

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 19th November, 2015

The House met at 9.30 am

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

PRAYERS

QUORUM

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we do not have the requisite quorum. I, therefore, order that the Division Bell be rung.

(The Division Bell was rung)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order Members. Order! Order! Order! I can confirm that we are in a position to start the business of the day. We have quorum now.

Next Order. Hon. Sabina Chege.

PAPER LAID

Hon. (Ms.) S. W. Chege: Thank you, Hon. Temporary Deputy Speaker.

Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House today, Thursday, November 19th 2015:

The Report of the Departmental Committee on Education, Research and Technology on its consideration of the Engineering Technologists and Technicians Bill 2015.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next Order

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BILLS

Second Reading

THE BASIC EDUCATION (AMENDMENT) BILL

(Hon. (Ms.) S.W. Chege on 18.11.2015)

(Resumption of Debate interrupted on 18.11.2015)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, The Basic Education (Amendment) Bill (National Assembly Bill NO. 35 of 2014), was debated in the Second Reading. We now put the Question.

(Question put and agreed to)

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

Second Reading

THE ACCESS TO INFORMATION BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Members if you have spoken you cannot speak twice. I am made to understand it has not been moved. So, I call upon the Mover, Hon. Priscilla Nyokabi, to move the Second Reading of The Access to Information Bill (National Assembly Bill No. 36 of 2015)

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, the Access to Information Bill (National Assembly Bill No. 36 of 2015) be now read a Second Time.

In moving this Bill and having waited for it for a long time, I would say that the country has waited for this law for over ten years as far as I know. We had the first draft in 2002 and since then it has been a long journey to get to the place where we are today. I want to appreciate that the 11th Parliament, National Assembly, has occasion today to look at the Access to Information Bill, 2015.

In moving this Bill, I want to look at the history of the Bill and the efforts that there have been to get it passed, especially in view of other Motions that have come before this House. I will discuss a little bit the rationale of the Bill. I will discuss the benefits of the Bill and look at comparative perspectives. This is an international as well as a constitutional Bill for our country. I will look at the underpinning principles in the Constitution. I will quickly look at the salient features and then call on the Seconder when I finish moving.

In terms of the efforts on this Bill, the Access to Information Bill, I just wish to start with my myself. Access to information is part of the freedom of expression and the freedom of media clauses in the Constitution. After law school, I joined an organisation called International Commission of Jurists (ICJ). I learnt a lot about human rights issues, more so the access to information regime. When I was growing up in an estate here in Nairobi, I knew of many friends and many people of my age who passed away for not knowing that the Government has a programme on anti-retrovirals (ARVs). I know people in this country who continue to die of Human immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) even when the Government is spending a lot of money on ARVs, and there are also global funds. If these people just knew that HIV and AIDS has ARVs, my friends who passed away when they were young would be alive.

I went to the university courtesy of the Higher Education Loans Board (HELB). A friend of my mother had heard about HELB. In Nyeri County, I come from a village in Karima, where not many of us know about HELB. Personally, I had never heard about HELB. I learnt about it when I became a university student. I feel a lot of sadness that in this country we continue to have many university students--- In my own county of Nyeri, many parents, when their children get good grades such as A (plain) A (minus) they run around panicking that they will not be able to pay university fees without the knowledge that there exists a fairly good programme, the HELB that supports our university students to study.

On the third part, and this has been the most interesting one for me---. I also grew up in Nyeri County where many of us use kerosene and paraffin lamps. For years, my family used a kerosene lamp. It was not until much later that I discovered solar power. Even for personal fulfilment and choices, we have a country where many homes continue to use kerosene, which is a lot more expensive and has a lot of health issues. I wish somebody could just let them know that solar power is cheaper and better.

So, access to information at Government and personal levels in terms of the choices that we make is very important. Many times poor people are poor because of lack of information as opposed to lack of resources. This Access to Information Bill will start to deal with some of these issues.

In terms of the history of this law, there was a study done as early as the year 2000. This study indicated that one of the gaps we had in our governance and democracy system was lack of access to information. Information is the oxygen of democracy. You cannot have a regime or a good government system without information. In fact, Judge Daimon has decreed that democracies die behind closed doors. Governments must open themselves to scrutiny. Access to information is the engine of any democracy and ours is no exception. So, in the year 2000 that study showed that we had a serious gap on access to information in our country.

