

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Wednesday, 6th November 2019

The House met at 2.30 p.m.

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

PRAYERS

(Hon. Duale consulted loudly)

Hon. Speaker: Can we now start? There is too much noise here. The Leader of the Majority Party and team, we can start.

COMMUNICATIONS FROM THE CHAIR

REFERRAL OF BILL TO SELECT COMMITTEE UNDER STANDING ORDER NO.127(6) (A)

Hon. Speaker: Hon. Members, even as I make this Communication, I am waiting for the correct data that shows how many Members made their way into the Chamber yesterday between 2.30 p.m. and 4.30 p.m. I intend to make the data public. It is important. We are transparent and there is nothing to hide. Kenyans have a right to know Members who come and stand at the door, log in and go back to... I do not know whether it is the Members Bar or the Lobby Room.

Hon. Members, I wish to draw the attention of the House to the publication of three Bills proposing a legislative framework for public participation in legislative processes. These are:

(i) The Public Participation Bill (National Assembly Bill No.69 of 2019), which was published on October 2, 2019 under Kenya Gazette Notice No.167 of 2019 and read a First Time on October 29, 2019. This Bill is sponsored by the Select Committee on Parliamentary Broadcasting and Library.

(ii) The Public Participation Bill (No.2) (National Assembly Bill No.71 of 2019), which was published on October 11, 2019 under Kenya Gazette Notice No.170 of 2019 and read a First Time on October 30, 2019. This Bill is sponsored by the Member for Kiminini, the Hon. Chrisantus Wamalwa, MP.

(iii) The Public Participation Bill (Sen. Bill No.4 of 2018) which has been referred to this House after passage by the Senate. This Bill, which is sponsored by the Senator for Busia, Sen. Amos Wako, was published on March 5, 2018 under Kenya Gazette Notice No.17 of 2018 and read a First Time in the National Assembly on June 11, 2019.

Hon. Members, you will recall that I have since referred the Senate Bill to the Budget and Appropriation Committee for appropriate recommendation as contemplated under Article 114 of

the Constitution. On the other hand, I also referred the Public Participation Bill (National Assembly Bill No.71 of 2019) to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to the provisions of Standing Order 127(1) relating to Committal of Bills to Committees and Public Participation.

Hon. Members, I wish to notify the House that on 4th November 2019, the Chairperson of the Select Committee on Parliamentary Broadcasting and Library petitioned the Speaker, to have the first Bill referred to his Committee on the basis of the fact that the particular Bill was sponsored by the said Committee. It is my view that the request merits my favorable consideration. In this regard, pursuant to the provisions of Standing Order 127(6) (a), I, hereby, refer the Public Participation Bill (National Assembly Bill No.69 of 2019) to the Select Committee on Parliamentary Broadcasting and Library for consideration; being the Committee which originated it. The Committee will exercise all the powers under Standing Order 127 when considering the said Bill and, thereafter, report to the House as required.

I thank you. It is only the Hon. Members of this House who will look at all the other Bills by Hon. Wamalwa and see which one fits into the other and which one can be subsumed by the other.

I thank you, Hon. Members.

Hon. Millie Odhiambo, I have looked at the intervention list and I can see that you have an intervention. You do not have to shout.

Proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker for issuing the Communication. I just wanted to seek a clarification. In a case where you have three different Bills pertaining to the said matter, is there a possibility of co-sponsoring a Bill between a Member of the Senate and a Member of the National Assembly to fast-track certain Bills? This is because the public participation Bills that we are talking about may be similar in content or principle, but with minor differences in terms of approaches. I am saying this because I also have the Reproductive Health Bill, which is still waiting for the pre-publication processes. I am told there is possibly another one in the Senate. So, is there a possibility, for purposes of fast-tracking so that we do not have committees going through similar Bills at the same time, that we have the Bills co-sponsored? I have not seen it in the Standing Orders, but I do not know whether there is a possibility of co-sponsoring Bills.

I thank you.

Hon. Speaker: Hon. Millie Odhiambo, you have raised a very pertinent issue. I have had occasion to suggest that there be a meeting between the technical teams serving the respective Committees of Procedure and House Rules of the National Assembly and the Senate, more particularly, because the Constitution is very clear in Article 109 (5) as to which House money Bills may originate from. I have suggested that to a number of Senate leadership members to explore the possibility of co-sponsorship certain Bills. But in order for that to happen, we need to work in conjunction with our colleagues in the Senate with a view to making concurrent provisions in the Standing Orders of both Houses. That is because on the face of it, there are some Bills that have come from the Senate which have been lost for the simple reason that they originated there and yet, the Constitution is clear that if a Bill has a money effect, it cannot originate from there.

However, there may be Bills that could help the country and serve it better. So, I will be taking up the issue you have raised once again with the Clerks of both Houses to see whether they can put together some proposals for consideration, perhaps, jointly between the two

committees to see how best we can handle the issue of co-sponsorship of Bills. It happens in other jurisdictions, as you know. So, thank you very much. It is a good point but since it is not there, even if we allowed it here and the other House does not allow it, there will still be some friction.

The two Hon. Members who are upstanding, please, take your seats so that I can make another Communication.

(Hon. Members took their seats)

CONVENING OF NAIROBI SUMMIT ON ICPD BY GOK/UNPF

Hon. Speaker: Hon. Members, the Governments of the Republic of Kenya and the Kingdom of Denmark, in conjunction with the United Nations Population Fund (UNPF) will be convening the Nairobi Summit on International Conference on Population and Development, (ICPD-25). The Summit will take place next week from 12th to 14th November 2019 at the Kenyatta International Conference Centre (KICC) under the theme: “Accelerating the Promise”. The Summit will mark 25 years since the 1994 Cairo International Conference on Population and Development (ICPD), which articulated a bold new vision on the relationships between population, development and individual well-being. The organisers have informed us that invited guests include Heads of States, Ministers of Planning, Health, Finance, Education and Social Welfare, Parliamentarians, youth delegates, academia, and other state and non-state actors from around the world.

Hon. Members, as part of the main Summit, the Parliament of Kenya has been requested to co-host a Parliamentarians' Forum in the form of a daily 90 - 120 minutes session to be conducted within the precincts of Parliament. Those sessions will bring together Members of Parliament from other countries participating in the Summit for peer-to-peer sharing and deliberations. Indeed, the National Assembly will participate through the Departmental Committees on Health, Education and Research; Labour and Social Welfare and Finance and National Planning as well as the Parliamentary Caucus on SDGs. The Senate will also participate.

Hon. Members, in view of the foregoing, the House Business Committee has considered and resolved to honour the request to co-host the Parliamentary Forum and, therefore, allow the use of the National Assembly Chambers by the Forum. In this regard, the Leader of the Majority Party will be moving an appropriate Motion seeking the alteration of the Calendar of the House for next week at a later stage during today's sitting.

Hon. Members, since the attendance is by formal accreditation, Members who wish to attend may liaise with the aforementioned Committees or the SDG's Caucus, which in this House is led by Hon. Ochanda, for registration and accreditation.

I thank you, Hon. Members.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I agree with you. This was, indeed, decided on by the House Business Committee. However, since last night, I have been hearing some very strange things regarding this group of Parliamentarians; that they want to come and discuss sex education, gayism and lesbianism. There are Members of this House whose position is known on gayism, lesbianism and intra-sexism. They have been denied accreditation. Hon. (Ms.) Shamalla is one of them.

Hon. Speaker, I want you to make it very clear that in this Chamber, anything else can be discussed but not on matters on gaysim, lesbianism or contrary to the teachings of the Holy Quran and the Bible. I am told that out there, Christians and Muslims are up in arms. We are a country that believes in only one God. Denmark and those other people who are coming can discuss their issues out there. If we have to alter our Calendar and allow them to use our Chamber, we will allow them to discuss matters on finance, health, education, social welfare, youth development and academia.

Hon. Speaker, I want to go on record that in this Chamber where each of the 349 Members have been sworn in using the scriptures of Allah, I do not think there is any Member who is a gay or lesbian. Hon. Speaker, you must make it very clear that they cannot discuss western ideologies and behaviors contrary to our religion. I am ready even to be denied a visa. I am a true Masonic Muslim and very conservative. The information that I have heard out there this afternoon is that Christians and Muslims want to hold a parallel meeting.

Hon. Speaker, I want you to make it very clear to the Clerk and the Serjeant-at-Arms that we will remove them by force if we hear anything that is dealing with gaysim and lesbianism. How come you want to use our Chamber and deny some Members accreditation? Hon. Shamalla is a good example and I am sure there are many other Muslim and Christian Members. We will allow the Chamber to be used because all other countries have allowed. But when you go to Rome and peoples' homes, you must respect their culture, region and way of life.

As you can remember, when the former President Barrack Obama came here, our President Hon. Uhuru Kenyatta told him on his face that the homosexuality he was talking about is not a priority and non-issue for the people of Kenya. I want to say it here that in the National Assembly, it is a non-issue and not a priority. There is a Member who can confirm on record that her application was not accepted because part of the matter they will discuss is this issue and they know our position. Little do they know that all the 349 Members subscribe to what Hon. Shamalla believes in.

Hon. Speaker: Hon. Shamalla, do you want to say something?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Speaker. Indeed, I want to confirm that it is not only I as an MP, but there are hundreds of Kenyans who have been categorised and there is nothing wrong with being conservative. The rebels have decided that being a rebel is positive and great and conservative is dirty. Anyone who has been categorised in that group and attempted to register for that conference has not been able to do so. I, personally, being one of them.

MPs who are currently not in the House like Hon. Chris Wamalwa have been attending meetings with the Catholic Justice and Peace Commission (CJPC) here in Parliament. It is a fact that the inter-religious councils out there have taken great issue with this Conference; which has been televised recently on live debate. It is being couched in a very politically-correct language as inclusiveness which we understand to mean the inclusiveness of lesbians and gays. Let us make it very clear that in this country, nobody is bashing them. They have equal rights like ours. I do not understand why they want to have rights specific for themselves. It is a fact that we have been denied registration. I can provide all the evidence which is currently on my WhatsApp page as we speak today. I have found it extremely ironical that after I was denied registration, they are now asking me to go and get accreditation somewhere else.

Hon. Speaker: Hon. Members, this is not business, but it is important that we... Do not say no because I have not finished. What is the problem? You want to say no to nothing.

Hon. Members, I hear you but, maybe, I need to hear a few more because I am looking at the programme and I am scheduled to address them. Obviously, you know my position on the issues which you have raised. I may just take the advantage to tell them upfront that this Chamber cannot be used to discuss matters to do with homosexuality, lesbianism and other related monovalent issues. We cannot allow those kinds of things. Hon. Junet, you have the Floor.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker. I happen to be among the Members who attended the HBC yesterday, when this matter was raised. I can remember that the same question I asked in that Committee is being raised here. That, what is this meeting about? We were told that the Hon. Speaker will do a communication today.

This is a very sacred place and they cannot discuss homosexuality in a House that we discuss issues of national importance. The people who are coming here must be very careful because this country has its own Constitution, traditions and culture. The worst thing that can happen is to discuss homosexuality, lesbianism and gaysim in the National Assembly Chamber of the Republic of Kenya. This place will be cursed and problematic. We will not hold any meeting here again.

In fact, I am happy that they have refused accreditation to some Members because we would not have known their agenda. It is good that they have refused accreditation for Hon. Shamalla. Otherwise, we would have assumed and could not have imagined that they wanted to be given space for two good days to discuss gaysim, lesbianism and homosexuality. God forbid! This should not happen. They can go and discuss it somewhere else outside this country and not even in Kenya.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker, for issuing your communication. Just like my colleagues who have spoken ahead of me have said, I was also in the HBC. We got a request that this Chamber will be used, but we were a bit confused as to the real objective of those meetings. In fact, it was just a much generalised comment about what they are coming to discuss.

If it is coming out clearly that those people are most likely coming to discuss something we do not agree to as a country, then the next question we want to ask is why allow them to come. As a matter of fact, I think we need to write back to them and demand from them to say exactly why they want to use this Chamber. I profess a faith and I am a member of the Seventh Day Adventist (SDA) Church.

Hon. Speaker, I was just saying that I am a member of the SDA. We actually believe that on the seventh day, which is Saturday, you, your wife, children, servant or anything that belongs to you should not be used on that particular day because if that happens, even if you are not there, you will be part of the guilt. You will have committed a sin. If we allow our Chamber to be used by people who talk about things that we consider satanic, then, obviously, we partake and become, by association, members of that satanic grouping.

So, my request is that, since we are not clear about what those people are coming to do, and there are indications clearly by refusing to accredit some of us, we tell them that if they do not come out clearly to tell us that they are not coming here to discuss issues of homosexuality, then we are not going to allow them to use this Chamber. We should not be ambiguous about it. We should just be clear and let them know that we are not ready to entertain such kind of discussions in this Chamber.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Muturi Kigano.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker. The moment you allow this, you are going to open the flood gates. The next people to apply and ask for permission to use the Chamber will be the so-called bishops like Bishop Ng'ang'a and other people. This is a House of order which is founded in law. Homosexuality is illegal. It is against the Penal Code. This House, represented by you, epitomises the obedience of the law. Hon. Speaker, I am saying this with absolute respect to you. This is a ground for your removal. I am saying this will be a ground...

