

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 21st March 2018

The House met at 2.30 p.m.

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

PRAYERS

PETITION

AMENDMENT TO THE CONSUMER PROTECTION ACT

Hon. Speaker: Hon. Members, I have Petition No.14 of this year to convey. Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I, therefore, wish to convey to the House that my Office has received a petition signed by Mr. Allen Waiyaki Gichuhi of ID No.11061762 from Wamae & Allen Advocates.

Hon. Members, the Petitioner avers that Article 46 of the Constitution recognises and upholds the protection of consumer rights especially from public and private entities and that Part VII of the Consumer Protection Act has inherently failed to protect consumers from oppressive lending practices by banks and other credit lending institutions, hence going contrary to the spirit of the Constitution.

The Petitioner further contends that various Acts under which credit services are provided namely the Microfinance Act, 2006; the Housing Act, Cap 117 and, Section 44A of the Banking Act have limitations and are largely unregulated, and they do not protect borrowers from unscrupulous lenders and shylocks.

The Petitioner, therefore, prays that the National Assembly:

(i) intervenes and considers amending the Consumer Protection Act to include the in duplum provisions to apply to all credit providers and credit agreements, notwithstanding the nature of the parties to the credit agreement; and,

(ii) makes any other order or direction that it deems fit in the circumstance of this matter.

Pursuant to the provisions of Standing Order 227, this Petition, therefore, stands committed to the Departmental Committee on Finance and National Planning for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioners and the House in accordance with Standing Order 227(2). May I also encourage the Committee to propose a Bill for consideration by the House in addressing the lacuna in the three Acts of Parliament as raised by the Petitioner.

Hon. Members, in keeping with Standing Orders, if any Member is desirous of making comments on this, they can press an intervention button. I can see the Member for Kiminini. Do you want to say something?

Hon. Wakhungu: Yes. Thank you, Hon. Speaker. The Petition is timely. In the last Parliament, we passed the interest cap law. We expected the demand for loans to go high in respect to the law of demand and supply. You know, when the price goes down, under normal circumstances, you expect the demand to go up.

Unfortunately, instead of the banking industry supplying more capital or money to the people who want to borrow, they have been so restrictive that even the demand has gone down. It is true. Some time back, one of my constituents went to borrow some money from a micro-finance institution. I was so shocked that the percentage interest was about 25.

I support the Petitioner. In the same spirit of the banking industry, we should also extend it to the micro-finance institutions (MFIs). Those unscrupulous business people are taking advantage by over-charging and making super profits. As such, when it comes to profitability for those Small and Medium Enterprises (SMES), they cannot go anywhere.

Traditionally, the Petition should be there for 60 days. Mine is to request the relevant Committee to move with speed so that this issue can be concluded, if possible, in less than 60 days. If possible, we want to amend the Micro-Finance Institutions Act so that it can reflect the interest rate capping.

I want to thank the banking industry. I have seen the best lending rates have been reduced from 10 per cent to 9.5 per cent. That means one can borrow to the maximum of 13.5 per cent interest.

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. I support the Petitioner. Last week, the Central Bank of Kenya (CBK) reduced the lending rates to the Portfolio at Risk (PAR) banks to around 9 per cent. That means the bank interest should reduce to about 13 per cent. Therefore, we hope the banks will not delay in effecting those changes. This is because, for a long time, borrowers have sustained banks. It will be good practice if banks can follow suit and reduce their banking rates for the common man and businessmen.

With those few remarks, I support the Petitioner.

Hon. Speaker: I am not aware whether the Members who have placed their cards are for interventions or wanting to comment on this Petition or they are Members who decided to put their cards in the usual way. The early bird catches the worm. It is not about the House Petition. I can see the Member for Rarieda has placed his card at the top. I am sure it is not about this one. Just to point out, the Petitioner prays, among other things that, in considering the Petition, the Committee and the National Assembly considers the inclusion of the *in duplum* provisions in the various laws that have been mentioned. Those of you who might recall - I do not see many of you can recall - this had been introduced at one point by the late former Minister for Finance, Hon. Mwiraria. I think it was in 2006 or 2007. I think it is not a Petition that is just in the air.

Well, let us move to the next Order. The Petition stands committed to the Departmental Committee on Finance and National Planning.

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: I beg to lay the following Papers on the Table of the House:

The 4th Quarter Report of the Ethics and Anti-Corruption Commission for the period covering 1st October 2017 to 31st December 2017.

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June 2016, and the certificates therein:

- (a) Nyakach Constituency.
- (b) Mbita Constituency.
- (c) Kitutu Chache North Constituency.
- (d) Roysambu Constituency.
- (e) Dagoretti North Constituency.
- (f) Suna West Constituency.
- (g) Bomachoge Borabu Constituency.

If you allow me, I will make a comment on one of the Papers I have just laid. It is the 4th Quarter Report of the Ethics and Anti-Corruption Commission for the period covering 1st October, 2017 to 31st December 2017. While the Ethics and Anti-Corruption Commission (EACC) has been blamed for not doing its work, it religiously continues to send to Parliament its quarterly Reports as required by law. Those Reports normally contain summary of cases that are forwarded to the Director of Public Prosecution (DPP). Why I am so much concerned about this Report is that it has 40 files which were forwarded to DPP for prosecution: 27 files were recommended for prosecution; 24 were prosecuted and 10 files were recommended for closure. Some of the cases considered under this period of review include cases touching on Members of this House. My thought is to request the Departmental Committee on Justice and Legal Affairs to take time to note these reports and compile a report for deliberation in this House, so that we can all appreciate the work of this institution and deal with the matters they have cited in this Report.

Hon. Speaker: Very well. Next Order.

NOTICE OF MOTION

ESTABLISHMENT OF CIVIL REGISTRATION CENTRES IN EVERY CONSTITUENCY

Hon. Speaker: Member for Gilgil?

Hon. (Ms.) Wanjira: Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that every birth in Kenya must be registered by the Department of Civil Registration and documented through a Birth Certificate; further aware that subsequent registration of citizens and acquisition of documentation such as identity cards and passports, school admissions, registration of exams, and access to opportunities such as employment depends and relies on Birth Certificates; deeply concerned that the Department of Civil Registration Services has over time experienced backlogs in the issuance of Birth Certificates as a result of among other factors, inadequate personnel, unwillingness to embrace Information Communication and Technology (ICT), inadequate funding, and inadequate materials used in registration of persons; further deeply concerned that registration services are not easily accessible to majority of Kenyans owing to the few registration centers in place, this House urges the Government to consider establishing Civil Registration Centres in every Constituency and ensure full implementation of the Kenya Citizens and Foreign Nationals Management Service Act 2011.

Thank you, Hon. Speaker.

Hon. Speaker: Whose intervention is this? The Member for Emurua Dikirr, you had placed your card for intervention. Do not become slaves of these mobile phones. Just tell your constituents that you are in the Chamber between 2.30 p.m. and 7.00 p.m. I am sure they will

understand unless they only want to keep communicating with you all the time. I normally see so many of you Members using them. Even when you bend down, I know what you are doing. I know even those of you who retreat to the room behind. Just tell your constituents: "Because you sent me to Parliament to do something, just allow me to do it. After 7.00 p.m., we can talk until tomorrow morning." Parliament was there even before the advent of mobile phones and Members still served their constituents. Tell them: "Please, Parliament sits between specific hours." That is so that they can give you room to breathe.

I can see that many of you are under a lot of stress because you want to contribute to debate, but suddenly your constituents are calling and you think that they are so important that if you do not answer their calls, you are at risk. Just tell them to call you later.

Next Order.

BILLS

Second Readings

THE NAIROBI METROPOLITAN AREA TRANSPORT AUTHORITY BILL

(Hon. A.B. Duale on 13.3.2018)

(Resumption of debate interrupted on 21.03.2018)

Hon. A.B. Duale: Hon. Speaker, I rise under Standing Order 53(3), which says that despite Paragraph (2), the Speaker may, on the request of a Member, defer the putting of a question to the following day, in which case...

Hon. Members: Put the Question! Put the Question!

Hon. A.B. Duale: Hon. Speaker, I need your protection.

Hon. Speaker: Order! Order, Members!

Hon. A.B. Duale: Hon. Speaker, as a seasoned Leader of the Majority Party, I knew what was going on and I decided to plan ahead. Standing Order 53 (3) says:

"Despite Paragraph (2), the Speaker may, on the request of a Member, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put".

Hon. Speaker, this is a very important and controversial Bill and, as the Leader of the Majority Party and owner of the Bill, I need to go and do further consultations with the Government. I ask you to allow me to go and do that consultation. I am sure that the Standing Orders....

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members!

Hon. A.B. Duale: Hon. Speaker, Members must respect the Standing Orders. The Standing Orders are the Bible and the Quran that we use in this House. I rise under Standing Order 53(3) and request for deferment of putting of the Question so that I can do further consultations and come back when the House is ready. The Question can then be put.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, most of you never take time to read your Standing Orders. Look at Standing Order 53(3). Most of you, including the Leader of the Minority Party, who appears like he wants to address me--- What do you want to address me on? The Standing Order does not even say that the House shall be requested. We must follow our rules. Paragraph (3) says that the Speaker shall then appoint the time the following day.

(Loud consultations)

Hon. Speaker: Order! Order, Members! It is part of my responsibility and duty to ensure that the Standing Orders are followed. If it says that the Speaker at the request – and the wording is “shall”. It says “the following day”. Hon. John Mbadi, just look at paragraph 3. The Leader of the Majority Party has explained that the Bill is in his name, not having originated from the constituents of Garissa Township. He has just said that he wants to do further consultations. What you are saying, notwithstanding what you are shouting wherever you may be, and which is grossly out of order, anyway--- It is out of order.

The Leader of the Majority Party, having explained the reasons and the Standing Orders being very clear that it is the following day - the following day is Thursday 22nd March and the House shall sit from 2.30 p.m. Having concluded with the rest of the business in the Order Paper, the Question on this Bill will be put for the Second Reading. The day when the Question will be put will be Thursday, 22nd, which is tomorrow at 2.30 p.m., when the House reconvenes. It is as simple as that. So, there is no debate. The Standing Orders do not contemplate a debate. So, the request by the Leader of the Majority Party is granted. The Question on this Bill will be put tomorrow, Thursday 22nd March 2018 at 2.30 p.m. It is so ordered.

Hon. Ng’ongo: On a point of order, Hon. Speaker.

Hon. Speaker: There cannot be a point of order on a decision from the Chair. You need to read your Standing Orders. I do not want to start throwing everybody out because they do not want to read the Standing Orders.

Hon. A.B. Duale: Thank you, Hon. Speaker for that guidance. I can do consultations between now and tomorrow before 2.30 p.m.

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! Those of you who are withdrawing, please, do so without disrupting the proceedings of the House.

Hon. A.B. Duale: Hon. Speaker, people came here for one business. They must be consulting some people as I consult the Government.

Hon. Speaker: Next Order.

MOTION

APPOINTMENT OF MEMBERS TO APPOINTMENTS COMMITTEE

Hon. A.B. Duale: Hon. Speaker, they are also doing consultations. They must be consulting some people as I consult the Government.

Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Standing Order 204 and the resolution of the House of Thursday, December 14, 2017 appointing Members to the Committee on Appointments, this House further approves the appointment of the following Members to the Committee:

- (i) The Hon. Peter Kaluma, MP;
- (ii) The Hon. Tom Joseph Kajwang', MP;
- (iii) The Hon. Gertrude Mbeyu, MP;
- (iv) The Hon. Esther Passaris, MP;
- (v) The Hon. Joshua Kimilu, MP;
- (vi) The Hon. Eseli Simiyu, MP; and,
- (vii) The Hon. Oku Kaunya, MP.

Hon. Speaker, these are Members from the Minority Party. I want to thank the former Prime Minister. He has forced the leadership to bring these names. We told them to bring, they refused; but as you know, when 'Baba' speaks, things move. Hon. Mbadi, Hon. Junet, and the rank and file membership of NASA are listening. That is why when we were vetting the Cabinet Secretaries, these Members were not in the Committee. Among these Members---

(An hon. Member crossed the Floor without bowing to the Chair)

Hon. Speaker: Order, Members! That lady who is walking out, stand where you are! How many times do I have to keep telling Members that you cannot just walk around here? And the other Member is pulling you to her side. Can you not do without shaking hands? Go to the door, bow, then come and greet her as you wanted to.

(The hon. Member went to the Bar and bowed to the Chair)

Hon. A.B. Duale: Hon. Speaker, this is the whole confusion of the Nairobi Metropolitan Area Transport Bill. It has been very confusing this afternoon.

Hon. Speaker, amongst these Members, there are two Members who are automatic Members of the Committee on Appointment. They are Hon. John Mbadi, the Leader of the Minority Party and Hon. Junet Mohamed, the Minority Whip.

The historic handshake has made my life and the life of Parliament easier. When 'Baba' says that you participate in the Appointment Committee, they will participate. Therefore, at this juncture, I want to thank the former Prime Minister. If you get in the way of 'Baba', you will face the consequences. I was in ODM. I am a student of 'Baba'. There are people who think that they can get in the way of 'Baba'. If you are in his party, you either leave the way Hon. Ruto and I left or you toe the line.

Today I am happy because these are good Members. This Committee is chaired by the Speaker and deputised by the Deputy Speaker. It has leadership and Members. It is a very crucial and important Committee. Before the end of this week, we will have a new Attorney-General. We have a meeting today at 4.30 p.m. once this House approves these new Members. Tomorrow, we have the public vetting of the Attorney-General so that we can all move together as a House. It is good so that on matters of national interests as 'Baba' and the President have said; we move together. As we move, I am sure there will be casualties from the other side and not from Jubilee Party. Those casualties are not the first ones.

If you read the history of Kenya, in 1963, 1992, 1997, 2002, 2007 and 2013, there have been many casualties since Independence. If you are a casualty, you just need to relax for a few

days and you will get back your bearing. The person who caused you that injury might also be injured in the subsequent match. This is a very important Procedural Motion. We do not need to dwell much on it because the Metropolitan Bill is no longer on the Order Paper. We will go to the Cybercrimes Bill and we deal with the matter that is important to the country.

I beg to move and ask the Leader of the Minority to second. Today, the Deputy Leader of the Minority is seated next to him. He has realised that the signs are not good.

(Laughter)

Hon. Speaker, Hon. Mbui has not been here. However, after what happened yesterday, every leader is taking his position in the House. If you are not there, you will be a casualty. He is my old schoolmate. We were with him in Moi Forces Academy. Please, be loyal to Hon. Mbadi and 'Baba' and you will not go wrong. I also plead with Hon. Chris Wamalwa and Hon. Junet to follow suit.

I beg to move and ask Hon. Mbadi to second.

Hon. Ng'ongo: Thank you, Hon. Speaker. I rise to second this Motion. I remember you had earlier asked me to nominate our Members to this Committee on Appointments, but I declined and gave reasons. As a Coalition, we had taken a position. However, since then, some developments have taken place which we are all aware of. Right now, circumstances have changed. Contrary to what Hon. Duale, the Leader of the Majority has said, that 'Baba' has instructed: I do not really need to get instructions from 'Baba' because I always know what he would think or what he has in mind in every situation. I am sure that he is now okay if we would have our Members in the Committee.

Hon. Speaker, looking at the membership, you will realise that these are Members from the National Super Alliance (NASA) Coalition. I want to be very clear that NASA is still a coalition and those getting a little confused about this matter need to be informed that NASA remains a Coalition. I am the Leader of the Minority Party and I lead the NASA troops in this House. I know Hon. Duale was referring to some events happening in the Senate Chamber. I just want to ask my colleagues to focus ahead and forget what is playing out in another House. I do not anticipate any issues arising in the National Assembly. I want to lead a united team. In this list, we have four Members from the Orange Democratic Movement (ODM) party. We have a Member each from Wiper, FORD (K) and African National Congress (ANC). That is the way we will go. We will make sure that all the NASA affiliate parties are represented.

I consulted with my colleagues from these other partner parties before we brought the names to the House. I urge the House to support the Motion. There are no casualties likely to happen. I heard my friend Hon. Duale making my Deputy here jittery. I want to make my Deputy confident that his seat is safe and he should focus on delivering services to the NASA Coalition. We are rolling out in the coming days a programme on how we are going to oversee the Executive and the Majority side. We are going to play our role effectively. The only thing that is going to change is that we are going to co-operate on matters of national importance and major issues that are helping to move this country forward. We will definitely co-operate.