In the year 2000, Dr. Mukhisa Kituyi then a Member of Parliament brought to this House a Private Member's Motion to be allowed to introduce the Bill. That happened. The House upon hearing Dr. Mukhisa Kituyi agreed that indeed an access to information law was important for our country.

In 2002, before this Bill could be brought to the Floor of the House, we had an election. So, the Motion lapsed. In 2003, the constitutional review exercise started in our country. The constitutional review exercise was critical in many respects. The old Constitution or the Independence Constitution, in Article 79, provided for freedom of expression, including the right to receive information. However, that Article did not allow citizens to seek information from the Government. That was a problem. The old Constitution assumed that the citizens would just sit back and wait for the Government to give them any information it wanted to give them. The citizens were merely recipients of information. In the constitutional review exercise, this needed to be changed.

The Bomas Constitution Draft of 2004 included and protected the right to information. It contained very express provisions, giving Kenyans the right to seek information from Government and from any other source. The Wako Constitution Draft of 2005 also protected the access to information. As we all know, in the Referendum of 2005, we lost the entire Constitution Draft, not for the reasons of access to information but for many other reasons.

In 2006 Professor Anyang' Nyong'o, then a Member of Parliament, introduced another Motion to bring to this House the access to information law. Professor Anyang' Nyong'o's

Motion passed. The Bill was published, read the First Time and committed to the Energy and Communications Committee. The Bill was looked at by the Committee, then led by Hon. Gideon Moi, in a clause by clause analysis and was prioritised for passage. As you know, 2007 was an election year. We had 23 Bills awaiting passage. This particular one was eighth on the queue. Unfortunately, in 2007, the Bill was not considered.

The Government of Kenya has also put in a lot of effort with regard to this law. A Minister for Information, Hon. Raphael Tuju, drafted a Bill in 2000. In 2005 there was another Government Bill which was fairly technical in its approach. The particular Bill did not go far; it was never published.

In the last Parliament, Hon. Shakeel Shabir tried to introduce this Bill again. Recently, Cabinet Secretary Matiang'i, promised that the Bill would come to the Floor of the House. In the first Presidential Speech to Parliament, during a joint sitting of the Houses of the 11th Parliament, the President promised that this Bill would be introduced.

It is time that the country looked at this access to information law. There has been a long history and many attempts, but today we want to close these attempts and look at the Bill that is before this House.

Former President Mwai Kibaki in 2005 said that his Government was committed to enacting the access to information law. The current President of the Republic of Kenya, His Excellency Uhuru Kenyatta, has committed that his Government will implement the access to information law. In fact, the Jubilee Manifesto is based on three pillars: *Uchumi*, *Umoja*, and *Uwazi*. The third pillar, *Uwazi*, is on transparency. This is the law on transparency. We cannot have transparency in our country without an access to information law. There are many reasons why the various regimes in this country have supported this particular Bill.

We have many other individuals such as the former Vice President, Hon. Moody Awori, who was a big supporter of this Bill. The former Prime Minister, Mr. Raila Odinga, was also a supporter of this Bill. At one time, he said that the Government was not dilly dallying on this Bill. Dr. Kilemi Mwiria, Hon. Njoki Ndung'u, Hon. Otieno Kajwang' and many other Members of Parliament have in the past supported efforts to have this Bill passed. During the 10th Parliament, Hon. (Eng.) Rege, who was then the Chairperson of the Committee, made some effort but he did not get far enough.

Today, the 11th Parliament has a chance to look at this Bill and consider passing it. The rationale around it relates to the access to information being a fundamental human right. It underpins other rights. We are in a country where our young people continue to be arrested every evening for not carrying an identity card. We do not have a law requiring anybody to carry an identity card. You cannot protect yourself or secure your other rights until and unless you have the right to access information.

We have seen many fistula cases in our country. We have corrective fistula surgery being offered in our hospitals. We have many women in our country who continue to suffer cases of fistula, because they do not know that the only thing you need for corrective fistula treatment at the Kenyatta National Hospital is bus fare to get there. Fistula correction is actually free surgery but many citizens do not know that. To protect your other rights such as the right to water, the right to health and the right to education, access to information is extremely critical.