Hon. Speaker: I am incapable of even taking threats from the Member for Kangema. Member for Kangema, were you here when I read the Communication? I think I need to read this Communication again. It is like all of you were not here. The House should not be addressed as if you are addressing a public baraza. You cannot start telling me that is ground for my removal. Go ahead. The provisions are there in the Standing Orders. You cannot start...

Hon. Clement Kigano (Kangema, JP): All that I am saying is you represent this House. You epitomise the law and the moment you are seen to allow this Chamber to be used to perpetrate an illegality, then our character stands... Hon. Speaker, your reply to them should be a big no or you ignore.

Thank you.

Hon. Speaker: Hon. Members, we cannot transact business that way. This is not Kitutu Chache North. Because you were not present, let me read for the benefit of those who are contributing. Do not imagine that for one moment, I do not take notice of what has been said and, more particularly, what Hon. Shamalla has said. For avoidance of doubt, let me read this Communication on the request that has been made to us so that we can take a decision either today or allow ourselves further clarification. This is because if Hon. Members of this House seeking accreditation to attend that conference are being denied such accreditation for whatever reasons, then it is not even worthy considering a request to sit in this Chamber. How is it that those people organising and who will be participating at the KICC can deny Members of this House accreditation and then we allow them to come and sit in the same House?

Hon. Members, it is for that reason that I thought I better read this Communication once again and then allow some of the Members who are involved in the organisation, like Hon. Ochanda, to make their presentation. He is the leader of the caucus. He can make his comments.

However, before we go to the Procedural Motion, then we shall have a decision to whether or not to consider the Procedural Motion now. So, Hon. Members, let me repeat this Communication because many of you, like the Member for Kangema and Hon. John Mbadi, were not in. Hon. Members, this is the Communication. It regards the ICPD 25 Nairobi Summit and Parliamentarians' Forum, 12th to 14th November 2019.

The Governments of the Republic of Kenya and the Kingdom of Denmark, in conjunction with the United Nations Population Fund (UNPF) will be convening the Nairobi Summit on International Conference on Population and Development (ICPD-25). The Summit will take place next week from 12th to 14th November 2019 at the KICC under the theme "Accelerating the Promise". Leader of the Majority Party, do not ask which promise. The Summit will mark 25 years since the 1994 Cairo International Conference on Population and Development (ICPD) which articulated a bold new vision on the relationships between population, development and individual well-being.

Hon. Members, organisers have informed us that, invited guests include Heads of State; Ministers of Planning, Health, Finance, Education and Social Welfare; Parliamentarians; youth delegates; academia and other State and Non-State Actors from around the world. As part of the main Summit, Parliament of Kenya has been requested to co-host a Parliamentarians' Forum in the form of daily 90-120 minutes sessions to be conducted within the precincts of Parliament. These sessions will bring together Members of Parliament from other countries participating in the Summit for peer-to-peer sharing and deliberations.

Indeed, the National Assembly will participate through the Departmental Committees on Health, Education & Research, Labour & Social Welfare and Finance & National Planning as well as the Parliamentary Caucus on SDGs. The Senate will also participate. In view of the foregoing, the House Business Committee has considered and resolved to honour the request to co-host the Parliamentary Forum and, therefore, allow the use of the National Assembly Chambers by the Forum. In this regard, the Leader of the Majority Party will be moving an appropriate Motion seeking alteration of the Calendar of the House for next week at a later stage during today's Sitting.

Hon. Members, since the attendance is by formal accreditation, Members who wish to attend may liaise with the aforementioned Committees or the SDG's Caucus for registration and accreditation. That is the information that I have. In this House, Hon. Ochanda leads the Caucus on SDGs. Because we were told that Members are supposed to seek accreditation, it is for that reason that we may have to withhold any action because one Member has already reported that she has been denied accreditation. It is for that reason that one of us who may be better versed with these happenings is given a chance to explain to us before the rest of you make comments which may be un-informed. Let us get Hon. (Dr.) Ochanda to speak about this issue of accreditation and, more so, the issues which will be canvassed in the forum.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Speaker. I was fairly well prepared for purposes of seconding a Motion that was supposed to be moved by the Leader of the Majority Party. However, this has come ahead of that time. There are things that I want to say very clearly. The international summit is on population and development. The last summit was done in 1994 in Cairo, Egypt. It involved 179 countries and Kenya was one of them. This is a follow-up meeting of what happened 25 years to assess the impact and commitments that were made.

(Loud consultations)

Can I continue Hon. Speaker? If they can bother to listen, we will get a head way. This is an international event. What I need to make clear is that the people who requested to come here are Members of Parliament from other countries. It is not a venue for everybody else to come in. Two, you have mentioned very clearly in your Communication that the accreditation will be done through committees. If an individual Member went ahead and started looking for how he or she could be registered or accredited, it is very clear from this Communication that there are committees of the House that are dealing with that issue. For purposes of preparation, we met our Departmental Committees here today in the morning. We met the Departmental Committee on Labour and Social Welfare, the Departmental Committee on Health and the Departmental Committee on Finance and National Planning. These are formal engagements that we did for purposes of preparing for the meeting that will be held next week. If you went on your own to look for accreditation, please, reverse back and follow exactly what is in your Communication.

Again, for purposes of Parliament, the process of accreditation and registration will start this afternoon. So, if somebody went a little bit earlier, it means that she did not know.

Now this is clear. Instead of Members of Parliament from other countries meeting somewhere on the sides of Kenyatta International Convention Centre (KICC), they requested that we get this Chamber and engage with us. The discussions will be on development, population and well-being of the people. So, it is very clear. Based on this, the Speaker of this House and the Speaker of the Senate are involved. The Hon. Speaker has mentioned already that if, in the process of looking at these things, he finds that there is something unbecoming like we have mentioned, he is at liberty and will go ahead and cancel or stop that process because he is part of it. We are looking out for 50 Members of this House who will be with us throughout. This means that when the other Members will be meeting in this Chamber or elsewhere within the precincts of Parliament, we will also be there. We want to go with these sentiments that have been mentioned that if anything comes that we do not like or it is not in our culture, we will refuse it. I am also with other Members who are saying that they cannot allow that to happen. That is the kind of clarification that I wanted to bring out.

Hon. Speaker: Hon. (Prof.) Oduol, you have the Floor.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker. I would like to indicate that it is true that the International Conference on Population and Development (ICPD25) will be a follow-up of the meeting that was held in Cairo. As I start, I would like to emphasise that, normally, when we have international conferences, we get international or world commitments and then country commitments. It is from the perspective of the country commitments that I believe that the earlier contribution by the Leader of the Majority Party and Hon. Shamalla was raised.

I rise as a Member of the Departmental Committee on Sports, Tourism and Culture. Anytime we deal with international agreements, if we come up with areas that are offensive to cultures and contexts, we ensure that those who are engaged and participating along the line will look for the devil which is usually in the details. When we look at the committees that Hon. Ochanda said that we would register, we cannot ignore the Departmental Committee on Sports, Tourism and Culture. If we had more time, we would see the reason ICPD25 will go back to zero achievements 25 years later. One of them goes contrary to our Constitution which does not allow direct access to abortion, except in a context where it is deemed that the mother's life is threatened. But because this is an international conference and we, in Kenya, had an opportunity to host an international conference in 1995, we have lessons of how we ensure that we allow global conversations to take place. However, we have a very sensitive framework to allow national commitments to be sensitive to the culture, be responsive to the contexts and not to contravene the Constitution.

My submission and request is that the Departmental Committee on Sports, Tourism and Culture be one of the committees that would be doing accreditation because we can look through and see the extent which will bring a conversation that would protect our interests.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Millie Odhiambo. Today, she is seated at the right side of the Hon. Speaker.

(Hon. Junet Nuh spoke off record)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker for giving me the opportunity to contribute. Hon. Junet wants to intimidate me by shouting that I support lesbians or gays. He knows me. Whether I support them or not, I state my facts clearly for the entire world to know. So, I will state my position very clearly.

I am a Christian and it cannot change. Two, I am a human rights activist. Those two cannot change. Where the two conflicts, I am Christian and that does not change. Having said that, I have listened to Hon. Jennifer Shamalla. She said that she was denied accreditation. If, indeed, that is true, it is intolerance of the highest order. I want to urge the organisers that it does not matter what the diverse opinions are. Let them go to the ICPD and be heard. We are also falling in the same trap. The same way we are stopping Hon. Jennifer Shamalla is the same way we do not want to hear lesbians and gays views. If we have different views, let us be tolerant. Let those who do not want gays and lesbians state that they do not want them. Let those who want them say it and give their reasons. Let them cite the biblical verses and Koran that embolden them to deny gays and lesbians. Let the ones who want to talk about the human rights say what they want. That is what tolerance is all about. Otherwise, as a country, we are dangerously going through what not only the United States of America (USA) went through, but also the entire world is going through. The far rights are coming in because of intolerance. Those of us who are deemed to be conservative are not willing to listen to other voices. Because of that, the negative voices are taking over. Let everybody be heard. I will go to that conference and I will state my position as a Christian and as a human rights activist.

As I finish, Hon. Speaker, indulge me one second. Yesterday, I watched television and listened to the Christian community speak. They say that as a consequence of ICPD, there will be decisions that will be made that will bind this country. Because I listened to the Christian and Muslim voices, I brought a Bill that people do not use in the House called the Treaty Making and Ratification Act. No international instrument or agreement can be passed in the entire world and ratified by Kenya without the stamp of Parliament. So, let us not split hairs for no reason. Parliament will have the ultimate say whether it is a treaty, convention or an ordinary national law. Parliament has the say. Let us not be intolerant. State what you want and say what you do not like. Millie has stated hers, unapologetically.

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

Hon. Speaker: Hon Leader of the Majority Party, you cannot be shouting point of order and arguing with Hon. Millie Odhambo when she has finished contributing. It means that you wanted a point of argument.

Let me allow the Member for Emuhaya, Hon. Omboko Milemba. Please, do not take more than three minutes.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you Hon. Speaker for giving me this chance. The conference being referred to and baptised with good names like international is already attracting doubts from a section of Kenyans, as we have seen, who include the Christians, Muslims and, as you can see, Hon. Speaker, even here in the House, there are doubts on what will be discussed during the conference. As a teacher and the representative of teachers and a Member of Parliament for Emuhaya Constituency, gayism, homosexuality, lesbianism and abortion are some of the issues that will be discussed.

The fact that there is some doubt on the content that will be discussed in this House is enough for you, Hon. Speaker and us, to rule that the conference should possibly be held outside because ultimately, we shall have a chance of having the final say in what will be discussed. So, if we indulge ourselves in it from the beginning, then we shall lose the podium or the *locus*

standi to deal with it when it will have offended Kenyans out there. For that reason alone, Hon. Speaker, I propose that they get another place. Parliament remains sacred and we shall have to deal with it when we are not in it, as it may go.

Hon. Speaker: Hon. Jimmy Angwenyi, you have two minutes.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, when we were sworn in as Members of Parliament, we swore to defend and protect the Constitution of Kenya. The Constitution of Kenya does not recognise homosexuality. Who is in this House in which we were sworn in will allow homosexuality to be discussed here?

Hon. Speaker: Hon. Jimmy Angwenyi, it is the House which is being requested.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): We are saying that we should not discuss anything. Those people should not be allowed to be anywhere near this Chamber. Let them hold their meetings elsewhere in the *vichochoro* and everywhere but not in this august House.

Hon. Speaker, do not waste your time asking them to define what they want to say. Give them a big no. Period!

Hon. Speaker: Hon. Members, to avoid unnecessary commotion, let me hear Hon. Abdullswamad, the Member for Mvita.

Hon. Abdullswamad Nassir (Mvita, ODM): Asante sana, Mhe. Spika. Nataka nijulishe Nyumba hii kwamba Mjumbe ambaye ametumwa na akaleta stakabadhi za wenye kutaka kufanya hiyo konferensi hapa...

Naomba Kiongozi wa Walio Wengi Bungeni anizikilize.

Hon. Speaker: You are addressing the House. Please, just proceed. The HANSARD will show what you say.

Hon. Abdullswamad Nassir (Mvita, ODM): Asante sana. Kuna lugha ambayo mmoja alitumia kwamba *key population*. Miaka minane iliyopita, nilibahatika kwa sababu ya kazi ambayo nilikuwa naifanya dhidi ya wanaotumia madawa ya kulevya na nikapata safari ya kwenda nchi ya India. Nilipofika pale, kati ya wale waliofika huko ni watu wa NACADA. Nakumbuka nikiwapa kauli yangu. Tulipofika pale *key population* iliozungumziwa, tuliona misago na maghanithi katika sehemu ya India.

Kwa hivyo, naomba tusifikirie kamwe kuleta watu ambao nia na madhumuni yao ni kuzungumza mambo ambayo ni ya kushusha hadhi. Watu kutoka nje ya nchi hii kuja kuzungumza mambo ya kipuuzi yenye ni kinyume na sheria ya Kenya na kinyume ya Katiba ya Kenya na muhimu zaidi, mambo ambayo ni kinyume na maadili yetu tunayoamini kama jamii na uaminifu wetu kama nchi na wananchi ni dhambi kwa Mwenyezi Mungu.