That does not mean that NASA has issues. We may be seeing a lot of things happening out there but, in the National Assembly, I want to assure you once again and assure our supporters out there that we will work together. If anything, NASA summit still exists. The NASA Coalition agreement also exists. These are the issues that come about concerning sibling rivalry which are manageable. However, it should also be given to us. Actually, Kenya and more

particularly we in NASA, should be a test case. We are an example to the world. It is very rare to find a coalition existing after an election for five years. We existed as a Coalition for Reforms and Democracy (CORD) in the Opposition for five years. I do not see anything stopping us from existing as the NASA coalition even for the remaining four and half years.

Hon. Speaker, I want to conclude there and ask my colleagues that we support these Members. I know Hon. Peter Kaluma and Hon. T.J. Kajwang are known lawyers. Hon. Eseli is someone with experience and is serving his third term in Parliament. We also have Hon. Mbeyu Getrude, Esther Passaris and Hon. Oku Kaunya. These are new Members but working together with these experienced Members including my Deputy and me. I just wanted to correct the Leader of the Majority Party. I think he forgot a bit that it is the Leader of the Minority Party and the Deputy Leader of the Minority Party who are automatic Members of this Committee and not the Whip. So, together with my Deputy, we will work. It is unfortunate that we only have the Attorney-General remaining to vet. Jubilee enjoyed themselves while vetting the other Cabinet Secretary appointees which is now water under the bridge. I am sure Kenyans will see some difference when the NASA team joins together with Jubilee in the vetting. Maybe, they will see what they missed, if we participated in vetting the Cabinet Secretaries.

Hon. Speaker, I second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker, I want to announce to the new Members that there is a scheduled meeting regarding the Committee on Appointments today in Room No.9 at 4.30 p.m.

Hon. Speaker: Next Order.

THE COMPUTER AND CYBERCRIMES BILL

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

Hon. A.B. Duale: Hon. Speaker, I beg to move:

THAT, the Computer and Cyber Crimes Bill 2017, be now read a Second Time.

This Bill seeks among many other things:

- (i) To provide for the offenses relating to computer systems.
- (ii) To provide for the timely and effective detection, investigation, and prosecution of computer and cybercrime.
- (iii) To facilitate international co-operation in dealing with computer and computer crime matters.

Hon. Speaker, the investigative agencies in our country have faced a number of challenges in dealing with crimes related to the usage of computer systems and technology.

Part one of this Bill contains the preliminary provisions and sets out the objects of the Bill *inter alia*:

This Bill will create a platform that will protect confidentiality, integrity and availability of computer systems.

- (i) It will protect programmes and data.
- (ii) It will prevent the unlawful use of computer systems.
- (iii) It will also facilitate investigative and prosecutorial agencies on how to deal with cybercrimes.

Yesterday, I watched the Director of Criminal Investigations on television saying that he needs legislative powers to deal with a matter which was raised by Hon. (Ms.) Sabina Chege. I do not know why she is not here. No, you are here. Today you must speak. You and many others, including Hon. Wamalwa, and I have been victims. So, this Bill will facilitate investigative and prosecutorial agencies with regard to dealing with cyber-crimes.

Finally, this Bill will also facilitate International Co-operation on computer and cybercrime matters because the crimes committed using computers are sometimes trans-border. This Bill will also give the platform and also facilitation for international investigative agencies so that they deal with matters on computer and cybercrime.

Part II of the Bill provides for the offences which are punishable under this Act. I want Members to look at that. If this House feels that the offences being investigated are adequate, that is good. However, if we feel we must increase the offence being investigated, I am sure the relevant committee listened to the stakeholders. The Chairman will give us the views of the stakeholders so that we ask ourselves whether the penalties prescribed in the Bill are adequate or not and also if we need to increase or reduce them. Those powers lie with this House.

So, Part II of the Bill provides for the offences punishable under the Act. The offenses created under this part include the following:

(i) Unauthorised access by infringing on security measures.

There are people who hacked the systems of Kenya Defence forces (KDF). They can hack the systems of the National Intelligence Service (NIS), government agencies and departments. So, there are penalties that any unauthorised persons who gets access by infringing on security issues, he or she will be liable for an offence under this Act. Unauthorised interference to a computer system, program or data, and unauthorised intersection of data from one computer system over the telecommunication system will attract a penalty.

(ii) Illegal devices and access codes.

There are people who use illegal communication systems. You remember the Chinese and Koreans who set up a communication centre in Runda in 2015 and who were involved in financial fraud in credit cards. So, we are talking about unauthorised illegal use of devices and access codes, pass words, unauthorised disclosure of passwords or access codes. If somebody steals or accesses your password, or access code he or she will have committed an offence. These offences are common in the financial, banking and security sectors. There are many cyber-crimes. We have heard of false publications and fake news. The other day, there were people who posted fake news when our father, the former President was in Israel, recovering from illness. Every day we see fake news. This Bill will deal with you if you get your daily income from creating fake news. Your days are numbered.

(iii) Child pornography.

There are countries if you go to and you want to access any pornography, the system rejects. A good example is United Arab Emirates (UAE) and China. Our children are not safe because they can access and watch nude photos and pornography videos. We must protect the family. We must protect our families. Protecting the family starts with our children. We should only allow systems that bar access to child pornography or any type of pornography.

(iv) Computer forgery.

There are people who transfer documents using the computer forgery.

(v) Cyber stoking and bullying.

We are the greatest victims of cyber stalking and bullying. We are normally threatened. Somebody sends you a message saying, "We will meet in 2022." He does not know whether he will reach there or

whether you will vie. Families are being threatened! With regard to bullying, it affects mostly female Members. Families are breaking up because there are people who are bullying others. I am sure Members will speak out. They discuss your wife and create stories. There is a lot of cyber stalking and bullying, hate speech and ethnic profiling. We must use the gadgets that we have for progression and in a responsible way. This part also provides for offences by a body corporate and confiscation of all the fortified assets.

Part III of the Bill provides for the investigation procedures, including search, and seizure of stored computer data upon obtaining a warrant from a court, which warrant shall be used. People could use your identity and name to access and use technology. They use your photo and other forged documents to con people. Hon. Sabina Chege has been a victim of this. They will tell you to send money so that they can employ you, or they will tell you that a certain Member of Parliament is giving out bursary, but you need to pay some fees. They are known and I am sure they are watching us. Your days are numbered.

The Bill gives power to a police officer to search without a warrant in special circumstances. Extremism and radicalisation by terrorist groups is done through computer. Computer sites are open and children are recruited. In fact, this Bill will help us in dealing with recruiters who are among us and those doing radicalisation. I have seen the Minority Whip has walked in. Before he came, I said that when Baba says right, you go right. If you disobey him you become the casualty and go home, if you belong to his party. That is the position I knew when I was in the Orange Democratic Movement (ODM). It is a very straight, like the Catholic Church.

This Bill talks about the creation of a central authority. Part V of the Bill will provide for the general provisions and Clause 42(1) on territorial jurisdiction states:

“(1) any court of competent jurisdiction shall try any offence under this Act where the act or omission constituting the offence is committed in Kenya.”

Criminals have devised new methods of committing crimes, through for example, child abuse, identity theft and online fraud. Banks in our country do not want to disclose but they lose billions of shillings every year through this kind of online fraud. There is serious money laundering that is going on in the country and all over the world. Let me also talk about cyber stalking where you harass, frighten and send threatening messages to people and their families.

Looking at the financial sector, since mobile money channels started every day for example, 7.5 million transactions go through the money transfers and Ksh2.9 billion goes through that system. The Kenya electronic payment system that the banks use and which we receive our salaries through, in the financial sector transacts, receives a volume of about Ksh100 billion on a daily basis. These systems are vulnerable to threats and this Bill is going to cure that. There are people who create a network of private computers where they put malicious software. I know the Vice-Chair of the Departmental Committee on Communication, Information and Innovation is an expert in that and they will control it.

There are people who earn their living through extortion by using this technology. They harass your family and run such stories for weeks. They have over one or two million followers. They create fake videos and ultimately you pay them to stop and that is how they earn their living. We are telling them that they cannot earn their living illegally. There are people who go to an accident or terrorist site and take pictures which are not good for the family and children and put this in WhatsApp groups. If you are administrator of a WhatsApp group and you are watching me, by the time this Bill is signed into law, there will be very few administrators of WhatsApp groups.

There are many bloggers who earn their living through these illegal means. We want the social media and main media to thrive and be very vibrant. We need a free society, but the social media, technology, phones, WhatsApp, face book, twitter, instagram and many other platforms must be used in a more responsible way. They must be used for the benefit of developing our country and better communication. In conclusion, the other day when I was having tea at the lounge, a Member said to me: “My friend, the day I was given my certificate but before I was sworn in, a blogger in my constituency posted that I am the most unpopular leader in that constituency.” He wondered because he had not been sworn in. I told him not to worry because he will have to live with them for the next five years.

Even if, they want to deal with us leaders, I have no problem, I am a public figure. But when they involve our families, brothers, wives, children, mothers and fathers, it becomes a problem. Colleagues let us fast track this law, debate, support it, look at the offences and add more where we feel a gap has been left. At the end of the day this law exists in the United States of America (USA), all Western and developed countries, so it is not unique.

This law also touches on the security sector and that is why the Chair of the Departmental Committee on Administration and National Security is here to contribute because they also talked to the security sectors but the Bill belongs to the Ministry of Information, Communications and Technology. We have experts like Hon. Musimba, who I think is here. I am wondering where the other Member, Hon. Osotsi, the former Secretary-General of Amani National Congress (ANC) is. I talk to party leaders and not small people. The party leader said he is no longer a Member of his party. Barrack Muluka is the Secretary-General of ANC.

Hon. Osotsi was complaining about this Bill and he is not in this House. I hope he will come and support it because he is an expert in that area. I think Hon. Musimba is around and he is a Member of the Committee. This is a solution to social problems. Colleagues, as I sit, I want to repeat that we must protect our children from child pornography. We must put codes that people of certain age cannot access certain information and material that is going to destroy their life. If my 10 year old child has a phone with internet and Googles nude photos, he will get them. You cannot do that in Dubai and many other countries like China, USA, Rwanda and Uganda. So, let us protect our families and children.

I beg to move and ask the Chair of the Departmental Committee on Communication, Information and Innovation to second. Three other Chairs played a very big role in terms of the security aspect and Hon. Koinange should be given priority. I ask Hon. Kisang to second.

Hon. Speaker: Hon. Kisang.

Hon. Kisang: Thank you, Hon. Speaker. I stand to second this Bill. The Computer and Cybercrimes Bill, 2017 is sponsored by the Leader of the Majority Party, Hon. Aden Duale, MP. It was read a First time on 10th October 2017 and subsequently referred to the Departmental Committee on Communication Information and Innovation for consideration and thereafter to report to the House.

The Committee placed an advertisement in the local dailies and wrote to the key stakeholders inviting them to submit their views on the Bill. Yesterday, I tabled the Report in the House and we had several meetings. I urge Members to pick it from the Table Office so that they can contribute meaningful. The Committee received 13 memoranda and held meetings with stakeholders who include the Kenya ICT Action Network (KICTANet), the Media Council of Kenya (MCK), the Centre for Intellectual Property and Information Technology Law (CIPIT), the Communications Authority of Kenya (CAK), the Kenya Private Sector Alliance (KEPSA), the Information Communication Technology Association of Kenya (ICTAK), the Information

System Audit and Control Association (ISACA), Kenya Chapter of ISACA, the Technology Service Providers of Kenya (TESPOK), Safaricom Limited and Article 19.

Article 19 is an association that is basing the issues on Article 19 of the Constitution. Last but not least, we met the Ministry of Information Communication and Technology. The other stakeholders were on issues on security. The Departmental Committee on Administration and National Security, headed by Hon. Koinange, also met some groups. He is going to report on what the stakeholders said.

I want to give a summary overview of the Bill, as the Leader of the Majority Party, has said. The Computer and Cyber Crimes Bill, 2017 seeks to provide for offenses relating to computer systems in order to enable timely and effective detection, investigation and prosecution of computer and cybercrimes. So far, in Kenya, we do not have such a law. That is why this Bill is timely; so that we minimise the crimes, in collaboration with other states, under mutual legal assistance agreements. The Bill proposes to regulate several concepts.

Clause 3 outlines the objects of the Bill as the protection of the confidentiality, integrity and availability of computer systems, programmes and data; prevention of unlawful use of computer systems, facilitation of investigation and prosecution of cybercrimes, and facilitation of international cooperation on the subject matter of the Bill. You know, there are some systems that are very critical in our country. We have systems used by the National Intelligence Service (NIS) and the Kenya Defence Forces (KDF) as well as the money payment systems. These systems are very sensitive. That is why it is important that they are protected.

Part II of the Bill prescribes various offenses and penalties. These include, among others, unauthorised access of a computer system, which is punishable by a fine of up to Kshs5 million or imprisonment of three years or both. There are some experts outside there who may access systems illegally. There are even some employees of organisations who have left. They have the in-house knowledge to access systems and mess them up or shut them down. Unauthorised interference of a computer system, program or data is punishable by a fine of up to Kshs10 million or imprisonment of five years or both. Unauthorised interception of data to or from a computer system over a telecommunication system is punishable by a fine of up to Kshs20 million or imprisonment of 10 years or both. What happens is that as you communicate, there are people who can intercept and get to know what is happening between two parties or even data that is shared across networks? We are saying that this is illegal. If somebody intercepts communication with an intention of committing a crime – cyber espionage – it is punishable with the imposition of a fine not exceeding Kshs10 million or a term of imprisonment not exceeding 20 years or both.

Publishing false, misleading or fictitious data with the intention that the data be considered or acted upon as authentic is punishable with the imposition of a fine not exceeding Kshs5 million or a term of imprisonment not exceeding two years or both. There are so many things that have been published. If you read today's and yesterday's papers, there are many false reports. You go home in the evening and check your WhatsApp and Facebook and you find so many things that are written about us and others that are not true. So, we are trying to curb this by ensuring that people become responsible and use technology for the intended purposes. Publication, production or possession of child pornography on a computer system is punishable with imposition of a fine not exceeding Kshs20 million or a term of imprisonment not exceeding 10 years or both.

As the Leader of the Majority Party has said, our children are not safe. There are so many pornographic sites and they are available and we need to protect children. We need to teach our

children ethics, but how can we do that if there are people whose business is just to put nude photos on websites, WhatsApp and on other sites? We are saying this is a serious offense. It is equivalent to undertaking sex with a minor.

Forgery of computer data, resulting in inauthentic data, with the intention that the data be acted upon for legal purposes as if it is authentic is punishable with imposition of a fine not exceeding Kshs10 million or a term of imprisonment not exceeding five years or both. We have discussed and heard about cyber bullying. Majority of hon. Members every day, before you sleep, you hear people putting very many funny things about you and they are lies. However, because we are leaders, we do not mind, but how about our family members and those innocent civil servants? So, we say that this is a very serious offence punishable by a fine of Kshs20 million or imprisonment of 10 years or both.

Part II of the Bill regulates investigative procedures. This is where Hon. Koinange is going to dwell on but the part empowers a police officer with a warrant to search, seize and store the data while investigating offenses under the Bill. Of course, the search will be done under a court order or warrant. The Bill further empowers a police officer, in special circumstances, to enter into premises which he/she suspects an offence under the Bill has been committed or is likely to be committed and take possession of a computer system without warrant. There is a similar case that happened sometime in 2015. There were some Chinese who set up an office in Runda and their business was just to make fake credit cards and ATM cards and fleece Kenyans.

Hon. Speaker: Just one minute. Are the members who are putting their cards on interventions...? I was wondering what it is that the Member for Suna wanted to say. Hon. Musimba, you have an intervention.

Hon. Musimba: Yes. I thank you, Hon. Speaker. I do not want to interrupt the Chair, Hon. Kisang, but I have noticed a trend from the last House with the Clerk's Office. You were very clear when I wrote a letter to you, which you acknowledged in plenary.

