaker has. Both Members on that day are on HANSARD saying they will provide evidence. The onus right now is on Hon. Kaluma. He needs to provide to this House the minutes of that sub-committee because we know the membership which elected him and Hon. Didmus Barasa. Hon. Barasa has proved to the House through the minutes that he is a member of the sub-committee. However, what he disputed was that he is the vice-chair to the chair, Hon. Peter Kaluma. Hon. Kaluma, the Speaker has just asked where the other minutes are, where the sub-committee sat and elected you as the chair and Hon. Didmus as the vice-chair. Minus that, then you and Hon. Waluke have an explanation to make to this House. It is as simple as that.

Hon. Speaker: Hon. Mbadi, the Floor is yours.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I also want to agree that this matter was hot. The issue we are dealing with here is truthfulness. When you make an allegation or a statement in the House, it should be of facts.

Hon. Speaker, what you have read actually are minutes constituting the sub-committees. It does not mean that if during that meeting the committees had not sat, that they did not sit again. They could have. The way committees operate is that even if you form sub-committees, still there is the overseer who is the Chairman. Today, the Chairman is in the House. We have had sub-committees and I doubt whether they take their minutes seriously. Really, these are just informal arrangements. Let us be truthful, factual and have this matter to rest. We are not going to supervise this Committee here. If it fails, then the only thing to do is to disband it. That is what this House can do. However, it has not failed so far. We just want to hear from the Chair.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): You cannot disband a committee!

Hon. John Mbadi (Suba South, ODM): Someone is speaking to me here as if he does not know that we can disband this Committee. It can be disbanded. Hon. Wamunyinyi, I know you came to Parliament before me but it appears you have forgotten so many things. Just listen. We have disbanded committees in this House and we can still do so. If you ever thought that once you are in that Committee it is permanent, you better be careful. You may find yourself out anytime.

(Loud consultations)

Hon. Speaker, let me cut it short by asking us to get back to the track, instead of addressing... Some of these Members of Parliament whose misbehaviors make them stay away for two years instead of really behaving well to be in the House...

An Hon. Member: We will come back!

Hon. John Mbadi (Suba South, ODM): Even if you come back but you have been jobless, two years is punishment enough. You better be careful. You may find yourself again out for two years in 2022. Could the Chairman of the Committee confirm to us if those sub-committees have since sat?

(Laughter)

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, we asked and we were to get this information. I think it is good that Hon. Didmus Barasa brought the minutes. I have seen it in my Office. I was going to sign it. It is the same document that Hon. Barasa has tabled. It is very clear and the reference is Minutes of the 41st Sitting of the Departmental Committee on Administration and National Security on Constitution of Sub-Committees. The writer forwards this record. The only thing that he says is that during the Sitting, the Committee constituted sub-committees to bring expertise and experience. The Sitting resolved that each sub-committee elects a chairperson and vice-chairperson and also develop its programme of activities. The list of the established sub-committees is part and parcel of the minutes. This Report further states that Hon. Didmus Barasa was appointed to serve in the sub-committee one which was tasked to deal with legislation reports, questions and answers, statements, petitions and to undertake any other role as it may be assigned by the main Committee. The other members of the sub-committee were, Hon. Peter Opondo Kaluma, Hon. Ahmed Kolosh Mohamed, Hon. Geoffrey King'angi Muturi and Hon. Joshua Aduma Owuor. I wish to confirm that since the constitution, none of the sub-committees has sat to elect chairpersons or vice-chairpersons. The Report goes on to state that the Sitting of 27th September 2019 at Hilton Garden Inn, Machakos, as alluded to by the Member, was a full Sitting of the Committee and the only agenda transacted was consideration of Bills. This Report is signed by the clerk in charge of this Committee, Mr. George Gazemba. Hon. Kaluma, Hon. Waluke and those of you who said they went, maybe, the clerks are also not aware. You might have sat in the Members lobby. The Deputy Speaker normally likes holding sessions there. Hon. Kaluma, you might have held the sitting there also.

Hon. Kaluma, the Floor is yours. Please speak to this.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I am happy at the confirmation that we met and agreed on the sub-committees. We created those sub-committees to help the Committee serve Parliament better.

An Hon. Member: *(Off record)* Let the Chair speak!

Hon. Peter Kaluma (Homa Bay Town, ODM): The Chair will speak! Do not worry. Hon. Speaker, if you remember, there was a complaint that particularly Questions, Bills and other issues were delaying reporting before the House. The Chair in his wisdom brought the matter to the Committee so that the various Members could assist him do the work with the Committee. Those sub-committees were formed. The decision was that each sub-committee was to go and sit down. This is a new invention. It may be that we did not have the HANSARD and other things because it is not something that is properly facilitated already. However, we met at Continental House on the Second Floor.

Hon. Members: (*Off record*) Who?

Hon. Peter Kaluma (Homa Bay Town, ODM): The colleagues in that Committee. In fact, the initial idea was that because Hon. Didmus is most concerned about Parliamentary Question delays, he should chair the sub-committee. The decision to make me chair was only made because of the Bills. The other things we were saying were matters which merely require responses. The meeting at Hilton Garden Inn was not a meeting of the sub-committee. I remember I never said so. I said we met at Hilton Gardens Inn and the efficacy of the sub-committee dealing with Bills and others in which I was designated to be the Chair and Hon. Didmus was seen during that meeting. If we need minutes of the informal meeting we had, we will give. However, the clerk is wrong to say there was no meeting. Today, the members of the Committee - and the Chair is here and everybody who was there - will confirm to you that we met to have adoption on various Bills. At the end of it, the Committee resolved with my sub-committee we go and review them. What we did not understand is that those meetings ought to be notified. This is because we do not take it that they should be dealt with like formal committee meetings. There are assistances by people in a sub-committee to the committee. Even now we are going into a sub-committee. The members of that Committee can confirm to you. If it is that there is no record because of HANSARD and others, it is because of informal arrangement under which the sub-committees sit. If it becomes necessary that in the functions of Parliamentary Committees, you also have sub-committees and they work properly, those directions will refine in the Standing Order. You will give directions and you can do them.

Hon. Speaker, I think it is not right for us to come to Parliament and start negotiating over roles which we know we are discharging. As late as today, we were in the Committee with Hon. Didmus after I pulled him from here. He left early as usual but does not know that after this session, we are going into a meeting to refine the reports which were adopted today for better consumption by the House. This is the fact.

I am not dying to be a chair of this sub-committee. I request Members to be honest about what we do. If Hon. Didmus has problems being the vice-chair of that sub-committee, he can leave. Equally, if I have a problem being the chair of the sub-committee, I can leave. However, we cannot appear before the House and pretend when even as late as today, the sub-committee has task to do with the legal clerks so that we expedite this matter.

Thank you, Hon. Speaker

Hon. Speaker: Hon. Didmus Barasa was more concerned about his having been given the role of vice-chair. The Hon. Kaluma says that after now, you are going to meet and so if you are not aware, you are at liberty to relax.

(Loud consultations)

The sub-committee should be facilitated in the like manner. That is important because you cannot set up a sub-committee of your Committee to go and deal with matters as weighty as Bills and there are no records of those sub-committee meetings. So, Hon. Koinange as the Chair of the main committee, it is important that when your various sub-committees request to meet, you should liaise with the Clerk to have them also facilitated particularly with regard to the staff and the minutes. This is so that nobody comes to dispute what may have been discussed in the committees.

Let us have Hon. (Dr.) Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, this is a question of integrity being raised by Hon. Didmus Barasa. Hon. Kaluma said on record that whatever transaction was done at the sub-committee was on the HANSARD. I expected him today to give us the HANSARD records to show that they had that sub-committee meeting.

Hon. Peter Kaluma (Homa Bay Town, ODM): *(Inaudible)*

Hon. (Dr.) Robert Pukose (Endebess, JP): Yes. You said that in the House and we can look at the HANSARD.

Hon. Peter Kaluma (Homa Bay Town, ODM): *(Inaudible)*

Hon. (Dr.) Robert Pukose (Endebess, JP): No! This is a House of records and we must be honest to each other. The last statement Hon. Kaluma made was that he wants to be honest. You cannot take us for a ride around the corner raising issues claiming that Hon. Didmus Barasa said and claim that it is on the HANSARD. That issue of the sub-committee where Hon. Didmus Barasa was selected as the vice-chair. He put it and the HANSARD can take us into that consideration. Yes, that is true.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): *(Inaudible)*

Hon. Speaker: Hon. Jimmy Angwenyi. I appreciate that, as the father of the House, you could be aging a little faster and suffering from momentary losses of memory. Read your Standing Orders and you will see that there is a provision for sub-committees.

Did I see Hon. Koinange? Do you want to weigh in to this one?

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. I was waiting for this moment so that I can say something.

Hon. Speaker, the baby has not yet been born but everybody is chasing this baby. Hon. Speaker on 24th September, we agreed that we were going to have four sub-committees and we allocated those members in the four sub committees. They were going to sit among themselves and within a month or so - which is not yet - then come back to the main Committee and tell me: "This is the chair. This is the vice-chair", and say what they have agreed on. I believe this is a very good idea because my Committee has a lot of issues to address. I thought Members should be made active. The Members who are in Hon. Kaluma's sub-committee are good at legislation and petitions.

Hon. Speaker, Hon. Didmus is here but some of the Members never appear in the Committee and they miss many times. I would suggest if we could give the details of how many times they come to the Committee before they come and shout in the House.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Cheptumo, you appear to be burning with something.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, this is a very important Committee just like all others. Listening to Hon. Kaluma who is a member of my Committee and Hon. Didmus Barasa... There is only one question that is not being answered here. Was there a meeting of the sub-committee to elect Hon. Kaluma as the chair and Hon Didmus as his vice-chair?

Hon. Members: *(Inaudible)*

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, if the answer to that question is yes, then what follows is a presentation of the minutes of that meeting. However, if the answer is no, it is, therefore, not in order for one of the Hon. Members of that Committee to allege that Hon. Didmus was chosen as a vice-chair. It is even clear to me now that when the sub-committee does the elections, they are supposed to report back to the main committee and give feedback.

Hon. Speaker, I know you are wise and you sympathise with us here. Looking at you, you can see where we are going. There is a serious problem. In my view - and I may be wrong - there was no meeting to do the election for the chair and the vice-chair of the sub-committee. Since we need to spend our time in a useful manner and noting that this Committee is very important, the more we discuss it, the more we raise more doubts about their performance.

Hon. Speaker, I request that you give your direction in this matter because it is a House of records. It appears to me that there were no elections.

Hon. Speaker: Well, we cannot spend all the time discussing. Hon. Angwenyi, it is not done that way. You know Hon. Angwenyi was in this Chamber when the microphones were hanging from up there and so, people were used to shouting. Proceed. Make your point then.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, I am glad you have come to the conclusion a few minutes ago. Why are we spending time talking about an unborn baby; one that is illegitimate because it is not recognised in our Standing Orders? We should not spend so much time on that.

Hon. Speaker: Hon. Angwenyi, you may wish to make reference to a story that was published about a Bill that is seeking to amend the Children's Act by the other House, perhaps, to deal with that particular area of illegitimacy and others. But I think we should allow Hon. Koinange to call a meeting. Indeed, the minutes show that a meeting happened on 24th September. He should call for another one and get a report from all the sub-committees so that they can start moving.

Let us not further debate on this because we will just kill the sub-committees. I want to encourage other committees to form sub-committees. There are some committees which are inundated with a lot of work. Several Members have been complaining that businesses referred to those Committees are not moving. I think rather than dwelling so much on this, let us allow Hon. Koinange. Hon. Didmus Barasa, according to the record, you belong to that sub-committee. You can meet and ask to be provided with clerks. You are not the vice-chair. Hon. Kaluma has said there was a proposal to have you as the vice-chair.

Hon. Members, we have lived long enough in this country and seen Members of this House who I may not wish to name who elongated themselves positions in their political parties. They went ahead to issue serious statements only to be disowned by the real officials. Then soon thereafter, they proceeded to resign from the positions they had elongated and in their minds assumed. I am not saying that is what Hon. Peter Kaluma is doing. No!

I want your sub-committees to work. I think this is more important and substantive. Let the sub-committees work and the Chair of the main Committee will come and give a report of what is happening. Hon. Koinange in the course of next week, why not give us a progress report on how the sub-committees are working. Let us proceed.

Next Order!

BILLS

Second Reading

THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL

(Hon. Jeremiah Kioni on 15.10.2019)

(Debate concluded on 16.10.2019)

Hon. Speaker: Order, Members! Order! Debate on this Bill was concluded the week before we proceeded on the short recess. What remained is for the Question to be put, which I hereby do.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

First Reading

THE PUBLIC PARTICIPATION BILL

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

Next Order!

Second Reading

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

(Hon. William Cheptumo on 17.10.2019)

(Resumption of Debate interrupted on 17.10.2019)

Hon. Speaker: Order Members! Debate on this Bill commenced on 17th October. By the time of adjournment, the Mover, Hon. Cheptumo, had spoken to it, the seconder was Hon. Jeremiah Kioni and the Question was proposed. On the Floor was Hon. Wafula Wamunyinyi who had a balance of four minutes. If he desires to make use of them, he may proceed.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you Hon. Speaker for giving me this opportunity to continue with my contribution to the Petition to County Assemblies (Procedure) Bill 2018. As had been explained earlier, this Bill seeks to provide for the procedure to be followed when filing petitions. It merely attempts to fill the gap that exists in our county assemblies in the manner in which public petitions are handled.

The Bill also seeks to provide clear mechanism for ensuring that the body or content of a petition is clear. So, as I had said earlier, I support this Bill. I also want to point out that the assemblies are mandated by the Constitution in Article 185 just like the National Assembly is in Article 95 of the Constitution. The country assemblies ought to develop their own legislative agenda. They should also go ahead and enact laws that will help people in the counties. I am particularly concerned about my county of Bungoma.

I strongly feel that the Bungoma County Assembly has responsibility to ensure that they undertake legislation on matters that affect the county and that has to do with local interests and cultural issues. People are disturbed and harassed by the police as they have their local brew;

busaa or *kwetee*. The county assembly should put in place a legislation to ensure it protects the people who perform their cultural activities using *kwetee* or *busaa*. They should not be harassed by the police. It is illegal for a rogue policeman from Mayanja Police Post to harass *wananchi* every day and collect large sums of money because of things which should be handled.