Ahsante sana, Mhe. Spika.

Hon. Speaker: Because there is no Motion yet, the Leader of the Majority Party stood on a point of order.

(An Hon. Member spoke off record)

Are you saying that he did not stand on a point of order? This is the problem. And this Member was a Speaker of some county assembly. How were you conducting business?

The Leader of the Majority Party stood on a point of order and, therefore, what is being discussed now is expressing yourselves on that point of order. In my Communication, I said that at some point later this afternoon, he was to move a Motion. I do not know whether the Leader of the Majority Party wants to move the Motion or not.

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

Hon. Speaker: What is your point of order Hon. Junet, again?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, I want to give a way forward on this matter and I want the Leader of the Majority Party to listen to me.

Having listened to the conversation of Members and their opinions, I would like to request the Leader of the Majority Party to step down the Motion. If he moves it, it has to be decided by Members. I do not want it to be moved. Hon. Speaker, I request that you do more consultations until tomorrow in the afternoon.

(Loud consultations)

Let there be more consultations. I request the Leader of the Majority Party to step down the Motion for today so that we can discuss it tomorrow. *Tutaiangusha kesho.*

This is a matter that has interests of Members who feel that there is gayism to be discussed and there is interest of Members who are bringing the guests all the way from other countries. So, the two interests must be balanced.

Hon. Speaker, I request you take more time until tomorrow in the afternoon when we will make an informed decision on this matter.

Hon. Speaker, you listened to what Hon. Millie, Hon. Ochanda and what Prof. Oduol have said. You also listened to what those who are opposed to it have said. Take your time and let the matter be decided tomorrow afternoon.

Hon. Speaker: Hon. Members, the issue is not one for me to decide. Even though the Hon. Ochanda has said that the Speaker of the National Assembly and that of the Senate are involved, I want to say that I have only received a letter and some programme which is here. It is showing that I will be addressing, but the organisation and involvement is really a matter like any other - just like I have been invited to address several other fora. We know there are Committees of this House that are involved. Hon. (Prof.) Oduol now suggests that yet another one should be included but, this decision cannot be made until we get to the actual Motion. We cannot make that decision until we get to the actual Motion. So, let us get to it. Let us get to it because there is nothing for us.

Hon. Olago Aluoch, please.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I wish to address the House in two minutes.

In 2010, in the 10th Parliament, I chaired the Committee of the Parliamentary Service Commission (PSC) that was in charge of designing this place to accommodate the new numbers that we were going to have. What came out of that Committee was that this House is sacrosanct and sacred.

(Applause)

It does not matter what those people are coming to discuss. What is important is that Nairobi is a well-known destination for conferences in Africa. Why can they not have that meeting elsewhere? Why here? We do not have to discuss the pros and cons of what they are going to discuss. That is not for us. For me, what is important is this: Why are we even contemplating adjourning our Sittings to allow some other meeting to take place here? There are sufficient places in Nairobi which can accommodate the huge number of people. That is my

view. When I opened my computer this morning and saw there is going to be a Motion by the Leader of the Majority Party, I wondered why. Since that Motion has not even been tabled, it should not even be tabled. Let us move on with our business.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, indeed, I think the Leader of the Majority Party jumped the gun because he stood on a point of order after my Communication. I had said that he was shown on the Order Paper to be moving a Motion. That is why I thought it is during the moving that he should have said the issues that he has said. That is so that you could express yourselves then. So, I can see there are several of you who want to contribute. Let us allow us to get to the Order; we get to the Motion so that the House is then able to make a decision. As you would appreciate, the request was not made to the Speaker. Hon. Junet, the request about the use of the Chamber was not made to the Speaker. It was made to the National Assembly. This House makes decisions through resolutions. It is for that reason, after we received the request, we decided to forward it here. It is up to you to decide one way or the other. That is on how to treat that request.

Let us move to the next Order.

PETITION

REPEALING OF LAWS RELATING TO IDLE AND DISORDERLY CONDUCT

Hon. Members, as you are aware, under Standing Order No.225(2)(b), I am required to report to the House any Petition other than those presented by a Members. Further, under Article 119 of the Constitution, it is provided the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, I wish to report to the House that my Office has received a Petition from one Mr. Joseph Onyango Owuondo who hails from Embakasi Sub-County and is the holder of National Identity Card number 28373243. He is calling for the repealing of all laws relating to idle and disorderly persons.

In this Petition, the Petitioner highlights the harassment and tribulations faced by ordinary citizens. The tribulations emanate from constant arrests by police officers under what he avers to be the amorphous and ambiguous charge of being idle and disorderly. The Petitioner claims that some police officers arrest slum dwellers and other jobless citizens on charges of being idle and disorderly but later, upgrade the charges to being drunk and disorderly while well aware that such charges may never be practically proved in a court of law.

Further, the Petitioner laments that most of those unwarranted arrests occur on Fridays or towards the end of the month in the obvious assumption that the arrested persons will utilise their incoming salaries or wages to secure their release from police custody. In addition, Hon. Members, the Petitioner avers that the idle and disorderly laws were enacted by the British colonial government in a bid to contain and manage Africans. As such, the laws are now both unnecessary and a contravention of Article 36 and Article 39 of the Constitution with regard to Freedoms of Association, Movement and Residence.

It is on this premise that the Petitioner seeks the intervention of this august House to repeal all laws relating to idle and disorderly persons, including Section 182 of the Penal Code,

and to enact legislation to provide for release of idle and disorderly or drunk and disorderly suspects on free bond upon being charged with misdemeanors.

Hon. Members, pursuant to the provisions of Standing Order No. 227, this Petition stands committed to the Departmental Committee on Justice and Legal Affairs. The Committee is requested to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order No. 227(2).

I thank you!

Hon. Gikaria, do you want to comment on the Petition? I hope you are not one of those ones who...

(Laughter)

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Speaker. I support the Petition. It is true. At the same time, the Office of the Clerk should be attentive. I brought amendments to that effect more than four months ago. The amendments were to repeal the Penal Code and the section that has been mentioned in that Petition. The tribulations mostly happen in urban areas. That is where people are arbitrarily arrested. As the Petitioner says, the charges are upgraded to something else. It is important that the Office of the Clerk acts when we bring such kinds of amendments or documents. It is because I brought a request to the Office of the Clerk for them to do that.

I totally support the sentiments of that Petitioner. I hope the Departmental Committee on Justice and Legal Affairs will act. Also, my amendments should be brought before the Committee.

Thank you, Hon. Speaker.

Hon. Speaker: Let us now hear the Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I rise to give great support to that Petition. There are certain draconian laws that were enacted by the colonial masters that have continued to siphon our freedom and liberty in this country. We also have to remember that we can achieve very little before we completely reform the Police Force which should actually be “the police service”. But it is still stuck in the colonial “police force” tag. We can only achieve very little. I am glad that my brother, Hon. Gikaria, has spoken. A while back, he fell victim. He was properly clobbered by members of the same Police Force. Therefore, Hon. Speaker, I want to support the Petition. Let us do whatever we can within our powers to ensure that we attain absolute freedom as a country. We should not be subjected to the draconian laws that have continued to undermine our progress as a country. Thank you.

Hon. Speaker: I am sorry, Hon Members, we are through with the comments. Allow me to recognise guests who belong to the Kenya Renewable Energy Association, and who are seated in the Speaker’s Row. They are Mr. Kamal Gupta, Chairman; Mr. David Jesse, Secretary; Mr. Patrick Tonui, Member; Mr. Corn Peters from Netherlands; Ms. Rahab Kagwanja, Convener of Kenya Renewable Energy Association; Ms. Sharleen Wangui, Administrator; Ann Wachera, Member; Eng. Samuel Wahome, Member; Eng. Otieno, Member and Odhiambo Odamwa, Member. They are all welcome to observe the House proceedings.

(Applause)

They have been holding sessions with our Departmental Committee on Energy on matters of renewable energy. As you may know, there is a Bill that the Committee has been considering, which is critical.

COMMUNICATION FROM THE CHAIR

PASSAGE OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO.51 OF 2019) FOR A SECOND TIME IN TERMS OF ARTICLE 115 OF THE CONSTITUTION

Hon. Members, I wish to make this Communication as I promised earlier. As you are aware, in the afternoon Sitting of yesterday, Tuesday, November 5, 2019, this House passed the Finance Bill (National Assembly Bill No.51 of 2019) for a second time, following referral by His Excellency the President in terms of Article 115 (1) (b) of the Constitution. Following that decision, my attention has been drawn to certain insinuations from Members of the House and from outside the House. The statements are to the effect that sufficient notice was not given with regard to the day on which the President's reservations on the Finance Bill (National Assembly Bill No.51 of 2019) would be considered by the House and that Members were not afforded sufficient time to lobby themselves to garner the threshold necessary to vote so as to reject the President's reservations on the said Bill.

Hon. Members, on the first claim, may I remind the House and the general public that Standing Order 154 (2) of the National Assembly Standing Orders requires the House to reconsider and conclude a Bill referred back by the President within 21 days following conveyance by the Speaker of a Message from the President to that effect. So as to refresh the minds of Members, on Thursday, October 17, 2019, I did convey to this House a Message from the President communicating his refusal to assent to the Finance Bill (National Assembly Bill No.51 of 2019). Thereafter, I committed the President's Memorandum containing his reservations on the Bill to the Departmental Committee on Finance and National Planning for consideration. The Committee considered the Memorandum and tabled a Report thereof last week on Tuesday, October 29, 2019. The Committee recommended that the House agrees with the President's reservations, save for the amendment to insert a New Clause with the import of saving the existing loans from any negative effects of repeal of section 33B of the Banking Act, 2016.

With regard to the claim of sufficiency of notification, you may recall that during the afternoon Sitting of Wednesday, October 30, 2019, the Leader of the Majority Party, in his Statement to the House under Standing Order 44 (2) (c) regarding business for the subsequent week, notified the House that the specific Bill was scheduled for consideration on Tuesday, November 5, 2019. As a matter of fact, the Order Paper for that particular Sitting had a Notice Paper to that effect. My count of days indicate that the House and the general public had, at least, a six-day notice of the coming up of the matter for consideration. Moreover, pursuant to Standing Order 38, the Clerk of the National Assembly prepared and published on the Parliament Website the Order Paper for Tuesday, November 5, 2019 on the evening of Friday, November 1, 2019, being four days prior to the material day.

As you may all contend, it is a matter of public notoriety that both the print and electronic media have on numerous occasions highlighted that the matter would be coming up for consideration by this House on Tuesday, November 5, 2019. I, therefore, find it to be absolutely inaccurate for a Member of this House or even the public to claim that there was no sufficient

notice regarding the Sitting in which the House would consider the President's reservations on the Finance Bill, 2019.

With regard to the number of Members who attended yesterday's Sitting, I can confirm that the biometric register and the electronic log-in system indicate that a total of not less than 270 Members were present at that Sitting – having come in at different times during the Sitting. Since at the time when I was ascertaining the threshold to make a decision on the Memorandum there were 161 Members present, you will agree with me that the die had been cast given that there was less than 233 Members present; other Members having left the Chamber on their own free will. However, as your Speaker, I would not fault any Member for not being present in the House to exercise his or her right to vote on any matter. Indeed, before proceeding to take the vote, I did order that the Division Bell be rung for 10 minutes, so that any Member who may have stepped out of the House would return and participate in the making of that decision. It is, therefore, untrue and incorrect that Members did not have sufficient time to lobby internally with a view to garnering the threshold necessary to vote so as to reject the President's reservations on the said Bill, if that was what the House desired.

Having said that, may I reiterate that the decision of the House on the re-consideration of the President's Memorandum on the Finance Bill (National Assembly Bill No.51 of 2019) as pronounced by the Chair yesterday retains the import that the House did pass the said Bill a second time in a manner fully accommodating the President's reservations in terms of Article 115 (2) (a) of the Constitution.

The House is accordingly guided and the general public to know the truth.

I thank you.

Hon. Members, this was merely a Communication. However, the truth is out there. It is recorded. If Members come to the House and then walk out, they cannot blame anybody. They went to TV stations and argued that they were never given adequate time. That is wrong and dishonest. Some of the Members who appeared on TV stations were not in the Chamber. You see, you were not elected to go to TV stations. You were elected to come to Parliament and, specifically, to the National Assembly. If you think that you can make laws in TV stations, you can only blame yourselves.

Let us proceed to the next Order.

An hon. Member: ... *(Off-record)*

Hon. Speaker: No, No, No! This is factual. Let us proceed.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party, it time to lay Papers. I am sorry! It is Hon. Murugara to lay papers on the Table, on behalf of the Committee on Delegated Legislation.

Proceed, Member for Tharaka.

Hon. George Gitonga (Tharaka, JP): Thank you, Hon. Speaker. On behalf of the Chairperson of the Committee on Delegated Legislation, I beg to lay the following Papers on the Table of the House:

Reports of the Committee on Delegated Legislation on its consideration of the following pieces of legislation—

(a) The Public Service Regulations, 2019 (Legal Notice No. 65 of 2019).

(b) The Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No.86 of 2019).