Hon. Speaker: Sorry please!

Hon. Musimba: You were very clear when I wrote a letter to your office for your attention about this particular Bill. I followed that letter by instructions to the Clerk's Office to say that you go before the Committee. I went before that Committee. I followed your directive as you ably gave from the Chair and I am disheartened from yesterday. I really wanted to catch your eye but I was not able to. The Committee has gone ahead to prepare a Report and negate, in line with Standing Order 216, that all Members and, indeed, all the representations have to follow. More importantly, your office cannot be demeaned by either the Clerk's Office or by the conduct of the Committee itself when you express yourself and you say: "Please, go and follow such and such direction." You have ordered us from the Chair.

In fact, even today the Leader of the Majority Party consulted Standing Order 53 and said that there is nothing here to be debated. This will be deferred and the Question will be put at a later date and I appoint a certain time. We see a trend with the Clerk's Office of negating Members' views. We are wondering. It hinders our role of representation for the people out there, especially towards a grave Motion or an important Bill like the one before us. Cybercrime is not an easy thing. As you rightly directed to that particular Committee – I am glad that Hon. Koinange is here – to articulate the matter.

Hon. Speaker, I want a clear guideline and direction from you. What do you do when you have repeatedly written letters in which I was forced to include my amendments because the Committee did not give me an opportunity to appear before them and ventilate further, despite a letter I wrote to them within the timeline that you had given? They

have gone ahead and come up with a report negating the concerns I had which we would have dealt with and would not have had to come before plenary. I remain guided.

Hon. Speaker: Everybody has a right to not just present their views before a Committee of the House but to appear before any Committee of the House - whether you are a Member or not - and participate in the deliberations. The only qualification is that you may not be counted for voting if there is any. It is not possible for me to start following up on what happens with a letter that you wrote to the Committee. I indicated that your views should be presented before the Committee. If that has not happened, the only recourse available at this point would be that we allow the Seconder to finish seconding and you will have the opportunity to say whatever you want about the Bill. Who knows? Perhaps your views might carry the day when it comes to the Committee of the whole House. You have the power to propose amendments to any clause, including the title of the Bill at the appropriate time. Nothing is lost because maybe your contributions will enrich the Bill.

I normally prepare sufficiently so that when I identify persons who have done some research on any matter, I exercise my discretion to give them more than the 10 minutes allowable. You saw me do that in the last Parliament with regard to the current Governor of Vihiga. I have done that on numerous occasions with regard to the Member for Seme - particularly when it comes to matters health - because I recognise his expertise. When Hon. Nyikal contributes to matters, the House appreciates what he says. It helps to enrich whatever legislation the House is making. I have also noticed that Hon. Nyikal participates very actively when it comes to the Committee of the whole House which is the time that the law is made. During the Second Reading, it is good that you make known your views so that when you propose amendments during the Committee of the whole House stage, people will also remember what you said during debate.

At this point, I would just ask you to prepare yourself. I will give you as much time as you require to give your input into this Bill because we appreciate that you have special knowledge in this area. That is the best. Remember the Chairman only has 30 minutes. We can give you those 30 minutes to enrich the House with your knowledge, not just on matters of cybercrime, but also computer and ICT - related matters. We appreciate that you have expertise in this field.

I received information from the Chairperson that Hon. Osotsi is a Member of the Committee. I thought that if he is a Member of the Committee, he has the opportunity to enrich the Bill. I just saw that he has proposed one or two minor amendments. Maybe his expertise will be contained in the report of the Committee. Hon. Musimba, I will give you an opportunity to enrich the House and the Bill - as appropriate - so that in debate, you will help Members to understand your areas of concern and how you would want the law to be enriched given what has come from the Leader of the Majority Party.

Hon. Kisang, your time is to be compensated. Do not worry.

Hon. Kisang: Thank you, Hon. Speaker. I also had a meeting with Hon. Musimba. I called him and we met yesterday. He has appeared in my Committee and we have agreed that the can propose his amendments at the Committee of the whole House stage. He can give them to us early enough. He has not lost anything. I will summarise the report so that I can at least be within the 30 minutes.

Part IV of the Bill applies to provisions of the Mutual Legal Assistance Act of 2011 with specific regard to international cooperation in the investigation and prosecution of the Computer

and Cybercrime Bill. It specifically provides for cooperation with the Office of the Attorney-General (AG) as the central authority established to handle these matters.

Part V of the Bill, from Clauses 42 to 46, contains the general provisions including the territorial jurisdiction for application of the Bill, power of the court order and forfeiture of any items seized under the provisions of this Bill. I just want to briefly go through the recommendations and amendments by the Committee which will appear at the Committee of the whole House stage of the Bill.

As a result of the public participation exercise conducted by the Committee, it noted that majority of the submissions focused on the provisions of the Bill that seek to limit fundamental rights and freedoms guaranteed under Articles 31 and 33 of the Constitution such as the right to privacy and the freedom of expression. Other submissions pointed out to the need to delete some of the provisions under the Bill and harmonise them with existing provisions in other Acts of Parliament. Pursuant to the submissions of the memoranda and the deliberations of the Bill, the Committee will, therefore, move several amendments to the Bill at the Committee of the whole House stage. This is the stage where if, Hon. Osotsi, who is a Member of the Committee, wants his name to appear in the Order Paper, he can bring the amendments he wanted. Hon. Musimba and any other Member are also welcome to bring their amendments because many of us are experts. There are also some who are talking to us from outside. We need the Bill to be enriched and to be good so that in case anybody goes to court, parts of the law will not be nullified.

The Committee will propose to amend Clause 2 of the Bill to replace the definition of the word “authorised person” to limit the appointment of the latter to “person” that is, law enforcement officer or a cyber security expert designated by the Cabinet Secretary responsible for national security. We anticipate this law will be implemented both by the Ministry of Information and Communications and the Ministry of the Interior and Coordination of National Government. We intend to eventually have maybe two or three cyber security centres - one within the Directorate of Criminal Investigations, one at Konza and another one at the Communications Authority of Kenya (CAK) headquarters. This is so that we can monitor those crimes and even block those things that we do not want to reach our children.

The Committee will also propose to amend Clause 2 of the Bill to expand the definition of the word “premises”. Those are areas where a law enforcement officer can enter. We have expanded it to include a virtual space in which data is maintained, managed, backed up remotely or made available to users over networks such as cloud. Currently, most data is no longer stored in a computer. Most of the large data is stored in the cloud that is why we are including space as part of a premise that an authorised officer can access.

The Committee will also propose to amend Clause 2 of the Bill to define the term “national critical information infrastructure”. Most of the stakeholders do not understand what this term means so we will define it so that it is clear. The Committee will also propose to amend Clause 3 of the Bill to clarify that one of the objects of the Bill will be to facilitate the prevention, detection, investigation, prosecution and punishment of cybercrimes under paragraph (c) of the Clause.

Hon. Speaker, further, the Committee will propose to insert a new paragraph under the Clause to clarify that the scope of the Bill will be to protect the rights to privacy, freedom of expression and access to information as guaranteed in our Constitution.

The Committee will also propose to amend Clause 12 of the Bill to insert a new sub clause that will stipulate the extent which freedom of expression under Article 33 of the Constitution shall be limited in respect of the intentional publication of false, misleading and

fictitious data or misinformation in line with the requirement set out under article 27(4) of the Constitution. The Committee will also propose to insert new clauses after Clause 16. This is basically to enhance and enrich the penalties.

The Committee will propose to delete Clause 24 of the Bill which allows for search of premises without a warrant. All the stakeholders complained about this. After lengthy deliberations, it was felt that there is no sufficient justification that exists to allow a search without a warrant. My colleague from the Departmental Committee on Administration and National Security will tell us if there is any sufficient reason to retain this Clause. Otherwise we have proposed to delete it.

The Committee will propose to delete Clause 13 on child pornography and amend the current Section 16 of the Sexual Offences Act to harmonise it with the proposals contained in the Bill, so that we do not duplicate. Under the amendment, the Committee further proposes to add a further provision of the Sexual Offences Act to provide for the offences of sexual communication with a child.

So, this Bill is very important. I urge all the Members to go through the Report and read the Bill. Currently, most countries in the world like Nigeria, South Africa, Pakistan, United States of America (USA), United Arab Emirates, and United Kingdom (UK) have already enacted this Bill. If we do not have this law, we are likely to lose investors who want to come to our country but they are not sure because their resources are not safe. Many organisations have lost resources. Banks have lost a lot of money but no one is willing to declare what they have lost because of client confidentiality. So, I urge Members to support this Bill, so that by mid April it is signed into law. Those who are abusing us and putting nude pictures of Members in the social media refrain or brought to book. They are supposed to be in Kamiti or other prisons in the country.

With those few remarks, I beg to second. If there is any part of the Bill that you believe it is offensive, we are willing and available, so that we can make the necessary amendments. We want to come up with a law for posterity. I second, Hon. Speaker.

Hon. Speaker: Order Members!

(Question proposed)

There was an indication that the Departmental Committee on Administration and National Security also considered this Bill. However, if the Leader of the Minority Party desires to contribute, he takes precedence.

Hon. Speaker: Hon. Koinange

Hon. Koinange: Thank you, Hon. Speaker. I stand to support this Bill. The Departmental Committee on Administration and National Security, which I chair, applauds the process that has been carried out by the Departmental Committee on Communication, Information and Innovation, that is, the process of analysis and the public participation which was undertaken by that Committee. The Committee appreciates the gesture which was put forward by the Committee's Chairperson. He invited me to present amendments relating to aspects of security touching on the same.

The Computer and Cybercrimes Bill 2017, as it has been noted by others, seeks to provide for offences relating to computer system, in order to enable timely and effective detection, investigation and prosecution of computer and cybercrimes in collaboration with other States under a mutual legal assistance agreement. I note that this Bill creates the following

offences: unauthorised access of a computer system; unauthorised interference with a computer system, programme or data; unauthorised interception of data to or from a computer system over a telecommunication system; cyber espionage; publishing false, misleading or fictitious data; production or possession of child pornography; forgery of computer data; and, cyber stalking and bullying. The offences listed in this Bill will go a long way to regulate the use of internet and the menace of cyber stalking and bullying which a good number of Members of this distinguished House have fallen victim. I would like to report that we met a number of stakeholders yesterday. We will meet some of them tomorrow with the Director of Criminal Investigation (DCI). Most of them are convinced that they are unable to prosecute this menace because of lack of law.

The Departmental Committee on Administration and National Security received submissions from among others: The Ministry of Interior and Co-ordination of National Government and the Central Bank of Kenya (CBK) relating to the implementation of security-related aspects of this Bill that include effective investigation and prosecution of offenders under the law.

The Committee will also propose to introduce amendments to address cyber terrorism which is the intentional use of computers, networks and public internet to cause distraction and harm for personal objectives and even Governments. This concept significantly varies from the idea of an unauthorised access, interference or interceptions of a computer system, programme or data.

The Committee will also propose to introduce amendments to address the use of crypto currencies to fund terrorism and other illegal activities such as money laundering. There are well documented cases around the world which have demonstrated that the underlying block chain technology would be used to come up with solutions for society that will be positive and socially revolutionary. There is need for this House to empower the law enforcement agencies to detect and prevent the unlawful use of crypto currencies to facilitate the various activities such as money laundering.

The Committee will further propose amendments to address the use of dark web and crime ware as a service.

The dark web refers to the parts of the internet that are not indexed or searchable using search engines such as Google or Yahoo. There are reports such as one by the University of Portsmouth that point to the fact that the dark web has been used for illegal activities such as illegal trade forums and media exchange for paedophilia and terrorism.

Hon. Speaker, crime ware is software that operates with a limited amount of autonomy to steal confidential sensitive corporate information. This information could range from passwords of bank account holders to social account holders such as those of us who hold Facebook accounts.

Some of the amendments mentioned by the Committee on Communication, Information and Innovation point to the use of network monitoring and other forensic tools by law enforcement agencies as being acceptable as evidence admissible by courts of law in Kenya in line with amendments proposed to clauses 5, 6, 7, 8, 28 and 29 of the Bill.

The Departmental Committee on Administration and National Security will propose to introduce amendments to Clause 24 of the Bill so as to strengthen the legal framework within terms that do not unnecessarily make the process of conducting effective investigation, lengthy, complicated and unreasonably protracted. The Committee will, therefore, be proposing to amend clauses 23, 24, 25 and 26 relating to the access of warrants, production orders as well as search and seizure of computer data.

Finally, I note that this Bill has been prosecuted through the process of the House with a lot of haste. It would have been my desire and that of the Departmental Committee on Administration and National Security of this House to have interrogated this Bill with a bit more scrutiny to make sure that all the salient aspects are captured and regulated with unchecked sanctity. We would therefore have liked to take time and come up with a watertight Bill rather than rush it and leave many gaping holes in it. Like Jonas Salk who dedicated a lot of time to defeat polio, we should be driven by commitment and desire to combat computer and cyber related crimes which in any case, are mostly international in nature through the global community.

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

[The Temporary Deputy Speaker (Hon. (Ms.) Tuya) took the Chair]

Hon. Temporary Deputy Speaker, let us be less emotional and be more rational in enacting this Bill. Let us make a law for posterity. It should be for current and future generations of our nation.

With those few remarks, I beg to support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Leader of the Minority Party.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to contribute to the Computer and Cybercrimes Bill.

This Bill is supposed to set a legal framework to prevent and control the threat of cybercrime that we see. Basically, the crimes or offences we are looking at are those that are against computer systems or the offences committed by means or use of computer systems. My colleagues have talked about it, but I also want to add that this country has never had a legal framework to handle these kinds of crimes which have so severe and serious repercussions comparable to terrorism. The other wide spread crime that is devastating both to the economy and even social set up is cybercrime.

Even though this is more or less and an ICT related Bill, it has a security angle. That is why the Chair of the Departmental Committee on Administration and National Security was allowed to make his comments to inform the debate. But there are specific offences or crimes we are going to look at in this Bill. One of them is unauthorised access to the system, damage to computer data or programmes and sabotage to hinder functioning of a computer system. Those are some of the crimes we are going to look at. It is going to be a land mark for this country for the first time to have an Act of Parliament, once passed, that is going to address the issue of people who have become innovative in a negative way in devising systems of committing such kind of crimes. A lot of computer fraud is happening in this country and we have to follow other countries which have passed legislations in the recent past to deal with cybercrime. This crime affects the economy in a big way. It affects e-commerce, trade and even our wellbeing as a society. Many countries have attempted to come up with laws. It is important that this House takes time to study the comparative jurisdictions and see some of the pitfalls they went through in passing the various pieces of legislation.

One of those countries is Nigeria. It just passed a law they call the Cybercrime Act of May 2015 but as we speak, there is debate that there is need for the Nigeria National Assembly to amend the law. Why? It is a very technical area. I ask and encourage the two Committees - because the general membership of this House may not be in a good position to come up with

amendments that are going to enrich this law - to engage more seriously on this Bill so that when we pass it, it becomes useful to us. My concern is that even if we pass this legislation, is it going to be applied or used? We have passed many laws in this country, but I am afraid they are never applied for the intended purposes. The law enforcers do not use them. I want to give the example of Nigeria to show why the committees need to be more serious on this Bill. While the members were debating the Cybercrimes Act of May 2015, most members of Parliament exhibited ignorance. I hope that this august House is not going to be party of exhibition of ignorance. One of the members of the Nigeria National Assembly said this about hacking of computers: "The moment someone has accessed your computer as long as it is not for something illegal or criminal and he is not taking your computer away permanently, you cannot say the person has committed an offence." He went ahead to say that: "If I pick your computer system and try to crosscheck a file, I do not think it is an offence."

It has since been proved that this member did not understand the provision that was in the law. Because of such participation, out of ignorance, they ended up amending a very important clause in that Bill. In short, I am saying that those of us who probably are not well educated in ICT matters should try to be a bit cautious, listen to the experts and get to understand their explanation and then we make an informed opinion.

What are some of the provisions of this law that are good? I will talk about those which I fear may infringe on our rights later. There is a very thin line between security, maintenance of law and order, basic human rights and the Bill of Rights as provided in the Constitution. Children's rights have been featured in this Bill with a provision tightening the noose on online child pornographies. We will agree that child pornography is something that is worrying us in this country. We need to support any attempt to deal with it.