I have made a formal complaint to the Inspector-General about that police officer from Mayanja Police Post. I am hoping the County puts in place measures to ensure there is legislation governing cultural activities and what people do at their homes.

Hon. Speaker, Article 185 of the Constitution is very clear:

“(2) A county assemblies may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercises of the powers of the county government under the Fourth Schedule.”

Like us, it gives them the power to do legislation. They can do legislation even on revenue collection measures in the counties. They can clearly provide clarity or details on the small traders and businesses within the county on what they should pay in terms of rates, licences and the charges that the counties charge. I appeal that as we make this provision, even the assemblies ought to have undertaken some legislation to provide for the procedure. Although this House is undertaking to do it for all the assemblies across the counties, it should have been the assemblies themselves at their level to put in place mechanisms that provide for the procedure.

With those few remarks, I thank you very much and support the Bill. Asante.

Hon. Speaker: Hon. Sankok. Hon. Members, I am following the requests here.

Hon. David ole Sankok (Nominated, JP): I am well prepared. That is why I am raising up to contribute.

Hon. Speaker: Proceed.

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, as much as public participation is important, we have elected leaders and they are given that mandate to represent their people. I think we are taking public participation a bit further than what it should have been.

Thank you, Hon. Speaker, for giving me that opportunity to contribute. I support.

Hon. Speaker: Hon. Members, I thought we are contributing to the Bill before the House, which is the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018). Next is Hon. Mbui.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker, for giving me this opportunity to contribute on the Petition to County Assemblies (Procedure) Bill 2018, which creates an Act of Parliament to give effect to Article 37 of the Constitution.

I begin by looking at what Article 37 of the Constitution really deals with. It is in Chapter Four on the Bill of Rights. It states that:

“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”

I think this is a very good idea because as we have seen in the past, it has been a very difficult challenge for members of the general public sometimes to get their petitions heard. Any attempt at making this process easy is actually a positive idea. Remember after the last elections, we attempted several times to present petitions to IEBC on our views on how the elections were conducted. Every time we attempted in Machakos and everywhere in the city, we would be received by teargas. Even on the issue of this Bill of Rights and this Article 37, the issue of demonstrations has also been very difficult because it is out of demonstrations after the last

elections that some of our legs were broken. However, I thank God because this idea helps the public to be able to give petitions.

Petitions to the National Assembly, the Senate and county assemblies are very important ways for members of the general public to raise their grievances through their elected leaders so that the National Assembly, the Senate and the county assemblies can have an opportunity to deliberate. There are very many serious cases of injustice that get lost and when petitions are being presented and discussed, the public gets solutions. I remember a case in point where families of very many victims who died in a fire tragedy in a school in Machakos could not get justice. It took very many years until I presented a petition to this House and it bore fruits because those families were compensated. Therefore, this is a very important Bill.

I have noted several minor errors which I think need to be dealt with. The first one is on Clause 3(b). It says that the Petition shall be in English or Swahili and yet there is a provision of a form attached in the Schedule which is in English. So, I do not know how it is that the form can be in English and then the responses to the questions can be in Swahili. I think that requires a translation to both languages. Then Clause 5(1) and (2) is actually a repetition of the same thing. It says:

The Clerk shall, if satisfied that the petition meets the requirements specified under this Act, forward the petition to the Speaker for reporting in the county assembly.

Both clauses actually say the same thing. That is one of the things that need to be sorted out so that this Bill can go when it has been properly worked out. We will sort it out in the Committee of the whole House. Otherwise, I wish to say that the Senate, for the first time in my opinion, is dealing with the responsibilities for which they were elected. Now they are dealing with petitions to do with county assemblies and this really is the job for which members of the public elected Senators. They need to look at more of the laws that are coming from the Senate and figure out ways in which they can assist the MCAs to do their job. I recommend that once this is passed, the Members of the County Assembly of Machakos can present a petition on behalf of the residents of Kinanie in Mavoko where the roads are impassable and the county keeps collecting revenue from the trucks that go to carry sand and stones and yet, when the rains come, those roads cannot be used and the general public is suffering.

With those few remarks, I support.

Hon. Speaker: Next is Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Bill. This is an extremely good Bill. It actually shows us that our devolution process is continuous and it is still going on. We realise that this is implementation of Article 37 of the Constitution which gives us, as citizens, the right to petition and picket. As it is in the Constitution, we really had not put in place an Act or a Bill that makes it be done harmoniously in a smooth way. Therefore, this is extremely important.

As the county assemblies actually mature and take their work seriously, there will be many petitions that will actually go to them which may actually relieve some of the petitions that come to this House. If we do not have a procedure to assist in this, then obviously you are going to have very many ways of doing petitions, which I do not think will be a good way to run a country in a disharmonious way, particularly when one will be dealing with what the people desire or what they may want to state. So, I find this an extremely important Bill that has come in place. The Mover has really looked at it and the processes and made them as close as possible to the procedure in the National Assembly, except where it indicates that the petitions will be

reported back and discussed in the county assembly. That is different from what we do here. Petitions are not discussed in plenary except in few occasions. That is good. It takes into consideration the fact that there are other bodies that actually resolve issues. So, when a petition is taken to a county assembly, other bodies will have been involved if the matter was to be solved at that level, including whether those matters have gone to court.

So, I think this is a good effort. Clause 5 says exactly what the clerk and the speaker should do, and how it is reported back to the assembly. This will go a long way in giving our people in the counties opportunities to express themselves through petitions without having to look here. Some of the petitions that we handle here should be handled elsewhere.

Clause 7 (2) seeks to harmonise Article 15 of the County Governments Act. That comes out very well. Whereas the County Governments Act indicated that each county will do it in their own way, the Bill seeks to harmonise so that all counties will use this as a guideline. This is not robbing the counties of the opportunity to do their own things, but actually gives a guideline. I do not see anything that will stop the counties from using their Standing Orders to make sure that the petitions are handled in a way that is peculiar to them, but still within the law.

With that, I support this Bill.

Hon. Speaker: Let us have the Member for Tharaka. Hon. Ng'eno is not there.

Hon. George Gitonga (Tharaka, DP): Here I am. Thank you, Hon. Speaker. I am in the House. I rise to support the Petition to County Assemblies (Procedure) Bill, 2018. It is a Bill that is emanating from the Senate to this House for the sole purpose of ensuring that county assemblies have a procedure of introducing petitions on the Floor of the House and those petitions are referred to the relevant committees to be acted upon.

I have gone through the Bill. The procedure that the county assemblies are adopting is the one we use in this House to ensure that petitions - whether by the public or by private members - find their way into the House. They are presented in the manner that we have prescribed in our Standing Orders. The Chair then refers those petitions to the various committees to be dealt with.

County assemblies have been groping in darkness with regard to how they can present petitions to their assemblies. They have also been groping in darkness with regard to the form and format of petitions. That is the reason why this Bill has been introduced in this House and a form in the format of a Schedule has been provided in the Bill on how they can present their petitions.

I urge the House to pass this Bill so that it becomes law and the county assemblies are able to use it. I want to see the County Assembly of Tharaka Nithi introducing and prosecuting numerous petitions regarding the various issues that touch on the citizens of Tharaka Nithi County and especially my constituency of Tharaka. There are a lot of issues including water, food, roads and electricity which, if the Assembly petitions the County Government, they can be dealt with.

With those remarks, I urge the House to pass this Bill so that the county assemblies have a Bill of their own procedure with regard to the presentation of petitions to the assemblies.

Hon. Speaker: Let us have the Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Speaker. I support the Bill in spirit. I have a problem or some reservations when it comes to the principle in terms of what we are doing, particularly for county governments or counties in general.

I am convinced that county assemblies are miniature *replicas* of the National Assembly or Parliament. When we go into a situation where the Senate or the National Assembly is prescribing what the county assemblies are supposed to be doing, I am generally convinced that

we are not doing the right thing. We are over-legislating for county governments to an extent that when we come up with procedures of how petitions are done, we again come up with processes of raising revenue. Parliament is coming up with all manner of things for the county assemblies. That is not right. We need to revisit this.

County governments are distinct. County assemblies are supposed to do these things on their own. Each county assembly needs to come up with its own ways of handling petitions. Look at us in this other direction. We do not have a stand-alone legislation for purposes of petitions. We have our Standing Orders. If the Standing Orders of the county assemblies are wanting, they only need to be reminded that there are some things in their Standing Orders that are not working out and that need to be looked into. They should look at their Standing Orders instead of us coming up with legislation.

In principle, I do not know how to raise this later on such that we are properly guided. We are doing things for county governments or assemblies that we ought not to. Look at how these things are in the Constitution. County assemblies are supposed to do things on their own. They can borrow and learn from others. That is allowed. The National Assembly or the Senate should not prescribe exactly what they are supposed to be doing.

I support this Bill in spirit. In terms of the principle, I am still not very convinced that we are doing the right thing as the National Assembly.

Hon. Speaker: Well, the prayer said in the other House is slightly different from the one said here. They do not sit in the mornings on any day. They are at liberty to prescribe their own procedures as they find necessary. I suppose, Hon. Ochanda that, that is why you are having difficulties. Why can we not make the procedure for petitioning in the other House similar to our procedure at the national level? Why do we want to prescribe a particular procedure? It may well be that at the village level, as we move from one village to other areas they can decide how they want their petitions. In the Isle of Man, they sit every August after church and say that these are the laws they have passed. After some prayer, they are all adopted to become the laws of the land.

Let us have Hon. Shamalla.

Hon. (Ms) Jennifer Shamalla (Nominated, JP): Thank you, Hon. Speaker. I associate myself with the sentiments of the Hon. Member. I am concerned that this Bill may restrict the rights of a person who may want to petition the county assemblies when you have it so formalised. In as much as I support it, I understand that they may want to have a format at the village level for people to have a precedent and to fill it in. My concern is why it has to be in a Bill and not in the Standing Orders. With all due respect to the Senate, perhaps, they could concentrate on weightier issues than the prescription of the outline of a petition to the county assemblies.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Let us have Hon. Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. I rise under Standing Order No.95. Going by the mood of the House and the last sentiments, will I be in order to request that the Mover be now called upon to reply?

Hon. Speaker, I can see we have other business in the House. The Calendar of the House this week is very weighty. This Bill is procedural, but not weighty. Most Members support it with minor amendments. Will I be in order to ask that the Mover be called upon to reply?

Hon. Speaker: Hon. Akoth Odhiambo Millie rose in her place and claimed to move that the Mover be called upon to reply under Standing Order No.95. The only way for me to determine that is to put it to the House.

*(Question, that the Mover be called upon to reply,
put and agreed to)*

Mover, the Chairperson of the Departmental Committee on Justice and Legal Affairs. Are you standing in for him, Hon. Washiali?

Hon. Benjamin Washiali (Mumias East, JP): Yes, Hon. Speaker.

Hon. Speaker: Very well. Proceed.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Chair of the Departmental Committee on Justice and Legal Affairs, I want to thank the Members who have contributed to this Bill. Just like what Hon. Millie has said, this Bill was discussed and debated in the Senate. Therefore, whatever we are doing here is more or less procedural. I want to agree with the Members who support this Bill. We will look at the few other amendments that they have proposed at the Committee of the whole House.

On behalf of the Chair of the Departmental Committee on Justice and Legal Affairs, I wish to reply.

Hon. Speaker: Very well. I will not put the Question for Second Reading because the House does not have quorum. That will happen another day. So, let us move to the next Order.

(Putting of the Question deferred)

BILL

Second Reading

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, with your permission, I want to step down this Bill because it has some issues with the Government. I will wait for the National Treasury to sort out the issues.

(Bill deferred)

Hon. Speaker: The Order has been taken out of the Order Paper. The Leader of the Majority Party is the Mover of the Bill. Therefore, it is in order for him to request for it to be stood down.

Next Order.

MOTIONS

ANNULMENT OF THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019 AND THE INSURANCE

(MOTOR VEHICLES THIRD PARTY RISKS) (CERTIFICATE OF INSURANCE)
(AMENDMENT) RULES, 2019

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (Legal Notice No.88 of 2019) and the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No.92 of 2019), laid on the Table of the House on Wednesday, 2nd October 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order No.210(4)(b) annuls in entirety -

- (i) The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (Legal Notice No. 88 of 2019); and,
- (ii) The Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No. 92 of 2019).

Hon. Speaker: Hon. Boss Shollei is not here. The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, the Chair of the Committee on Delegated Legislation told me, through the House Business Committee (HBC), that she is committed. She wants to be slotted in tomorrow in the afternoon, so that she can deal with the two Motions.

Hon. Speaker: Very well. The Motion is stood down to tomorrow in the afternoon. Next Order.

(Motion deferred)

RATIFICATION OF AGREEMENT BETWEEN GOK AND
GOVERNMENT OF SOUTH AFRICA ON DEFENCE
CO-OPERATION

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation, laid on the Table of the House on Wednesday, 16th October 2019, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

Hon. Speaker: Chairperson, Departmental Committee on Defence and Foreign Relations, Hon. Katoo. His Deputy, Hon. Tong'i, is also not present. The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I have no brief from that Committee. I do not see anybody from that Committee. Hon. Katoo is one of the active Chairs and he must be committed somewhere. So, in the HBC tonight, we will re-schedule the Motion to tomorrow. I will look for him.

Hon. Speaker: The Motion is similarly stood down. Next Order.

(Motion deferred)

BILL

Second Reading

THE DATA PROTECTION BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the Data Protection Bill (National Assembly Bill No.44 of 2019) be read a Second Time.

I rise to move the Data Protection Bill, 2019, which seeks to give effect to Article 31(c) and (d) of the Constitution by setting out the requirements for the protection of personal data which is processed either by a public or private entity. This Bill is part of the implementation of the Constitution 2010. It outlines the key principles that shall govern the processing of personal data by both public and private entities while at the same time seeking or setting out the rights of data subjects and the duties of the data controllers and processors in our country. So, this is a very important piece of legislation. Who processes our data? Who controls our data? Which public or private entity archives it? All these are set out in this Bill to make sure that the right to your privacy in terms of data is achieved. This Bill is long overdue. It will implement Article 31 of the Constitution which ought to have been passed within a five years' timeline, which was given by the Constitution.