(c) The Private Security (General Regulations), 2019 (Legal Notice No.108 of 2019), and
(d) The Political Parties Funding Regulations, 2019 (Legal Notice No.143 of 2019).

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

NOTICES OF MOTION

ADOPTION OF REPORTS OF COMMITTEE ON DELEGATED LEGISLATION

Hon. George Gitonga (Tharaka, JP): Thank you, Hon. Speaker. I beg to give notice of the following four Motions:

THAT, this House adopts the report of the Committee on Delegated Legislation on its consideration of the Political Parties Funding Regulations, 2019 (Legal Notice No. 143 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls the regulation 18 of the said Regulations.

THAT, this House adopts the report of the Committee on Delegated Legislation on its consideration of the Public Service Regulations, 2019 (Legal Notice No. 65 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in its entirety the said Regulations.

THAT, this House adopts the report of the Committee on Delegated Legislation on its consideration of the Private Security (General Regulations), 2019 (Legal Notice No. 108 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), annuls in its entirety the said Regulations.

THAT, House this adopts the report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Amendment) Regulations, 2019, laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 67 of the Value Added Act, 2013 approves the Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No. 86 of 2019).

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

ORDINARY QUESTIONS

Question No. 473/2019

DREDGING OF MKANDA CHANNEL AND MAINTENANCE OF OCEAN ROUTES IN LAMU COUNTY

Hon. Ali Sharif (Lamu East, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 42A(5), I wish to ask the CS for Transport, Infrastructure, Housing and Urban Development:

(i) Could the Ministry consider dredging the Mkanda Channel in Lamu County for ease of use by the marine vessels and boats that ply the Lamu East and Lamu Town routes?

(ii) What measures is the Ministry putting in place to ensure that the ocean-plying routes in Lamu County are regularly maintained to safeguard all boats, sailors and their passengers from risks associated with changing tides?

Thank you, Hon. Speaker.

Hon. Speaker: Question referred to the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Baringo County, Hon. Gladwell Jesire.

Question No. 474/2019

PROGRESS OF CONSTRUCTION OF SAKATIA WATER PAN IN BARINGO NORTH

Hon. (Ms.) Gladwell Jesire (Baringo CWR, JP): Thank you, Hon. Speaker. I am asking Question No. 474 of 2019 to the CS for Water & Sanitation and Irrigation:

(i) Could the Cabinet Secretary explain the progress of construction of the Sakatia Water Pan in Koibaware Village, Saimo Soi Ward of Baringo North Constituency whose construction by the National Government began on 12th April 2015 and is not complete to date?

(ii) What measures are being put in place to ensure that the construction of the said project is completed without further delays, and how much money has been earmarked for the completion of the same, noting that there is a machine which is rotting at the place?

Thank you, Hon. Speaker.

Hon. Speaker: Question is referred to the Departmental Committee on Environment and Natural Resources. Next Question is by the Member for Malava, Hon. Malulu Injendi.

Question No. 475/2019

APPOINTMENT OF SUBSTANTIVE VICE-CHANCELLOR FOR MMUST

Hon. Malulu Injendi (Malava, JP): I rise to ask Question No. 475 to the CS for Education:

(i) When is the Cabinet Secretary appointing a substantive Vice-Chancellor for Masinde Muliro University of Science and Technology following the expiry of the tenure of the previous Vice-Chancellor more than a year ago?

(ii) Could the Cabinet Secretary explain why most persons holding positions of Vice-Chancellor, Deputy Vice Chancellor and Registrar in public universities are in an acting capacity?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is referred to the Departmental Committee on Education and Research. The last question is by the Member for Wundanyi, Hon. Dan Mwashako.

Question No. 476/2019

PROCESSING OF RETIREMENT AND TERMINAL BENEFITS OF TEACHERS

Hon. Danson Mwashako (Wundanyi, WDM-K): Thank you, Hon. Speaker. I rise to ask Question No. 476 of 2019 to the Teachers Service Commission:

When is the Teachers Service Commission processing retirement and terminal benefits lodged by—

(i) Mrs. Rose Kambe Mwashinga, a widow of the late Rophus Wana Mghendi of TSC No. 289808, who has been pursuing Mr. Mghendi's death gratuity since 2016?

(ii) Mr. Festus Mngambwa of TSC No. 003584 who has been pursuing his pension payment since 1999?

Thank you, Hon. Speaker.

Hon. Speaker: Question referred to the Teachers Service Commission to give a written reply. That can be done within 10 days from today.

Next Order!

BILL

First Reading

THE WAQF BILL

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

Hon. Speaker: The Leader of the Majority Party, the Floor is yours.

MOTION

ALTERATION OF HOUSE CALENDAR

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, having listened to the House, I want to indulge you. The proceedings of the House - The HANSARD - are serious. If you want to hear what the late Tom Mboya, the late Jomo Kenyatta, the late Oginga Odinga and many other leaders said, you just get the verbatim report or listen to the audio. I am a staunch Muslim and a practising one. I abhor homosexuality. In fact, if I hear about it, I vomit. By moving the Motion, I will go into history that I moved a Motion that allowed the discussion of something detestable in the Chamber. By accident, a homosexual might come and sit on my chair, namely, the chair of the Leader of the Majority Party, and I will have to use the same chair the next afternoon.

Hon. Speaker, on behalf of the House Business Committee (HBC), I decline to move this Motion. Anybody else including Hon. Ochanda, should pick it from where it is. Hon. Speaker, you are the Chair of the HBC. The Leader of the Minority and the Whips are also Members. I decline to move. In any case, our Members have been refused registration. I have never seen a scenario where a caucus of that type... We have even hosted the Inter-Parliamentary Union (IPU) in this country, but at the Kenyatta International Convention Centre (KICC). They never came to the Chamber. The only people who are allowed in the Chamber are our colleagues at the East Africa Legislative Assembly (EALA), who are part of us. I have never seen strangers sit in the House of Commons in the United Kingdom or the Congress in the United States of America.

Hon. Speaker, forgive me. A time will come in your history when you will stand. To be very frank, even between the Constitution of Kenya and the Holy Quran, I will go with the Holy Quran. I will go with my religion. Hon. Ochanda, you are the one who came with this baby. Please, even if it Tuesday next week, bring it to the House. I was ready to move it so that the House decides either way, but how do I do it and in which language? I will go into history that Duale's Motion of inviting some people was rejected. I can already see the mood. I decline to move. I will report back to the HBC in writing the reasons I have declined to move the Motion during the next sitting on Tuesday. I hope the HBC will agree with me.

I decline to move.

(Applause)

Hon. Speaker: It is one thing to decline and another to seek to have it stood down, or indeed, request any other Member of the Committee who maybe desirous, for example, Hon. John Mbadi or Hon. Dr. Makali Mulu. Hon. John Mbadi, would you move the Motion on behalf of the HBC?

Hon. John Mbadi (Suba South, ODM): The reason I was standing is that I thought Hon. Duale was implying that Hon. Ochanda may take it up and move it. This is about altering the Calendar of the House, which can only be done by the HBC. I was going to ask: Under what wisdom can a non-Member of the HBC move the Motion? The other Members who can move the Motion are the ones who sit in the HBC like me. However, I also decline to move this Motion.

(Loud consultations)

Hon. Speaker: Hon. Osotsi is a Member of the HBC, but let us hear from Hon. Makali Mulu.

(Laughter)

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Speaker, I must declare my interest. I am a Member of the Caucus on Sustainable Development Goals. At the same time, I am a member of African Inland Church (AIC). I am in a Catch-22 situation. Looking at the mood of the House, even if we moved this Motion, it is actually dead on arrival. That is the truth of the matter. My suggestion is that we have further consultation on this matter and then we see what the House will say. That is my proposal.

(Loud consultations)

(Several Hon. Members raised their hands)

Hon. Speaker: Hon. Osotsi, the Floor is yours. Hon. Mishra, I can see your hand up, but since you are not a Member of the HBC, it is not possible for you to express any opinion on this matter.

(Loud consultations)

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Speaker. I have been listening very keenly to the discussion around the meeting that was to take place here in the Chamber next week. I am not a Member of the SDGs group and I am a strong member of the Anglican Church. As you know, Anglicans in this country do not support gayism. Therefore, I would not support any discussion on gayism and especially in the holy Chambers of Parliament. As Hon. Oluoch said, there are so many other venues in this town where they can take the meeting. On that basis, and as a Member of the HBC, and given the fact that the Leader of the Minority Party and the Leader of the Majority Party have declined, I also decline to move this Motion.

(Laughter)

Hon. Speaker: Hon. Members, there is nothing out of order. I gave a chance to all the Members of the HBC who could have perhaps taken up the matter. I chair the HBC. The Motion has no Mover. Therefore, it is dropped. That is the procedure. I could see some of you raising your hands. That is the procedure and law. The Motion for the Alteration of the Calendar of the House, appearing as Order No.9, having failed to attract a Mover or even a Seconder, is therefore, dropped.

(Motion dropped)

Next Order! Hon. Members, we just go to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

THE DATA PROTECTION BILL

(Loud consultations)

The Temporary Deputy Chairman (Hon. (Ms.) Jessica Mbalu): Order! Order! Order Members!

(Several Hon. Members walked out of the Chamber)

The Members who are walking out, please, do so in a quite manner. Order! Order, Hon. Members! Hon. Members, we are in the Committee of the whole House to discuss the Data Protection Bill (National Assembly Bill No.44 of 2019).

*(The Temporary Deputy Chairlady (Hon. (Ms. Jessica Mbalu)
consulted with the Clerks-at-the-Table)*

Order, Hon. Members, we are just putting the business in order.

Clause 3

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is an amendment by Hon. (Ms.) Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 3 of the Bill be amended by deleting the words “handling of personal data of a data subject is guided by the principles of lawful processing, minimisation of collection, restriction to further processing, data quality and security safeguards” appearing in paragraph (b) and substituting therefor the words—

“that the processing of personal data of a data subject is guided by the principles set out under section 25;”

Hon. Temporary Deputy Chairlady, the justification for this is because the principles listed in Clause 3 are not as exhaustive as those stipulated under Clause 25 of the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, do you want to speak to Clause 3? Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I am just trying to find out since Section 25 is part of the Bill and Clause 3 will automatically come before Section 25, whether there will be any harm if the wording of Section 25 would have possibly have been baseless other than making reference to it. That means you delete Clause 3 and then you have to move to Section 25. I am not a legal expert, but maybe drafting will not allow that. I am just finding out.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Are you supporting the amendment or you are seeking clarification?

Hon. Makali Mulu (Kitui Central, WDM-K): I have no problem with the amendment. For purposes of user friendliness of this Bill, will there be any harm if that was done? However, I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairlady, I oppose that amendment because Section 25 that is being referred to is very limiting. When you look at the Bill, the principles of data protection, which is being referred to, is spread all over the Bill and not just Section 25. This clause that is being deleted is talking about lawful processing, minimisation, restriction on processing, data quality and security safeguards.

Those are among the six data protection principles which are global. We have six data protection principles which are accepted globally and they are part of the general data protection regulations as passed by the European Union. So, if we limit to only Section 25, we will be limiting the scope of data protection principles. In any case, the data protection principles are spread beyond Section 25. This one summarises the six international principles on data protection. So, I oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): I want to support Hon. Shamalla. She is trying to expand the same principles which are in Section 25. So, it is not harmful. She is not adding anything. She is just helping and I am sure if the Chair is given a chance... We had a discussion and he will agree that there are no static principles. I know Hon. Osotsi is an expert in this area, but he is saying that the principles set out under Section 25 are being added. She is enhancing Clause 3.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, Leader of the Majority Party, you are supporting.

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

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

Hon. Members, we also have an amendment by the Leader of the Majority Party, but he has stated that it will be moved by Hon. Millie Odhiambo. You must clarify that you have been allowed to move it by the owner of the Bill because it is a Floor amendment. Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Millie is a good friend of mine. She came with the amendments very late. So, there are some which we have agreed with the Chair, and she will drop some. I hope she will not undercut me, but only moves with my permission the ones we have agreed on.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well, it is good to be on record because Floor amendments have to be moved by the owner of the Bill who is the Leader of the Majority Party. Let us have Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Chairlady. I thank the Leader of the Majority Party for allowing me to move, but you can take my word to the bank especially when we are doing amendments. I do not go back on what I have said. We have agreed with the Chair to move Clause 3.

Since Members do not have it, I am seeking to amend Clause 3 of the Bill by inserting a new paragraph after paragraph (b) to include -

“to protect the privacy of individuals”

The main purpose of this Bill is to protect the privacy of individuals and yet in the objectives, we have not provided for that. So, I am only just stating that we are protecting the privacy of individuals.

(Question of the further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Marakwet West.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Chairlady. We have agreed with Hon. Millie that it was an oversight to leave that particular addition. So, basically, Hon. Millie is enhancing the Bill, so that it is specified that we want to ensure the privacy of individuals is availed.

I support. Thank you.

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

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have two amendments. The first is by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 4 of the Bill be amended in Paragraph (b) by inserting the word “located” immediately after the words “data subjects” appearing in subparagraph (ii).