This is a law based on the theory that information is for public good. Information is collected using taxpayers' money. The information that we seek to access is already paid for by taxpayers. Governments, as you know, use taxpayers' funds for many of their functions. The

information that we seek to access is for public good – a public resource that should be available to everybody at the same time. Information is value-free. Information is neither good nor bad. It depends on how you interpret it. Interpretation is the basis upon which we use information. In the first instance, the information that we seek to access – the data – is a public good and a public resource.

In this country we use the Official Secrets Act, which criminalises disclosure of information by any public servant. Time passage means that this law is no longer effective. In this era of information communication technology (ICT), information should be accessible globally without borders. There is no reason for us to continue having in our statute books the Official Secrets Act.

In the fight against corruption, which has come to the fore in recent weeks and months, and in this year particularly, access to information becomes very important. If the information held by Government officials in the records they keep, including the tenders they give and the selections they do, can be accessible to the public, we would probably not have as much corruption as we do. In many countries, corruption thrives in secrecy. Corruption thrives behind closed doors. If you open the doors and bring in sunshine, corruption will disappear.

With regard to development, a celebrated economist, Kay Mathiesen, in his studies discovered that closed societies are more likely to die and suffer from famine. It is not famine that kills. It is when you have a closed society, where information on calamities and disasters is not shared, where information does not spread, where you do not have freedom of expression and freedom of information; you will have a problem with development in such a society. None of the 38 countries on the World Bank list of the least developed countries has an access to information of law. The converse is true. Most of the highly developed countries allow easy access to information. It is easy to see that even in counties like my own in Nyeri, where we practise agriculture. You need a lot of information to be a productive farmer such as the right soil, the right fertiliser and the right seeds. Without such information even development is compromised.

With regard to elections, for peaceful, free and fair elections, information is critical. Form 36A, Form 14, Form 39, Form 419A and all of the information that we need during elections must be availed on time. We are politicians and contestants. It would scare you to death if you could not tell the votes that you have in a particular polling station at the right time. We have to get all that information. Information regarding elections such as the registered voters, who is being put on or off the register, what is the voting like, and whether the Electronic Voting Device (EVD) is working is very critical.

The other reason we need to access information is peaceful coexistence. I come from the Kikuyu community which continues to be painted in very bad light. Many Kenyans think that the Kikuyu community lives in largesse. I want to state for the record that does not happen. Like everybody else, we have challenges of our own. We have hospitals and schools that do not work as well as they should. What we need for peaceful coexistence is the right and accurate information and important data to avoid stereotypes, genocidal messages and problems within the tribes that coexist in this country.

We also spoke about self-fulfillment. Many people need information even for personal and religious reasons. As a christian I have been happy to find out that God does not love ignorant people. The Bible is all about truth, information and transparency. Even God does not love ignorance, darkness and secrets. The Bible and christianity are about information and

transparency and the same applies to the Quran and Prophet Mohammed. Information, openness, truth and justice are all important concepts in our religion.

On economics, foreign direct investments in countries with access to information are higher. In the East African region, we continue to compete with Rwanda. I would like to share with the House that I had a hand in drafting and passage of Rwandan Bill on Access to Information. Since the Rwandan Government has access to information law we find that a fair amount of foreign direct investments that should come to Kenya as the regional business hub, chooses to go to Rwanda, which has better governance structures than Kenya. We want to surpass other countries in Africa and compete at our rightful level in Africa; therefore, information for the purposes of the economics and free trade becomes very critical.

Among the groups that have supported this law the most is the Kenya Private Sector Alliance (KEPSA), understanding that access to information is important for economics.

The last part of it is our role as legislature in the Budget-making process. We raised our Budget that passed to Kshs2.2 trillion passed. This meant that every day Kenya would spend Kshs6 billion. I am not sure whether we asked ourselves if our economy can do Kshs6 billion in a day.

Hon. Temporary Deputy Speaker, when passing the Budget, access to information becomes very critical. For instance, the Teachers Service Commission (TSC) is the third largest employer in the Sub-Saharan in Africa with 286,000 employees. As we do our Budgets facts and figures become very important.

As we look at a critical question like teachers' salaries, it is very important for us to look at the figures on the table. With 286,000 employees there is only so much we can do within the Budget system and budgeting processes. But of importance to note is, as legislators information is critical for the work that we do.