The House can recall that we passed the Access to Information Act, 2016 in the 11th Parliament which implemented Article 35 of the Constitution on access to information. Once we passed that law in 2016, we ought to have followed it up with data protection piece of legislation. I am sure individual Members of Parliament did not raise that legislative proposal and the Government took long to come up with it. We have it now and we must deal with it. At that time, we told Kenyans how they could access information, but we did not formulate the mechanism or parameters to protect that information which is the obligation of the State. Under Article 35 of the Constitution on access to information, the State has an obligation to provide required information to all citizens. As the Legislature, we failed to formulate the mechanism to protect that information or data and its controllers or processors.

The right to privacy is in Article 31 of the Constitution. Just like any other right, it is one of those that are guaranteed and protected by the Constitution. However, I can say without any fear of contradiction that this is the most abused right by rogue persons in this country. Kenyans often complain that their personal data on their financial status, health status and other sensitive personal data is accessed by individuals who have absolutely no right to access it. For us to protect personal financial and health status, sensitive data or any data of any person, this law is paramount. I really want to urge the House that we need to pass this law before the end of this Third Session.

Hon. Speaker, let me give an example. There are rogue persons who often call us from Kamiti Maximum Prison, informing us that we are lucky and have won huge sums of money that could certainly change our lives. We wonder how these people access phone numbers of Kenyans. Somebody in one of the most secure prisons in Kenya can even call Members of Parliament, telling us that we have won. There are even those who text you telling you that your account in Barclays Bank or Standard Chartered Bank has been closed and they even quote your account number.

(Hon. Jared Okelo and Hon. Onyango Oyoo consulted loudly)

This is not Kibra.

Hon. Speaker: What is happening, Member for Nyando and Member for Muhoroni? The Member for Suna East has arrived and suddenly that place is on fire. Hon. Junet, why do you not teach them how to consult in low tones?

Hon. Aden Duale (Garissa Township, JP): He speaks Dholuo language. So, I did not understand what he was telling them.

Somebody from Kamiti Maximum Prison may call you. They have access to even your health and financial data, which is confidential. So, this law is very important. Unless we redefine the parameters of persons holding personal data, Kenyans' right to privacy will be compromised. This Bill creates the mechanism or parameters for protecting Kenyans' right to privacy and makes sure that our data and privacy are not compromised.

Hon. Speaker, to bring this matter close home, allow me to say that data protection also relates to the security of our country. There are many public bodies with personal information of Kenyans. The Registrar of Persons keeps a lot of data in form of finger prints and photos. Recently, we had the Huduma Namba registration, which I do not know where it has disappeared to. It was hyped. I was given a slip, but I am yet to see my Huduma Namba Card. All these are people who hold information of Kenyans. Unless we redefine the right to privacy in relation to such a broad range of information, we will not know who keeps our private data and information. We will not know who can access it and whether it is Government agencies and what they do with it. In this era of technology where most advanced countries like the United States of America (USA) are grappling with data protection, we also need to move in that direction if we are to safeguard and guarantee Kenyans their right of privacy.

Data protection is broad-based. I am glad this Bill effects various consequential amendments on 12 Acts of Parliament which apply to data protection. It is going to affect other Acts of Parliament in terms of data protection. Data protection principles and sectors will be affected. It will affect registration of births and deaths, the processing of data on voters, processing of data collected by institutions like the Capital Markets Authority, personal data on examination, personal data on employment and personal data on citizenship, among others. All existing Acts of Parliament relating to personal data will be affected through consequential amendments.

This is a very important Bill. As we go to the Committee of the whole House, we must bear in mind the fact that our national security interest is very important. We must know where the data will be kept, who will keep it and who will be the data commissioner. There will be an element of security. We will propose relevant amendments on how to secure and improve the Bill.

Let me highlight some of the key provisions of the Bill. The Chair of the Committee will second and tell the House the public participation aspect of it, like what the stakeholders said, the contribution of the Ministry in charge of ICT, the contribution of security and other arms of the Government and the private sector.

Part I of the Bill is the normal preliminaries that sets the objects and the purpose of the Bill. So, I do not need to go into it. Part II of the Bill is very critical because it establishes the office of the data commissioner and provides for how he is going to be appointed, his qualifications, the functions and powers of that office and the removal of the data commissioner

from office. This person shall be responsible for overseeing the implementation and enforcement of the Act once it is enacted. We will require this person to be vetted by this House, more so by the National Intelligence Service, so that he is not somebody who can be compromised. We heard that Russians were involved in the election of the President of the United States of America. You can imagine what may happen to a country like Kenya if our data or election is interfered with. I remember we are yet to open the servers. We must put in place a provision that prohibits hiding of servers. The Bill has that provision. Hon. Millie Odhiambo, one of the Members who sit with me and other Members during the Committee of the whole House, must make sure that our data is not stored in another country. There is a provision in the Bill that we should not put our data in another country. These are some of the things we are going to look at when we look at the whole Bill. So, Part II talks about the establishment of the office of the data commissioner.

Part III provides, among other things, for registration of both data controllers and data processors and designation of data protection officers whose responsibility will be to advise the data controller and the data processor of the requirement of the data protection law. The law will create two sets of technical officers, namely, data protection officers and data processors whose business is to advise the data controller and processor on how to protect the data protection law.

Part IV of the Bill outlines, among other things, the principle of processing personal data, which include how to process personal data in accordance with the right to privacy. How data is processed must fundamentally be linked to the right to privacy, the right of data subjects and how to exercise those rights by the citizens.

Part V of the Bill outlines the grounds for processing sensitive personal data. There might be a time when personal data or a company data is sensitive, maybe, to the national security. It provides for how to deal with that. That is dealt with in Part V of the Bill. Even how to deal with sensitive data on the health of a citizen is dealt with.

[The Speaker (Hon. Justin Muturi) left the Chair]

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

Part VI provides the condition in which you can transfer personal data outside Kenya. How do you transfer? What are the conditions? You cannot just share data that belongs to our country with another country or entity in another country. Certain conditions are provided and safeguards that must be met prior to transfer of personal data of an entity or person.

Part VII of the Bill deals with enforcement provisions on how data commissioner may among others, process complaints made to him regarding any of the provisions. This part deals with enforcement where an individual or an entity - both public and private - makes a formal complaint on the storage or usage of their personal data.

Part VIII is about financial provisions which include how annual estimates of the office of the data commissioner will be prepared and how it will be presented for audit by the Auditor-General.

Part X deals with provisions on delegated powers. In particular, it proscribes the power of the Cabinet Secretary for Information, Communication and Technology. Once this Bill becomes an Act of Parliament, he is under obligation to provide regulations in accordance with the Statutory Instruments Act.

The last part provides for offences including unlawful disclosure of personal data. These days a blogger or a Government agency can put personal data on their pages. How do you deal with that? Do they have powers to make it public? Can they make unlawful disclosure of personal data? There are general penalties in that last section and development of codes. In that area, we will bring some amendments. The Committee has recommended 2 per cent, but it depends on the size of a company. When you talk about the turnover of a company, to some companies, 2 per cent is too small while in others, it is big when you compare both multinationals and the small and medium companies.

From the foregoing, this is, indeed a very elaborate Bill in terms of implementation of Article 31(c) and (d) of the Constitution on the rights to privacy. It will certainly make an impact in the manner in which personal information of Kenyans is stored, handled, transferred and maintained in a manner that is in conformity with the Bill of Rights, the Constitution and the relevant laws.

That is the highlights of this important Bill. I ask the Chair to second and give Committee's recommendations and what the stakeholders, both public and private, and other participants who either sent their memorandum or appeared before the Committee, said. I can assure the House that when we come to the Committee of the whole House, maybe late next week, we will make sure that all their concerns are taken care of.

I beg to move and ask Hon. Kisang, the Chair of the Departmental Committee on Communication, Information and Innovation, to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kisang.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to second this important Motion as moved by the Leader of the Majority Party, Hon. Duale.

The Data Protection Bill, 2019, was sponsored by the Leader of the Majority Party and was read the First Time on 4th July 2019 and subsequently referred to our Committee. From the memorandum of objects and reasons, the principal object of this Bill is to give effect to the right of privacy as provided for in Article 31(c) and (d) of the Constitution. It sets out the protection of personal data processed by both public and private sectors.

Further, the Bill outlines the key principles that shall govern the processing of personal data by both private and public sector as outlined by the Leader of the Majority Party.

While setting out the rights of data subjects, the data controllers and processors as they handle data, the Bill further seeks to establish the office of the data protection commissioner and sets the mandate of the office which shall include, *inter alia*, to make provisions for the regulations of the processing of personal data and obligations of data controllers, processors and for connected purposes. On the delegated legislation, the data commissioner, in consultation with the Cabinet Secretary of ICT will make regulations to give effect to this law.

The rights of data subjects under this Bill include the right to be informed of the use to which personal data is to be put, right to access personal data in custody of another controller or processor, right to object to processing of all or part of the personal data, right to correction of false or misleading data and the right to deletion of false information or misleading data about the data subject. Sometimes, you might see something going around in the mainstream media or the social media concerning a data subject, but the information is not right. So, the people who are holding the data, the data processors and data controllers or the data subject can appeal through the data commissioner for the information to be updated, deleted or corrected. If you check, many Kenyans have identity cards whose date of birth is 00/00/1967, but there is no date

of 00 and no month of 00. This Bill will help so that those anomalies that appear on our records is updated.

In considering the Bill, the Committee carried out an extensive public participation process where an advert was placed in the local dailies on 11th July 2019 requesting the public to submit their views on the Bill. In fact, I was very surprised recently that all the three major newspapers wrote many things about the Bill as if they did not see that we put an advert on the newspapers. What they published was misleading. In fact, one person called me, but I told him that they need to go to our website and check because some of the comments in the media that this House is trying to gag the security arms, the Directorate of Criminal Investigations (DCI), the Attorney General or the Office of the Director of Public Prosecutions (DPP) is wrong. They have not gone through the Bill. It is good that people read and understand the Bill.

In addition, the Committee held public county forum meetings with stakeholders. We went to Kakamega, Mombasa, Kilifi, Kisumu, Kericho and Nakuru counties where the public gave views on the Bill. The Committee noted that they were all in support of the Bill due to rising cases of personal data misuse and the need for protecting the same. There were lots of complaints especially by the elderly. Majority of the elders who used to benefit from Kshs2,000 stipend that they got every month said that the records are no longer there. They are missing. When they go to the banks, they do not know what could have happened. They are in support of this Bill.

Further, the Committee received and analysed memoranda from the following stakeholders: The Commission on Administrative Justice (CAJ); the Amnesty International; the Lawyers Hub; the Google Kenya; the Technology Service Providers of Kenya (TESPOK); the representative of the private sector in Kenya; the Article 19; the Kenya Private Sector Alliance (KEPSA); the Kenya Open Data Portal (KODP) taskforce that formulated the Bill; the Bowmans (Coulson & Harney LLP); the Kenya Medical Association; the Branch International Limited; the Digital Lenders Association of Kenya; the Teachers Service Commission; Karanja Matinti as an individual; and, the Centre for Intellectual Property and Information Technology Law. These also included the Ministry of Information, Communication and Technology and the Communications Authority of Kenya (CAK), amongst others.

Further, I appreciate Hon. Omar Mohamed Maalim. He sponsored the data protection and privacy legislation proposal, which was referred to the Committee for pre-publication scrutiny. The Committee, in consultation with the Member, agreed that we merge the two Bills. What was good in Omar's Bill was incorporated in the Bill that came from the Executive. The Member was happy with it. We are thankful and appreciative of what the Member did because the Bill was enriched.

The introduction of this Bill is a good step towards better protection of data and the privacy of Kenyans as Kenya does not have a specific data protection law. If you remember, in the 11th Parliament, in 2016, Hon. Priscilla Nyokabi, came up with the Access to Information Bill and we passed it. It was assented to in 2016. What we should have done first is to come up with this law. Although we can ask for information, currently, we are not guaranteed of protection of data. We are not guaranteed of security of the information that is held by all these entities. Even on the Huduma Namba that we did early this year, there is no protection. We do not even know what has happened. It is now quiet. We think the Government should, with this law, move with speed and issue Kenyans with their Huduma Namba. I believe they are waiting for this law, so that they can issue us with that single number that will identify all Kenyans.

Once it is passed, the law will give effect to Article 31(c) of the Constitution which outlines the right of every person not to have information relating to family or private affairs unnecessarily revealed. Article 31(d) gives the right to privacy of communications. I believe we are suspecting, especially leaders, that when we speak on phone, there are people who listen. Sometimes when you talk to somebody on the other side, you believe there is something going on. So, with this law, as we pass it, those who are infringing on our rights by listening to our conversations will be on the wrong. Even if they listen to it, they will not use it against you in a court of law because it will be illegal. They will have got the information illegally. It will also regulate collection, retrieval, processing, storing, use and disclosure of personal data.

I remember in 2012-2013, when we were going around the country looking for votes, before we settled on particular political parties, there are people who belonged to parties. I belonged to the United Republican Party (URP) and others who were not members of a particular party. You would find yourself registered to a political party whose name you did not know. How did they get your information? How did they get your data? As soon as we pass this law, the usage of one's data without their consent will be a thing of the past.

Data is becoming more and more available. People can use your data to make money. They commercialise it. Currently, every day, you receive text messages telling you there are promotions here and there or there is a new suit in town. So, people are misusing your data. They are not supposed to send text messages to you. They are not supposed to call you unless you give them consent. You are supposed to accept to receive messages. Skills and opportunities for retrieving different types of data are evolving extremely fast due to advanced technologies. Unauthorised, careless or ignorant processing of personal data can cause great harm to individuals, Government and even companies. The purpose of personal data protection is not just to protect personal data, but also the fundamental rights and freedoms of persons that are related to the data. While protecting personal data, it is possible to ensure that a person's rights and freedoms are not violated.

I want to give some few highlights about the Bill. Hon. Duale has already done it. I just want to go through it quickly. Part IV of the Bill highlights the principles of processing personal data. Every data controller is bound to ensure that the data is handled in lawful way. The data should be processed in a transparent and lawful manner, be accurate and up to date and be collected for a specific reason. If you collect data for census, as soon as that action is complete, you should delete it within a short period of time. If it is for particular areas, say during floods and you want to assist people or give them food, you are supposed to delete the data as soon as the season is over, instead of holding them for too long and unnecessarily.