The amendment seeks to provide for clarity on the kind of data that can be processed by data controller or data processor who is not resident in the country. So, this is basically to clarify and I urge the Members to support this. I thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I invite Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, as he has said, this is a matter of just providing more clarity to that clause. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, do you want to speak to this?

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

Hon. Shamalla, do you have an amendment to this?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): I rise to state that I have dropped my amendment to this particular clause as my issues were addressed by the Chair of the relevant Committee.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. It is on record that Hon. Shamalla has withdrawn her proposed amendment.

(Clause 4 as amended agreed to)

Part II

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I rise to state that I have dropped my amendment to this particular clause. The reason being that the Chair of the relevant Committee has enhanced and changed how the Data Protection Commissioner will be employed or recruited and that is through the Public Service Commission (PSC). Thereon, the name will be forwarded to the President of the Republic of Kenya and subject to confirmation by Parliament. For these reasons, I have dropped the amendment to this particular clause.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It is on record again that the title of Part II, amendment by Hon. Shamalla, is officially withdrawn. Therefore, I move to put the Question.

(Part II agreed to)

Clause 5

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, move the amendment to Clause 5.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairman, I rise to drop this particular amendment for the reasons herein mentioned without wanting to speak more.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): On record again, the proposed amendment to Clause 5 by Hon. Shamalla is withdrawn. Hon. Chair, you have an amendment.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 5 of the Bill be amended by deleting subclause (5) and substituting therefor the following new subclause—

(5) The Data Commissioner shall in consultation with the Cabinet Secretary, establish such directorates as may be necessary for the better carrying out of the functions of the office.

The amendment seeks to provide clarity to the provisions by inserting a word that was omitted in the sub-clause of the Bill as well as to make provisions of directorates working under the Data Protection Commissioner.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is no interest to speak to this amendment.

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

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

(Clause 5 as amended agreed to)

Clause 6

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 6 of the Bill be amended—

(a) in sub-clause (3) by deleting the words “Cabinet Secretary” and substituting therefor the word “President”;

(b) by deleting subclause (4) and substituting therefor the following new subclause—
“(4) The President shall nominate and, with the approval of the

National Assembly, appoint the Data Commissioner”.

Initially, the Bill proposed that the Cabinet Secretary appoints the Data Protection Commissioner, but we amended so that the PSC advertises competitively and selects three people. Their names should be sent to the President who will then send one name to Parliament for appointment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see the Member for Suba North.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Temporary Deputy Chairlady, for purposes of making a decision, could the Chair of the Committee inform us why he thinks the Cabinet Secretary should not appoint the Data Commissioner and it must be the President? We have many people at this level who are appointed by Cabinet Secretaries.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, you know this position of Data Commissioner is very senior and is supposed to be independent from any influence. That is why as a Committee, we saw it prudent that it be advertised by the PSC and instead of the Cabinet Secretary appointing, which means this person will be under his influence, we thought it should be done as a sole corporate body and the President should select one name from the three names given to him. Then one name should come to Parliament for

vetting. This will make the office independent. Even the removal of this person should be subjected through a similar process.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Millie, do you want to speak to this proposed amendment.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I had proposed a different amendment which was having this position to be competitive. However, in terms of whether the name should be brought to Parliament, this might be a subject of a different discussion. I do not know whether it would qualify as a constitutional commission. A decision was made in respect of one of the bodies which we wanted to be brought to Parliament and it was nullified.

This is for purposes of information, but I cannot remember the body. Maybe the Chair of the Departmental Committee on Justice and Legal Affairs could jog our memories. But I know there is one body which we brought to the House and is not a constitutional commission and the court said we do not need to bring it before Parliament for approval. Otherwise, I agree with the part on being competitive.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party, are you on intervention.

Hon. Aden Duale (Garissa Township, JP): I agree with the Chair. Even the CEO of the Ethics and Anti-Corruption Commission (EACC) is competitively recruited and approved by the House. This is a very important office and we are the people's representative. Therefore, it should be given some independence. The Chair chose the PSC because the selection panels these days are not doing a good job and are all compromised looking at the quality of commissioners being appointed to various commissions. I hope the selection panel for the Auditor-General and Controller of Budget will do a good job. So, the PSC should do the interview and send three names to the President, then he picks one and Parliament approves it. So, this office has security of tenure. I support the Chair's amendment.

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

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

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment to Clause 6 by Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I wish to drop my amendment in view of the amendment moved by the Chair. It satisfies the reasons for me wanting to move my amendment, which was to have the nomination of the Data Commissioner done in such a way that he is not answerable or beholden to a particular Cabinet Secretary.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Your amendment is withdrawn.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 7 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c)—

“(ca) holds a master’s degree.

The Temporary Deputy Chairlady, this is basically about the qualifications of the holder of the Office of Data Commissioner. In all the laws we have passed for CEOs, we said that the minimum requirement is a master’s degree. That is why we said, as a Committee, that for one to be a Data Commissioner, which is basically a very senior position, one must have a minimum qualification of a master’s degree in relevant fields, which is basically Data Science, Law, Computer Science and relevant fields.

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 8 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1)—

(1A) The Office of the Data Commissioner may, in the performance of its functions collaborate with the national security organs.

As we prepare this law, the processing of personal data may affect our national security in this era of cybercrime and terrorism. There is, therefore, need for the Office of the Data Commissioner to collaborate with the national security organs in performance of its functions if it deems it necessary. So, this is just to make sure that the Data Commissioner is part and parcel of our national security interest. So, if the National Security Council wants to call him and share with him information, then that can help. So, mine is just to make sure that that element, which was missing, is included. You saw what happened in the USA in the election of Obama. You have seen terrorism can get into our system and hack it. I am just saying that apart from other functions, this amendment is giving him a collaboration aspect with the national security organs.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairlady, I have a lot of respect for the Leader of the Majority Party. I just wanted to inform him that Part VII, exemptions, caters for that. National security is exempted on matters to do with data protection and also under Clause 54, the Data Commissioner has powers to prescribe issues of exemption. So, I think this will be a repetition somehow. However, I am okay with the spirit of the amendment only that it is going to be more like a repetition.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, do you want to clarify something?

Hon. Aden Duale (Garissa Township, JP): I really want to tell Hon. Osotsi to read my amendment. Let me read it. It says:

“The Office of the Data Commissioner may, in the performance of its functions collaborate with the national security organs.”

The word used is “may” and not “shall”. It is not harmful. It will be done where necessary. As we speak, data and technology in the world is about security. So, I am saying “may” and not “shall”.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Kisang, do you want to comment on this?

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I have heard what Hon. Osotsi has said. I have also discussed with the Leader of the Majority Party. What the Leader of the Majority Party is proposing is basically to provide for that window. You know we have our data now, say, *Huduma* data, IDs or intelligence data. So, basically, they should work together. I believe when the National Security Council meets, this officer should be there. They also need to inform security agents what is happening. They will be holding serious and important data for the citizens of this country.

So, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I would have been very concerned if the word used was “shall”. However, when it is “may” I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Thank you for the clarification, Leader of the Majority Party.

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

We also have an amendment by Hon. Shamalla. Hon. Shamalla, please, move your amendment.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): In view of me dropping the initial clauses of Part II from authority to agency, I now move to drop the amendment to Clause 8, which was about the deletion of “office” to read “agency”.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It is on record that the proposed amendment to Clause 8 by Hon. Shamalla is withdrawn.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 8 as amended agreed to)

Clause 9

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Again, for the same reasons under Part II, I drop this amendment.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 9 agreed to)

(Clauses 10, 11 and 12 agreed to)

Clause 13

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Chairperson to move the amendment to Clause 13.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 13 and substituting therefor the following new clause—

Staff of the Office.

13. The Data Commissioner shall, in consultation with the Public Service Commission, appoint such number of staff as may be necessary for the proper and efficient discharge of the functions under this Act or any other relevant law.

Hon. Temporary Deputy Chairlady, we are saying that the Data Commissioner shall, in consultation with the PSC, appoint officers that may be necessary for proper and efficient discharge of the function of the office. To allow the Data Commissioner to consult with the PSC when appointing his staff, we are saying this will be competitive. We know that the PSC has the expertise in terms of human resources in the country. So, we are saying that the Data Commissioner should consult them initially to help as they build capacity.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, you have a point of order. I know you have an amendment to this one.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Deputy Chairlady. It is in regard to that amendment. I am just wondering whether I should propose a further amendment to his amendment after you put the Question.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): That will be after I put the Question. Thank you, Hon. Millie, for the clarification.

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

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

We have an amendment by Hon. Millie Odhiambo, which she has been given permission by the Leader of the Majority Party.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I wish to propose a further amendment to the amendment by the Chair, which is - to include the word “competitively”.

Then further, to re-number the existing sub-clause as (i) and to insert a new sub-clause immediately and re-number it as (ii) which provides that when appointing the staff of the office under sub-clause (i), the Data Commissioner shall ensure that there is regional and gender balance.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, since you have the amendment, move it as it is on the Order Paper.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I am saying that because the Members do not have the amendment, I am moving it as per...

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You have a copy which you can read on what you intend to do. You want to insert the word “competitively” immediately after the words “Data Commissioner”.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes. Further, I will have a sub-clause (ii) which says that when appointing the new staff, there will be regional and gender balance, and appointment of persons with disability and the youth. That is all.

(Question of the further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I want to ask Hon. Millie Odhiambo to drop that amendment because this is already provided for in the Constitution. We are overlegislating. Every appointment that we do in this country must have regional and gender balance and people with disabilities. We are overlegislating. I want her to drop the amendment.

I oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Before I give the opportunity to Hon. Millie, I will give the opportunity to Hon. Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I want to agree with the Leader of the Majority Party that while the use of the word “competitive” makes a lot of sense because it is anticipated, the second part of the amendment is already catered for in the Constitution. So, we may not need it.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Chairperson, Hon. Kisang Kipkemoi.

Hon. William Kisang (Marakwet West, JP): I also want to request Hon. Millie to drop the amendment. We can take the first part of the amendment which is on the competitiveness of the people who will be appointed. Competitiveness is already there. The PSC is an expert in employment. Basically, they have all these things. They advertise and put it on the newspapers. Suppose you do not get a youth who is qualified, you can get him at the low entry level, but not at the directorate level because you cannot get a director who is 25 years old.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. I note that Hon. Millie Odhiambo moved the proposed amendment on behalf of the Leader of the Majority Party. I want to give the opportunity to Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, given that I was using the charity of the Leader of the Majority Party, I will drop the amendment on youth, gender and persons with disabilities. Even as I drop the amendment, I want to say for clarity that if you look at all the other pieces of legislation, even though the provision to give jobs to the youth, gender and persons living with disabilities is in the Constitution, we normally provide it in the main law. Sometimes, when ministries are implementing the law, most of them do not look at the Constitution, but the Act. We have had instances where people do not include the youth, women or persons with disabilities because it is not in the main Act. Even though we sometimes appear like we are overlegislating, that is the reason.

Again, for purposes of what the Chair of the Committee has said, the inclusion of the PSC is not an indication of competitiveness. It can choose to call one person and tell him to apply. We have seen it. People abuse the law all the time. That is why a lot of times you become very clear about what you mean in Kenya. Because of that, I withdraw the second part of the amendment, but retain the one on competitiveness as directed by the majority of the Members.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): In Clause 13, Hon. Millie has withdrawn sub clause (ii) and we have remained with sub clause (i).

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona to sub-clause (ii) withdrawn)

I will give the opportunity to the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, this is the problem with Kenyans. When you give them a half of an acre, they will extend it to an acre. The competitiveness of the people who will be appointed is in the Bill. So, what are we doing? I told Hon. Millie to drop the whole amendment because the competitiveness is in the Bill. The Chair of the Committee will tell you.

I have no problem. Has she agreed with the addition of the word “competitiveness”? Does she think the PSC will not do a competitive recruitment?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I did not declare the results of the vote. Hon. Members, for clarity and record, I put the Question.

Hon. Members, you are here and you know how we make laws.

Hon. Aden Duale (Garissa Township, JP): She has withdrawn the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Does she want to withdraw the amendment? Hon. Millie, you withdrew the amendment in sub-clause (ii). Can you be on record withdrawing (i)?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I want to tell the Chair of the Committee that the word “competitive” is not in the

Bill. However, because I am on donated time, I will withdraw the amendment. Sometimes, some of these things might bite your children one day.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. We are on record that the proposed amendment by Hon. Millie Odhiambo in Clause 13 has been withdrawn.

*(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona
to sub-clause (i) withdrawn)*

(Clause 13 as amended agreed to)

Next clause.

Clause 14

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by Hon. Shamalla. Please, move your amendment.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): I rise to withdraw this amendment for the very reasons I gave with regard to Part II of the Bill. The amendment seeks to delete the word “office” and substitute therefor the word “agency”.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 14 agreed to)

Clause 15

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chairperson. Please, move it.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 15 of the Bill be amended by deleting the word “the” appearing immediately after the words “First Schedule on” in sub-clause (5).
The amendment seeks to correct a typographical error.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is no interest to contribute to this amendment.