There is computer forgery and fraud which is going on. This is something that affects the banking sector and trade in general. You would be lucky if you are seated here today and you have not been a victim of computer fraud or forgery. This Bill will help us address that issue. The Bill provides for confiscation of proceeds of cybercrime and compensation of victims. Again, I had expressed my fears whether that provision will be applied. In the Proceeds of Crime and Anti-Money Laundering Act that governs ethics and anticorruption in this country, there is provision for confiscation of property acquired through economic crimes. How much has been confiscated? How much property has the Ethics and Anti-Corruption Commission (EACC) confiscated? Today, the Leader of the Majority Party has tabled in this House the Quarterly Report of the EACC, but the question I ask myself is whether this House needs to even debate that report. The EACC has been a let down to the people of this country. If there is a reason why corruption continues to rise in this country, it is because of pretending that we have a commission that deals with corruption. You ask yourself why even simple cases of fraud have not been dealt with. I know of many cases in counties where people have stolen money. They have used the same proceeds to acquire property. They do not even hide it. They have developed properties within the county and you can see them. Someone who is earning a salary of Kshs95,000 has constructed a hotel worth Kshs100 million in three years. You do not need any more investigation. These are people who just need to be arrested and their property taken away. They need to suffer and pay for it. The EACC will never help Kenyans fight the corruption menace. I am not so sure whether we need to put in place a law that we would confiscate proceeds of cybercrimes and compensate the victims. I do not know. I am not sure whether our agencies that are tasked with the responsibility of implementing this will do it.

I know the Bill is long overdue. It is important that we have it. It has good provisions. I do not want to go into the details because I would take the whole afternoon discussing them, but any good Bill must also have bad clauses. This Bill has a provision that outlaws false publication. I know the world today is so concerned with fake news. It is the in-thing. It is what is now being discussed. Probably, this Bill will help fight this menace. This idea may be good, but there is a red alert that this offence is similar to the old crime of criminal defamation, which has since been declared unconstitutional.

I want the Committee to look at that aspect. Even though that provision is good as it will help fight fake news, how is it going to affect the fundamental freedoms and our rights? Clause 23 of this Bill talks about seizure of stored computer data during an investigation. There is a requirement that an investigation officer can seize a computer system during investigation. This at first looks impractical. More importantly, how is the application going to be checked so that we do not allow police officers to misuse the same provision to punish innocent Kenyans? We have seen many times in this county where good laws have been applied wrongly. You find a law that had very good intentions being applied by security agencies to victimise and punish innocent people going about their daily business without any problem.

I am happy that the Chairman of Departmental Committee on Administration and National Security has stated that they are going to propose amendments touching on the issue of getting warrants or conducting searches without warrants. I do not know why we are legislating on this. We tend to imagine that getting a search warrant is such a difficult thing. Getting a search warrant, if you have a case, is so easy. You can do it in record minutes. Why do we want to make it look like there are things that we need to do which may not require search warrants? The end result is that we are going to use the same provision to violate, infringe and interfere with the freedom of Kenyans. People who have supported certain provisions in law thinking that they are good have ended up being victims of the same provisions.

Under Clause 24, you say you will give power to search without warrant in special circumstances. What is “special circumstances”? Unless you define concisely in specific terms what “special circumstances” is, I would be hesitant to support such a provision in law. The moment you allow security agencies to define for themselves what a special circumstance is, they will just decide to raid Mbadi’s house because special circumstance has dictated so. Many a times, laws on security like crime prevention have always been used to insert provisions that in the long run cause suffering to us.

Clause 27 provides for expedited preservations and partial disclosure of traffic data for service providers. This requires clarity. We need very clear definition. This Bill is lacking one thing. Given that it is targeting crime, you need to be very specific in defining those specific crimes. I know lawyers like Otiende Amolo are here. They will help us appreciate that definition is very important, that a word can be interpreted in many ways if it is not properly defined. In law, you cannot just allow words to be applied anyhow.

We need to include in this Bill all types of crimes because we do not want to legislate all the time. We want to legislate holistically. There are issues that need to be added. I can see my time is almost running out. We need to add child sex tourism, online bullying, unlawful disclosure or obtaining personal data, liability of legal persons and other crimes that are not covered here. We also need to define cyber identity theft and many other things.

Finally, we need to support this Bill because it is long overdue. We needed this law early enough to deal with some of the problems that we have gone through. We have also to be careful

and make sure that the product that is going to come out of this House is something we are going to be proud of in years to come.

It should not be one where we will be blamed and told that we were in Parliament when it was passed. I am winding up in one second. That is when everybody will be shouting that we have passed a bad law, when we go to public rallies. I have seen situations where we pass laws here and we are the first ones to condemn how bad they are in public rallies. Let us be sure that we will be proud of this law once we pass it.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Hon. Members, I know there is an array of interests on this. We have cybercrime technocrats. We have Members of the Departmental Committee on Communication, Information and Innovation. We have Members of the Departmental Committee on Administration and National Security. Some Members have personal accounts of cybercrime harassment. So, I am going to balance all those interests from the both sides. We have enough time to ventilate on this. We should not have any anxiety around the time to speak. We will have enough time for everyone.

We have Hon. Kipyegon Ng'eno on this side.

Hon. Kipyegon: Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to also contribute to this Bill. It is seeking to address the serious question that most members of public have a problem with. I wish to clearly state that I support it.

If today the country was to decide to shut down the use of WhatsApp, Facebook and other social media sites, I think it will go into a crisis. There is something we need to understand even though we support the use of computers and access to the internet. Nowadays, we cannot live without them. But we must also understand that however popular some of these undertakings are, they have criminal tendencies which must be legislated upon so that people who access these cyber activities stick to what is good for the country.

People are worried about hate speech and other issues that are on social media sites like Facebook and WhatsApp. I am not worried about that because that is part of life. I am worried about a few issues that I wish to state as I support this Bill.

The question of unauthorised access is what endangers the cyber. If we allow unauthorised access, it is like allowing people to hack your bank accounts and get your money. It is like allowing people to access your private issues. I support legislation that will ensure that if there is unauthorised access to people's accounts anywhere, it should be punished.

Another issue I wish to support is the protection against access to pornographic photos or videos, especially by the young ones. If you visit most cybercafés in town and anywhere, there is no control. People who run those cybercafés cannot even control the age of people who go to use the computers. There are teenagers who would want to access computers to make applications to schools or communicating with their brothers and sisters who are abroad. But there should be a regulation to ensure that access to pornographic sites is illegal so that children are not spoiled while they are still very young.

Another issue that I would like to support is legislation on money laundering activities which are also in our systems. Nowadays, people want to access their accounts and transfer money electronically, but there is no serious protection against those people who would want to hack people's accounts and transfer their money. So, I wish to support by saying that if we were to have strict rules to protect anybody from accessing other accounts illegally, then we will reduce cybercrimes.

I would also like to support it on matters of security. We must understand that there is some security information in the Government. There is security information in private entities which should not be allowed to be accessed by anybody. I watched a story on KTN news yesterday talking about the Cambridge Analytica. That is one of the cybercrimes to have been committed worldwide. When you follow that story, you realise that there are many things which go on in our computers and the internet especially during electioneering periods. The crime *Mheshimiwa* is asking me to explain is when someone uses computers to imitate other people so that people imagine it is that person who is speaking or addressing certain people or personalities. That is a crime.

If we had made this law a long time ago, many members of public would not be suffering from issues like intimidation, faking people's accounts and posting other matters and doing several things. I support the Bill. If hacking and cyber bullying are penalised, this country will be moving in the right direction in terms of electronic use.

I wish to end by saying that I know some victims and I was discussing this with my brother, who is one of the youthful Members of this House. I know victims of this law will be young men because they have made it in business nowadays. You will find them mostly in WhatsApp groups where they make money out of it. Sometimes they want to discuss several issues. It is good if we are discussing matters that can help the society move forward or matters that have serious assistance to the youth of this country. But if we are using computers to abuse others or extort money from other people, tarnish other people's names, it obviously loses its meaning. I urge our youths to know that this law is going to hit hard on them. I ask them to run away from cybercrimes. Let us use our internet for good purposes like to assist us make ends meet, move on in life and assist the country to move in the right direction.

I support the Bill. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): The Hon. Dr. Otiende Amollo, Member for Rarieda.

Hon. (Dr.) Otiende Amollo: Thank you, Hon. Temporary Deputy Speaker. The intention of this Bill is good, but the execution is incomplete and, therefore, I am compelled to oppose it in its current form.

First and foremost, there are four distinct issues that make the Bill doubtful of constitutionality. The Bill seeks to introduce the phenomenon of what we call national security. This it does in Clause 6(3) and Clause 7(2). Members will recall that when we were making our Constitution, there was an attempt to sneak the word "national security" in Article 24 which was defeated. There is nothing as dangerous as introducing that word and not defining it. This Bill introduces that word twice and does not define it. If you leave that word in this Bill, it would be *carte blanche*. It authorises anything to qualify as national security and that could land us all in problems.

Secondly, this Bill, at Clause 12, introduces the offence of publishing false or misleading data or information. Hon. Mbadi spoke to this. It is true that the High Court has previously declared a comparable provision unconstitutional and that is the offence of criminal defamation, which was in the case of Jackline Okutah. It, therefore, stands to reason that this particular clause would offend Articles 32 and 33 in terms of freedom of opinion and freedom of expression.

Clause 21 of this Bill seeks to do something unconstitutional. It seeks to create additional penalty in terms of any offense in any other law. Then it purports that under this Bill, in addition

to any punishment in any other law, you can also be punished additionally. That is what we call double jeopardy in law. It is unconstitutional and offends Article 50(2) (o).

Clause 31 of this Bill does something strange. It allows anybody who feels offended to appeal either to the High Court or to the Court of Appeal. There are three things about that. First of all, it is not necessary to have such provisions in this Bill because they are already in the Constitution. Secondly, it excludes what usually is the avenue for challenge, that is, what we call judicial review, not appeal. Judicial review is preserved by Article 50(2) (q). More importantly, it strangely seeks to allow somebody to appeal from a magistrate's court to the Court of Appeal, and that does not exist in any other legislation. It does not distinguish whether, therefore, you go to the High Court or to the Court of Appeal. It gives you the discretion to go to either. Such concurrent jurisdiction can create immense confusion.

With those specific areas of unconstitutionality, I wish to observe that looking at the definition of 'computer system', looking at the object in Clause 3(a) and looking at the offence created in Clause 4(1), those of us who belong to the NASA Coalition complained in the Supreme Court on 8th of August and the Supreme Court directed that the servers of the Independent Electoral and Boundaries Commission (IEBC) be opened, but the IEBC refused to open them. We were, however, able to access the servers of the IEBC and we published the results. If this Bill was law, we would all be serving a jail term of five years, having been fined Kshs5 million. Therefore, being a person who will want to access such a server in future, in the unlikely event that the IEBC or such other entity unlawfully refuses, I would definitely not want to support such a Bill.

It is also to be noted that there is the question of penalties. This Bill is so heavy on penalties. It creates 17 offences. All those offenses are the heaviest I have ever seen in any legislation. The jail term ranges from three to 25 years. Fines range from Kshs5 million to Kshs25 million. That does not exist anywhere. As a lawyer who focuses mostly on rights, to create severe penalties does not usually deter people from that offence. It will only result in circumvention of those offences. Criminal jurisdiction suggests that if you want to achieve deterrence, you create rational offences and not outrageously irrational in terms of fines or jail term.

It is to be noted that Clause 13 is a good one because it creates the offence of child pornography. I heard the Chairman say that they were going to amend it, which is a good thing. I observe that while it is a good provision, it has a very strange exclusion in Clause 13(2). It is a defence of a charge under this clause if the person establishes that the child pornography was intended for a *bona fide* scientific research. I could not imagine what *bona fide* scientific research there can be in child pornography. Clause 13(2), as proposed, needed to be excluded because it is just bizarre.

The offence of cyber stalking and cyber bullying in Clause 16 is very unclear. In its current form, unless properly defined, it could include anything including legitimate criticism. If somebody contacts you continuously, which could be two or three times, then that could amount to cyber bullying. I do not even know how your constituents who call you twice or three times will contact you because they will be committing a criminal offence. Unless properly redefined, Clause 16 is dangerous.

For those reasons in its current state, I oppose this Bill. It is important to note two things. One, that the fact that it has been enacted elsewhere, including in the United States, does not require us to enact it because they do not have a Constitution such as ours. The Kenyan Constitution is only like the Kenyan Constitution and no other. Secondly, in the past history, we

had rushed like other countries, led by the US, to pass similar legislation, especially the Prevention of Terrorism Act. All the countries that passed that legislation later ended up in problems. In this country, we had to repeal it. My caution is, while the Bill is well intended, unless it is properly looked into; it is one that would create more harm than good.

Lastly, I have heard many Members talk about cyber bullying and people accessing their phones and sending all sorts of messages. It will interest Members to know that all those issues that appear to concern us are not necessarily stopped by this Bill except the provision of cyber bullying. Cyber bullying is actually distinct and different from what confronts us. We will have to look at this Bill critically or at any other law if we want to enact legislation that will shield us from all those shenanigans that we spoke about. But to assume that once we pass this Bill, our problems as enunciated by Hon. (Ms.) Chege are gone, is actually a misnomer.

With that, I oppose for now.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Very well, Hon. Otiende. Listening to you clearly, you have done a tooth comb analysis of the Bill as it is. At this stage of the Second Reading, we are at liberty to raise any issues of concern in the Bill and I can see the Chairman taking notes seriously. I believe you are going to invite Hon. Otiende at some point to help in fine-tuning. I do not believe that the intention of Hon. Otiende in opposing is to suggest that we throw away the baby with the bath water. We have an opportunity to fine-tune it and introduce any such amendments that may make this otherwise good Bill constitutional and proper.

Member for Murang'a County.

Hon. (Ms.) Chege: Thank you, Hon. Temporary Deputy Speaker. At the outset, I want to thank Hon. Otiende Amollo for the observations he has made. You have rightly advised him on the way forward. I know he is a first time Member of Parliament. He has a chance to make the Bill better and propose amendments which I think are interesting.

I do not see the issue of punishment on the number of years or the jail term and the fines offensive because unless you have suffered through cyber bullying and a lot of things happening through telecommunication, that is the only time you will know the pain is more intense. It is worth more than the Kshs50 million or a jail term of 25 years. If I was the judge and I get one of these people, I will jail them for life because they cause a lot of pain. I thank the authors of this Bill. I know both committees are going to make major contributions towards this Bill.

With regards to unauthorised access, I have just learnt that there is something called cyber fishing. This is where somebody goes and gets information using your office and accesses your bank accounts. This is really criminal. I know many Kenyans have suffered. On false publications, this is one of things that almost every Member of Parliament suffers from. Immediately you are elected, the next thing you see is a publication about you. They will fish and write about things that are really painful. They do not care whether you have small children who might read this. There are some gutter presses and I am hoping we will take care of them when we pass this Bill. There are many false publications which hurt many families in this republic.

I really support this Bill because as you know, I am going through challenges especially with law enforcers. One of the reasons the management of Safaricom is not able to follow through with complaints is because the law does not provide what we should do with these people. If you take them to court, somehow, they are released because the courts do not know what to do with them since there is no law to punish the criminals. That is why they have taken a

holiday. They have used and abused the social media platforms. I am hoping this Bill will come to bring some of these people to book.

I also want to thank Hon. Otiende for telling the country that they had access to the server. If they did, this Bill is right on time. That is hacking. I do not know if they want to be the super hacker next time. They have admitted that they are criminals. It is good for him to know that this is a House of records and this can be used against him and his party. For now, we will not take him seriously because we are friends and he is now part of us. Otherwise, if he mentions something on the Floor, because this is a House of records, it can be used against him. For advice, next time if he cannot table evidence, please, he should not mention it even if he does not mean it. He can take it up, withdraw and apologise. Anyway, the Chair may not have captured that, but it is interesting to know that there are people who had access to the servers.