A data subject must consent to having the personal data processed. The burden of proof lies on the data processor to determine express consent. If you go to court and say that you did not consent to your data being used, it is not up to you to prove that you did not consent. It is up to the other person who has your data to say how they got the consent. Was it in writing? Was it verbal? You have to record the voice. For processing any data relating to a child, consent must be got from the parents or the guardians because the child cannot give consent before the age of 18. I know there are people who wanted the consent age to be reduced to 16 years, but I am happy that was thrown out.

Part V has outlined the categories of sensitive data, grounds for processing, the principles to be applied and how to process personal data relating to health. I know health data is very sensitive, but it is important sometimes, if a person is sick and seeking medical care out of the country. In one of the clauses, you are allowed to transfer data out of the country for a good

reason, to save life or get medical attention. The Bill further sets out the conditions for transfer of data out of Kenya. Some of the conditions for transfer of data out of Kenya include consent by the data subject, especially health data and the data commissioner must give proof of appropriate safeguards for data out of the country in terms of how safe it is.

In case of infringement of a provision of this law, the penalties imposed by the data commission is up to a maximum of Kshs5 million. I know this is what was in the newspapers recently. They were saying that we are becoming punitive. I know we raised the jail term. For some corporate bodies, a jail term of up to 10 years, but the fine was still Kshs3 million. So, we will have to revise when we go to the Committee of the whole House. We will have to make amendments, so that the fine and the jail term is commensurate. Then we raise the figures from the Kshs3 million that we had said earlier to Kshs6 million or Kshs7 million.

I would like to ask Members to go through this Report, the Bill and support it. For a long time, our data has been used and collected by many people, both public and the private sector. There is no guarantee that the data that is held by these bodies is safe. From about four or five years ago to now, we receive text messages that we do not know where they are from. You may find somebody sending you a text message that they have sent you money erroneously. Without checking, because one may not be careful, one ends up sending one's own money to them yet it is all a lie. People have lost a lot of money. How do these people get these phone numbers? So, in this Bill, these people will be penalised. Even if they are already imprisoned, like the ones in Kamiti Maximum Prison, you can institute a case against them, so that they serve more years in jail if found guilty.

I hope and trust that the data commissioner who will be employed will do a good job. We have set out the qualifications for this particular office holder. We believe that we will get somebody of integrity who will protect our data. What we agreed as a Committee with the stakeholders is that this particular office holder will be employed competitively through the Public Service Commission (PSC). The PSC will advertise, shortlist and send three names to the President, then the President will send one name to the National Assembly for vetting. When the National Assembly approves that person, the President will do a formal appointment of that commissioner. The data commissioner cannot work as a stand-alone person. We said he will be at liberty to set up directorates below his office, so that he can have directors in charge of various departments to help him actualise this law.

Without taking more time, so that Members can contribute, I take this opportunity to thank the Office of the Speaker, the Office of the Clerk, the Office of the Leader of the Majority Party, Members of the Departmental Committee on Communication, Information and Innovation and the secretariat of the Committee for their dedication and support during the processing of this Bill. Further, I wish to appreciate all the stakeholders for their valuable input and time. They appeared before us and they want this law to be passed soon. Therefore, I urge all the Members to participate in discussing this Bill and pass it. Kenyans are waiting. Their data is being misused daily and there is no law to protect them.

With those many remarks, I wish to second.

Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): The first Member to contribute will be Hon. Kevin Wanyonyi, Member for Kwanza.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. This Bill, as the Seconder has mentioned, is overdue. We have had many problems in this country. One of them is access to information through illegal means. Why I have sat here all through is because I have been a victim of this matter. I do not know what happened, but somebody accessed my phone and called out: “Are you Mr. Ferdinand Kevin Wanyonyi? I replied, “Yes, I am.” He told me he has been looking for me and he was holding some information. He went on and on, I do not want to disclose the rest of the conversation, but I wondered how he got my full name. I do not know if he got it through somebody from Safaricom or from where I used to work. I have no idea. That is what happened. I am sure some Members have been victims of such things. Somebody gets your information illegally and presents it so clearly that you will have no reason to suspect them. I do not know how true it is when they say it is the fellows at the Kamiti Maximum Prison. I do not have a relative or a friend in Kamiti Maximum Prison, but that is what is happening. It is the reality. We must guard against it.

The other day, I am sure you, Hon. Speaker and most Members participated in the registration of the Huduma Namba. People came to my House when I was there with my family members and I voluntarily gave my data to the registration agents. To date, I do not know of anyone who has been given that number. I am asking the Government to tell us what happened with that exercise. We spent money on that exercise. If we establish in this House, by show of hands, how many Members gave their data for Huduma Namba registration, we will find that all Members registered. None of us has been given the number. I do not know what happened. Those are some of the things the Government has wasted money on. We thought this would be of use to us. I do not know what happened. There are many problems. It is good this Bill has come to the House and it will enable us to be a step ahead in what happens in the Third World.

The fact that we have the Ministry of Information, Communications and Telecommunication, we will form a commission to be in charge of this. That is something that we all have to support. It may make us to be above others in the Third World. I do not know if it has happened in other regions; I really do not want to mention that. This is something that needs to be done. We should have a commission in charge of it. At the same time, let us set stiff penalties for whoever accesses information illegally. Setting up a commission will not be enough. Let us have known penalties. If you access information illegally from somebody, you should be punished by law. That will deter people who get information illegally. That should be known to the public. We should not pass this Bill and leave it at that. The public should know that accessing information illegally, for example, from you, Hon Speaker, is unlawful. I am not complaining, but we have youth out there – they are not my age and your age – who do nothing but play around with figures and give you any information. Let it be known that it is punishable to get information from somebody illegally.

The other thing that is a bit sensitive is transfer of data to another country. That is what the Chairman of this Committee talked about. When you go to a neighbouring country, you should get information legally. If, for example, I am in a university in the USA and there is some information that is needed, it should be done through the legal means that you and I know. It should not be done via somebody calling you to give them information. I have had cases, particularly on land in this county, which is an emotive issue. You find that somebody has all details about your land in terms of boundaries and acreage. If your father or grandfather died, they also have that information. Therefore, they might claim that the land is theirs and the existing information will be erased in the land’s office. So, when you go there, you will be blank

in terms of information. They know more than you know because they are prepared to do what they did.

So, we have had cases of land issues. We are all from the Third World and struggling to survive. We had cases where somebody knows all about you and your grandfather and he even knows your clan and where your mother came from. This is something that, as the National Assembly, we should legalise. Hon. Speaker, you and I, as Members of Parliament, have been giving out money to the elderly. Last weekend, about four old men came to my house and said that they could not access their money yet they had been paid. You wonder what we should do. You tell me what I should do. Who should I call? One of them told me that he has received money twice, but he does not have it. That means the record has been erased. By who? Therefore, I want to urge the House to pass this Bill, so that we can put some nuts and screws to protect our people and to protect those who do not know what is happening. Unlawful disclosure of data is important because of business rivalry. If somebody knows what you are doing, he will just beat you at it. I support the Bill and urge Members to do the same because it is important. Let us be seen to be ahead of other people, so that we can do better.

I support. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me an opportunity to support this very important Bill. Let me start by thanking the Committee on Communication, Information and Innovation for coming up with this Bill, whose time is now. If it is not now, it is today. If it is not today, then it is this hour.

We are in the Jubilee administration which campaigned on the platform that it would be a digital Government. A digital Government means digitalising all information and collecting data from all individuals for the sake of easier delivery of services and easier access of services by the citizens of this country. Personal data is very useful in enforcing laws and making sure that Government services reach the citizens in time and in the required proportion. I am just from Qatar and I have seen how personal data is important in enforcing laws. In Doha, you may not find traffic officers on the road because all data is digitalised. If you are a traffic offender, you will just receive short message service on your phone of the traffic offence you have committed and how much you are supposed to pay and how you can pay that particular fine.

This data is very important, but at the same time, very dangerous. If there will be a Third World War, God forbid, it will be a digital war. It will be a war in which information and personal data is used to finish communities, tribes and countries. We have just heard recently that Russia was able to infiltrate into the USA election. If it is true, the information was there. With such infiltration of data, we need a law to protect it. We have all given our data to the Huduma Namba registration. Everybody in the country, including Members of Parliament, gave every information because of the threats from the Government. We answered every question that they asked genuinely and they have our data. We do not know what they are doing with our data. What we know is that we have already given out our data. That is why this Bill is very important. It has come at the right time. As much as we may not know what the Government is doing with the data, when we pass this law, we will be assured that the data will be protected and anybody who divulges such information unlawfully will face penalties. That data will be protected wherever it is.

It is very important for us to protect our citizens. We have heard of people in Kamiti accessing our data. The Member who has just spoken before me confirmed that somebody called him and he had all his three names and other information that he may not have told us because

sometimes it is secret. He may not divulge everything. You can imagine somebody you do not know has all your details. If they get details of our account names, account numbers, our bank branches and other information, including our personal identification number, we get scammers where money is transferred to accounts. You find yourself a poor person and a beggar all of a sudden yet you work very hard to earn. We have had criminals from other countries that I do not want to mention, but they are known to be very good in cybercrime. That is why we need to protect the data of our citizens.

This Bill is very important and we should pass it as soon as possible to protect ourselves. Even individuals in this country are very malicious. We had somebody “*Waziri Chacha*”, who was molesting our female colleagues in this House through cybercrime and through the use of personal data that I do not know where he had collected from. You have heard Hon. Sonko, the Governor of Nairobi, recording almost everybody on phone and threatening and exposing even secret discussions and affairs. We have had him exposing even Members of this House and fellow governors. If this Bill was in force, Sonko would now be serving a jail term. But because we were not able to protect personal data, he is still free and still recording other people. We do not know who else will be recorded. Nowadays I do not call. If he calls me, I put his call off because I do not know what I might say. In the process, you may say other things.

As I finish, because I do support 100 per cent, allow me to thank the Thursday’s Parliamentary Forum of Committees, which is very important. We will all participate, especially in the launch of the Kiswahili Standing Orders. Today, I have learnt that Standing Orders does not translate literally to mean *amri ya kusimama*. It has another very different meaning. We will participate, but I want to ask for your indulgence to let us have sign language interpretation for our brothers and sisters who are blind during that particular forum. We should also have the introduction of Standing Orders in sign language, so that whenever there are proceedings of this House, we have sign language interpreters. We have a deaf community of a million people in the country. They also need to access information since there is a law which says that all print media and audiovisual media must have sign language during their news bulletin. It is important for them to follow the proceeding of their beloved leaders that they have elected.

With those very many remarks, I support this Bill 100 per cent. I want to thank the Committee on Communication, Information and Innovation for coming up with this Bill and his excellency, Hon. Duale, who is the Mover of the Bill.

Thank you, Hon. Temporary Deputy Speaker.

An Hon. Member: His excellency?

Hon. David ole Sankok (Nominated, JP): Yes, he is an excellency. He is in charge of all pastoralists and we have said one kilometre, one vote because Kenya is defined in terms of land mass and population. We should also think of population, landmass and acreage in the Building Bridges Initiative (BBI).

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, Standing Orders are known as *Kanuni za Kudumu* in Kiswahili. Information about Members of Parliament is out there. All the names of Members of Parliament are on the website of Parliament and are available to all Kenyans. I do not know why you are complaining that somebody knows all your three names.

Hon. Akoth, Member for Suba North, the Floor is yours.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Before I say whether I support or not, I can

confirm that I will neither remember the name of Standing Orders in Kiswahili nor will I read it in Kiswahili. Where I come from, Kiswahili is not our language. So, I promise I will neither remember what the Standing Orders are called in Kiswahili nor will I read them.

In principle, I support the Bill. I thank the Committee for bringing it. I am supporting in principle because if you look at the principle behind data protection, it is, indeed, noble especially because we are in a digitised era and most of our work is becoming digitised whether it is data or not. It, therefore, raises very significant issues of privacy and security including personal security. For women, it also includes issues of intimidation and bullying.

Hon. Temporary Deputy Speaker, it is also coming at a very good time when the Law Society of Kenya (LSK) just passed the Sexual Harassment and Bullying Policy which does not deal with data. But when you are talking as a woman, you will see the connection between security, cyber bullying and data. I know we have different legal frameworks for cyber protection, but I know that data, because of connectivity, can sometimes overrun the issue of cyber protection and bullying.

Hon. Temporary Deputy Speaker, the reason I am talking in principle is because I support this, especially now that you have a lot of information and data collected by different agencies. People have spoken about the Huduma Namba. Recently, I attended court and I see it is almost totally digitised. Since we are going in that direction, we will have a lot of data and information that is kept especially in electronic form, whether it is criminal records or just normal records, and especially for those of us who protect children. We have instances of children who have gone through court when they are younger or as juveniles and their records should not be made available to the public. If that kind of data is made available sort of carelessly, then it is wrong. Indeed, this Bill is coming at a very good time. We must ensure that when data is given to Government agencies, then it is used for the intended purpose.

I am glad Hon. Duale has spoken to what we witnessed in the last elections. I am actually considering doing my PhD around this issue whether some of the things that we glorify would not actually, indeed, be a bane; that we have over-glorified technology. If I compare the 10th Parliament, when we had no technology and the way to catch the Speaker's eye was by standing up, sometimes that is even more democratic than when we rely on technology that only the Speaker can see. When everybody stands up, we can then see, for instance, whether Hon. Prof. Oduol has been standing up for 100 times, but when Hon. Millie walks in, she is favored against Prof. Oduol. So, there are also certain issues that may not necessarily be positive even with technology. Indeed, because of those challenges, we need this data protection. That is why I am referring to what Hon. Duale has said that even as we speak, the servers have not been opened so that we can check the issue of fingerprints. That is not even the greatest concern. My greatest concern is the way we allowed foreigners, not only to access our data, but also to take our data to foreign lands, manipulate it and use it against our own citizens. That is why this is coming at a very important time.