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

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is a proposed amendment by Hon. Jennifer Shamalla. Please, move your amendment.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, for the aforementioned reasons, I withdraw this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The proposed amendment to Clause 16 by Hon. Shamalla is withdrawn.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 16 agreed to)

Clause 17

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Jennifer Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, for the reasons mentioned here before, I withdraw this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): That proposed amendment is withdrawn.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clauses 17 and 18 agreed to)

Clause 19

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have an amendment by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 19 of the Bill be amended by —

(a) deleting sub-clause (4) and substituting therefor the following new sub-clause —

“(4) The Data Commissioner shall issue a certificate of registration where a data controller or data processor meets the requirements for registration;

(b) inserting the word “this” immediately after the words “the provisions of” appearing in sub-clause (7).

It seeks to clarify the provisions on registration and clearly say that a certificate shall be issued when requirements for registration are met. It also seeks to correct a typographical error. I urge Hon. Members to support the amendment by the Committee.

(Question of the amendment proposed)

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

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

thereof be inserted, put and agreed to)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a further amendment by Hon. Millie Odhiambo, Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 19 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (e) -

“(ae) any measures to indemnify the data subject from unlawful use of data by the data processor or data controller; and”.

It basically protects a person if a data processor or a data controller uses the person’s data wrongfully. So, it puts the burden on the data processor or data controller, so that they do not use one’s information wrongfully.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): That is the proposed amendment and the Leader of the Majority Party had agreed with Hon. Millie to move it.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

Clause 20

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairlady, I rise to withdraw the amendment to this clause. I am aware that the Leader of the Majority Party will be proposing a subsequent amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Your proposed amendment is withdrawn and it is on record.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

The Leader of the Majority Party has a proposed amendment to Clause 20. Please, move your amendment.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 20 and substituting therefore the following new clause—

Duration of the registration certificate

20. A registration certificate issued under section 19 shall be valid for a period determined at the time of the

application after taking into account the need for the certificate, and the holder may apply for a renewal of the certificate after expiry of the certificate.

The reason for the amendment is that the validity of a registration certificate issued to a data controller and data processor should be decided by the need for that certificate. We do not want a situation where any Tom, Dick and Harry will be asking for a certificate.

So, the amendment seeks to provide that a registration certificate issued under Clause 19 shall be valid for the period decided or determined by the Data Commissioner at the time of the application after taking into account the need for the certificate. There must be a need. The holder may apply for a renewal of the certificate after its expiry. So, I am only introducing the element of need.

A long time ago, I used to be a trader in commodities. I know the Common Market for Eastern and Southern Africa (COMESA) rules allowed one to import sugar and instead of giving a certificate to the real importers, they used to give to brokers. We do not want a situation where somebody goes round with a certificate and sells it to an expert like Hon. Osotsi, who may not know what to do with it. This is to make sure that we are alive to it. Once it expires, one can ask for renewal.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairlady, this is a very innovative amendment and I support the Leader of the Majority Party. You can imagine we are going to have thousands and thousands of data processors and data controllers. If we say that the office will be processing registration certificates after every three to four years, that will be the only work they will be doing. We need to make it flexible, so that we do not have to keep on registering them. This is one of the issues that can be handled in regulations.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Deputy Chairlady. The reasons advanced by the Leader of the Majority Party are noble and good, but it is for those reasons that I do not support the amendment. He is introducing absolute discretion to the commissioner and that can be dangerous. It can end up being a weekly thing, every two days, or every one month. The idea of having some prescribed time brings some predictability and reduces the whim. That whim is what we are reducing by prescribing the time.

So, for the very reasons advanced by the Leader of the Majority Party, I do not support that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me get the views of the Chairperson, Member for Marakwet.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I support Hon. Duale's amendment. We agreed that there are those data processors and data controllers who do not have to get licences. Say, when you go to any office, there are security officers who take your details like your ID number or telephone number and then you are allowed in. Such data processors and data controllers do not need to get licences. So, that is why the discretion is there, to weigh in. I believe the person who will be appointed as a Data Commissioner will be a reasonable person who has gone to school properly.

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

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

(Clause 20 as amendment agreed to)

(Clauses 21, 22 and 23 agreed to)

Clause 24

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 24 of the Bill be amended in sub-clause (6) —

(a) by inserting the words “on the website” immediately after the word “officer”.

(b) by inserting the words “who shall ensure that the same information is available on the official website” immediately after the word “Commissioner”.

In line with the right to access to information guaranteed in the Constitution of Kenya and the Access to Information Act, this amendment ensures that the same information will be available on website.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

Clause 25

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 25 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

“(e) collected only where a valid explanation is provided whenever information relating to family or private affairs is required”.

We are giving an additional principle which is aimed at ensuring that data subjects are informed of reasons for collection of data related to private and family affairs, so that they can make informed decisions before granting consent. Basically, we are saying that information should be given first on what the data is going to be used for.

I move.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Suba North, do you want to comment on this amendment? We have Hon. Millie Odhiambo to move her proposed amendments.

(Technical hitch)

Hon. Stephen Mule (Matungulu, WDM-K): We cannot continue with business when Members are under threat.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): *(Off-record)*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It is true there is a problem. I order the officers of Parliament in charge of ICT or the systems to ensure that the systems are in order. I do not want to speculate and say that there is hacking. I think they are working on it. Members, we are not under threat. We have already ordered the security to ensure that all is well. I think the systems will be okay.

(Technical hitch)

Hon. Godfrey Osotsi (Nominated, ANC): *(Off-record)*

Hon. Aden Duale (Garissa Township, JP): We had already done it. You are late, we have finished.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We had already moved from that proposed amendment.

Hon. Godfrey Osotsi (Nominated, ANC): *(Off-record)*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi, I have heard you. You know the procedures of the House. We have already passed that proposed amendment. It was carried. You know the procedures if you want to do a recommittal.

Hon. Godfrey Osotsi (Nominated, ANC): I want to go on record. I know we passed it, but this is a fundamental amendment because you are going to stop companies from processing data.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi, you cannot rule on procedure. You know the procedure of the House. You know what to do if you want to recommit. Read your Standing Orders.

Hon. Members, we have a proposed further amendment by Hon. Millie Odhiambo. They have agreed with the Leader of the Majority Party to move on his behalf.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I am glad the Leader of the Majority Party is advising Hon. Osotsi. If he thinks that what we have moved is fundamentally defective, he can convince the Members so that it is recommitted. Once it is passed, it is past.

I beg to move an amendment to Clause 19 (h).

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We are on Clause 25.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Sorry, it is Clause 25 (h). I beg to move:

THAT, Clause 25 of the Bill be amended in paragraph (h) by deleting the word “or” appearing immediately after the word “safeguards” and substituting therefor the word “and”.

If I can just explain, it says every data controller or processor shall ensure that personal data is not transferred outside Kenya unless there is proof of adequate data protection safeguards or consent from the data subject. So, it means “either or”, when there must be consent as well. If we put “or”, it means you can send my data outside Kenya even if I do not consent. That is why I am suggesting that we amend the word “or” to “and”.

Thank you.

(Question of the further amendment proposed)

Hon. Osotsi?

Hon. Godfrey Osotsi (Nominated, ANC): I think we need to be very careful with these issues of data processing. Consent is already implied. If you look at the obligations of a data processor and data controller, we may not be able to process data if we put that amendment here, from a technology point of view. We have so many banks and insurance companies like Safaricom who have data centres outside the country. We will not be able to process any data if we put so much restriction on data processing. Obligations of data processors and data controllers are already implied. That is why I am hesitant to support that amendment and even the earlier amendment by Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): *(Off-record)*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You are out of order, Hon. Shamalla. You do not shout to another Member. You can address him through the Chair.

Hon. Osotsi, you are on record as not supporting the further proposed amendment by Hon. Millie Odhiambo.

Hon. Godfrey Osotsi (Nominated, ANC): Yes. It is on that basis, if you look at it from a technology point view.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. You said “yes”. I give it to the Chairperson.

Hon. William Kisang (Marakwet West, JP): From what Hon. Osotsi has just said, I wanted to convince Hon. Millie to drop the amendment. We had agreed earlier. There is a different view that Hon. Osotsi has given. If one had earlier given consent of their data to be collected and there is need for that data to be transferred out of the country, you do not have to give consent again. If it will be used for the same purpose out of the country, it means we are going to raise a lot of restrictions and people will eventually go to court and we will not be able to implement this law. I remember many amendments were brought some time last year by the Departmental Committee on Administration and National Security on computer issues and the Cyber Crimes Act. Eventually, 26 clauses of the Bill were thrown out by the courts. So, Hon. Millie, because these are the experts, I am beseeching you to withdraw the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us hear from the Member for Rarieda. Dr. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Deputy Chairlady. I want to join the Chairperson and Hon. Osotsi. I will be discussing with the Chairperson later for his support in an earlier amendment, but on this one, I agree with him in persuading Hon. Millie Odhiambo purely from a reality perspective. The reality is that in this country, even when it comes to elections, often times we engage with parties outside the country.

Therefore, the data of voters ends up going outside the country. What is emphasised in Paragraph (h) is that there ought to be sufficient protection, which I agree with, but if we had the word “and” instead of “or”, then getting the consent of every voter might be impossible. So, I want to persuade my sister that on this proposal, although the intention is noble, it might create practical problems.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, are you persuaded?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I am not persuaded going by the provisions of the same Bill. On what Hon. Otiende is referring to, there is protection of data even during elections. There are provisions. I was using the same spirit of the Bill to provide “and”, but to move us forward, I will drop it because we will still have an opportunity to discuss further and bring an amendment. However, it is not in tandem with the spirit of the Bill on protection especially of data that goes out. Elsewhere in the Bill, it talks about consent for data that goes out of the country. So, I was using the same spirit.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. The further proposed amendment by Hon. Millie Odhiambo is dropped.

(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)

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

(Clause 25 as amended agreed to)

Clause 26

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I wish to drop the proposed amendment because the words of the proposed amendment are superfluous.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The proposed amendment by Hon. Shamalla on Clause 26 is dropped. I proceed to put the Question. Order Members. We take votes on clauses to be carried.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 26 agreed to)

Clause 27

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, you had been agreed with the Leader of the Majority Party to move that amendment on his behalf.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 27 of the Bill be amended in Paragraph (b) by deleting the words “physical or” immediately after the words “data subject has”.

It provides that a right conferred on a data subject may be exercised where the data subject has a physical or a mental disability, by a person dully authorised to act as their guardian or administrator.

I am wondering why somebody would, for example my sister, Hon. Dennitah Ghati or Hon. Tim, require a guardian or an administrator. Physical disability does not inhibit anybody in any way. For mental disability, I can understand, but for physical disability, I do not understand unless the Committee explains what they intended. This is a right conferred on a data subject. It may be exercised. It means, in this instance, my sister, Hon. Dennitah Ghati, is a data subject and they can only exercise that right through a guardian or an administrator. How?

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I give the Floor to the Member for Garissa Township, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, physical disability is possible. You know, you have only given us the example of Hon. Dennitah Ghati. What if you do not have your hands, how will you sign? A good example that I can give is when you lose your eye sight. You need it. If you can remember, your Governor of Homa Bay County, a few months ago had somebody walking with him everywhere to read for him. So, physical disability can come in many ways that can inhibit the data subject. We cannot say it is physical disability, but it is only a medic who can tell us. We are lucky because we do not have, as Members, physical and mental disability cases. We can use anything. I am sure there was a purpose why physical disability cuts across many things. We can understand mental disability, but physical disability is a serious matter. I want her to drop that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Rarieda.

(Hon. (Ms.) Millie Odhiambo stood in her place)

Hon. Millie, do you want to say something?

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Deputy Chairlady. On this, I want to support the amendment. If we look at Clause 27, we should read it together with Clause 26. What are those rights of the data subject that would disentitle them from accessing because of a physical disability? If you look at the rights that have been captured, the kind of physical disability that we are talking about, including the example given by the Leader of the Majority Party, may not really apply.

The danger is that once we include physical disability under this part, you will almost preclude even those who are physically disabled, but mentally or otherwise able because you will have added them here. Therefore, I suggest that we remove the word “physical” and maintain “mental”. In any other circumstance, we could have said “mental or other disability” such that it will allow the possibility that if you are disabled in such a manner that you cannot, then you can get data through an administrator.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairlady, I will be comfortable with what Hon. Otiende is proposing. We remove “physical” and say “mental or other disability”, so that if you have a disability that you cannot operate, you will need a guardian or an administrator. A guardian and an administrator have specific legal implications.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. You are in agreement with the owner of the Bill, the Leader of the Majority Party.

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

(Clause 27 as amended agreed to)

Hon. Chairperson, your Committee Members are not attentive.

(Clause 28 agreed to)

Clause 29

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by the Chairperson.

Please, move your proposed amendment.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 29 of the Bill be amended by—

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

“(d) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;”

(b) inserting the following new paragraph immediately after paragraph (e)—

“(f) a description of the technical and organisation security measures taken to ensure the integrity and confidentiality of the data.”

We are proposing this amendment to ensure that the rights of data subjects are protected and that security measures are taken into account by data controllers. Processors must also ensure there is integrity of the data collected. Basically, as you collect data from a data subject, the data should be accurate. If there is any data that is not correct the data subject will be allowed, from time to time, to ensure that the data is updated.