In representation again a lot of data is required. My own county of Nyeri, for instance, leads in cases of diabetes in this country. This is very important Bill for us lawmakers and leaders in that county to continue countering diabetes and find ways in which it can be countered. I am aware that Mandera has the highest cases of maternal mortality. It is, therefore, very important for the leaders in that county to look at the question like that based on the data available to them.

As we do our oversight role, it is very critical that we have important information such as on the public debt, the dollar and other information on oversight that we need to keep our Cabinet Secretaries(CSs), Executive and our departments in check. Even on registration we need a lot of information in many occasions. Since we have not changed the National Assembly laws, Government officers are still allowed to give information to parliamentarians at the pleasure of the President. This is because we are still using laws that have not been amended after the new Constitution. Access to information would ensure that Government officers would give Parliament the right and accurate information for us to do our work of oversight, representation and legislation.

The other benefits of the Bill include devolution. We now have 47 county governments with their own budgets. It has surprised me how difficult it is to get the final and accurate copy of any county's budget. In fact many of us here - I have shared this with some Members of Parliament - have had to go to the Commission on Revenue Allocation (CRA) to pick up a copy of our counties budgets. In my own county of Nyeri, even though I am the County Women Representative, I have had to use fairly strategic and creative methods to

access the county budget, a document that should ideally be available to the public. I fear for the counties. I am a county Member of Parliament. We also have the Governor and the Senator. I therefore, use creative methods to get the budget. I wonder what is happening to the citizens if I have to use creative methods to get a copy of the county budget!

So, documents such as the county budget, expenditure, development plans, programmes and achievements should be available to the citizens in the counties. We had two main reasons of setting up county governments. One was service delivery, and two developments. For both of these to happen, access to information is critical. We are not going to succeed in devolution without information. There are some provisions in the County Governments Act, but until we have a law obligating release of information by Government officers, we will not make as much progress as we want to in the devolved governments.

We also spoke about anti-corruption. The use of resources is very critical for us to have information. We are a developing country with taxpayers and a tax base as the main source of our revenue. We have to make good use of the scarce resources that we have. This means that we should make choices and options. I want to support the move by the CS to start putting in place austerity measures in our country. We cannot continue to live large when we have very critical elements or areas to finance like health, education, roads and transport. For us to make best use of resources, access to information is critical. Access to information helps in running away from white elephants. We are in a country where we have many half finished projects like hospitals, schools, roads and markets, and I wonder how a half finished market or road helps anybody. These half finished projects end up consuming money and not being of benefit to anybody.

History in this country is replete with stalled projects which money has been sunk in. For us to use our resources well, economically and optimally, we need access to information. We have many programmes targeting poverty and marginalisation. Many of those programmes do not work well because the poor do not know about them, and cash transfer comes quickly to mind. We have a Kshs19 billion budget for cash transfers. Everywhere we go, you will hardly find people who are not complaining about the cash transfer money. Either they did not get the money or they did not access it or did not know or have information when selection was being done. Most programmes that we have on fighting poverty need to be accompanied by information. The bursary, health and agriculture programmes on seeds and fertilisers need to be accompanied with information. Affirmative action groups and programmes like the 30 per cent preferential procurement should also go with a lot of information. This particular promise is a great presidential directive that 30 per cent of contracts and tenders of the Government be given to young people, women and persons with disabilities. However, this programme is not working well, because we do not have sufficient information going to the target groups on the 30 per cent preferential procurement. We also do not have sufficient information to ensure that those competing in the 30 per cent procurement programmes are the ones intended. The same applies to programmes like Uwezo Fund. A lot of information needed to go with it so that young women and people with disabilities benefit from it.

The other benefit of this law will be international standing. Kenya is a regional powerhouse, way ahead of many other African countries. However, our competitive edge and advantage is not very sharp as a modern democracy would require. We need a legal framework that confirms our powerhouse status. We need a modern legal framework that includes laws on access to information. Many countries in Africa that we compete with, including South Africa, have this law. South Africa in particular, coming from the days of apartheid, the Africa National

Congress (ANC) understood that a good reason why apartheid was very difficult to defeat was because the apartheid Government did not release information to the black people of South Africa. So, when ANC took over power, a law on access to information was one of the main laws that the Government then enacted. Nigeria, Ethiopia, Liberia and Rwanda have now passed access to information laws.