Hon. Temporary Deputy Speaker, again, you should look at the kind of data and information we have. That is why I am connecting it with the cyber protection regime that if you have mass data and I have seen it many times especially during elections times, people invade your privacy with a lot of unwanted and unsolicited information. Sometimes and especially for us as politicians, I do not want to eat and speak politics throughout. There are times I just want to close my life off politics, but I switch on my phone and I am inundated with all manner of things on politics. It is an invasion on my privacy. My privacy should only be invaded with my consent. So, there must be regulations and systems that allow people to use that kind of data. I know

people have even made reference to *WhatsApp*. I know it is difficult because I have seen that our focus is mainly when you are talking about Government agencies, but my concern is when we are talking about private agencies.

Hon. William Kisang (Marakwet West, JP): Private one is covered.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you. I thank the Chair because he is telling me the private one is covered. Every single day, you are inundated by people using your personal data to get you into all manner of groups. I think all Members know that. You wake up in the morning and you are in a group of people who harvest flies, people who want to dance while singing and all manner of things. Sometimes you just switch off your phone not because you do not want to work with people, but it is overwhelming. There must be some control in terms of information that you get. It is not that difficult. In funerals, people tell you there is a way to join *WhatsApp* groups and I choose to, but you should not just wake up in the morning and add me to any group. Well, if it is for my constituency, that might be a bit different because I am elected to serve. So, I may not complain. Today, I left a group from another constituency. I was added to a *WhatsApp* group for “The Bureti We Want”. If you want Bureti, what does it got to do with me? I am just giving that as an example. As Members of Parliament, we get overwhelmed by all these things.

For me, from the perspective of privacy, we need to protect our data. From the perspective of freedom of choice, especially political freedom of choice, then we need to protect our data. I remember when I was running for the first time, one of my opponents, who also happens to be a very good friend of mine and who comes from the computer world, had superior knowledge than me at a time when people were still not very conversant with this. One time in the morning, everybody woke up in my constituency and he had sent them personal messages. They said: “Wow, this is the person we will vote for because he has sent me a personalised message”. Many people left me because of receiving personalised messages at a very limited cost. I did not know that I was not able to use that data to reach people. That also creates unfair competition. So, we must provide a parameter on what data and how we can deal with private data.

Finally, the reason I said I am supporting this in principle is because I have not had an opportunity to look at this in depth. I have heard complaints outside. I am going to spend time and look at some of the complaints that people are putting on this Bill. If I agree with them, I shall be proposing amendments.

Otherwise, I support in principle. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken. We shall now have Hon. Iringo Kubai, Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice to this particular Bill.

I take this opportunity to thank the Committee chaired by my good friend, Hon. Kisang, for having come up with this Bill which is going to cure a lot of ills which we have had in this current digital era where many things are happening. The people who are analogue are surprised to see things in various places and start wondering where and how the same information go to that level.

However, because we have to live with this current technology, we should put laws in place so that unscrupulous people do not take advantage of that access to individual information and its different usages, either positively or negatively. Let me thank the Committee because they went out of their way as required by the Constitution to conduct public participation. This

happens in every committee when we have a law in the offing. When we go out there, we get a lot of information. The Committee, according to the Mover of the Bill and the seconder, went out there and got support from the people because they found that the Bill will cure a lot of problems.

As has already been stated, you cannot hide any information from anybody these days, even knowing your names will be done at the strike of a key in our gadgets. One cannot be hidden any longer. However, we must have a law so that if you access any information, you must not use it positively, negatively or in any way that could hurt the owner of the information. Each one of us, more so leaders and Members of Parliament, have gone through the agony of getting our information hacked and being told unpalatable things. Others have lost money while others have seen their information being passed to unwarranted quarters. The victims have nothing to do because there is no law to protect them. Criminals, both in jail and outside, are using data from individuals especially leaders to blackmail them. They use the same data to con people daily.

We normally receive messages that we have won Kshs100,000 for a game played or something you participated in whereas you have never done such a thing.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kubai, just for my own edification and knowledge, are these gadgets legally available to our brothers and sisters in jails? Are they legally available there or they are in themselves illegal?

Hon. Kubai Iringo (Igembe Central, JP): Well put, Hon. Temporary Deputy Speaker. These gadgets are already there illegally. Every time, we see this on the media. After a search is conducted, they riot because they do not want to be searched. They know the gadgets will be collected. If all the gadgets are collected, they have others the following day. So, there is a loophole in jails. The officers should be taking care of this and ensuring that these gadgets do not get into jails.

Most of these people in jail are ICT wizards and they send people messages to send them money. Once you send money, they will know even your personal identification number. In the process, you lose money and you have no redress. Automated Teller Machines (ATMs) on the streets and near banks are being hacked already. The other day, they arrested security people and a woman in Thika who had accessed people's accounts and had got money out of ATMs. When you go to banks to complain and ask why your money was debited from your accounts, they do not refund you the money immediately. They will take their time trying to give possible explanations. With this law, once your account has been debited and you can prove that you are not the one who did it, you will have recourse because the law will be in place.

We were told that the Huduma Namba is for our good, but I do not know how good it will be. Once that number is issued, everything which pertains to you is already in the system. It will be very risky especially if somebody gets to know about that number. With a click of a button on the machine, you will know everything about a person. This will be possible to hack into every aspect of the person's life. It will be very dangerous. So, we should put this law into place to cushion against such crimes.

As I said earlier, we cannot run away from technology. So, we need to put measures in place to check the advancement of that technology. The people who will man this board should be brought to this House to be properly vetted, so that we can get people of integrity who will ensure that whatever data they come across is held in total secrecy. They ought to have integrity so that when they access people's information all over the country or when they are confronted

with a case, they can handle it expeditiously without injuring people, their integrity or their public standing.

We need to caution those who access other people's gadgets or steal them to get information. There should be a way of checking the gadget to identify what has been retrieved and destroyed. We should not allow other countries to access our data. If the USA systems can be tracked, their elections hacked, what about a country like Kenya which is grappling to get near the USA? It will be very disastrous for this country especially for our security.

Today, if you want a licence, an ID card or the cards we use in Parliament, if you go to River Road, you will get one. Technology has gone that far. Today, if the army plans something which is top secret, you will hear about it in the streets of Eastleigh. Hacking is being done left, right and centre. So, if our security organs are infiltrated by criminals and we do not have a recourse, they will walk scot-free. As has been said, there is somebody who records every person he talks to and nothing can be done. I propose that once this law is put in place, such characters are brought to book and stopped.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kubai you have completed your time. Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to comment on this very important amendment Bill. I want to congratulate the Committee for bringing this particular legislation on protection of data since it is long overdue.

Indeed, this is a very exciting time. On a very personal level, I have waited for this Data Protection Bill especially because of the business aspect of it. If you look at countries like Philippines and India, there is huge business on processing and outsourcing trade going on. Nowadays, when you call the USA or the United Kingdom (UK), you hear a voice from a service provider. The call may not be routed to large companies in the UK, but to India, Philippines and recently Ghana. This is because they have data protection laws in place.

We have been unable to tap into this very valuable aspect because we do not have data protection laws in place. As soon as we have this legislation in place, I foresee a mushrooming of start-ups in this area. This will benefit a generation of people who are the youth of this country. Going forward, during the Committee stage when making amendments, I think we should relook at the registration fees. It seems very high and would be punitive for the youth of this country.

A lot of time I do not think registration fees and levies are about making more money for the Government, but just an administrative procedure to ensure there is some sort of order. I find registration fees in a lot of legislations and regulations sometimes quite unaffordable. I also want to welcome the position of the data protection commissioner. This is something we should think through. This commissioner cannot be subjected to a particular Ministry or Cabinet Secretary. In the amendments, I saw that he or she should be appointed by the CS, Ministry of Information, Communications and Technology.

Data protection is a huge area and not just about ICT, but also national security and many other aspects. It is my considered opinion that the appointment of the data protection commissioner should include the Executive and the approval by Parliament. Going forward, I urge the Committee to look at the various clauses within the Bill. There may be certain contradictions. If I do recall, especially with regard to Clause 25(g), at one point they appreciate, accept and realise that data can be collected without the consent of the party and especially when conducting a criminal investigation. In another clause, they have said it can only be collected

when consent is given. There are a few contradictions and it is important for the Committee to look at them at the Committee stage.

Another issue of concern is when there is a breach or leak of data and the time it would take to inform the subject matter. The words used were 'within a reasonable time.' I think there should be definite timeliness because the subject matter is the owner of the personal data. Whereas there are timelines for data processes, there is no timeline for informing the subject matter when there is a serious breach. So, if there is a serious breach to my account and it may have been hacked, I think it is important for me to be informed either through e-citizen or whoever is collecting the data within a timeline or as soon as possible. It is my considered opinion that 72 hours is not pushing it and would be reasonable.

With those few remarks, I support the Bill as long it is passed with the necessary amendments during the Committee stage.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwangi Mburu, Member for Lari.

Hon. Jonah Mwangi (Lari, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, I support this Bill because I am a Member of the Committee and was present as we deliberated it.

I support the purpose of the Bill because it is providing regulations for processing personal data. We should have regulations for people giving data and subject rights with regard to protection of personal data. We should have regulations on how handling of data is done, by who and where it is stored. I support the Bill because it has taken good care of this part. I also support having a data commissioner. I also support the process of selecting one. The appointment, powers and qualifications are put in place, so that the data commissioner can be a person of high standing, integrity and is trusted by Kenyans to protect their data even against the Government that he serves.

I have looked at the process of appointing a data commissioner, removal from office and powers accorded including the functions of the office. I support the Bill because they have taken good care of that part. I have also looked at the data processors and controllers because they are the people who will be collecting data. What if you want to collect data like they did with the Huduma Namba, were they registered by the data commissioner? If you want to collect some personal data from people living in Lodwar or Lari for some purpose, one should have a licence to collect it and give benchmarks to the data commissioner so as to be allowed to collect the data.

I support the part to do with data processors and controllers. I am happy the data commissioner will come up with regulations to guide them, so that they can live within a framework and get licences in an easier and controlled way. I also support the part on sensitive personal data. Today, there are institutions which collect sensitive personal data from people. You will find people going to collect data on the number of disabled people or those living with HIV in the village. Their main purpose is to solicit for money in the UK, Europe and where we have NGOs. There are so many people who are collecting data. They will tell you, for instance, that they want to provide you with water tanks. Then they will go ahead to ask how many people in your family have this and that disease or how many people in your family have cows. They obviously are going to use the data somewhere else without your consent. So, this Bill is trying to curb that practice. What we can really curb is the usage of the data. Data is universal. It is everywhere. People are collecting data for different purposes but they are behaving like they are collecting it for other purposes.

The other part that I have looked at in this Bill is on the exemptions that have been given. I have already seen some fireworks in the newspapers. You will find the DCI saying that this Bill will prevent them from fighting corruption and getting information from say, MTN or other mobile service providers. In this Bill, we have provided for the position of a data commissioner who is empowered to prescribe instances where exemptions can be made. If an exemption is to be made, then it is the responsibility of the data commissioner to go and discuss with the relevant bodies. If you want to get this information from the MTNs, then it is the data commissioner to give a reason for that. The data commissioner will also provide a data sharing code so that we can have the best practices. I do not want my bank to give DCI information every day and you know there are so many crooks within those establishments. Then they will focus on me because I have a lot of money in my account. So, every time they want to harass me, they simply get information from the bank without my consent. We must have a good data sharing code from those institutions and that can only be developed by the data commissioner.

The other part I have looked at in this Bill is the one on penalties. Most of the stakeholders were of the feeling that we should up the penalties, but as a Committee, we thought maybe we will leave them at that and then we can relook at them at the Committee of the whole House. Most of them were suggesting that the fine be raised to Kshs10 million or Kshs20 million. We asked about the repercussions so that we can balance the penalties and the views obtained from public participation. People are really in support of this Bill, especially where we went for public participation. We went to Mombasa and Kilifi and everybody is worried about sensitive data on our children. There are white people who will come and take names, addresses and phone numbers of young girls. Because these people are vulnerable, they will give the *mzungu* all the data not knowing what they want to do with it and not knowing that one day their daughters will be called to a beach hotel and then be abused. It is because of the personal data that they collected without the victim's permission.

With all those points, I really wish to support this Data Protection Bill and I hope it becomes law as soon as possible.

The Temporary Deputy Speaker (Hon. Christopher Omulele): That was well spoken, Hon. Mburu. Those who collect data legally will have a responsibility to use it responsibly. They should not to use it to harass the owners of that information.

Next is Hon. Mogaka Kemosi, Member for West Mugirango.

Hon. Vincent Kemosi (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I also want to state at the outset that I support this particular Bill. Kenya joins quite a number of countries that are advancing to bring up laws on data protection. It is in the league. Upon assent of this Bill by the President and it becomes law, it also joins the league of the UK which in 2018 passed the law on data protection. Many countries are now dealing with data protection. It has been said here that data protection is a very important aspect because technologically, the globe is now much advanced. I am quite confident that upon assent of this particular Bill into law, it will substantially address various issues including what is being pronounced regularly by the President of the USA, Hon. Trump, who says each and every time that there is fake news out there. Kenya is not an exception to fake news.

Article 31 of the Constitution of Kenya provides for the right to privacy which includes not having information relating to a particular person, a person's family or private affairs unnecessarily being revealed. Paragraph (d) of that article says the right to privacy of an individual on communication should not be infringed. This Bill will definitely address those

issues which are provided for in the Constitution. The Bill will go a long way to address issues of privacy.

Of interest in the Bill is Part IV. Under Clause 25, we have the principles and obligations of personal data and protection. It has come out very clearly that every data controller or processor shall ensure that personal data is processed in accordance with the right to privacy of the data. That is provided for in the Constitution. Part (b) of that provides that the processed data should be done lawfully, fairly and in a transparent manner. That is very important because most of the data in Kenya, as it is today, is unlawfully obtained and this is what now spreads out. Some of it is spread out as fake news. Some people just get information and they do not consider if it is unlawfully obtained. This particular aspect will address the issue that the data obtained should be lawful and fair. I am quite clear in my mind that while I obtain particular data, it will also require a court order to get that particular data.

Part (c) provides that it should be explicit, specified and legitimate for the purposes that it was obtained for. For example, when you visit an organisation, you leave your information behind. It could be your phone number. That information is supposed to identify you and be used for that particular purpose. After you leave, you find somebody calling you saying, "I have been suffering here. I thought you could look for a job for me." That is not the reason you gave out that particular data. However, with this law, I am quite clear in my mind that those issues will be addressed. The information needs to be adequate, relevant and limited to what it was being obtained for. Further to that, I am happy that it also gives a door that data obtained from an individual by an organisation can be reviewed or corrected if that particular data is not accurate. Upon use of that particular data by an organisation – for example, if you cease to be a customer of a particular organisation, say, Safaricom and you switch to another service provider, you can seek that your information at Safaricom be erased or rectified.