Hon. Temporary Deputy Speaker, I really thank you for giving me an opportunity. I do not want to go into details because when we come to the Second Reading, we will be contributing a lot especially in working with the relevant committee to make this Bill rich. It is our responsibility. We have a responsibility and that is why we were sent by our people to come to this House to make laws that will save them from such pains that they go through, through cyber bullying.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Tuya): Hon. Kitonga, the Member for Makueni.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to comment on this very important Bill. Last time, Hon. Chege made a personal statement in relation to cyber bullying among other matters and the House said that we should wait for this Bill and pass it. Up to now, hacking is not a crime as such and in fact if you do it for the common good of the people, then it would be deemed proper. I do not think there is anything Hon. Otiende is admitting which is wrong. That just amounts to the truth. When you speak the truth and it is justifiable, then there is no case against it.

Hon. Temporary Deputy Speaker, this law affects several other laws.

The Temporary Deputy Speaker (Hon. Tuya): Hon. Ngunjiri, are you on a point of order?

Hon. Martin Wambugu: Thank you very much, Hon. Temporary Deputy Speaker. I had tried to get a point of order when Hon. Otiende Amollo was on the Floor. I have just heard the issue repeated by my friend, Hon. Maanzo. I just wanted them to clarify to us because some of us are not lawyers. When they say that hacking is not a crime, at this moment in time, I want to understand what that means. I understood Hon. Otiende to be saying that they actually accessed the IEBC servers. Hon. Maanzo is now telling us that it is not a crime. The little legal knowledge I have tells me that it is a crime. So, I was just looking for direction on whether what they are telling us is the truth.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Tuya): I know that your point of order on Hon. Otiende's contribution is overtaken by events, but in terms of definition of whether hacking is a crime or not, I think at this point, let us stick to the contributions on the Bill. The question on what a Member means or the other, one point is that we have to be relevant to the issues that are of concern to the Bill. I am not going to allow, going forward, any issue that you mention that is outside of this discussion.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker. I would like to tell our friend that is why we are making this law so that such activities can become a crime. This law is

going to affect several other laws. We have the Penal Code which is very old and by the time it was made, there was no technology as such. Therefore, there are other Acts which are going to be affected such as the Evidence Act. The most important part of an issue, whether it is cyber bullying or any of the cybercrimes, is how you are going to prove it in a court of law and whether we are going to have special courts like the anti-corruption or environment courts. Technology grows on a daily basis. We have to make laws such that even when it advances, we are able to catch up with the situation.

In fact, when ICT started developing in the country, a study was carried out at the University of Nairobi. One of the courses facilitated was on ICT which is done by Prof. Ben Sihanya who is an expert from Stanford University where he got his PhD. America was the first to advance on these matters, but law gets overtaken by events. We are saying that at the Third Reading, we have to be futuristic and look at all crimes related to this.

When it comes to crime, punishment and bailing or bond, it is going to affect all of us including our children, very soon. A former Member's child was sentenced to 25 years for a certain crime by a court. Although there were methods of appeal, the law and the sentence remained. Unless you are forgiven by the Kamiti Maximum Prison through the power of mercy, things become very complicated. So, when you say for a small crime or an offence under this, you fine someone Kshs25 million or 25 years in prison or both then we really have to clearly what exactly we are doing.

The other issue is constitutionality. Any law which does not conform to our current Constitution immediately becomes null and void. It could be certain sections of that particular law or the whole law. So, we have to be careful so that when we enact some of the provisions in this law, they should not go beyond our Constitution or contravene it. We should make laws that are within our Constitution. We may make it with emotions and make laws that are not within our Constitution. We cannot just copy other countries blindly. We cannot copy the United States of America (USA). The other day, we heard Hon. Dalmas Otieno say that when we copied the American system of pure presidential system, we did not copy the Electoral College. Therefore, that makes the difference between us and other jurisdictions. So, we have to make a law tailored to our situation although the world has become a village when it comes to ICT or cybercrimes.

There are many issues such as that of google. There are certain companies which have already been already licensed. There is something called 'google earth'. A few years ago, you could google this Parliament and you could see the movement of people and even the cars parked. Of course, security issues were raised and the laws were amended globally such that the pictures of google earth appear two or three days after they are taken. You could see what was happening in the Israel Temple direct from google earth, and this is part of what is happening. So, to what extent does security intermarry with cyber?

You have heard of the technology of drones. A drone is something which looks like a flying bird but it is actually a drone, which is a weapon of war. It is insecurity in itself. It is directed by a computer. It can be used to assassinate someone. So, there are so many issues we need to look into in totally. There are science laboratories where this technology is being developed. We have many years to get there as a country. I believe the technology will soon be sold to the world through the cyber forums. It is big business. When there is a popular thing happening, anybody who accesses it makes money.

There is the issue of taxation. When you are dealing globally, how is Kenya going to benefit with the taxes? When we operate from here, as a county, we also lose a lot of taxes in this matter. There are many other issues we need to look into. The issue of fake news is a big

problem in the world today. It has been discussed at several forums. Many times, fake news is released through such forums. Now there are electronic newspapers, which just run on rumours and fake news. People access them and someone makes money. How do you deal with that? How do you deal with a cybercrime that happens outside Kenya's jurisdiction? What do you do with a crime which has been committed in the United States of America (USA) by a Kenyan from Nairobi? If somebody hacks into a banking system in another country and accesses information or money, what happens?

We have not yet reached the end of innovation. Innovation will carry on. There is public information and private information. Some information is already in the public domain. There are so many other things we need to look into, including sensor. When you seize these materials, in whose custody will it be? We need to train police officers, judiciary officials and other people to catch up with these activities. There is money laundering involving banks as well as savings and credit cooperative societies (Saccos). Some Saccos are bigger than some banks and, therefore, use ICT to carry out their transactions. The number of transactions which take place in a day need to be captured.

With those remarks, I support the Bill with amendments during the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Hon. Ngunjiri, you have suddenly disappeared. Are you still interested in contributing?

Hon. Ngunjiri: Yes, Hon. Temporary Deputy Speaker. I have had the opportunity to read through this Bill. I have noted a couple outstanding issues, which I hope will be looked at as the Bill continues to be developed. First, the current title of the bill is "Computers and Cybercrimes". For purposes of expanding the mandate of the Bill, we should think of renaming it to Cyber Security and Technology Protection Bill. For example, when Hon. Sabina was talking about the issue of her phone being taken control of or somebody using her number and using her name, that does not fall under cybercrime, even though it is a crime of technology. I hope this Bill will cure such mischief. I hope we could change the title as I suggested.

The other thing is under the definition of the Cabinet Secretary (CS). We have said that we want this Bill to be put under the CS from ICT. I propose that we put it under the CS, who will be responsible for matters relating to cybercrime and cyber security at whatever point. There is also a need to consider having a national cyber security coordination centre that brings in multi-stakeholders from various security agencies and the ICT Department itself so that we get comprehensive security.

We are defining crimes based on how we understand them but we need to think about something called cybersquatting. This is where somebody takes over your identity and holds onto it. You know the way people speculate after buying land. So, somebody takes over your identity because you are not on the internet or you do not have that identity on the internet. They force you to buy it back from them if you want to use your original identity. It is going to be important for us to think about how to secure people's personal identities from being misused because cyberspace is a new space we are all getting into. Some people are getting into it before others. I still know people who do not have WhatsApp on their mobile phones. So, if somebody gets into the internet before you and chooses to take over your entire identity, we do not have a law that stops that from happening. That will be one of the things I would suggest to be looked into by this particular Bill.

We have talked about inappropriate publications. One of the problems we have with the internet right now is that there is no accountability mechanism for whatever you post. As we

think about how to make this Bill comprehensive, we need to think about how we hold people accountable for what they post. If you have a twitter account that has three people and you call me names, are you accountable? Can you argue that that is your opinion or is it a public publication? It is important for us to think about some of the specifics of when you make a publication, and at what point it becomes a public publication. I have heard people arguing that my Facebook page is my page and so when I post something on it, it is an opinion. If you take me to court, I can say it was my opinion. I was sharing, and I have the right to hold an opinion.

However, you are putting this on public space. We will need to decide and define how at what point publication becomes public and how you deal with inappropriate publications.

Finally, we have spoken on the issue of the title. I would like to re-emphasise this again. A lot of the crimes we have today make us think of this Bill; be they cyberterrorism, cybercrime or the kind of crime that was given a Nigerian name because they send you email and tell you that they are stuck somewhere, and that they want you to send them some money. We are going to have a very dynamic name.

I do not know whether our security agents are able to keep pace with criminals on the internet. We also need to seriously consider how to set up a specialised force or create a very regular training mechanism of dealing with upcoming crimes; because every day, somebody discovers something new. As we speak, we have read about Cambridge Analytica. In another couple of years, we will be thinking about something else. People always discover something new to do with the information that is available in the internet. How do you create a law that is flexible enough to deal with everything that comes up on the internet? As we said, the internet is a dynamic environment, and it is growing every day. People leave school and develop programs. We have programs such as Mpesa, which is very useful to Kenyans. It is very easy for somebody else to develop something like that and use it to con people of their money. At what point in this Bill do you think about such emerging crimes? I know we do not anticipate crime but the problem is that in this particular space we seriously need to anticipate all the potential opportunities for misuse of the internet and of the cyber space.

I was one of the people who raised this issue sometime back. However, I still felt very strongly that this particular Bill should have been looked at by the Departmental Committee on Administration and National Security or at the very least a joint committee should have looked at it. However, the Speaker directed me and said that Members of the Departmental Committee on Administration and National Security can attend the hearings of the Departmental Committee on Communication, Information and Innovation. I think there are a lot of inter-linkages and we are losing something if we do not have Members of both committees sitting and looking through this Bill as it continues to the final stages.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Member for Kathiani.

Hon. Mbui: Thank you very much, Hon. Temporary Deputy Speaker for this opportunity. This is an extremely important Bill that is going to solve quite a number of issues affecting the citizens of this country.

From the definition, this is an Act of Parliament to provide for offences relating to computer systems. I took the opportunity to understand it better and went to look at the definition of computer systems and within that definition, I realised they are physical or virtual devices including mobile devices which are part and parcel of computer systems. This is something that is extremely important because we all know that almost all Kenyans own mobile phones. Therefore, they are part and parcel of the system we are talking about.

Globalisation has generally led to a lot of development and we all understand that Information and Communication Technologies (ICT) play a very key role in it. It is growing faster than a lot of the users can understand how to interpret and use it. That is why you find a lot of times we have mobile phones and we do not know how to use most of their features. Our smart phones have many Applications (Apps) which we do not even know how to use. Basically, it is growing too fast and some unscrupulous people have taken advantage of the fast changes in technology to do things which we need to address in this Bill.

I will only talk about the offences that I have seen in this Bill. I have listened to a colleague who has said that he feels that the penalties are extremely high. Maybe we can increase them if possible because these are issues which are affecting many people and in very nasty ways. Clause 4 is an offence on unauthorised access. Looking at it, in the last elections, the Chairman of the Independent Electoral and Boundaries Commission (IEBC), Wafula Chebukati, stated that his password was used. Therefore, there were people who had unauthorised access to the servers. Because of that, there was a disputed election that led to a lot of lives being lost.

Personally, I was a victim of the violence which resulted from the last disputed elections. Therefore, I think it is important that we address these issues. Someone has mentioned the access that NASA had to the servers, but I think it was probably in conforming to what the Supreme Court President said that the servers should be accessed. Clause 12 talks about false publication and my understanding is that these are things that are put out there, which are not true about different people. I have been a victim of this. Many Members even those who are new will end up being victims of this if we do not pass this Bill.

For example, I saw in one of the groups an individual who kept criticising the projects I was doing to the point where he implied that I had stolen money. Some of the projects which were being named were not even funded under the National Government Constituencies Development Fund (NG-CDF). Some were national Government projects and others were funded by the Local Authorities Transfer Fund (LATF) in the previous dispensation. But this person continuously kept repeating and saying that money was lost. I attempted to answer the questions, but it reached a point where I had to call the person. It was interesting and I discovered it was blackmail when the person told me that they are trying to find out the things I have been doing so that they can write a magazine for the constituency.

So, I realised that some of this false information was being used so that they can extort money from Members. A lot of times, on our WhatsApp groups, the criticism that is levelled against leaders is not because there is something wrong they have done, but simply because people want to be paid to stop saying what they are saying. Sometimes, they make a lot of noise so that you can realise they are available and can be used. They are actually gangs for hire. If we do not enforce this and make it very prohibitive, they will continue doing that to us. I will tell Members that there are people who lose their political offices and seats within five years just because some bloggers decided to make them victims and continuously talk about them.

I also noted in my first term that the Kenya National Audit Office (KENAO) do preliminary reports. They come to your constituency, study what goes on there and write a preliminary report which is basically meant for the fund account managers to answer. Somehow this information leaks to the bloggers. Even when there is a query like why a dormitory is being built for two years, and that can be answered, as long as it is in a KENAO report, somebody will put it out there and imply that money is in your pocket, yet, clearly, the report says that the project was put up, but it has not been finished because probably you did not provide enough funds and will provide them in another year.

It is important that as Members of this House we deal with these issues. I have seen photographs on social media depicting Members and leaders negatively. Many times, these are photo shopped and are not realistic. People are photographed in compromising situations, but then they change the face to look like it belongs to someone that the public recognises. We must put a stop to this and I think this Bill will go a long way in helping us to do that. Clause 15 talks about computer fraud. I have been a victim of this because our mobile service providers allow certain people to access our phones and they send us messages and tell us that if we want to them to stop sending messages, to please, send a short message service (SMS) saying stop. I did not ask you to start in the first place, but you are telling me to stop, and every message that comes takes away money from our mobile phones' airtime and bundles. These are the issues which need to be addressed by this Bill.

Clause 16 talks about cyber stalking and bullying. I think that has been ably talked about by many of my colleagues. Clearly, people are using technology to bully others. We have an opportunity as a House to put a stop to it. We need to ensure that those people who think they are sharper than us in use of technology or probably are idle are stopped and fought. This is the only way we can use to reach and deal with them.

Finally, as caution to Members, let us be careful not to put personal information on mobile phones and on Facebook. Many times, we have seen people being attacked or their homes raided. When you ask the criminals how they knew the whereabouts of a person, they say that the person had posted a message saying that they have gone to London for two weeks with their family. So, if you do that and put it out there, you are telling the whole world where you are and when you are out. Therefore, you open yourself up to this kind of fraud.

With those few remarks, I support and wish that when we go to the Third Reading, we increase the penalties as much as possible. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Tuya): Member for Saku.

Hon. Dido: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. From the outset, this is technical. As a colleague said at the beginning while moving the Bill, we should not pass it in a rush because its technical nature will transgress many areas. First of all, this Bill is about rights, fundamental freedoms, civil liberties and access to information. It is about the horse or the cart and one look at it is a serious dilemma. It is also about the good and the bad. Article 34 of our Constitution is about freedom of the media. Article 35 of the Constitution is about access to information and Article 95 is about the role of the National Assembly in legislation.

*[The Temporary Deputy Speaker
(Hon. (Ms.) Tuya) left the Chair]*

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

The important bit that we need to critically analyse and understand in this Bill is the role of Parliament in legislation. We set media standards, regulate and monitor compliance with those standards. The laws that we pass must reflect the interest of all sections of the society. If you look at the use of cyberspace, the internet and the computer, you will realise that in all our constituencies, 60 to 70 per cent of the people who voted for us to be in this House are young men and women. They are the major users of the internet. Before we pass this Bill, one of the things that we must address seriously is civic education. It is also about when this Bill should be

passed. If this Bill is passed by this House, when does it come into force? When will the principal applications of this Bill become part of the laws of the land?

Looking at the some of the issues we raised, particularly last week on the misuse and abuse of cyberspace by the citizenry in Kenya and across the world, one of the things we must agree as a House is that we must protect the many from the few who abuse cyberspace. Within this Bill, there are areas that we need to address, for example, with regard to offences. Offences that are punishable by law must be read in conjunction with the existing civil offences code that exists in our land. The other things in this Bill which we need to be very careful about are illegal devices and access codes. When you walk around the duty-free shops around the world, you find very interesting gadgets which are legal in those countries, but as soon as you bring them to our country, you are told they are illegal. You will be told that they are bound to interfere with system X or Y. So, the committee or the experts who are helping to shape this Bill should try to come up with more details as they continue to craft it.