Let me clarify to this House early enough that national security is protected. Information around national security is exempt information. Nobody would want to interfere with national security programmes, plans and ideas. However, it is also true that an ignorant society is not a safe society. At different times, information relating to matters critical would have to be released. However, a lot of information on national security would be protected against release unless it is connected to trading or contracts. Again, corruption in national security agencies is not protected from disclosure. It is only real national security information that is protected.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyokabi, for your planning purposes, you have two minutes.

Hon. (Ms.) Kanyua: Thank you. I will just wind up, Hon. Temporary Deputy Speaker.

The Bill is well drafted. The provisions of this Bill are well done. The Bill is a product of many years of consensus and deliberations among stakeholders, including the media, the Ministry of Information and Communications Technology, academic institutions, private sector, civil society and Government leaders. A lot of contributions have been made. The Bill makes clear separation between information that is available and information that is not available for release, what is called exempt information in Clause 6.

Information relating to privacy of individuals cannot be released. Unwarranted invasion of privacy is not allowed. You cannot seek somebody's official records that invade their privacy. For instance, you cannot seek information on marital status of an individual. You cannot also infringe on commercial interests or trade secrets. You cannot cause substantial harm to the economy. When a process is under consideration, the public is not allowed to access information on that process. You cannot access information on a matter on which a final decision has not been made.

I urge the House to debate this Bill and look at its provisions keenly, taking into account the many instances that we have required information. I also beg the House to pass this Bill to ensure that the country attains a stronger democratic regime.

I do not know what happens with morning sittings. Some Members of Parliament get affected. Either Eng. Gumbo or Hon. Lessonet was going to second this Bill, but none of them is here. I request Hon. Makali Mulu to second the Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Makali Mulu, the Member for Kitui Central, you have the Floor.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. I take this opportunity to second this Bill. I want to start by appreciating the work Hon. Priscilla Nyokabi has done to see this Bill debated in the Chamber. As she was moving the Bill, I realised that a number of former Members of Parliament have attempted to have this Bill passed by other Houses which have come before us, but that has not happened. So, this is a historic moment to have Hon. Priscilla Nyokabi move this Bill in this House.

It is unfortunate that we are discussing this Bill in 2015. If we were serious, we should have been among the first African countries to pass this important Bill. It is surprising to note

some of the countries which have passed such a Bill before Kenya. As we are talking, 17 countries in Africa have passed such a Bill. You can imagine Liberia, Sierra Leone, South Sudan and Sudan have already passed this law. If you asked any Kenyan whether Sudan could be having such a law, probably he or she would tell you “no” because the perception we have of Sudan is that it is quite restrictive in terms of access to information. However, they have this law.

We should have passed this law a long time ago. That is why I urge my colleagues in this House and Kenyans in general to support this Bill. Access to information is important for any country. We have all heard of the phrase that information is power. That means when you have information, you have power. You can do what you want to do with the information.

Clause 3 provides the object and purpose of the Act. I beg to read out paragraphs (e) and (f), which state:-

“(e) provide for the protection of persons who release information of public interest in good faith, and,

(f) provide a framework to facilitate public education on the right to access to information under this Act.”

Those two objectives confirm that this is very important Bill. This law will protect those who provide information of public interest. The Bill will also make sure that Kenyans are educated on what is happening around them.

Clause 4(3) says that access to information of a public entity, or private body, shall be provided expeditiously and inexpensively. This will ensure that Kenyans are able to access information at anytime and anywhere in the country.

Clause 5(2) provides that information shall be disseminated taking into consideration the need to reach persons with disabilities, the cost, local language, the most effective method of communication in that local area, and the information shall be easily accessible and available for free or at cost taking into account the medium used. This clause makes sure that any Kenyan, whether disabled or illiterate, will be able to access information.

This Bill provides that, that information is accessed by all. Under clause 3(c), there is a provision that this information should be on the internet provided that the materials are held by the authority in electronic form. This means that you do not have to travel to any place to access information. You can access it from anywhere as long as you have a computer and you are connected.

Hon. Temporary Deputy Speaker, in terms of access to information which is Part III of this Bill, Clause 8((2) says that:-

“Despite subsection (1), an applicant who, because of illiteracy or disability, is unable to make a written request for access to information in accordance with subsection (1) may make that request orally and the public officer concerned shall reduce the oral request to writing in the prescribed form and provide a copy to the applicant”.