There have been many complaints about this Bill. Some of the security agencies have felt threatened by it. They are saying it will slow the fight against corruption or hamper the security of this nation. I want to make it very clear that this has been addressed in the exemptions. If the data required is for purposes of security and public order of this nation, the Commissioner can exempt it.

Some of the people working in those security agencies have had the tendency of going through people's data and sharing it unlawfully. On some occasions, somebody will tell you that you are in a certain place. When you interrogate this information to see if it is true, you will find that one of the security agents has revealed information on where you are. That is not what the information is intended for. This Bill will address those issues so that if some subjects in the security agencies have the tendency of spying on people that should stop. Otherwise, this is a good piece of legislation.

Looking at the countries across the globe, India has an Act for that purpose. Zambia has a Bill which is in Parliament. Ecuador and Barbados have the same Bill. It is high time we passed this Bill into an Act of Parliament. Once this is done, I am quite sure that these issues will be addressed.

I agree with what Hon. Millie spoke about. Looking at my phone, you will find that I receive information while I am not the right person to access that important information. Somebody puts me in a forum for Bobasi Constituency while I am not a constituent. I live far from Bobasi. This Bill should address those issues. Why should I be put in a forum in which I am not relevant? I am ready to engage with my constituents on the issues pertaining to West Mugirango and not on other issues from outside Kenya. You will even find that people in the

diaspora have put you in their forum and when you try to follow up what they are speaking about, they are issues concerning the diaspora.

With those many remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Maritim, Member for Ainamoi.

Hon. Sylvanus Maritim (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker. I support this Bill. It is coming at the right time. Considering the digital era and advanced technology, we give out a lot of information all the time. Even in Parliament, we register at the gate every time we come in. We give out our vehicle registration number, phone number and the number of persons inside our vehicles. That information can easily be misused.

Lately, I have been receiving random messages because one way or the other, my information is out there. Funny enough, the other day, I received a text from Java informing me that they are opening another branch just because I used Mpesa to clear my Bill. It did not mean that my data is supposed to be misused. I am reminded that just before the elections, when we were checking our political parties, you would find yourself in a party that you do not know simply because there was a lot of data - probably through Mpesa - whereby someone picks your ID number and registers you in a political party that is not of your choice.

This morning, in one of the dailies, I read about a prominent person who has been unwell. The daily gave us information on his health condition and the kind of disease he is suffering from. That is not fair. This Bill will help to ensure that health records are in safe custody and data that is out there is not misused.

I come from Kericho where we plant tea. Many times, we have tea agencies moving round collecting data from the farmers and counting the number of tea bushes they have in their farms. We do not know what they intend to do with that information. This Bill cures the same under Clause 29. It talks about the duty to notify. Before you collect data, you have to specify what you intend to do with it.

With regard to financial data, we are waking up to a situation where banks are giving out our details without notifying us. The Kenya Revenue Authority (KRA) has our bank details. We have not been notified about the information KRA wants from our bank accounts. That is wrong. In supporting this Bill, the integrity of information that is collected lies squarely in the office of the data controller and data processors. We would not want a situation where people collect information and it is shared without knowing what is to be done with that data.

Otherwise, I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Lodepe, Member for Turkana Central.

Hon. Lodepe Nakara (Turkana Central, ODM): Thank you, Hon. Temporary Deputy Speaker. I just want to add my voice to what has already been said by the other Members of Parliament (MPs).

Privacy in this country no longer exists. You can find your private information circulating on social media. Our children and in-laws are on social media. We endanger the lives of our people. This Bill will curtail those who have been misusing social media and giving out people's secrets. I agree with the MP who said that there needs to be strict punishment for anybody who reveals private issues to the public. Sometimes you can see people on social media abusing leaders - people who are supposed to be respected and dignified. You discover a young man abusing an adult. Some people do not have access to social media. You find somebody bringing such kind of a person to social media. How can you protect a person who is illiterate yet his

name or company or family has been brought to social media? We need to protect the public and the privacy of the people.

As an MP, I create time for my family. I take a photo with my family maybe while on holiday. I have taken care of my family budget. People take that photo and put it on social media and say this MP is enjoying while people are dying of hunger or thirst. You become afraid to even take your family on holiday because once they discover and get the photo, they put it on social media and embarrass all your family members. We need to protect the privacy of the people. As much as we want to be open as leaders for the public to scrutinise our lifestyle, it should not go to the extent of showing our family photos and embarrassing our children.

We need to give direction. That is why we are MPs and leaders. We need to give direction, protect the innocent and the security of the people so that this country can run in an efficient manner. It is good to use social media. We do not ignore that. We get information about our constituencies and nation from social media. There is an area that we need to curb especially with regard to private issues such as our bank accounts.

Hon. Temporary Deputy Speaker, during the campaign, my opponent went to the bank and got the balances in my accounts. He said that I could not even run a one-week campaign because the people in the bank revealed to him what was in my account which was very bad. We need to protect people so that they can enjoy their time.

With those few remarks, Hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Lodepe. We shall have Hon. Osotsi who is a nominated Member.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to also raise my voice on this very important Bill. It is primarily for the purpose of implementing Article 31(c) and (d) of the Constitution of Kenya on the right to privacy. This Bill will also be very critical towards the path of becoming a digital economy. They say that data is the 21st Century oil of the digital economy. This Bill will be very crucial in our trade and economic engagement with the world.

As you are aware, the European Union (EU) came up with the General Data Protection Regulation (GDPR) which are regulations on data protection. This Bill will allow Kenya to trade easily and effectively with Europe and the entire world. Having looked at the entire Bill and benchmarking it with the international standards on data protection, especially the six principles of data protection, it is in full compliance with them which are lawfulness, fairness and transparency. This Bill aligns with those principles.

Secondly, there is the issue of purpose limitation which basically says that you are supposed to collect data for a specific, explicit and legitimate reason. Three, there is the principle of data minimisation. Data that is collected must be adequate, relevant and limited. Fourth, it is the accuracy of data that is collected. This Bill allows a data subject to have a say where the data that is being collected or processed is inaccurate or incomplete.

Fifth, it is the storage limitation. For how long are you going to hold data? The Bill is very specific on that. Lastly, there is the issue of data integrity and confidentiality which most of us have discussed this afternoon.

This Bill talks about the office of the data commissioner which is a very important office. As a Committee, we looked at this and thought that the data commissioner is a very critical position as enshrined in this Bill. Therefore, we will look at the necessary amendments so that we can have some degree of independence in this office. One of the things that the Committee agreed on is that because the role of this particular individual is cross-cutting all Government

sectors, he needs to be appointed by the President and vetted by Parliament. I am sure that the Committee will come up with those amendments at the Committee of the whole House.

What is important is the right of the data subject which has been captured very well in this Bill. I will go through it quickly. The data subject will have the right to be informed on the use of the personal data. Two, he will have the right to access personal data in custody of anybody. That is the data controller or processor. He will have the right to object to the processing of his personal data, correct false or misleading data and delete false or misleading information about that data subject. Because there is an international element to the issue of data, he will have a right to data portability. This means that if data is taken from this country to another country, that data subject who is in Kenya has a right to that data about him in the other country. This Bill has tried to comply with international standards on data protection.

There is the issue of collection of data. When we talk about data, many of us imagine that it is computer data. Data can be in hard copy. There is data that you write when you get to a building which is your name and identification card number. There is also data that is captured by Closed-Circuit Television (CCTV) cameras. This Bill will protect individuals whose data is captured without their knowledge. When the Bill will be passed, people who are in the business of CCTV cameras will have to know that they must not install them in private places. Some people put these CCTV cameras in hotel rooms, toilets and very private places. Once this Bill becomes law, it will be an offence for you to put a CCTV camera without putting a posting message that you have it.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi, hold on. The Leader of the Majority Party, what is out of order?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, Hon. Osotsi is an expert in this area, but he has made an allegation that there are hotels in this country that put CCTV cameras in rooms. Following the various videos that circulate in the social media, can he identify that hotel so that people can be very careful? Can he name those hotels? I am also in the hotel business but my hotel is not one of them. When you say that there are hotels which install CCTV cameras in rooms, can you name them so that we can tell Members to be very careful going forward?

(Laughter)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Proceed, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): I mean that CCTV installation will have to take into account the right to privacy.

We have people, especially in this political environment, who have the habit of recording others. You go to a meeting and someone records what you are saying and takes pictures. These people come out and even those kinds of conversations are used by mainstream media. It is an offence for you to do that. Those who do that must know from today that when the Bill becomes law, it will be an offence for you to do that.

There is also the issue of registration of data controllers, processors and protection officers. A lot of leeway has been given to the data commissioner to come up with regulation on this area. The data commissioner should look at business interests as well because we do not want to punish our businesses through very stringent process of registration of data controllers

and processors. This Bill will trigger amendments to almost every piece of legislation that has a data component in it. We have a list of consequential amendments that will be done in this Bill which is not exhaustive. As a Member said, we need also to include the Banking Act and Higher Education Loans Board (HELB). We also need to include the Political Parties Act. I am happy that the Independent Electoral and Boundaries Commission (IEBC) is provided for here. Anyone who will interfere with the IEBC register, this law will catch up with him.

Hon. Temporary Deputy Speaker, this is a very important law. I know there are a few gaps. We will propose amendments to tighten the Bill. The Bill is very critical in helping us to enforce the law on computer misuse and cybercrime which we passed. I ask the civil society to support this Bill and ensure that we help this country have the Data Protection Act.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mohamed Sheikh, Member for Wajir South. He is not in the House. Hon. Mbui, Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity.

The world is going digital progressively. In fact, the need for sharing personal data has become a big requirement now. For instance, when you want to register a company on line, your personal data is required. When you want to book a cab to travel, you require personal information. When depositing or withdrawing funds from an account and even when you want to order food or any product, you do it online and it requires, obviously, sharing of data. If you go online now to *mzalendo.com* you will access the full names, ID numbers, education, age and marital status of Members of Parliament. That is where the scantily dressed ladies got Members' numbers and sent those messages. While I was seated here, I read an article that talks about the danger of leaving data in some places like at the photocopiers. When you photocopy your ID card, you are advised to be careful not to leave copies behind. Sometimes when you go to do photocopy, you may be told that some copies are not very clear and so others are produced. Apparently, the copies that are left behind can be manipulated and used to acquire, say, sim cards or to commit crime.

Data from M-Pesa shops has been used to register small political parties. There is a political party from my region - I do not wish to name it - which did not recruit members, but by the time we went for the last election, they had recruited so many members. Some of my constituents checked and found out that they had been registered in that political party even though they had never given consent to be registered. That means that their data was picked, probably, from M-Pesa shops and used to register them in political parties.

It is important to note that the Data Protection Bill will curb some of these vices that have been going on. The protection of privacy is in Chapter Four of the Constitution in the Bill of Rights. Basically, the Bill seeks to give effect to Article 31 (c) and (d) on the right to privacy. Article 31 of the Constitution says every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed. That means that the continuous seeking for information from people needs to be controlled. Every time you go anywhere, including to a supermarket and you are required to fill a form, you are supposed to give your age, gender, marital status, which can be used by people looking for spouses, and financial status. You are even asked the amount of money you earn. Obviously, that information, if put out there can be critical. Sometimes, you are even asked about your medical history, maybe, for insurance purposes. These can actually be misused.

This Bill deals with data that is out there. You may be put in a situation where you have to share data which may be revealed to people who do not deserve. I remember recently, there

was a big outcry in the US about *Facebook*. In fact, the founder of *Facebook* was actually grilled by the Congress on the use of private information that was being received by his organisation. They would receive information and share it with other companies. They would look at the kind of things you view, access and seek and they would get to know the kind of person you are. They give that information to marketing companies to continuously bombard you with information and requests to purchase items. That is one of the things that will be sorted out by the Bill.

This information can also be used for elections. What happened in the USA case that we read about is that people were influenced slowly but surely by use of technology. That happened because they had shared their information.

On issues to do with security, it is true that security can be compromised if you share certain data. I remember one of my colleagues in the last Parliament saying in this House that there are Members who when they travel even with their families, they post on their *Facebook* pages that they have travelled. The minute that is posted, it is like telling thieves in the estate that you are not there and they can easily raid your home. So, this is an important Bill.

The second part of Article 31(d) of the Constitution says that the privacy of their communication is infringed. I do not know how we will manage this. The privacy of your communication being protected means that no one should listen to your calls and nobody should read or intercept your mail. I remember having a fight in this House in the last Parliament when we were dealing with miscellaneous amendments that were proposing to give the State agencies an opportunity to listen to conversations because of security reasons. I do not know whether this contradicts those amendments we made.

It is important that private data is now protected. We are going to take care of who processes the data and who protects it. We are getting the right in this Bill to query the use of our data which is important and we are going to get the right to correct the data that has been put out there and we will get the right to delete. This is really important.

There is establishment of the office of the data commissioner and the process by which this person will be recruited, employed, interviewed by the Public Service Commission and then three names forwarded to the Head of State who will then send a name to Parliament for vetting. That system has worked for this country. I ask that when the House receives such a name, we be seized of the matter and ensure that we do thorough drilling so that we do not have people with no integrity getting into offices that are very sensitive, like this one of the data commissioner. So, it is important that when that time comes, the House should stand up to be counted and do the right thing to ensure we get the right people.

We also have data processors and controllers. It is proposed that data should be processed in a transparent manner and has to be collected for specific uses. Once the use is done away with, the data should be deleted. Consent of the owner of the data should be sought before it is used. If the owner is below the age of consent, you seek the consent from the parents. That is important. These are the things that have been missing from our legislation to enable the country move into the digital age in a proper manner. I hope that once this House passes this, those busybodies that are constantly waiting for legislation to come out of this House to rush to court and those judges that are continuously injuncting this House, will this time see that this is something that will help the country and avoid those tendencies that they have been having.

Thank you. I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Lesuuda, Member for Samburu West.