The area of punishment has been addressed by the speakers before me. We need to try to relate it to other jurisdictions. We need to ask ourselves what the offense is and how it is committed. Relativity is important because of standards and for the purpose of enforcement. Currently, we can all read Government documents whether classified, confidential or even secret on the internet or even on WhatsApp. I think that, in itself, is criminal. It jeopardises the security of the State or even, sometimes, the security of individuals. For that reason, I think those working in the Government, who have access to classified information, through this Bill, must be warned that there is a law.

On the area of child pornography, I think in the West, the punishment is currently very serious. Individuals in their 70s or 80s are being caught and taken to court many years after they have retired from their jobs following clear forensic evidence establishing that they did something wrong at some point in their engagements in public life. For that reason, we cannot in any way, as the Bill appears to state, give any leeway on child pornography. It is criminalised all over the world and Kenya should not try to reduce the bar from where the international system has placed it.

The area of international co-operation is very interesting and we need to look at it critically. We have the International Criminal Court (ICC) cases that still linger on. There is the rendezvous of some Kenyans in the Island of Guernsey because of tax evasion. We must consider the areas of criminal jurisdiction or else it will be like we are crafting a law that at some point in time, we would have to defend. The famous Wikileaks fall in this category. If we pass this Bill, we will have something to hang our hats on so. We can craft it better in the future. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Mariru): I can tell the interest is very clear on this Bill and we are going to have enough time on it. I will distribute fairly the opportunities to speak to this very important Bill. Next is Hon. (Ms.) Wamuchomba Gathoni.

Hon. (Ms.) Wamuchomba: Thank you, Hon. Temporary Deputy Speaker. Finally, the Members here are laughing because I have been wondering how long I am going to wait to join this very energising debate. I am one of the victims who have really suffered out of what we call cyber molestation, cyber bullying and cyber stalking. This is where people follow you and they are interested in how you smile and laugh. They go ahead to make a story out of all that. I also happened to be a big victim, barely one week as a Member of Parliament, when I gave out my honest opinion on how Members should be paid and who should be paid respectively.

I remember very well I attended a discussion on a national television and I gave my opinion just like any other Kenyan would. Just a clip of what I said was used by bloggers and I was persecuted, judged and jailed. I was jailed because I went through a lot of emotional challenges and even wondered whether that is what it meant to be a Member of Parliament. I thank God he gave me sufficient grace to sustain the smile and get the energy to continue working for the people of the great County of Kiambu. I am sure they know that I am working greatly. Every day, I am on the ground - if I am not in Parliament - offering them the service that they deserve. I thank them for giving me space. Even after going through the fire, they have made me a great woman.

I am one of those who sat in the very many meetings of the Departmental Committee on Communication, Information and Innovation led by our able Chairman, Hon. Kisang, and supported by our able Vice-Chair, Bwana G.K. I am glad we made the milestones that we have today. We have suffered for a long time because we were operating in an open space without a clear guideline and framework on how to handle some of the things concerning computer networking, computer data processing, digital appliances, connectivity and the processing of information that ends up servicing a lot of sectors in this country. The Computer and Cybercrimes Bill is an idea that is long overdue with the increased use of computers and digital appliances, all interconnected to operate our economy. There is dire need for a legal framework to guide the use of computer systems in Kenya and data management. We need a framework to guide us on misuse, computer systems and create remedies for offences emanating from the same.

In the recent past, the Kenyan economy - which is one of the fast-growing economies in Africa - has embraced the use of computer systems in almost every sector, from the medical world, transportation, security, communications, advertising, financial and research. It is, therefore, very risky for the Kenyan economy to operate without a clear legal framework to govern the operations and exchange of data. Socially, data, information development and sharing have been a thorn in the flesh. The emergence of social media has created a loophole for total misuse of computer systems through cyber-bullying, cyber-molestation, cyber-stalking which, as a lawmaker, I have been a victim of like I have said. I, therefore, support the passing of this Bill with a realisation of the risks that I have mentioned so that we can provide remedies that I have also mentioned.

I am also keen to make sure that we create a framework to maintain confidentiality of information that we process in all those sectors, protect data and create a mutual legal agreement with all other nations that we are operating with so that we can have a clear flow of information and operations around the issues of computers and data systems. More specifically, I am keen to see a Bill that will offer remedies and minimise cases of sexual harassment and domestic violence perpetrated by the use of computer systems.

When I was contributing in the Departmental Committee on Communication, Information and Innovation, I cited an incident which I want to mention. I have had an opportunity to work with members of the public and to reconcile families using radio. Many cases that were presented to me were cases where a husband talked about infidelity from evidence processed through the use of computer systems and such appliances that relate to computers. It is very sad for me to say that most of those cases that were presented to me emanated from broken families, domestic violence and such like social issues that disintegrate our social networks.

As a parent, I am more excited to note that this Bill has facilitated an opportunity for us to protect our children from child pornography and has provided a clear roadmap on remedies to protect our naïve children from material that is not vetted that lures them into absurd religious practices and immoral behaviours.

Therefore, I rise to support this Bill so that it can materialise into a law that can guide us on how to run our economy.

The Temporary Deputy Speaker (Hon. Mariru): Although there are not many Members on my left, I will still give an opportunity to those on my left to contribute. Before I do that, allow me to give an opportunity to one or two Members who are still on my right. I take note of Hon. Musimba and what the Speaker mentioned about your expertise in this and your interest to speak to it.

Let us have Hon. Gideon.

Hon. Gideon Keter: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill because of one thing: Our society needs orientation and protection. I do not support cyber-bullying, cyber-stalking, computer fraud, computer forgery, false publication and child pornography. It is high time that we, as a country, stood up and protected our society. I fear for my generation. The moment this is passed as a law, within the first 24 hours, many of the young people will be arrested because of many reasons related to this. Many young people have been practicing this for a long time. You find them with fake Facebook accounts and pseudo Twitter accounts, busy abusing one another, left right and centre and making life completely difficult for other people. Now is the time to become champions of media, literacy and share responsibly. Before sharing, we have to stop, reflect on what we share and verify before we share because we need to separate facts from fiction as a society. Spread of false information has a negative impact on people's lives and causes unnecessary confusion and hardship. Stopping this behaviour is everyone's responsibility. Since I know it is my generation that will suffer most, I still urge that the Government needs to conduct training and capacity building. It is not only the Government, but other stakeholders should conduct aggressive nation-wide sensitisation programmes lasting at least a year to increase this awareness.

The law enforcement officers and, most if not all, prosecutors and Judiciary officers need to know how to deal with cybercrime and electronic evidence. At the level of the police, special cybercrime units are often established, which offer technical support to other police services. The creation of specialised prosecution services is less widespread and varies with the Judiciary. Lack of knowledge and skill among prosecutors, and in particular members in the bench, seem to be a major concern in most countries, including our own country. I expect regular training of judiciary officers on cybercrime and electronic evidence, which I know is very rare. I also expect programmes to support the training of prosecutors, judges and magistrates to acquire the necessary skills regarding cybercrime and electronic evidence.

This is a good Bill. It is a pacesetter. It will take Kenya to a unique space whereby as a society, a young person will grow up in a safe environment which has less threats. It will also enable every family to forge ahead and focus on development rather than threats.

I support the Bill.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Melly.

Hon. Melly: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It has come at the right time in the sense that it will move with the tide of the time. The Bill proposes to look at crime related to the internet, technology and confidentiality. I want to point out very clearly that with the advent of the internet, privacy has become quite expensive. You

realise that our bank accounts are easily invaded by fraudsters who hack banks' computer systems and Automated Teller Machines (ATMs).

If you look at last year's report on cybercrime, you will see that banks lost billions of shillings. A number of the criminals went scot-free. Banks paid a lot of money to individuals who invaded accounts of innocent citizens. Apart from that, this Bill will address issues of unauthorised access. Last week, in this House, most Google accounts and Gmail accounts of a number of Members were accessed by individuals who had pseudo names. They carried out crimes in the names of Members of Parliament. They made calls and solicited funds. I saw the presentation by the National Intelligence Service (NIS) and the Director of Criminal Investigation (DCI). It was as if there was desperation. Everyone was helpless. This Bill will cure a number of these issues. Apart from unauthorised access, there are issues which are private in nature. There is also the issue of photo shop. A number of young men and women invade the social media and use pseudo names to pervert the names of individuals. This Bill will look into that.

I also want to talk about false information which affects us in development. For instance, Face book, WhatsApp and Twitter are rooms where rumours and innuendos are propagated against individuals, to an extent that even normal citizens always say that some information was in the social media and yet it is false. We have individuals in the society who create accounts for leaders. I remember one instance where His Excellency the President complained because an individual hacked his account and abused the top leaders of this Republic. This is the time when we need to learn from other democracies and nations on how they manage the cyberspace.

Apart from that, there is also publication, production and possession of child pornography. Pornography has become a serious problem not only in this country but also across the world. Every other time, nude photos are sent to anybody or any group with a lot of impunity. If we introduce this particular Bill, it will curb that and restore our morality and values. This kind of pornography is not allowed in the Islamic nations. In the nations which do not have order, every other time anyone can send bad things across the internet. Someone can send nude pictures across the internet. This Bill will cure that.

In fact, I heard one of the Members talking about the fines and penalties which are given to the criminals. Some of these penalties are lenient compared to the laws of integrity of individuals. If some of the individuals who have been mentioned to peddle rumours and innuendos are punished by paying Kshs2 million or Kshs3 million, it will not pay for the reputation of an individual. It is very little.

I rise to support this Bill in the sense that it will bring order. Earlier on, before the advent of the internet, computers and the web, crimes were limited because they were physical. Currently, there are a number of criminals who go scot free. I want to look at a case which one Member has talked about. During the campaign period and even before that, young men and women came up with information that is false, misleading and it assassinated characters of individuals. You do not have anything to pin them down. You can only be silent.

I want to urge Hon. Members to pass this Bill. There are certain reservations that I have noted. The Chair of the Committee is here. He will note them down, so that we pass the Bill with a few amendments.

I support the Bill.

The Temporary Deputy Speaker (Hon. Mariru): On the top of the list and from my left is Hon. Mule Mutinda, Member for Matungulu.

Hon. Mule: Thank you, Hon. Temporary deputy Speaker. I was wondering whether cybercrime is going on in the House.

It is high time we understood where we are going and where we are coming from. I thank Hon. Kisang for the good work he has done with the Committee.

Hon. Temporary Deputy Speaker, at the outset, I would like to say that we are going to support this Bill without any reservations because we need to have a Bill which is constitutional. First and foremost, as speakers who have spoken before me have said, there are quite a number of issues which we need to address. I want to say very clearly that during the Committee of the whole of the House, we must fine tune this Bill for the prosperity of the young people and the nation at large.

I have looked at quite a number of issues. Clause 12 is on false publication. We are putting it in a very general way. We need to be very specific and clear on what we intend to achieve with this Bill. I believe we need to expound Clause 12 to make sure we do not allow any false publication in this country and anybody to purport to deal with Kenyans at any given time. I know that it is in public domain what a UK company did during the elections. It is completely unacceptable in a society where democracy must prevail.

Clause 14 of the Bill talks about computer forgery. We need to relook at it. As Members, we need to understand that this is being done day in day out. I want to confirm to this House that only two weeks ago I received an e-mail purported to be generated by Kenya Power giving a contract and an agreement for me to contribute on behalf of the constituency for transformers. But whoever who sent it must have been a very big idiot because he forgot that I am serving my second term in this House. When we put up a list of transformers, we were very clear on how it should be done. We need to expound what we mean by computer forgery in Clause 14 of the Bill. I have not seen anywhere else where we are looking at mobile phone, cybercafés and the other gadgets that are used to do this. We must be holistic in what we call computer forgery. Direct or indirect, we must deal with it.

Hon. Otiende Amollo talked about penalties. For me, we should not be making laws because we need to punish people. We also need to make this law applicable to society for people to understand that they need to live responsibly. But I agree that whereas we have a responsible society, we must have very clear punishable penalties. If we leave it open for the Judiciary to make rulings they want to, even cybercrime will get itself to the Judiciary. Even the ruling from the Judiciary might not reflect the will and purpose to provide judicial solutions on cybercrime.

Clause 27 talks about a police officer or unauthorised person have responsible ground to believe. You know the kind of police force we have in this country. Imagine a police officer believing that you are a cybercrime officer. He comes to you and wants to deal with your office and wants to get into your office. We must be clear on when a person comes to investigate a cybercrime. We have heard in this House how cybercrime infringes into the rights of individuals. So, the police officers and authorised people must have very clear authority to perform their duty such that we do not get ourselves in cycles of cases. We are in a society where if anything happens and you feel aggrieved, you are allowed by our Constitution to move to court. I ask the Committee to re-look at Clause 27. Let us be specific and alive to the reality.

Clause 29 of the Bill talks about interpretation of content and data. I know Hon. Musimba will agree with me that it is not all of us who have the expertise to interpret data when it is its original form stored in a cloud somewhere. On this Clause, we need to bring in the technical expertise. I believe that before pass this Bill, with some of these clauses, we must have very

detailed technical experts to sit down, evaluate the clauses and give guidance and policies on how the clauses will be implemented. Sometimes I am in pain. We make very good laws. Kenya is not short of laws. The only problem we have in Kenya is how to implement them. Somebody somewhere wants to hide under other laws to make sure that it does not happen. We need to look at Clause 29 again. I know it has several issues put together, but we need to go details especially on issues of interpreting whatever that is stored in the cloud.

Clause 30 of the Bill is on obstruction and abuse. It is the same scenario. A police officer or unauthorised person who misuses his exercise of power under this part committed as an offence is liable to a conviction or a fine not exceeding Kshs5 million. Imagine we are now making a law to arrest somebody who has come to arrest a criminal. Am I correct? We need to relook at some of these clause because at the end of the day, at what point do we determine that the police officer or the authorised person has over-exercised misused his powers? That is why I am saying that a lot of clear guidelines and policies to manage and implement this Bill are required.

We are talking of a central authority. For me it is real. But, do we need to rely on the central authority to operationalise this Bill? My answer is no. We need to think outside the box to make sure that we have a clear direction on how to make sure that all that is contained in this Bill to be successful in dealing with criminals, it is operationalised. I request the Committee to relook whether we need to rely on the central authority online? Please, we do not need to.

As I conclude, this Bill is extremely timely, but we should not be in a hurry to pass it to please some people. Let us do the correct thing as a House and let us make sure we go through it with a toothcomb and make sure that when we come to the Committee of the whole House, Members and experts have interacted with it in totality and we make sure we do not leave a loophole on it because the state of the nation lies under the menace of criminals hiding behind cybercrime.

I support the Bill with amendments.

The Temporary Deputy Speaker (Hon. Mariru): Hon. (Ms.) Shamalla.

Hon. (Ms.) Shamalla Jennifer: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill with certain amendments. I wish to address the issue of a scourge that is spreading in this country; a vice that has become very dangerous.

As Kenyans, we have acknowledged in the preamble of our Constitution, in the first paragraph, the supremacy of the almighty *Yahweh El-Ohim*. We also recognise the inherent dignity of every person. It is an inalienable right. It is a national value that we espouse in Article 10 of the Constitution. Dignity about the human body is self-respect and self-worth.

I have noted that the Bill addresses the issue of child pornography extensively but not pornography as a whole. That is the vice and scourge that is spreading in this nation. Pornography in its entirety has been addressed in other Acts and in other pieces of legislation. For example, the Media Act prohibits publication of vulgar or obscene material but this Bill does not address pornography at large. Pornography is an act which debases a human being. It makes a human being's value lost. It debases not only women but also men. It is my humble submission that indeed we must incorporate outright the banning of access to pornography via the internet in Kenya. It is destroying the social fabric of this country. It has become a national inequity. It is so closely related to drugs. I say this because it is known that a generation is growing up that believes that pornography is a natural act of sex, and that in order to perform these vile acts available on the internet, one has to take drugs. They engage in all night orgies in private residences in Nairobi and other urban areas. This abnormal behaviour is being influenced by

access to the internet. It is my considered opinion that the Committee takes into consideration that firewalls be set up to stop the access of pornography not simply on issues related to child pornography but pornography at large.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Musimba, you had indicated that you are an expert. I am deferring giving you an opportunity so that you hear two or three other Members so that you are able, in a more comprehensive way, do your submissions. Hon. Maritim.