(Question of the amendment proposed)

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

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

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

(Clause 29 as amended agreed to)

Clause 30

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, you have a proposed amendment.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, sub-clause (1) of clause 30 of the Bill be amended in paragraph (b) by inserting the word “natural” immediately after the word “another” appearing in subparagraph (iii).

This is to be in accordance with the interpretation part of the Bill which describes what a data subject is.

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

Clause 31

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 31 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (4) —

(5) The data impact assessment reports shall be submitted sixty days prior to the processing of data; and

(6) The Data Commissioner shall set out guidelines for carrying out an impact assessment under this section.

There is need for the Data Protection Commissioner to set out the types of processing operations that would require a data impact assessment. Secondly, setting up of timelines on when data impact assessment reports should be submitted to ensure the rights of data subjects when processing operations are likely to result in high risk to the rights of the particular data subject. So, basically we introduce impact assessment on use of data so that we do not expose citizens to risks.

(Question of the amendment proposed)

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

(Clause 31 as amended agreed to)

(Clauses 32, 33 and 34 agreed to)

Clause 35

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 35 of the Bill be amended in subclause (3) by deleting the word “before” appearing in paragraph (b) and substituting therefor the word “after”.

Basically, we are correcting a typing error in this particular clause. I move.

(Question of the amendment proposed)

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

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

(Clause 35 as amended agreed to)

(Clause 36 agreed to)

Clause 37

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by the Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Bill be amended by deleting clause 37 and substituting therefor the following new clause—

Commercial use
of data.

37. (1) A person shall not use, for commercial purposes, personal data obtained pursuant to the provisions of this Act unless the person-

(a) has sought and obtained express consent from a data subject; or

(b) is authorised to do so under any written law and the data subject has been informed of such use when collecting the data from the data subject.

(2) A data controller or data processor that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

(3) The Cabinet Secretary in consultation with the Data Commissioner may prescribe practice guidelines for commercial use of personal data in accordance with this Act.

Basically, we are saying that when data is used for commercial purposes, the data controller or processor should ensure the identity of the data subject is concealed, especially when they are doing marketing. The current proposal was making reference to direct marketing while the new provision is seeking to ensure that data used for commercial purposes, which is much broader than direct marketing, is properly secured. Anything to do with commercial data should not identify the data subject; it should be made a pseudo.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Osotsi, you want to speak to this?

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Chairlady. I support this amendment because Clause 37 makes reference to direct marketing, but this provision is very broad; it talks about all forms of commercial data.

*(The Temporary Deputy Chairlady
(Hon. (Ms.) Jessica Mbalu) left the Chair)*

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is one more Member who wants to speak to this.

Hon. Daniel Rono (Keiyo South, JP): Hon. Temporary Deputy Chairman, I had the commercial aspect, but I did not hear the individual aspect. Is that captured in the amendment? Oh, it is captured in other clauses.

I support.

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Jennifer Shamalla, your amendment falls in light that the other one is carried.

(Proposed amendment by Hon. (Ms.) Jennifer Shamalla dropped)

(Clause 37 as amended agreed to)

(Clauses 38, 39 and 40 agreed to)

Clause 41

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have an amendment.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 41 of the Bill be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (d) —

(e) the cost of processing data and the technologies and tools used.

It is imperative to have in mind the cost of processing data and technologies and tools used in processing data. This is because you need big servers for storing data. It is important to have in mind the cost of storage when a particular data controller or data processor is used to give a particular data of a subject for a period of time. The cost of collecting and giving this particular data will make it very expensive for the data controllers or processors to give data for a period of time, say, seven years.

In other laws, you need to give the account of records for seven years. However, for data, basically we are saying that as soon as you are done with the use of this data, it should be deleted immediately so that it does not consume resources in terms of servers and other equipment.

I propose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Rono, the Floor is yours.

Hon. Daniel Rono (Keiyo South, JP): My name is Hon. Daniel Rono. I am the Member for Keiyo South, Elgeyo Marakwet County.

The world is moving very fast. Data needs to be disposed of as soon as it is done with. I support the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

(Question of the amendment proposed)

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

(Clause 41 as amended agreed to)

(Clause 42 agreed to)

Clause 43

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Shamalla, the Floor is yours.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. I rise to drop this particular amendment for the following reasons: In hindsight, I have realised that, indeed, the time limit set could be extremely punitive. Issues with limits of time can be adequately addressed in Part 10 of the Bill under provisions of delegated legislation through regulations.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clauses 43, 44, 45, 46 and 47 agreed to)

Clause 48

The Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 48 of the Bill be amended by—

(a) deleting the item “(1)” appearing immediately before the words “a data controller”;

(b) deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the data controller or data processor has given proof to the Data Commissioner of the appropriate safeguards with respect to the security and protection of personal data, and the appropriate safeguards including jurisdictions with commensurate data protection laws;”

Hon. Temporary Deputy Chair, we are proposing this amendment to ensure that we make it very clear in the law as well as to set out jurisdictions with commensurate data protection laws during trans-border or transfer of data out of Kenya. This is basically for the Data Commissioner to ensure that there is security and safeguards for transferable data.

I beg to move.

(Question of the amendment proposed)

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

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

(Clause 48 as amended agreed to)

(Clauses 49 and 50 agreed to)

Clause 51

The Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have an amendment.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 51 of the Bill be amended in sub-clause (2) by deleting the word “order” appearing in paragraph (b) and substituting therefor the word “interest”.

Hon. Temporary Deputy Chairman, we are substituting the word “order” which is basically so broad with the word “interest”. This is because it is a broader concept which encompasses an interest as well as a common concern among citizens in the management of local and national affairs. This is also to mandate public bodies seeking to retrieve data for national security and public interest to secure expertise orders from the law courts before retrieving such information to safeguard the rights of data subjects against abuse. We are

substituting the word “order” with “interest” and also, if there is some data that the public bodies like National Intelligence Service (NIS), courts and the others want, they will go through courts to get data from the subject.

I beg to move.

(Question of the amendment proposed)

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

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

(Clause 51 as amended agreed to)

Clause 52

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party, the Floor is yours.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 52 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

(3) The Data Commissioner shall prepare a code of practice containing practical guidance in relation to the processing of personal data for purposes of Journalism, Literature and Art.

This amendment seeks to ensure that there is a proper code of practice, specifically when processing personal data for the purpose of Literature, Art and Journalism so that we remove quacks from those industries. This will enable us to know this particular data is known and is given by the Data Commissioner.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Osotsi, would you like to speak to this?

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I think this amendment is well captured under Clause 74. It is basically the role of the Data Commissioner to issue guidelines or codes of practice for data controllers, data processors and data protection officers. That is my first argument.

The second argument is that I think the amendment by the Leader of the Majority Party to Clause 74(a) captures that aspect. The amendment by the Leader of the Majority Party, maybe to some quarters may look very offensive and may appear like it is encroaching into other aspects of regulation, like Media Council and such. However, it is well captured under Clause 74.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Jennifer, do not speak before I give you the space. Now you have the space.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Deputy Chairman. I can see the reasoning behind the Leader of the Majority Party's amendment because he has used the words "with the relevant stakeholders" which is an essential part of public participation.

The Deputy Chairman (Hon. Patrick Mariru): Very well. The Leader of the Majority Party, the Floor is yours.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, for the Media Council, publishing associations and the art, you remember there is copyright infringement. Through regulations we are going to do it. That he works through the Media Council so that they do their specific code. He talks to the publishers who have their own code. You have heard the story where people just get a book and they republish it and sell it. I am just further improving Clause 77.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Member for Bomachoge Chache must speak to it. I cannot see your card. I can now see it. The Floor is yours.

Hon. Alfah Ondieki (Bomachoge Chache, KNC): Thank you, Hon. Temporary Deputy Chairman. I want to support the Leader of the Majority Party because this is an industry which a lot of people have interest in. For us to promote this industry, we must promote professionalism. I stand to support what the Leader of the Majority Party is saying.

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

(Clause 52 as amended agreed to)

Clause 53

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is an amendment by the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 53 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)—

(4) The Data Commissioner shall prepare a code of practice containing practical guidance in relation to the processing of personal data for purposes of research, history and statistics.

This amendment seeks to ensure that there is a code of practice specific for the processing of personal data for the purpose of research, history and statistics. These are very key areas in our country. There are many people who do research and that research can be used for development. We want to retain our history and more so statistics. So, the Data Commissioner shall prepare a code of practice containing practical guidelines in relation to the processing of personal data for the purpose of research, history and statistics.

(Question of the amendment proposed)

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

(Clause 53 as amended agreed to)

(Clauses 54 and 55 agreed to)

Clause 56

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Bill be amended by deleting clause 56 and substituting therefor the following new clause—

Complaints to the
Data Commissioner

56. (1) A data subject who is aggrieved by a decision of any person under this Act may lodge a complaint with the Data Commissioner in accordance with this Act.

(2) A person who intends to lodge a complaint under this Act shall do so orally or in writing.

(3) Where a complaint made under sub-clause (1) is made orally, the Data Commissioner shall cause the complaint to be recorded in writing and the complaint shall be dealt with in accordance with such procedures as the Data Commissioner may prescribe.

(4) A complaint lodged under sub-clause (1) shall contain such particulars as the Data Commissioner may prescribe.

(5) A complaint made to the data commissioner shall be investigated and concluded within ninety days.

This is basically setting up mechanisms on how an aggrieved data subject will seek redress from the Data Commissioner. There is a process that has been put in place so that if you have any issue or complaint, there is a process on how you apply to the Data Commissioner so that your issues can be sorted out.

(Question of the amendment proposed)

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

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

(Clause 56 as amended agreed to)

(Clauses 57, 58, 59, 60, 61 and 62 agreed to)

Clause 63

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, Clause 63 of the Bill be amended by-

- (a) deleting the word “two” and substituting therefor the word “one”; and,
- (b) deleting the word “higher” and substituting therefor the word “lower”.

This Bill provides currently a penalty of 2 per cent of the annual turnover of the preceding financial year in relation to an infringement on any provision of the Act that may be imposed by the Office of the Data Commissioner. I want Members to listen to me: 2 per cent of Safaricom’s annual turnover is Kshs1 billion and they can pay that. What about the young Kenyan companies that are in these industries and are coming up? Their turnover is not Kshs1 billion. Therefore, this particular provision was protecting the multinationals. That is why we are saying the 2 per cent is punitive to Small and Medium Enterprise (SMEs) whose turnover is low. It can cripple their functionality and survival and to this end we propose an amendment to reduce it to 1 per cent. We delete the word “higher” and substitute with the word “lower”.

Imagine a clerk who in filling data makes a small mistake. It is as easy as that and so the penalty was punitive. Let us reduce it from 2 per cent to 1 per cent and then delete the word “higher” and substitute it with the word “lower” just to protect all the players in the industry.

Hon. Osotsi and company may join this industry.

(Question of the amendment proposed)

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

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

(Clause 63 as amended agreed to)

(Clauses 64, 65 and 66 agreed to)

Clause 67

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Ms.) Jennifer Shamalla, you have an amendment?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. I rise to drop this amendment again so that it may conform to the amendments that were dropped entirely under Part II of the Bill.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 67 agreed to)

Clause 68

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. (Ms.) Jennifer Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. For the reasons herein before mentioned, I drop this amendment.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 68 agreed to)

Clause 69

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon Jennifer Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. For the reasons herein before mentioned, I drop this amendment again.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 69 agreed to)

Clause 70

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon Jennifer Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. For the reasons herein before mentioned, I drop this amendment again.

(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)

(Clause 70 agreed to)

(Clauses 71 and 72 agreed to)

Clause 73

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 73 of the Bill be amended in sub-clause (1) by deleting the word “two” appearing immediately before the word “years” and substituting therefor the word “ten”.

During public participation, most of the stakeholders said the penalty that was initially proposed in the Bill was too lenient and as a Committee, in agreement with the stakeholders, the sentence was enhanced to deter persons from committing offences under this Act.

Therefore, the proposal was to move the imprisonment from two years to 10 years.

I move and ask Members to support.

(Question of the amendment proposed)

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

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

(Clause 73 as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): I can see a young lady in the Speaker's Gallery taking photos of this Chamber. For some time I have been watching her and this is against the proceedings of the House. So, order the Serjeant-At-Arms to seize her phone and retrieve the photos. I do not know who she is. For people to access the Speaker's Gallery, they must be given permission by the Office of the Clerk.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party that is absolutely on target. She must not leave and the Serjeant-At-Arms should take the appropriate action.

Clause 74

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of the Majority Party you have an amendment.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 74 of the Bill be amended in sub-clause (1), by inserting the words "in consultation with relevant stakeholders" immediately after the word "guidelines" appearing in paragraph (d)

If you look at clause 74, the Data Commissioner may for the purpose of this Act issue guidelines to relevant stakeholders. My amendment seeks to ensure that the Data Commissioner consults the relevant stakeholders in developing sector specific guidelines particularly in the area of financial services and social protection among others.