Hon. (Ms.) Naisula Lesuuda (Samburu West, KANU): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support this Bill, and from the word go to say that we cannot belabour the importance of Government getting data. It is very important for Government to get data because it helps in planning for economic growth of a country. It is also very important that we safeguard the privacy and data of individuals. For a very long time, we have been thinking that this Bill should have even come before Huduma Namba was introduced. We know that even the details of the young children were taken. We know that our details were taken but the good thing is that once this Bill passes, still the information that was collected during Huduma Namba exercise cannot be used in any other way without the express consent of an individual.

Sometimes the Directorate of Criminal Investigations needs information. If they are matters to do with terrorism, they are provided for in this Bill and taken care of. Sometimes they keep following us especially politicians every time trying to get information from our phones and things like that. Now, they can go to court and ask for access to that information without accessing it without consent. It is scary to think that people can access all your information and data and you do not know what they could use that information for. Some of them are a nuisance. We have seen people sending other people messages. We have seen companies and businesses sending messages and you wonder where they got your contact from, but now it will be express that they will need to get your consent for them to get your details before they use your data.

For that reason, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Eve Obara.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I, too, stand to support and say that it has come at the right time. As noted by my colleagues, it is in compliance with international standards. This country is replete with cases of misuse of data. Politicians have a lot of times been victims of misuse of this data. In this world of social media, we have seen highly classified information circulating in the media even before the recipient receives it from highly placed offices.

As has been said, you have seen criminals from Kamiti sending us messages through our phones with our full details. You have seen companies supposedly from outside Kenya sending us funny messages that we have won different awards and you wonder how this information has come to them. You have seen information with data from the banks circulating in places that you never imagine that your data would be or even results of candidates flying all over the place from highly classified quarters. It has been unfortunate for this country.

When we finally have this Bill in place, hopefully, its implementation will be swift. This is so that, for once, you have the right to know why data is being asked for so that you have the right to ask for information to be deleted. We have seen information that is false. Some people have been convicted on false information. One will have a right to delete this information. It is timely.

Not to spend too much time and repeat what my colleagues have said, I support and congratulate the Committee that has come up with it.

Thank you very much.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. (Dr.) Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I just want to support this important Bill.

The Data Protection Bill is very important to this country, more so, bearing in mind that as a country, we cannot do without data. Data is very important for economic activities, social

activities and political activities. At times you find data is misused, especially by criminals. I think this Bill is coming up very late. It should have been there a long time ago. I remember during the time of collecting information through the National Education Management Information System (NEMIS) which was being spearheaded by the Office of the President and also during the last census, Kenyans were very concerned about how this data would be handled in terms of privacy. We must realise that there is data for public use and there is also private data which should be for individuals. We have a law on access to information. It makes it very clear that data for public use can be accessed by all Kenyans and there is a way you can access it without any problem. The concern has always been private data, data relating to individuals. This Bill is going to provide a legal framework which will help Kenyans in sorting out these matters.

I just want to give an example: you will realise that Kenyans, more so those who are in positions like MPs, CSs, PSs, are just human like any other. When it comes to medical information, you will realise that people can access it without your knowledge. Even as you conduct your business, there are those who will be saying you are sick and you do not know where they get this information from. There are others who go out there and start spreading propaganda about your health that you are about to die because of one, two and three. You do not know where this information comes from. I believe medical information is confidential. Through this Bill, it will not be possible to access information relating to individual's medical records unless you have provided the authority.

The other area I see information being misused is through data in our banks. We all have bank accounts. There is a Member who said somebody went out there, checked his bank account and they were able to say he could not sustain campaigns for one week because he was broke. The more serious one is where somebody goes to your account, realises you have Kshs4 million to Kshs5 million in the account and they go out there, hijack your son or daughter and demand you must give Kshs3 million or Kshs4 million before they release the daughter. It is just because somebody has given them that information. So, they know very well you have money. The money they will demand is exactly the money which is in your account and it becomes worse. It actually tortures families. Through this Bill, I think employees of banks who can provide such information will be punished seriously. We have put up a very structured way of accessing information.

The other thing is where information is used for criminal purposes and where people want to send you information. For example, I remember at one point a friend of mine got information saying that he had been given a limited number of days to do certain things only to find out later that information was coming from Kamiti Maximum Prison.

So, you wonder how somebody in prison has access to your telephone number. I think time has come that information relating to individuals – what we call private information – is protected. It is important that this Bill does so. So, I want to support this Bill and request the House as a whole to make sure that we fast-track it to become an Act of Parliament so that Kenyans can be saved from the current problems that we are going through because of the uncontrolled way of accessing data.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. (Prof.) Oduol, you have the Floor.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I also would like to say at the outset that I support this Bill. As has been very clearly indicated and spelt out in the Bill, it is necessary that any country, any government, any

people or organisation that would like to manage effectively their business would realise that ideas alone without data and figures would not make a very big difference. Looking at the Bill, I want to thank the committee and indicate that there has been very critical thinking and useful information. Not only are we saying we would like to have a data protection commissioner, because we would like to have an office where the work would be handled from, but also we are coming up with regulations that would manage from the point of view of those who are involved in data processing and from the point of view of those who are going to control this.

The Bill clearly takes into account the management of data as not only a legal matter but a matter that concerns a diverse array of issues. As we have heard here, it deals with issues that relate to finances, when we are talking about banks; it deals with issues of employment, when we are looking at factories and other kinds of bodies; it will indeed deal with many other areas from which we get information for public management. Therefore, I would like as I support this Bill to indicate that I do so knowing that it is not only going to address a very pressing matter, from both public and personal perspectives, but indeed that the Bill has taken into account to help us see that there are principles and obligations that we would need to look at depending on whether we are dealing with personal data or public data. That will also ensure that we find grounds that will prevent the misuse of personal data. Further, if we were to find that there would be those who want to try and escape responsibility or take advantage so that the law and law enforcement agencies would not be able to catch up with them, it is clearly stipulated that this is something that would be taken care of.

It is a good thing that sometimes you could be a professor and then you end up being a student. Once upon a time, I was a professor and the Leader of the Majority Party, Hon. Duale, would look at me with a lot of respect and I would have to understand that I was the one in charge. However, in this House, there is a way in which I have become a very good student. I understand that there is a sense in which when we are discussing a Motion and what I am talking about, to a large extent, has already been shared, then I only agree with what has been said. I support this Bill. I would like to stop at this point to enable other discussions to take place.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well summarised, Professor. Seeing no further interest in this debate, I call upon the Mover to reply.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. I really want to thank the Members who contributed immensely to this very important piece of legislation. The principal object of this Bill is to give effect to the right to privacy as provided for in Article 31(c) and (d) of the Constitution by setting out the requirements and the mechanism for the protection of personal data processed by either public or private entities.

Hon. Temporary Deputy Speaker, further, this Bill outlines and gives priority to key principles that should govern how we process personal data by any entity while setting out the rights of data subjects and the duties of data controllers and processors.

I am sure when we slate it next week for the Committee of the whole House Members will come with amendments that will protect it. However, I want to say it here again, as I moved this afternoon, that there is an element of the national security data and interest of our country so that both the Chair and myself will bring amendments to safeguard the interest of our national security.

I beg to reply.

The Temporary Deputy Speaker (Hon. Omulele): Very well. Hon. Members, for good reason, I will direct that the next necessary steps with regard to this particular order be undertaken at such a date as the much will be set out in the Order Paper.

(Putting of the Question deferred)

Hon. Members, the Speaker had given direction that there will be Zero Hour at 6.30 p.m. It is about four minutes to that time. However, I have also heard Hon. Wario's concern. I would only beseech Hon. Members that this appears to be a very important matter, but also emotive and probably very sensitive. I would kindly beseech Members that as you contribute, kindly try to restrain yourselves so that we do not raise temperatures of our constituents and the people who are affected so that they do not go after each other, but rather we try to bring them together. I will therefore, direct that we move on into the Zero Hour.

Hon. Wario, you have the Floor.

ZERO HOUR

MOTION FOR ADJOURNMENT UNDER SO NO.43

DESTRUCTION OF PROPERTY AND DISPLACEMENT OF PEOPLE

Hon. Ali Wario (Bura, JP): Asante, Mhe. Naibu Spika wa Muda. Mbeleni nilisimama kwa Kifungo 43 cha Kanuni ya Bunge kuomba fursa ili nizingumzie tatizo linalokumba watu wangu.

Mnamo tarehe 22 na 23 za mwezi huu, National Police Service pamoja na Serikali Gatuji ya Kitui, asubuhi na mapema, walivamia vijiji vitatu ikiwemo Inyali, Kiwanja na Kalalani. Walibomoa miji na nyumba zaidi ya elfu moja.

Naibu Spika wa Muda, ninapozungumza sasa hivi, kuna watu zaidi ya elfu tano ambao nyumba zao zimebomolewa. Hawana maji, chakula wala mahali pa kulala. Wanakaa chini ya miti. Shule za Umma tatu zikiwemo shule ya Inyali, Did-Ade na Kalalani zimebomolewa.

Naibu Spika wa Muda, iwapo wafugaji na wananchi hao wamefanya hatia, ni mahakama gani imetoa amri ya kubomolewa kwa nyumba zao? Ni mahakama gani imetoa amri ya kubomoa shule ambazo watoto wa Taifa letu la Kenya wanasomea? Ninavyozungumza sasa hivi, Wakenya wanang'ang'ana na watoto wao wafanye mtihani. Lakini kwingine, watoto wa Inyali, Kiwanja na Kalalani hawana mahali wanaita shule. Hii ni kwa sababu Inspekta Mkuu wa Polisi akishirikiana na Gavana wa Kitui wamebomoa shule zao.

Mheshimiwa Naibu Spika wa Muda, msafara wao hauishii hapo. Wao wanaelekea miji inaitwa Kaniki, Gurujo na Basahargesa katika eneo langu la Bunge. Tulipouliza ni kwa nini shule zilibomolewe tulielezwa maneno mawili: Kwanza, niliambiwa kuwepo kwa wafugaji katika sehemu hiyo ni tishio kwa usalama wa jamii jirani.

Pili, tuliambiwa eneo letu litafanywa mbuga ya kitaifa ya wanyama. Sasa mimi nimeeduwaa. Je, unabomoa nyumba elfu moja ili kuruhusu wanyama waishi? Unahamisha wanadamu na kupeana fursa kwa wanyama! Miaka arobainne wakati watu wakiishi hapo, mbuga ya wanyama ilikuwa wapi? Ni dhuluma ilifanyika dhidi ya watu wangu. Dhuluma imefanyika Kalalani, Kiwanja na Inyali. Ni dhuluma isiyostahili kufanyiwa kwa mwanadamu yeyote katika

Taifa la Kenya. Ni kwa nini nyumba zao zimebomolewa na leo wananyeshewa mvua? Ni kwa nini Inspekta Jenerali wa polisi aruhusu tukio kama hilo kufanyika?

Ninazungumza leo nikitaka shughuli hiyo isimamishwe mara moja. Oparesheni ambayo inafanyika katika sehemu ile isitishwe na serikali ijenge upya hizo shule. Sharti serikali iwalipe ridhaa walioathirika.

Asante.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, everyone who will speak after him will have three minutes only. We shall start with the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I want to speak first because I want to bring emotions down.

We are the leaders of this country and we are supposed to offer solutions. I remember we sat in a meeting with officials from the Ministry of Interior and Coordination of National Government in the presence of leaders from both counties. The chair of the meeting was the CS. Present were also the Governors of Tana River, Garissa and Kitui. Garissa County was present because we share a border with Kitui. We never agreed that there will be demolitions. On the contrary we agreed to go and do peace meetings so that our people would live together. Those from Kitui, Tana River, Garissa, Wajir, and Mandera live together as brothers and sisters. I think it is wrong for state agencies to go and demolish structures. There is a better way of doing it.

The mandate of the National Police Service is not to demolish schools and homesteads. You can choose a friend but not a neighbour. The people of Tana River and Kitui counties have lived together for many years and will do that for many more years to come. Neither of the two communities can be transferred to another part of Kenya. I ask the leadership of both counties not to take that route of Hon. Charity Ngilu. She has history. A video is going round. Politically, right now she is doing badly in Kitui County. I know her because I have been with her since the 10th Parliament. She wants to use that kind of politics of ethnicity to get support. I had a chat with the former Vice-President, Hon. Kalonzo Musyoka, during the Mashujaa day and we agreed that there is need to bring our people together. When I was the Member of Parliament for Dujis, I used to share the widest boundary with Hon. Kalonzo Musyoka. At that time, he was the MP for Mwingi North. We lived together.

So, I ask Hon. Members to look for solutions. I agree with Hon. Wario that the NPS has no mandate of destroying property and risk lives of the citizens of this country. The Inspector-General must be told in very clear terms that his action was wrong and those people must be compensated.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. (Dr.) Rachael Nyamai.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Speaker. I would like to make use of my three minutes, but what I want to say cannot fit in those minutes. First of all, the places Hon. Wario has mentioned are in my constituency and people have been killed there. I have buried 25 people and I do not know how many more Hon. Wario has buried. Over 100 people have been killed in Kitui South by thugs and not by people from another community. We are not talking about a community.

Recently, seven schools and health centres were closed. There are attacks, killings, rapings, maiming and destruction of property happening every day. When people talk about Inyali, I am surprised because it is right inside my constituency and the people living there are not our neighbours. I gave you time to speak, so I would also like to speak. The seven schools

which were closed are known by the Government. This is not about communities fighting each other but about people living in a game reserve where there are no chiefs, assistant chiefs or *mzee wa mtaa*.

People have their own rules and regulations. When a boy goes there they break his right hand. If given an opportunity, I can bring over 20 children whose right hands have been broken. The people who hit our children in Garissa University were traced to Inyali and this is known by the Government. The security of this country cannot be discussed when we bring politics to a serious matter like this one. This is a matter which should be undertaken the way the CS has decided.

This is not an opportunity for you to attack the Inspector-General because he has done the right thing. It is also not an opportunity for you to bring politics to a person's position, yet he has not settled down in office. I have confidence in this Government that our children in universities will not be attacked anymore by people from my constituency living in places like Inyali, Kiwanja Ndege and Kalalani. The schools they are talking about are not registered. The School in Inyali is right inside my constituency and only teaches Madrassa. Show me a child who has done an examination in that school. When a Government makes a right decision to save its people, let us get politics out of that and give the Government an opportunity to save Kenyans. It should not be people from Kitui, Tana River or any part of this country. This is about security...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Guyo Wario Member for Garsen, you have the Floor.