Hon. Maritim: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to support this Bill. Before I contribute, I want to say I am the latest victim of computer and cybercrime. Lately when I am going home, I have to go through a supermarket to buy ice-cream and chocolate for my wife just to assure her that indeed she is still the love of my life. The kind of confusion, the kind of mental torture that she has had to go through lately because of false publication is way too much. There is nothing that is disturbing like waking up in the morning to a 1000 notifications on Face book and people posting lies about others on social media. It is totally unacceptable.

The Computer and Cybercrimes Bill is going to solve half of our problems. In as much as we support freedom of expression and freedom of speech, it has to come along with responsibility. I want to challenge my youth, and those who are using social media that before you click send, before you upload anything, ask yourself four questions: Is it true, is it necessary, is it going to assist anyone, in the event that you are cornered, are you in a position to substantiate? If any of those is negative, you have to drop it like a hot potato.

There is cyber stalking and cyber bullying. Most of the Members here are victims of the same where guys are extorting money from us. They come up with funny stories. They send us messages asking for money so that they do not post the same. By passing this Bill, we are going to net them. We want to support our youth, we know they are creative and hardworking but they have to use internet appropriately.

I also need to warn group administrations for various social media platforms. Clause 17 is coming for you. They are seriously aiding and abetting commissioning of these crimes. If you are an administrator of whatever social platform, ensure you have ground rules. Ensure you put teeth in your rules because at the end of the day, we are coming for you. We know guys who are posting using fake accounts, pseudo accounts attacking leaders. It is wrong and it has to come to an end.

Members have talked of the penalty. They have talked of three to 25 years. A penalty of Kshs25 million to me, is less. The kind of damage that these youth are causing is huge. Some of us have struggled so much to build our reputation just for someone to go sit somewhere close to a Wi-Fi, compose a false message and circulate it so that they can damage our reputation. It is completely unacceptable. I stand to support the penalties prescribed.

A perfect enabler of this Bill is the police. Currently, with technology, crime rate is changing. We are going to work closely with security team to ensure that they are equipped with the necessary skills and with the necessary tools for investigation and even getting to arrest those personalities.

In that connection, the other day, I saw a comment from the NPSC talking of reducing salaries for some officers who have advanced their education. That is wrong. We need learned fellows. We need guys to go out and study on several methodologies on how to arrest the computer and cybercrime offences. We need this Bill and it is my biggest plea to the Members

that we support this Bill. Otherwise, we are going to support our youth. We want them to use the internet responsibly.

Thank you.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Mwangi Mburu.

Hon. Jonah Mwangi: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to support this Bill. It is the Bill of our Committee. It is a Bill that we have to support with all the passion. We have to be more open minded when we are looking at these issues.

First of all, on the fines, everybody is looking at the fines from a personal perspective but we were looking at the fines from a broader perspective. Consider a false publication against a corporate or an institution. If someone says a certain chocolate is causing cancer, what impact does that publication have to that company? That is why we had to put serious fines. That is why we had to give the judge the discretion to decide whether it is personal false information or corporate one that is affecting millions of shillings. We had to cater for it. We are also looking at cyber espionage. The other day, on 14th March this year, you saw the Business Daily publishing that we are under threat. It reported that there is someone who has been operating in Kenya for the last six years getting information to benefit a foreign nation and is getting money from the crime of spying for another nation.

You say the business daily publishing that Kenya is under threat because there is somebody who has been operating in Kenya for the last six years, getting information to benefit a foreign nation and they are getting money from the crime of spying for another nation. Which laws do we have to cater for this? This is a serious case, it is called slingshot. The other day in Runda, we had Chinese who had to be deported back to China because our Kenyan Government did not have the laws to take care of these Chinese, yet they had siphoned a lot of money from bank frauds. Banks are not reporting their financials correctly. Every day, banks are losing billions of shillings. When they publish that, the public may run away from the banks for the fear of its collapse. If you have clear laws, every person who is intending to rob these banks through cyber-crimes will know there is a deterrent and your money can be taken back by the bank. We have to look at all these things. We have to look at serious, critical information and infrastructure. The other day, we heard people saying that they can get into the system of IEBC. We have to protect these serious critical informational infrastructures so that no one can even dare or think. We have to protect their confidentiality and integrity so that when you say you have information from this particular system, you can substantiate where it comes from.

We have to look at E-citizen. In Kenya we are going digital every day. People are stealing from E-Citizen and Integrated Financial Management Information System (IFMIS) which are Government projects to ease the lives of Kenyans. If we do not have laws to protect this, where are we going? We need to do a good law and that is why the Computer and Cyber-Crime Bill is on the floor.

Clause 12 considered the issue of freedom of expression and we had to consider Article 24(2) to cover Article 33 of the Constitution. We will introduce an amendment so that it is in tandem with the Constitution. So, we are listening to everybody and we are taking those notes so that when we go back, we will put some serious amendments so that this Bill can be as good as it can be, for the nation and for the prosperity of this country.

We are looking at every part of this Bill. We are looking at facilitation of international cooperation. We do not want somebody to say that they have set base and their hacking system is in Tanzania. Will this Bill create a situation where we can cooperate with Tanzania to get

them, so that they do not operate an illegal computer system in Tanzania and deliver fake news to Kenyans using your illegal system? These are things that are happening. People are setting fake things. There is something we call cyber spoofing where people are masquerading as real people. It is a very serious crime in Pakistan and they have a serious law for it. In Kenya, you find someone creating your Face book account with your name and it will appear like it was you who created it. He will be posting something like I have decided not to vie again in Lari Constituency and everybody else will take that news as true. We must cover these things. My friend Hon. Sylvanus Maritim was talking about the way he was maligned. During my campaign, a serious mansion was put on Face book that I have another wife in Molo and I had vied in Molo. Truth be told, I do not even have a relative there. How do we take care of these people, the young boys who are in the streets and in the shopping center in the village, who wake up and say: "My MP has stolen 20 acres of land near my house." How do we take care of people who say that someone was found in Mombasa with someone's wife? How do we take care of them? I understand that we must guard the Constitution and everybody's freedoms but freedoms must come with responsibilities. Those responsibilities must be catered for in this Bill.

I support.

The Temporary Deputy Speaker (Hon. Mariru): We have to move to my left. Hon. Nzioka Kivasu.

Hon. Nzioka: Thank you, Hon. Temporary Deputy Speaker for the opportunity. At the outset, I rise to support the Bill on Computer and Cyber Crimes. I have been a Member of the Committee that looked into this Bill. We have deliberated fully on it and we have received memoranda from members of the public, institutional stakeholders involved in the ICT sector and I urge the Members to look at the recommendations that were tabled in line with the Bill that is before us.

Clause 3 outlines the objects of this Bill and looks at the protection, confidentiality, integrity and availability of computer systems and at the same time it looks at the prevention of unlawful use of computer systems, facilitation of the investigation and prosecution of the same and the facilitation of the international cooperation.

The Bill provides for a law that deals with computer systems and cyber-crime to help curb the increasing cyber-attack in Kenya. This is a concern to all of us and the Bill is coming at the right time. Equally, the Bill provides for a legal framework that defines detailed conditions for prosecution of the same. The three items in consideration of the offenses investigation procedures and international cooperation are well spelt out in the Bill and gives enforcement officers the power to detect, investigate and prosecute.

Kenya needs a properly regulated ICT industry and protection of digital platforms to help reduce on computer and internet enabled crimes which we are already talking about in the Bill. Every institution in the country is having computer systems which are supposed to be protected and every institution is supposed to guard the intrusion on those systems. The Bill clearly stipulates an authorised disclosure of passwords and access codes. Many at times in these institutions, the persons who disclose these passwords, go scot-free. This Bill confines that disclosure to be a criminal offense. When those successes are already given out and the people access the computer systems, programs or data and infringe the security measures of those institutions, equally, those individuals commit an offense.

On interception, many at times especially with the current technology, people are in a position to intercept, intentionally and without authorisation, information either to computer systems or from computer systems through use of telecommunication networks. This is

criminalised in the Bill. When we talk about cyber espionage or spying, many at time we are having individuals who keep on obtaining, possessing or communicating intentionally or unlawfully, information without our permission. This has been a concern to many Members of this House where information is obtained from whichever circle and is used to defame or malign the Members of Parliament.

On the false and misleading information, Article 33 is very clear on the freedom of expression. But Article 33(2) does not extend to propaganda, incitement, hate speech and trolling. There is need to curb the spread of either disinformation or misinformation of this information through the internet platforms which are being used especially by the youth which includes Face book, WhatsApp, Instagram, twitter and others.

Hon. Temporary Deputy Speaker, forgery of computer data is becoming a concern. I heard Hon. Mule talk about more definitions on this forgery. My understanding is, when you talk about forgery you are looking at either altering information from these computer systems, deleting that information or suppressing the data that resides within those computer systems. So, anybody who commits any of those offences is liable to forgery of the computer data crime.

We have all been victims of cyber stalking or bullying. We have been sent threatening messages which have caused a lot of harm to us repeatedly. Sometimes we get messages requesting money which is either extortion or just trying to gain some financial access from the Members of Parliament.

We have the social engineering or email fishing where people outside there try to manipulate other people into performing actions or diverging confidential information for their own gain. This information when you release it, sometimes you get coerced to give information unknowingly only for the information to be used against you or for other bad purposes. We need to be guarded against these email fishing.

Hon. Temporary Deputy Speaker, there is need to support this Computer and Cybercrime Bill, 2017 because we need to tackle the computer and cybercrime aspects and help improve our digital economy. Digital economy is affected when people shy away from the use of technology. If this Bill goes through, my expectation is that the digital economy within the country is bound to thrive because the fear will have gone.

We have been extorted heavily on cyber extortion. This comes from the denial of service threats. This is where somebody gets into you accounts, tries to deny you a particular service and later come in and say, fine, if you want me to restore this service, let me have this or that. They usually do it to gain some money. If you give them then they stop it. That kind of action needs to stop and we can only do it through this Bill.

Hon. Temporary Deputy Speaker, cyber terrorism is becoming a concern. We have online recruitment, funding, planning and spoofing where people exaggerate on certain information. We even have Government threats and bomb attacks through the same message. This Bill equally expounds on how we can tackle some of these online issues. At the same time, we have been having fraud and financial crimes especially bank fraud and money transfer. Kenya is riving very well with Mpesa. Many of us have lost a lot of money through Mpesa from fraudsters through being cheated or coerced only to realise you have really lost that money.

Hon. Temporary Deputy Speaker, Section 2 of the Bill talks about the Investigative Procedures. Our recommendations talk about the need to have a cybercrime unit that is going to help in the planning, coordination and execution of the prosecution issues for us to be able to help with the Bill being ---

The Temporary Deputy Speaker (Hon. Mariru): The one on top of the list is Hon. Tuitoek Kamuren, the Floor is yours.

Hon. Tuitoek: Thank you, very much Hon. Temporary Deputy Speaker. This Bill has just come at the right time. The Bill is very important and should cover a very wide area. In Kenya we are undergoing massive use of computerisation. Ministry of lands is doing a lot of digitisation. Universities and all learning institutions are also undergoing massive use of computers in their systems. We also know that when it comes to the world of Common Market for Eastern and Southern African Countries (COMESA) there is also the use of computers to enable the business.

COMESA deal with money transfers, Mpesa and other types of money transfers. If you look at the academic world people are doing a lot of very important research and publications in which people tend to do a lot of plagiarism. So, this Bill in my own view should be really wide. It should not be restricted to a very narrow area. We know the social media is a pain. Some of us are victims of the many things that are being written in the social media, WhatsApp, charts, telegrams, Instagram, Face book. It is a nice way of communication and has expanded opportunities for people to get information although a few people have misused it to exchange and source information. Therefore, this Bill is good in that it tries to bring discipline to the social media. A lot of bad things have been going on in these platforms. There is stalking of our members or individuals in Kenya, cyber bullying and all those kind of things. We also know about the banking fraud that is going on. This is where people steal money by manipulating systems. So, this Bill is coming at the right time because it is going to address a wide area which is really very important. It is going to sort out issues by protecting people's private information and data. This is done by preventing unauthorised disclosures and cyber espionage especially publication of false information which is on the rise of manipulating of information. Personally, I have been a victim. There is a lot of photo cropping or changing or manipulating information just to achieve wrong end of things. Publications of various kind including pornography that has been mentioned here is a very serious thing which we need to prevent especially to protect they young learners. If you go to homesteads you will find everybody including the children with their mobile phones busy. We therefore need to find ways of protecting young people in this kind of digital world of forgery.

I support this particular Bill very much because it will bring discipline into the sector. Apart from that, it will also streamline functions of various systems so that people do not misuse them in the banking system, business world and academic world. It will also ensure that everybody play their roles by using this technology for the right purposes and not to undermine or misuse the given opportunities. I, therefore, rise to support this Bill. We only need to expand it more so that when it goes to the Third Reading we will look at it clause by clause and see whether we have covered all the sectors so that we do not come back again and bring another Bill to cover other sectors. We actually need it to be a comprehensive Bill. Whoever said we do not need to rush was right.

Hon. Temporary Deputy Speaker, for us, the fine should be more punitive contrary to the misgivings of our Member, Hon. Amollo, so that people can be deterred from misusing these particular tools especially the social media where people's names are being damaged. People are creating fake information and the lasting effect may be fatal.

With those few remarks, I support hoping that in the Third Reading we bring in more amendments. Thank you.

The Temporary Deputy Speaker (Hon. Mariru): Let us have Hon. Wachira Kabinga.

Hon. Josphat Wachira: Thank you, Hon Temporary Deputy Speaker. I support this Bill. Since much has been spoken on the same, I will go to the points I feel are necessary. When we listened to the Mover of this Bill and thereafter submission by the Chairman of the Departmental Committee on Administration and National Security, we realise that there is a lot of relationship between the two Committees as far as this Bill is concerned. As we discuss this Bill, we need to look at its implementation. We have had Bills that have been put in place in this country but because of lack of capacity and necessary systems, implementing them has been a challenge. This Bill touches on prosecution and security, thereby bringing in our security forces that will do prosecutions and much of its implementation. So, even as we support this Bill, I urge that we look at the possibility of having a Joint Committee to finalise it before it comes to the full House.

The issue we are discussing is one that has caused this country a lot of loss of revenue and time by some of our people who spend time on bullying, stalking and conning others through the facilities that come with technology. We have people who have been abused. We have people who have ended up with mental disorders because of bullying through some of this technology. So, this is a Bill that we need to take seriously. It is a Bill that will have an economic value. We are aware that although not spoken out there, our banks are losing to the tune of Kshs 20 billion annually out of misuse of the cyberspace through intrusion, conning and hacking. All these things happen to our Government installations, telecommunication companies, mobile money, Saccos, micro-finance organisations and cooperative societies.

Long hours are lost by our people in this country engaging in some of the things that are unnecessary such as pornography, surfing the internet while they would have put that time to better use. We need to come up and put in place systems that will prevent that kind of wastage of time. We may not value it now but even as we continue we know our population is growing and systems are becoming much more complicated. People out there are getting to understand technology much more than we are doing, internationally and locally. It is high time that we as a country start preparing ourselves not just on the prosecution side that is brought by this Bill but we also need to invest heavily in technology regarding that is being misused. This is so that we can have effective infrastructural cyber security measures that will bring firewalls that will ensure that we do not let people access some of the things that are misused. We also know that through the same technology, recruitment and radicalisation of our children is also taking place.

We need to come in through this Bill to ensure that information that is flowing in our systems is not only economically beneficial to the country but also socially. We need to support our security forces by providing information that can lead to radicalisation.

I am cognisant of the fact that we as users in Third World are using a lot of devices and systems that are coming from the international manufacturers. We rely on their trust and goodwill that whatever they give us is not gathering information about ourselves and countries. If you think of it one gets worried that some of the equipment being used by our security forces could be collecting information and probably send it elsewhere internationally. Therefore, we need to invest heavily and ensure that this Bill is implemented in the right manner. The ICT Department can do it but let there be serious support from the administration and security. I believe that a joint body should be formed of experts from ICT and security forces so that they come up with a center that will not only be looking at what is happening but also carrying out intensive research. That is what will help us ensure that we are on top of things.