(Question of the amendment proposed)

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

(Clause 74 as amended agreed to)

(Clause 75 agreed to)

(First and Second Schedules agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): There are two amendments let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the owner of the interest rate has come to confuse me. He should go and talk to the President because the battle is before him. Hon. Temporary Deputy Chairman I beg to move:

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

“national security organs” has the meaning assigned to it under Article 239 of the Constitution
The justification is to provide for the definition of the” national security organs” as already defined in Article 239 of the Constitution. As we said earlier here we are saying the Data Protection Center needs to consult them in accordance to Article 239 of the Constitution.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by the Chairperson on Clause 2. Hon. Shamalla, please keep an eye on this one by the Chairperson because it will have an implication to yours.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by—

(a) inserting the following new definitions in their proper alphabetical sequence—

“data” means information which—

- (a) is processed by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with intention that it should be processed by means of such equipment;
- (c) is recorded as part of a relevant filing system;
- (d) where it does not fall under paragraphs (a) (b) or (c), forms part of an accessible record;
- or
- (e) is recorded information which is held by a public entity and does not fall within any of paragraphs (a) to (d);

“person” has the meaning assigned to it under Article 260 of the Constitution.

(b) deleting definition of the term “consent” and substituting therefor the following new definition—

“consent” means any manifestation of express, unequivocal, free, specific and informed indication of the data subject’s wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject”.

We are redefining the term “data” and “person” and their definitions included because they were repeatedly used in the Bill and were not defined. We are also deleting the definition of “consent” provided for in the Bill and substituting it with a more elaborate definition since it is a pertinent element of data protection and management. So, we are redefining the three terms to make it more inclusive.

I had discussed with Hon. Shamalla that we had redefined these terms and the Bill is comprehensive and we do not need to redefine again. So, I ask that you go by my amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is not me to go with it but the Members and I will put it to them.

(Question of the amendment proposed)

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

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

In the circumstances, having heard the Chairs first, Hon. Jennifer Shamalla part (b) of your amendment directly falls. If you have to proceed, then do so for part (a) and (c).

Hon. Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Chairman, I rise to drop my amendment and I support the Chairs.

(Proposed amendments by Hon. (Ms.) Shamalla Jennifer withdrawn)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie Odhiambo, what did you want to say? You have an amendment to Clause 2 and it is in the Order Paper? Yes indeed, you have an amendment that is approved.

Please proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT clause 2 of the Bill be amended in definition of the term “sensitive personal data” by inserting the words “property details, marital status, family details including names of the person’s children, parents, spouse or spouses; immediately after the words “biometric data”.

My amendment seeks to include certain categories into sensitive personal data. I seek to include property details, marital status and family details including the names of person’s children, parents, spouse or spouses as sensitive personal data.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We are done. Let us have the Mover of the Bill.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Data Protection Bill (National Assembly Bill No.44 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)
(The House resumed)

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

REPORT

THE DATA PROTECTION BILL

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

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Data Protection Bill (National Assembly Bill No.44 of 2019) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Mover of the Bill to move agreement with the Report.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Kisang, the Chair of the Departmental Committee on Communication, Information and Innovation, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. William Kisang (Marakwet West, JP): Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Speaker, there was an amendment by Hon. Shamalla on Clause 25 deleting sub-clause (g) of that clause. It reads:

“Every data controller or data processor shall ensure that the personal data is released...”

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Let me hear the Leader of the Majority Party. Hon. Osotsi, when the Leader of the Majority Party is upstanding, you resume your seat.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker. Hon. Osotsi must know that there are ranking Members in this House. What he intends to do is a re-committal. That Clause has been passed, and if you want to do a re-committal, there is nothing of Hon. Shamalla anymore. It has been passed by the House. So, you will consult me and we will find how to do the re-committal, but the story he is reading will not help us.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon Osotsi, you need to move your re-committal

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the proviso “subject to re-committal of Clause 25 (g).

I request Hon. (Prof.) Jacqueline Oduol to second.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, from where I sit, I am not in a position to put the Question. So, the Question on the re-committal will be put in the next sitting as it will be slotted in our Order Paper.

Next Order!

(Putting of the Question deferred)

MOTION

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

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

(Hon. Katoo ole Metito on 5.11.2019)

(Resumption of Debate interrupted on 5.11.2019)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): This is a resumption of debate. Hon. Members, you are aware that we do not speak twice to any Bill or Motion. We had Hon. Metito Katoo moving at the closure of debate. You can continue with moving of your Motion.

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Temporary Deputy Speaker. I had just started moving this Motion. Just to pick from where I left, I was saying that agreements are used to define the rights and obligations of militaries operating on foreign soil and the incorporation of the force or its members to the authority of the local officials.

[The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu) left the Chair]

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

As a country, we already have several agreements that are both bilateral and multilateral with other states and agencies. As a country, we stand to benefit from the expertise of the

counterpart states. The defence agreements that we have as a country include; the East African Co-operation Defence Protocol, the Western Indian Ocean Maritime Agreement and the Defence Agreement with Denmark. We also have a defence agreement with the United Kingdom. We have one which has been kept in abeyance awaiting adoption by this House. This is the so-called San Marco Agreement with the Italian Government. That is still awaiting adoption by the House.

The issue of co-operation and agreements draws its legal basis from Section 37 of the Kenya Defence Forces Act, 2012. It is about co-operation with other forces and forces visiting Kenya. It says: “Any treaty or agreement between the Government of Kenya and any other state or international institution or organisation regarding the use or provision of military forces shall provide for the legal status of -

(a) members of the Defence Forces placed at the disposal of the military authorities such state, institution or organisation; or”

(b) foreign military personnel and their mission while the personnel are deployed in Kenya.”

There are several conditions that must be met by the KDF and the foreign military personnel while operating outside the gazetted areas. They are stipulated.

There is also the issue of compensation of local communities in the event of accidents in areas where the military is deployed. Those are some of the things that must be defined in any treaty, agreement or co-operation. As a Committee, we analysed this. We are satisfied that they are clearly spelt out. This Defence Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa provides among others, framework for exchange, sharing and utilisation of the respective states’ experience, knowledge, military facilities and infrastructure. In my earlier remarks, I said that as a country, we stand to benefit from the expertise and knowledge of the counterpart state. When we exchange experiences of our military, knowledge, facilities and infrastructure that is a plus. It is a benefit to us, as a nation. This world has become very global. There are a lot of defence issues that require co-operation. That is even what we talk at times as multi-agency operation. Outside our borders, there are issues like tackling terrorism and sharing information technology on joint operations, especially in the coastal areas or maritime. Issues of security have become very global. Therefore, they require global strategies to handle them. One of them is defence co-operation. Mostly, countries make this agreement and co-operation to address some of the security challenges that they face as countries or globally.

We understand that military personnel do a lot of international relation in their studies because we always say that diplomacy is the first line of defence. Therefore, the military personnel are taught a lot on foreign diplomacy. This Defence Co-operation will be very instrumental in strengthening bilateral relation between the two states: Kenya and South Africa.

(Hon. (Ms.) Shamalla Jennifer and Hon. Godfrey Osotsi consulted loudly)

Hon. Temporary Deputy Speaker, the Members at the Dispatch Box need to consult in low tones.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order Members! There is Hon. Jennifer and Hon. Osotsi. Consult at a lower tone so that we listen to Hon. Chairperson, Hon. ole Metito.

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Temporary Deputy Speaker. I was saying that the Agreement also provides for a framework for parties to collaborate

in the field of defence industries like infrastructure in a mutually beneficial manner. There is a famous word called “military modernisation”. This is matching the equipment, facilities and infrastructure with the ever changing technological advancement. This Agreement provides a framework on how the two states will collaborate in military industry.

The scope and goals of the Defence Co-operation are included but are not limited to development and implementation of security and defence policy because every country must have a security and defence policy. The exchange of military information on matters agreed upon are subject to any restriction of national security because there is also national sovereignty. Therefore, as much as we share information, each country retains its right of withholding some information that is for the benefit of its national security.

There is also the issue of encouragement and facilitation of industrial co-operation between the respective industries in the fields of defence related work. That is in terms of research, development and procurement of defence equipment. As I said earlier, that is an issue of benefitting from research on this defence infrastructure. Military medical health service is also described in the Agreement. It is so specific in some of the clauses. Let me very quickly check the Article that talks about medical service. It is in Article 12 of the Agreement. It outlines the medical procedures which relate to the Agreement. The host nation will provide medical support to members of the sending party but the sending nation is liable for the cost of any private medical support for its members. Each party is responsible for all expenses relating to the treatment, removal and evacuation of its sick members. For example, if the South African troop is in this country in accordance with this Agreement and they go to our military health facilities for medical reason, that is fine. They will get it for free. However, if they go for private medical support, then their country will meet the expenses. The same applies to our military personnel.

There is also the counter piracy and other maritime safety activities which are explained in the Agreement. Article 7 of the Agreement establishes Joint Defence Committee (JDC) which will oversee the implementation of all arrangements arising from this Agreement. Therefore, it is supposed to meet once every two years alternating between the two countries. The terms of reference and the secretariat of this JDC are established for that purpose. So, the implementation of this Defence Co-operation will be through a JDC.

I want to talk about Article 8 of the Agreement where members of the armed forces of the sending nation will respect the compensation of nearby communities where these troops or personnel will be doing the operation. As I said earlier, this is very important. It is outlined clearly in Article 8. It outlines matters to be adhered to with regard to the community relation. It says that the members of the armed forces of the sending nation will respect the tradition, customs and culture of the communities adjacent to the host nation defence institutions. Their service authorities will ensure that they do not harm any vulnerable groups in the host nation. Let me use the example of Laikipia County, Hon. Temporary Deputy Speaker, which is your county. It is one of the counties which is used by the military to do this operation.

The Agreement is very clear that those who will be doing operations must respect the traditions, customs and culture of the adjacent communities and must not harm any of the vulnerable groups there. But should something happen contrary to that, then the sending nation must pay compensation for any death, injury, damage or any loss caused to the local community where any member of its armed forces is found culpable. Those are the things we provide for in this Agreement.

Hon. Temporary Deputy Speaker, I do not want to talk much about it because it is very clear, but as I have said, if approved by this House, it is going to join a long list of defence

agreements that Kenya currently has with other states some of which I mentioned earlier in my contribution.

Therefore, I request the House to agree with the Committee and approve this Agreement.

Hon. Temporary Deputy Speaker, I beg to move and request the Member for Limuru, Hon. Peter Mwathi to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Peter Mwathi.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, I beg to second this Motion.

In seconding, I want to associate myself with all the points that have been brought forth by my Chairman who has just moved the Motion. I also want to share with the House the fact that this is among several other agreements that have happened between Kenya and other countries forming bilateral and multilateral agreements which have been beneficial to our nation in terms of security. As it is very well known in this country, we had a problem of dealing with piracy in our Indian Ocean waters, a problem that has always been detrimental to our economy and some of the areas of co-operation that we are going to have with South Africa are going to help us to deal generally with piracy.

It is also important to note that in compliance with the Constitution of Kenya specifically on public participation together with the Treaty Making Ratification Act of 2012, this Agreement was subjected to public participation by way of invitation of memoranda through local dailies. After the requisite time, it took almost a month - it was beyond 14 days- we did not receive any memoranda in terms of either going against one of the 15 Articles that form this Agreement.

So, as the Mover said, there are areas that are critical especially in capacity building. Our forces are good. We are not entering into an agreement because we think they are weak. They are very strong. This Agreement is to enhance that capacity, to share information and deal with the sophisticated nature of crime that has been witnessed in the world of late.

In compliance with the law and the requirements of the Constitution, this Agreement has not been effected. It has been signed but it has been up and down because it was approved by the Cabinet sometime in October 2016 but South Africa found out that it was not complying with its internal mechanisms and so they took it to allow compliance with the internal mechanisms in South Africa. In February 2019, they signed it and we also signed it. Up to now, it has not come into force, the reason being that it cannot until it is ratified by this House.

I would like to inform the House that this Agreement gives our Defence Forces strength and capacity. In fact, probably, they will borrow what to do when we have disasters like what we had along the Likoni Channel. I am sure South Africa gave a helping hand and that hand they gave, in future; we shall be able to give it to other nations, once we get the knowledge. Everything in the Agreement, as I read, is beneficial to our forces. I urge the House to support.

For avoidance of doubt, in terms of financial commitment, there is no amount of money that will be spent by our country on foreign forces. When they come here, their country will take care of them and we shall take care of our own. In terms of finances, we shall deal with our forces only.

Finally, this among other agreements which put our nation at the top in terms of security should be supported by the House. Therefore, I urge the House to support it.

With those few remarks, I beg to second.

(Question proposed)

(Hon. Jeremiah Kioni walked from the Dispatch Box to his seat)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Kioni, Order. Even if I am proposing the Question, I am able to see your movement. Hon. Kioni, I guess you were rushing to your place to indicate interest to speak to this. You now have the Floor.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Speaker, I apologise for that.

Hon. Temporary Deputy Speaker, I would like to draw your attention to Standing Order No.35 that we may not be adequate to transact business. I ask that we try to raise quorum under Standing Order No.35.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Indeed, Hon. Jeremiah Kioni, we must deal with that first.

I order that the Quorum Bell be rung for 10 minutes.

(Quorum Bell was rung)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Stop ringing the Quorum Bell.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, now that we are not able to raise quorum, we will have to adjourn the Sitting. The time being 6.40 p.m., this House stands adjourned until Thursday, 7th November 2019, at 2.30 p.m.

The House rose at 6.40 p.m.