Hon. Ali Guyo (Garsen, JP): Asante sana, Mheshimiwa Naibu Spika wa Muda. Ninatoa shukrani zangu kwa ndugu yangu Wario kwa kunipatia fursa hii. Kwanza, watu wetu ndio wamedhulumiwa na serikali bali sisi ni Wakenya. Sehemu ambayo ametaja Kalalani imekuwa hata kabla huyu Mhe. azaliwe. Kwa hivyo, akidai Kalalani iko kwake anatushangaza.

Huko Tana River tuko na *game reserves* nyingi sana kama nusu ya *Tsavo National Park*, *Kora National Reserve*, *Tana Primate Reserve* na *Kipini Conservancy*. Tuko na *game reserves* na *conservancies* zaidi ya nusu ya Tana River. Sisi tunaishi vizuri na majirani wetu. Hata ndiyo maana mara nyinyi Tana River humpigia Kalonzo Musyoka kura kwa sababu ni jirani wetu. Sasa Mhe. Nyamai, IG Mutyambai ambaye ametoka hiyo sehemu pamoja na Governor Charity wamechukua nafasi hii kuwadhulumu watu wa Tana River.

Mama anafaa kuwa na huruma lakini huyu ameonyesha wazi hana huruma. Saa hii wamama wenzake na watoto wao wako kwa baridi. Lakini yeye anaongea hapa kama wale ndio wauaji. Je, watu wa Kalalani ama Inyali ni wauaji? Watu wa Tana River ni wakarimu sana. Lakini huu ukarimu wetu usichukuliwe kuwa uoga. Sisi tunasema kwamba Serikali ichukue hatua na Mutyambai ajiuzulu kwa sababu hafai kuwa *Inspector-General* wa Polisi. *Ametake sides*. Kwa vile Mhe. Nyamai na Mhe. Charity wanatoka kwa jamii yake, wameshirikiana kukandamiza watu wa Tana River. Kwa hivyo, Mutyambai kwanza ajiuzulu na Serikali ichukue hatua dhidi yake.

Asante sana.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Rindikiri Murwithania, the Member for Buuri, you have the Floor.

Hon. Mugambi Rindikiri (Buuri, JP): Thank you, Hon. Temporary Deputy Speaker. I think this matter is taking another direction. There is the issue of the boundary. Hon. Nyamai is claiming that this area belongs to her constituency. Hon. Wario is claiming it is in his constituency. It is becoming very difficult for us because we do not know who is telling us the truth. We know there is destruction that has taken place. There is no responsible government that

has the guts to destroy property. The Government is supposed to take care of human beings, animals and anything that is within its jurisdiction. I really would like to plead with Hon. Members. I can see the emotions among some of us. We do not come from Tana River. I do not come from Kitui. Like the Leader of the Majority Party said, we need to be sober with this matter because it is very sensitive.

I am concerned about the activities of the police because I have seen them crossing into jurisdiction of other police officers. We have issues that involve us and Isiolo County, where policemen from Isiolo cross over to my constituency, destroy property and go back. So, it is a common thing that is coming up. Surely, even if these schools and villages are really in Tana River or in Kitui, the issue is humanity and animals have been affected. It is very unfortunate that the police are involved. So, I urge the leaders to deal with the issue of the boundaries first and sit down the two communities, just like we have sat with the people of Isiolo and sorted out much of the problems. I can see my neighbour saying we have not. It is very unfortunate because she is my pivot, both here and out there. Anyhow, I think the boundary conflict is becoming an issue in many communities in this country. That is why the Ministry of Interior and Coordination of National Government should take responsibility when people fight. Their first responsibility is to ensure that there is peace and harmony between communities.

So, I plead with my colleagues to support. I can hear Hon. Wario's concern.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now hear Hon. Duale Dahir, the Member for Dadaab.

Hon. Mohamed Duale (Dadaab, KANU): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Let me start by saying that what has happened in Inyali, Kalalani and Kiwanja Ndege is actually a serious violation of human rights. I am not concerned whether that area is in Kitui County or in Tana River County, but what I want to...

Hon. Makali Mulu (Kitui Central, WDM-K): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Makali, there is nothing completely out of order. You will have an opportunity.

(Hon. Makali Mulu spoke off record)

The Temporary Deputy Speaker (Hon. Christopher Omulele): There is no information here. Hon. Makali, I will give you an opportunity after Hon. Dahir finishes his submission. Let him do his speech.

Hon. Mohamed Duale (Dadaab, KANU): Thank you, Hon. Temporary Deputy Speaker, for protecting me. I do not understand why somebody will say that this in a park while there are settlements which have been there for a long time. If we have laws in this country, did the Inspector-General of Police have a court order to do what he did? This is a country of law and order. We cannot allow somebody to take the law into their own hands and go and destroy property, leave people homeless and they suffer because of somebody's indiscreet decision. It is important that the people who did this are brought to book and taken to task. If they are civil servants, they should be laid off so that they can answer those issues in a court of law.

In this nation, we live together in many places. There are many people from Kitui County living in my constituency and in Garissa County. There are more than 1,000 voters from the Kamba community in Dadaab. Hon. Duale will also attest that there are more than 3,000 Kamba voters in Garissa. If today, for example, somebody demolishes their houses, is that in

order? That is exactly what has happened. Let us not incite the emotions of people in this nation. We need to promote living together harmoniously. We do not want to polarise people because the economy and the people of this nation depend on peace and tranquility.

With those few remarks, I condemn those acts.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Good, Hon. Daktari. We need to live peacefully with each other. Hon. Makali, what was so urgent? Hon. Members, there are almost 25 Members who would like to speak. Just pray that you will have the three minutes.

Let us have Hon. Makali.

Hon. Makali Mulu (Kitui Central, WDM – K): Thank you, Hon. Temporary Deputy Speaker. We have just concluded discussion on the Data Protection Bill. I want to share facts. We had a meeting where Hon. Duale, Hon. Kolosh, the Member who has just moved the Motion, Hon. Rachael, the three governors and I attended. We must set the record straight.

First, we are not talking about communities. We are talking about thugs who have gone into a national game reserve and are harassing Kenyans and more so, our people.

(Hon. Ali Guyo spoke off record)

Hon. Makali Mulu (Kitui Central, WDM – K): Secondly, we are not talking about... I gave you your time to talk, you should let me talk. You had your time.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wario, just hold your horses. We all agreed... He has three minutes. Let him finish.

Hon. Makali Mulu (Kitui Central, WDM – K): Hon. Temporary Deputy Speaker, in Kitui Central where I am the Member of Parliament, there are more than 2,000 Somali voters who vote for me. If you go to Mwingi where Hon. Mulyungi is MP, there are over 2,000 Somali voters. They have no problem. We are not talking about people who are in towns or urban settings and doing business. We are talking about camel herders who have come to a game reserve and are causing havoc to our people. We agreed, and that is why it is unfortunate that I see a level of dishonesty which I do not accept. In that meeting where all of us were present, we agreed that every Kenyan - including the Kamba – should leave the game reserve. We agreed on that.

The second thing we agreed on was for the Government to provide an alternative source of water and pasture for the camel herders as they leave the game reserve. We are not talking about people who are on their own land. I assure my friend that if there is anybody who has been removed from their private land and not the game reserve, even we as leaders from Kitui are willing to sit down and settle the matter. We will not allow anybody to be in the game reserve so as to harass our people where there is no chief, assistant chief or village elder. We cannot accept that. The herders should leave our county. We live with our brothers in an urban setting without any problem.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Lentoimaga Musa.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. This is not about Kambas or Somalis. It is about misapplication of the law. It is about bias. When Madam Ngilu said that she would unleash terror against other Kenyans in her county, the whole Government went there to protect her. They are demolishing schools now. Pastoralists are taken like non-Kenyans. Fifteen people have been killed in my constituency in the last one month. No single police officer has gone to arrest the

culprits who killed those people. Seven hundred and fifty goats and 600 cows were stolen. No recovery has been made, and yet there are 500 police officers in that region. They do not bother to go and look for the stolen cows and goats. However, when one person - and I am not saying that one person's life is not important- is killed in Kitui County, the whole country goes there. Why should you demolish houses? It is inhuman and evil. Since the Inspector-General came to power, we have seen a very different National Police Service. We used to have a fair NPS before Mutyambai took over. The NPS is a bit biased now and he should resign.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mutemi, you have the Floor.

Hon. Gideon Mulyungi (Mwingi Central, WDM – K): Thank you, Hon. Temporary Deputy Speaker. Thank you, Hon. Duale for supporting me. You can be my voter. I sympathise with Hon. Wario who is my neighbour in my constituency. I know what he is going through. If it was my town which was destroyed, I would also be agitated and raise the same issues.

Historically, Kambas have no problem with Somalis. We have no problem with Oromos. I have no problem with Hon. Duale who is my neighbour. I also have no problem with Hon. Ali Wario and the other Hon. Wario who is a Member of Wiper Democratic Movement of Kenya (WDM-K) and short like me. The problems we have are criminals and herders who cross boundaries. They come and graze their camels on private land and destroy homes. They kill and maim. That is the problem we have. As Hon. Makali Mulu has said, I have more than 500 Somalis who vote for me in my constituency. We have too many Kambas in Hon. Duale's constituency who vote for him. We exchange votes. So, we have no problem at all. The problem which Hon. Wario is experiencing now is some people who are orchestrating criminality. The police officers think that criminality is coming from the areas which have been destroyed. Therefore, this is an issue which as leaders, we need to sit down, talk and agree so that we do not allow communities to hate each other.

Thank you, Hon. Temporary Deputy Speaker.

Hon. Junet Nuh (Suna East, ODM): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Junet, what is out of order? He whispered to the Hon. Temporary Deputy Speaker that he lost an uncle in these skirmishes. That is why I have given him a chance to contribute.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to contribute to this matter. We should separate issues. There are people who are called herders who invaded the game reserve. There are people who live in the villages. I was told that there are people who have had houses there for over 30 years and they were demolished. We are in a country that is governed through the rule of law. When you want to demolish people's property, you must give them notice unless they are on riparian land like what we see being demolished here in Nairobi where they block the rivers. That is a piece of land that somebody has occupied for the last 30 years and he has built a storey building. Where were these people who have now come to claim that this is a game reserve? I totally support the idea of fighting criminals. If there are criminals hiding within the game reserve under the guise of being herders, the Government must fight them because the security of Kenyans is paramount. But you cannot use expansionist methods to criminalise other people. There are mosques built there. Where were people when mosques were being built? The story that is in circulation in town is that all that land has been grabbed by Hon. Nyamai and that she has taken over that land for her personal use. It is said that she has a title to that effect.

(Hon. Aden Duale spoke off record)

We cannot substantiate the obvious.

The Government must govern the people of Kenya through the rule of law; otherwise, tomorrow we will have other people evicted elsewhere in the country. My parting shot is that we must adhere to the rule of law. Short of that, we will witness genocide in this country.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now hear Hon. Mbai.

Hon. Nimrod Mbai (Kitui East, JP): Thank you, Hon. Temporary Deputy Speaker. I appreciate the short time I have been given to discuss this matter. First of all, let me declare that I was elected on the platform of restoring security in Chamatu, Endau, Malalani and Mutha. Inyali in Mutha.

The operation that was undertaken by the police was a culmination of a meeting that we had as MPs with the Governors of Tana River, Kitui, and Garissa. We discussed the matter and agreed on several issues. In the same meeting, the Cabinet Secretary, Ministry of Interior and Coordination of National Government, Dr. Matiang'i, was given ago ahead to remove all the people who were operating in the game reserve.

(Hon. David ole Sankok walked from his place to the aisle, gestured and spoke off record)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, you are being disorderly! You cannot take over this Parliament. You must have respect for Parliament.

Hon. Nimrod Mbai (Kitui East, JP): My friend, just walk away. We are discussing serious matters. This is not a Maasai issue!

The Temporary Deputy Speaker (Hon. Christopher Omulele): You cannot shout in the Chamber. Hon. Sankok, you are out of order!

Hon. Nimrod Mbai (Kitui East, JP): Get out of this place, please. We are on serious business.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Proceed, Hon. Mbai.

Hon. Nimrod Mbai (Kitui East, JP): Thank you, Hon. Temporary Deputy Speaker for protecting me.

First of all, we should not politicise this matter to the extent of attacking the person of the Inspector-General of Police based on the ethnic community he comes from. The police operation that was undertaken in Inyali in the Mutha area that borders Tana River was a cross border security operation. It was co-chaired by the county commissioner of Kitui County and the county commissioner, Tana River County. If Members of Tana River County are to blame, then the blame should be labeled on the County Commissioner and the County Police Commander, Tana River County and not the Inspector-General of Police.

Inyali area is a gazetted game reserve. There are human settlement or police operations there. The game reserve is guarded by the Kenya Wildlife Service. The police never got into Inyali. It is not within the game reserve. The police did not use bulldozers. The County Commissioner is not in charge of any bulldozer. So, saying that the Inspector-General of Police used bulldozers to bring down schools and private houses is a total lie before the House.

Lastly, there is a problem that needs to be...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Hiribae, the Member for Galole, you have the Floor.

Hon. Said Hiribae (Galole, FORD-K): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity. The areas that have been mentioned in this statement, that is Inyali, Kiwanja and Kalalani are all in my constituency.

(Applause)

Hon. Temporary Deputy Speaker, another thing I want to confirm to you is that the areas we are talking about are not in a game reserve because there is no way Kitui County can own a game reserve in Tana River County. It is not possible.

The other thing I wanted to confirm to you is that the damage that has been done is enormous. It is totally unacceptable. For that reason, therefore, I have decided to do a petition to this House so that the people who caused this damage can be held responsible. We will make sure that my people, who have been displaced and have lost property, are compensated fully.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, this is a very emotive issue. It is good that Members have ventilated on it. It requires deeper consideration by the leadership of this country, which all of us here constitute. It is also good that Hon. Hiribae is thinking about bringing a petition. This is an issue that needs a little more attention than just discussion here at Zero Hour. We have run out of time.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.00 p.m., the House stands adjourned until Wednesday, 30th October 2019, at 9.30 a.m.

The House rose at 7.00 p.m.