So, if you are not able to write, you can walk to an office and ask for the information that you want and the officer in charge of that office, is required by this Bill to listen to you, interpret the information that you require and provide it.

The benefits of this Bill to the country are many. If you look at the Budget-making process - I am aware I am a Member of the Budget and Appropriations Committee - you will realise that this country is going to gain enormously as a result of this Bill. The Bill is going to

make sure that information on public resources will be accessible by all Kenyans wherever they are, both at the national level and at the county level.

Hon. Priscilla Nyokabi has rightly put it. We all come from counties. You will realise that as Members of Parliament, representatives of the people, very few of us access county budgets to know what is planned in the specific counties in terms of development projects and how much will be used. Once this Bill becomes law, this information will be available to all Kenyans. This is very important for this country. For the first time in our history, we are going to ensure that there is openness, transparency and accountability in the use of public resources. That is good for the country.

The other benefit is in terms of devolution. We are all serious supporters of devolution. Devolution in this country will only work if information is made available at all levels.

The other area is corruption. Whistleblowers will now have a field day in making sure that they blow the whistle wherever things are not working well because they have the information. Hindrance has been that you want to talk about something, but you are not sure of the information that you want to give to the public. So, you are scared whether to give the information or not because you might be taken to court, and it is found that the information is not correct. It will be the right of a Kenyan to move to any public office, get the right information, and armed with the correct information, he or she can whistle blow to any level. One can do it in the streets, in the shambas and wherever you want to do it. That is going to be very good to this country.

We are all talking about the rights of women and children. These rights cannot be championed where people have no information. This Bill will make sure that this information is readily available to all Kenyans. With the information, Kenyans can champion the interests of women, children and all other marginalised groups and make sure that these groups benefit as citizens of this country.

Last but not least, because time is against me, is the issue of investments. If you are an investor based somewhere out there, for example, Germany, and you want to know about Kenya as an investment destination, this can only happen if you have access to information. Then you are able to analyse the risks that are involved, the opportunities that are there and you are able to make informed decisions on your investment. This is important for investors. It will help us as a country.

With those remarks, I support.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The first one on my request list is the Member for Makueni, Hon. Maanzo Daniel.

Hon. Maanzo: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute on this very important Bill.

I take this opportunity to thank and congratulate Hon. Priscilla Nyokabi, Advocate, for a serious job well done and for trying to put in place what has been very contentious for many years.

Article 35 of the Constitution was supported by Kenyans overwhelmingly when they passed the new Constitution. Kenyans wanted to have access to information. Information is very key. In fact, there is a religious saying that “People perish for lack of knowledge”. Knowledge is

information. If you are knowledgeable, you are likely to save lives. Intelligent information is power. You saw intelligent information in the Egypt plane crash case where intelligent information had been given that there was a possibility that a bomb was going to be sneaked into a plane. Just a one-kilogramme bomb caused loss of many lives because that information did not get to the right people, or whoever was given that information did not take it seriously.

This law talks about intelligence information and how it should be processed. It also talks of the Commission on Administrative of Justice, which will be used to purify some of the information, especially if the information comes from the Government. People should access information in the Government, especially construction information when buildings are being approved. If you want to purchase a building, you want to access nitty gritty of information. If there is no mechanism, then you may not have the information and you may not make the right investment choice or decision. You may end up buying a property which is defective and be conned.

There are many other laws which will interplay with this one. One of them is the Records Disposal Act. When we have court cases, there are records in court. When a case is over and a judgement has been given, after sometime those records are destroyed. That is a lot of information. Some of that information is left loose and may get to people who are not supposed to get it. There is a manner in which an Act (CAP 14 of the Laws of Kenya) captures it. We also have the Public Archives and Documentation Act, which will also be affected by this law.

The necessary amendments must also be made to the Public Officer Ethics Act, 2003, because part of it will be affected by this law. More importantly, the Official Secrets Act will also be affected. I saw a document which came to the Departmental Committee on Agriculture, Livestock and Cooperatives and also the Departmental Committee on Administration and National Security, and which was stamped officially. Under the Official Secrets Act, Government documents have a stamp to show that they are secret information or confidential. If a letter is confidential and it carries very important information from the Government of Kenya, which can be in the interest of Kenyans and not to their detriment, how secret is it? If it is secret, to what extent can it be released? If one releases such information, what punishment is available? This Bill does not provide serious instances when a breach has occurred because this has been covered in other laws.