We know that technology is changing every day. We know that issues such as pornography could be a problem of today and we may be faced with different challenges

tomorrow. I really sympathise with those of us who have to spend time in our houses trying to explain how we are not involved in some of the things that come through our devices.

Therefore, I support this Bill and as we discuss and pass it, I am cognisant of the many amendments that Hon. Members have proposed. I hope that the final product will be refined and taken seriously and more so through a Joint Committee that brings security and ICT experts and other stakeholders in place. It is probably one of the most serious Bills this House is going to discuss and probably pass this year. Without this Bill we are going to lose a lot of revenue. We shall have a spoilt and lost generation and it will take us time to recollect as a country. I am aware that today in our country and in many other countries, there are people who wake up in the morning take their breakfast, go to their bedrooms and spend hours there, doing nothing other than pornography, bullying people and thinking about how they can hack systems out there to cause this country damage.

I am aware that even as we talk about security, many of our children are engaged by people who want to recruit them to be members of outlawed groups. Therefore, the earlier we up our knowledge in this area, the better for this country.

Therefore, I highly support this Bill.

The Temporary Deputy Speaker (Hon. Mariru): Let us have Hon. Musimba.

Hon. Musimba: Thank you, Hon. Temporary Deputy Speaker. Indeed, this was a very interesting discourse and I have enjoyed listening to other Members speak. So, I thank you for your wise guidance. I think for housekeeping, I just wanted to know how much time I have. This is because the Speaker had given a certain directive?

The Temporary Deputy Speaker (Hon. Mariru): Your time is like, for any other Member. The Speaker did not.

Hon. Musimba: He said I have got 30 minutes.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Musimba, he did not specifically indicate 30 minutes. He just registered your presence.

Hon. Musimba: He did.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Musimba, just continue. I am consulting on what exactly the Speaker said.

Hon. Musimba: It is good so that I am able to organise myself.

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

The Temporary Deputy Speaker (Hon. Mariru): Hon. Musimba, as I consult, let me give one or two Members. Order! What is it do you have a point of order? Yes, Chairman.

Hon. Kisang: On a point of order, Hon. Temporary Deputy Speaker. Hon. Musimba has a lot of interest in this Bill. I am requesting that even if you do not give him half an hour, at least give him a minimum of 20 minutes so that we do not engage in circles. Let him speak, because he had requested that we delay the Bill, but we told him to come to the Chamber, speak and during the Committee of the whole House, he can also bring his amendments. I will request you to at least give him 20 minutes.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Chairman, you are speaking on the same issue I have raised. As I consult on the exact direction given, let us give other Members to speaking to this Bill. Hon. Sankok, it is not yet your turn. We have to follow order. Let us have Hon. Mishra.

Hon. Mishra: Thank you, Hon. Temporary Deputy Speaker. I will take the shortest time possible. If you do a business and the loss is more than profit, will you revisit the strategy of the business or close it? Similarly, when using technology, we have to look at the pros and cons and

if the disadvantages are more than advantages, then we have to strongly revisit that technology. However, this is the right time not only in Kenya but globally to think about cybercrimes and we revisit and pioneer how to stop and prevent them.

We talk a lot about businesses, money, sex, power and politics. However, in academics, I have an experience of 17 years as a lecturer in Moi University School of Medicine. Once, cybercrime happened and the exam question papers were hacked by some interested parties. So, we had to write down the exam questions conventionally and give to the students. How to prevent these types of crimes is very important. We are talking about governance and we know our leadership has the Big Four Agenda and there are sensitive ministries and departments of the Government, we have to ---

(Hon. Josphat Wachira crossed the Floor without bowing)

The Temporary Deputy Speaker (Hon. Mariru): Order, Hon. Wachira Kabinga. I can see you have remembered the mistake you have done. Please go to the door, bow and then say hey to your friend Hon. Musimba. Proceed now.

Hon. Mishra: All these sensitive departments like the Ministry of Health and the National Hospital Insurance Fund (NHIF) deal with multi-billion dollar projects because of the universal health cover. We need to prevent fraud in disbursement of funds, the private and public sector money disbursement to suppliers and insurance. We have to prevent many things to come. So, we need to create laws and rules which must be implemented. Let me give a personal experience, on how I was almost finished before elections. I was photographed next to a young nude Indian lady by some young men. That finished me personally, socio-economically, my private and personal life. My children are grown up and this affected my whole family, friends and my world. It is a must for us to implement this Bill and also think about widening our coverage on this discussion.

The Judiciary and the police as far as concerned have existing systems and they should be well trained on cybercrime, how to give judgement and justice. Also we can create a special department of professionals who are computer and digital literate. We should not do this alone because the world is a global village, but also ask other countries for help in creating a cybercrime club to prevent these crimes because this will help us.

With all these sentiments, I support this Bill.

The Temporary Deputy Speaker (Hon. Mariru): Hon. (Ms.) Cheruiyot Chesire, I notice that you have been extremely patient and I can see you are on top of the list.

Hon. (Ms.) Chesire: Thank you, Hon. Temporary Deputy Speaker for realising that. I want to contribute to this Bill having been a victim of this. Like I said one time, it is only that my husband has some strong shock absorbers, and that is why I am still with him. Otherwise cyber bullying, cyber stalking and other cybercrimes have happened to me. But, after my contribution on that day, it is like they have subsided and I do not think they have gone anywhere.

We are the representatives of the people and the voice of the voiceless in this House. It is true that families and people have suffered in silence. Medically, I think some of them have developed high blood pressure, ulcers or are psychologically tortured because of cyber bullying and cybercrimes. It is prudent to let the people of Kenya realise that nobody is after the youth. What we are trying to do is to continue bring the African family back because we are in an era where the young people no longer respect anyone.

In my own thinking, I want to believe that however, punitive the charges are it is not as bad as what people have undergone. Some people think the punishment of 25 years or any number of years given is too long. However, you should remember the person who has been affected by cybercrime which might have caused them a terminal disease. High blood pressure cannot be treated once it develops in a person. The youth of this country should not see like they are being targeted. We are trying to put things in order because as at now, we are very disorderly. Many homes have broken or others will break very soon. You do not know when this can happen. It can be anytime, day or night. You can find yourself being bullied or some funny photographs being sent to your husband or wife.

Any time, any day or night you can get yourself having being bullied or some funny photos have been sent to your husband or you as a wife. I must say in this case, women are more affected than men. However, we are not saying the Bill has come for women. It has come for both because when women are affected, men are equally affected. Therefore, I request that the police officers be given proper training so that they can have quick and proper investigation that may provide for justice to everyone. That way, people can get arraigned in court for the mistakes they have done.

It is important to also note to the youth that whatever thing they post on their walls are almost permanent such that even when they are looking for jobs it could be destructive to the appointments they are making or when they are going to look for jobs because someone will go down the line. Even if it is five or ten years, they will be able to see the type of person this person is. We want to talk to our youth.

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

The Temporary Deputy Speaker (Hon. Mariru): What is it Hon. Sankok. You seem to have an intervention.

Hon. ole Sankok: Hon. Temporary Deputy Speaker, I am just interested in protecting you because I can see although these people are not cyber bullying you, they are bullying you physically. So, I just wanted to protect you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Mariru): Order, Hon. Sankok! That is quite unprecedented that you are rising to protect the Speaker. The Speaker is not in any danger. He is okay. It is just the honourable members that are consulting. The Speaker has several ears. He is still listening as he is consulting.

Hon. (Ms.) Cheruiyot: Thank you, Hon. Temporary Deputy Speaker. I was worried that he is rising on a point of order to me but, maybe, he is seeking for attention. You never know. I also want to say that it is also prudent and necessary that the necessary amendments to this Bill be done to avoid loopholes that can water down the efforts of curbing computer and cybercrime. This is because if we do not actually look at the clauses closely and well, soon or thereafter, this Bill might be rendered useless. So, it is only important for this House to go slow in it and be in it seriously so that when we are coming to the Committee of the whole House, we will have had enough flesh to make sure that we are not soon or later coming back to say the Bill is not working.

I also want to give our youth personal advice now that I am also a parent. I also have teenagers in my house. Kindly go slow on what you write on your computer. When we talk of computers, our youth should know that computer is inclusive of their phones. At times they might think that until you go to a cybercafé and write, then your phone is not a computer. A phone is a type of a computer and I kindly advise them as a mother. That is motherly advice that they should avoid that habit. If they are used to cyber bullying, they should now change and turn

to other ways of using computers or their phones. If they want to criticise a leader, they should do so in terms of their constitutional mandates but not in their personalities and personal and private lives.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Mariru): Yes, Hon. Mohamed Sheikh.

Hon. Mohamed Mohamud: Thank you, Hon. Temporary Deputy Speaker. Computer and cybercrimes are very real. I support this Bill in the sense that we can no longer bury our heads in the sand and assume that all is well in our techno world. Our generation has had the greater opportunities of global success through the internet and through technology but yet again frustrated by cyber criminals and technological criminals who see backward opportunities in all.

We, therefore, need to protect our families, children, wealth and, above all, the dignity of our society given that these cyber bullies and cyber criminals take advantage of the young, the old and the rest. Therefore, this Bill supports a position where actually it protects the vulnerable in our society, particularly our young children who can be exposed to pornography and various other online criminal issues.

We need to understand what happens globally. In developed nations, cyber-bullying has been recognised as the highest danger to their communities. Because they realised that there is a danger within the cyber and new technology, they decided to set up laws which they enacted to protect their communities. They, therefore, found a great investment in the control of cybercrime.

We should also realise that it is important that we understand that the moral fibre of our society is at stake. We need to stand and protect this very invaluable society of ours from the influence of cyber criminals. Unless we engage ourselves in understanding why this is quite crucial and planning forward for our community as the world becomes technologically aware of the issues of cybercrime, our society will be in the arms of protection. A study by Deloitte Global Consultancy suggested that Kenya lost approximately Kshs18 billion due to cybercrime in 2016. Deloitte also suggested that in 2015, Kenya was the 69th most vulnerable country out of 127 countries they examined. Therefore, cybercrime is real. We need to understand that those criminals will use all possible means to ensure that they take advantage of the vulnerable members of our society.

I support this Bill to ensure that the protection of our community from cybercrime and technological crime is enacted within our laws. The only way we can protect our community is to enact those laws, ensure that they have been used on the ground and that the criminals are aware that “big brother” is watching. “Big brother” is the law of the nation.

I, therefore, support this Bill and would be very happy to see it come into action.

The Temporary Deputy Speaker (Hon. Mariru): Let us have Hon. Shaban.

Hon. (Dr.) Shaban: Thank you for giving me this opportunity to also give my opinion on this very serious Bill on cybercrime.

It is important for people to note that they cannot just read parts of the Constitution which give them the freedoms they want but at the same time not look at the other articles of the Constitution. In the preamble, it is quite obvious that this Constitution was made to protect Kenyans and also to make sure that families and the nation at large are protected. In the bill of rights, Article 28 talks about human dignity. It states:

“Every person has inherent dignity and the right to have that dignity respected and protected.”

In Article 29 on the freedom and security of the person, paragraph (d) is quite clear that people should not be subjected to psychological torture which cybercrime does. Article 31 of the same Constitution talks about privacy of Kenyans. Article 33 (2) is very clear on the limitations of the freedom of expression. I urge all my colleagues to look at the Constitution in totality, not just what suits them and leave out what does not. I know my colleague from Rarieda was the Chair of the Office of the Ombudsman.

Apart from being the Chair of the Office of Ombudsman, he is also a constitutional lawyer. As much as he was elected by the people of Rarieda, it is important for him to use his knowledge in a way that will help Kenyans but not to destroy them.

Hon. Temporary Deputy Speaker, I refer to the fact that he said that they hacked the systems to know the elections results. If they hacked the system and got the results which they are purporting to be put around, this country would have been on fire. The truth is that he should have told people how he was in the Committee which made up those figures. They came up with those figures to come and lie to Kenyans. It is important for Kenyans to respect the constitutional rights of Kenyans to elect the leaders they want and allow Kenya to move on. On that note, I want to thank the Opposition party leader who shook hands with the President the other day, and finally accepted that he is the duly elected President of this country. It is very important.

The social media spaces have destroyed families. People have been subjected to pain. Their children do not do well in schools because their parents are attacked in the social media. At the same time, it is important for us to note that there are people who have died of heart attack just because of the propaganda and the lies which are usually perpetrated through the social media. This Bill comes at a time when we need it. It should have been here before. I know that we were not ready for it at that time but the more we look at it, the more we need it.

The offences and the fines which have been imposed are about up to Kshs20million and in others up to Kshs7million. That means that the judge who is presiding over this case can make a decision on whether to ask the person to pay Kshs500,000 or Kshs20million. It is up to the presiding judge to make that decision. The jail sentences also give them the upward limit but not the minimum limit. This Bill is quite in order. As we are moving on, it is important for people to bring their amendments in the Committee of the whole House, so that they can be carried on board. We have to be convinced that the amendments which are brought here will be useful to Kenyans.

Most of the people who agitate against punishment for cybercrime perpetrators are those who most likely have used those same pages to destroy others. Time has come for Kenya to embrace this. We have to learn from the countries where cybercrimes have been stopped completely. We have to move on.

With those few remarks, Hon. Temporary Deputy Speaker, I give my support to this Bill.

The Temporary Deputy Speaker (Hon. Mariru): Hon. Musimba, I have consulted on the time the Speaker indicated. In line with the Speaker's pronouncement earlier, you will get as much time as you will need to present and prosecute your presentation, I will give you the first 10 minutes and then after that, inform the Chair the additional time that you need and an addition will be made at that point. You have your 10 minutes.

Hon. Musimba: Thank you, Hon. Temporary Deputy Speaker. First of all I want to thank you for your wise counsel and listening to other Members. It has been a very interesting discourse this afternoon as to the extent of this particular Bill.

I will start first on jurisdiction because that is one of the concerns that is raised in this Bill. Cyberspace is out there. You have to see how it collates to the average Kenyan and why the whole issue of computer and cybercrimes is important to Kenyans. It is because ...

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

The Temporary Deputy Speaker (Hon. Mariru): Order, Hon. Musimba. What is it Hon. George Macharia?

Hon. Macharia: Hon. Temporary Deputy Speaker, looking at the number of Members in the House, I believe and see we do not have quorum. Hon. Musimba has good contributions to make to this Bill. It is not fair that he speaks to an empty House. It is not fair that all the good points he wants to raise cannot be listened by Members who sit here to pass this Bill to law. I am the Vice-Chairman of the Departmental Committee on Information, Communication and Innovation. We have done a good job in looking at this Bill, which has 46 clauses. We invited Hon. Musimba to come and make his contributions to the Committee and we also advised him to attend debate in the House and make his contributions. Therefore, it is important and very necessary that Hon. Musimba make his contribution when the House has quorum. I do not want to say that the House does not have quorum, but that is my point.

He can make his contribution, but let us give him another chance when the House is full. I am not standing here to say that there is no quorum, but to make an observation.

Thank you Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Mariru): That is a fair point, Hon. George Macharia. We have three minutes to the end of time. Can the Clerk-at-the Table confirm to me whether we have quorum or not.

(The Clerk-at-the Table counted the Members present)

Hon. Member, our Standing Orders say that the Quorum Bell be rung for ten minutes to secure the quorum, but we have two minutes remaining to the end of the Sitting. So, in the circumstances, there is no need to actually ring the Bell because it has to be rung for ten minutes. We now actually have one minute and thirty seconds to the end of Sitting.

In that case, Hon. Musimba, the time that you had been allocated has been noted and it will be picked up when this matter comes back. The time that you had spoken is already recorded. So, you will have your first ten minutes and after that, the Chair will ask how many more minutes you will need and, at that point, he will make the decision how many more minutes to add you. That will be when this matter comes back in the Order Paper as we will be guided and directed by House Business Committee. I am sure, Hon. Musimba that, that is very clear. In fact, Hon. Musimba and Hon. Members, time is up.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 22nd March 2018 at 2.30 p.m.

The House rose at 7.00 p.m.