However, I urge Hon. Nyokabi, whom I have a lot of respect for, to look at a situation where somebody refuses to give information or gives the wrong information, although we have other laws like the laws of defamation, in place; what should we do to such a person under this law? To what extent can we punish them, so that people will be careful not to fail to give information? Those who have been in Government offices know the frustration one can go through a lot of times.

If a Government officer is unable to give certain information, what is the level of punishment against that person? At the Committee Stage, we can introduce the necessary amendments to make this law very strong. The Official Secrets Act is very notorious and also very important. I have worked for the Government before and the Swahili language of “*siri kali*” is what informs a government. There are some Government secrets that you cannot release; an instance issues to do with intelligence and the Military. However, there are other issues that we should get access to. That is why you have sign posts saying “*toa habari kwa polisi*”, meaning that you should give information to the police and tell them who has an illegal gun, or who has

joined terrorism. If it is a family member and you do not release that information to the Government, they will not be able to stop mass murder of people in case terrorists strike.

We have to look at it although I can see that the Official Secrets Act, Cap 187(3) is repealed. Immediately we pass this law, that particular sub-section will be deleted. It has been taken care of by other issues. This means that by this law, we have not absolutely banned all official secrets. We should not release our country to anybody who would want to take it over because we have released all our secrets to the enemies. In fact, if you release certain information on the protection of the country or to its detriment, you can be charged in court. In fact, in some jurisdictions, this is equivalent to treason, and one can be sentenced to death. For the protection of a nation, some secrets are important, and there has to be a way of vetting when that information is being released.

We have seen other Acts on the prevention of terrorism which invade people's privacy; whenever you book into a hotel, all your details are required by hotels. In fact, in some situations the information is to be released to the police quite regularly. Such information makes news serious business for newspapers every day. So, to what extent do you protect journalists under this law, so that there is freedom of expression and free Press?

Recently, a pressman was arrested for releasing information related to corruption. After serious deliberations and consultations, the writer was released. Again, what do you do to a malicious writer who, knowing very well that the information that he has is not true, goes on to publish it? The publisher and the writer are liable.

I support this Bill. It is a great law that has come at the right time. Not only does it deal with official issues relating to the Government, but also general information, so that Kenyans are well informed and are aware of things that affect them. They know where they can get help and bursaries. We will be looking at the Bill at the Committee Stage to make sure that Government information, which is important to the people is released. Information relating to the CDF and counties' and the country's Budgets is released, so that Kenyans can question the information for a better nation.

I support this law. I will be consulting with the Mover at the Committee Stage, so that we can improve and make it serve Kenyans better.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very well spoken. The Member for Kipipiri, Hon. Samuel Gichigi.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Speaker. I rise to support this particular Bill, which is long overdue. Access to information is good for the development of this country. Obviously, if you do not have information, you cannot think, deal with and build on something. It is important for development.

People in all parts of this country should get the proper information in respect to Government plans. Let every person know their rights in this country, so that those rights are not violated, and when they are violated, the people should know that they have recourse in law. People should know the responsibilities of Government officials, so that the public can require them to be accountable. Let people know the security officers and services, so that whenever there is danger, they know where to run to.

For purposes of integration and cohesion in this country, the people should know about each other. Let somebody in Kajiado get information on people in Turkana or Migori. Let us get information about this country. The Bill is good, but perhaps it can be enriched by improving on the quantity and the quality of information that Kenyans should get. It should not merely be on a

need to know basis, but let us get information. When you do not know about the existence of information, you may not go looking for it. Information that is going to bring this country together and develop it should be made accessible to everybody. This is a good Bill and I support it. I ask my colleagues to also support it.

Having said that, there are certain clauses that I will ask the Mover to look into for the purpose of improving them. Under Clause 6, when limiting access to information, possibly for security reasons, it is important to provide for oversight organs like Parliament, county assemblies, the Auditor-General (AG) and the Ethics and Anti- Corruption Commission (EACC) and see how we can balance, so that the provision in Clause 6 does not provide crooks with a defence when information is sought by these oversight bodies.

Clause 5(c) is quite lengthy and for purposes of implementation, it needs clarity. In Clause 5 generally, I would request the Mover to provide some penalties that will stop people from being mischievous. You can imagine a situation where one office receives a thousand requests for the same information for mischievous purposes to annoy or interrupt the ordinary operations of offices. This is in terms of repeated requests where somebody comes, you give them information and they are there tomorrow. We have idlers in this country and we do not want such persons to use this law to irritate or harm the operations of certain offices.

In Clause 9, you can improve the provision by putting in an explanation. Whenever there is rejection or failure to provide information, before the matter becomes an offence, it is important that you give the people who are refusing to give information a chance to explain. That is an area that can be improved.

In Clause 10(2), seven days whenever an office or officer receives a request for information, which has been transferred to them, we can improve that increasing the period from seven days to 14 days, unless it is an emergency.

On the role of the Commission on Administrative Justice also known as the Office of the Ombudsman, perhaps, we also need to strengthen them under Clause 14 so that they can have an investigative role. Let them inquire why information is denied if that is necessary.

In Clause 22, you have provided that an application for information can be made orally. You can improve that by saying that whenever an officer receives such an oral application for information, he reduces that into writing so that a record can be kept of that particular application. Otherwise, if it just oral and there is no record, one can always deny that such information was provided and people can claim that they have sought information while they have not. So, let it be reduced to information. I note that there could be a bit of overlap between the provisions in this Bill and those of the Freedom of Information Act of 2012. Perhaps, you can also explain how you are going to ensure that we do not have two bits of a law.

A Member has also pointed out what the effect of this law on existing laws will be. Which is to be given preference? To me, this is a good law. I also suffered the same fate that the Mover seemed to have suffered. I have tried to get a copy of the budget of my county and it has become extremely difficult for that to be done. You can hardly get it. When you get it, it is in bits. You are told that: "No. We are not following this. There are supplementary budgets." You do not get a copy when you ask for it. It is important that it becomes mandatory that those important documents are accessible to Kenyans.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next is Member for Busia, Hon. Florence Mutua.

Hon. (Ms.) F.M. Mutua: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to support this very important Bill. I want to congratulate Hon. Nyokabi for taking the initiative by ensuring that the Bill is tabled.

Let me start by saying that access to information is increasingly taking a legislative reform. I want to congratulate Hon. Nyokabi on this. Two hon. Members have talked about issues that we have, especially in the counties in accessing things like strategic plans of the counties. We have problems accessing budgets of the counties. So, it is very important that we have access to information on most of those things that are happening in the counties.

Yesterday we talked about the tax and how we need to pay it. We have revenue that is collected in the counties. Most of the Members do not even know how that revenue is used. So, we need to have access to information on how the revenue that is collected in the counties is utilized. That is because we never know how it is utilised. We also have issues when it comes to roads. Most of the constituents are asking: "Who is supposed to do which road in the county?" The Member of Parliament says it is the county, the county says it is the Member of Parliament. The Member of Parliament says it is the Member of the County Assembly and, sometimes, we are told it is the National Government. So, we never know who is supposed to do the roads which are in pathetic states. We also need to have access to information so that we can easily tell the constituents and also hold to account the people who are supposed to do those roads.

Now, we just have blame games in the counties between individuals. When we have access to information, we will have greater public participation in public affairs. We will also be able to expose corruption because access to information will lead to better management of resources. A good example is when we got the Auditor-General's Report. The Auditor was attacked seriously because he exposed the corruption that was going on in this country. This is the type of access to information we are talking about.

Access to information will also lead to increased transparency and accountability on how resources are being utilised in the counties and at the national level. Access to information will also empower citizens with the right to participate in decision making processes. Nowadays, when we are doing public participations even at the national level, you find that the information is only privy to a few. The people who are calling for public participation just invite a few people who will come and give a positive outcome of the public participation. We need to have access so that we give information to the constituents so that they can all come and participate in the right manner and get the right information from the conveners of the meeting.

Nowadays, it is like a secret. When the county is calling for public participation, it releases the information the last minute and only gives it to a few people. So, you find that the hall is empty and it is only a few people who can participate in those issues. A good example is last year when Hon. Nyokabi brought the issue of the sanitary pads. Sanitary pads are always budgeted in the national Government budget. Kshs400 million is always there. We never know where this money goes every year. We have asked the counties if the schools get those sanitary pads. We do not see or even know which school gets those pads, if at all they are bought. So, when we have access to information, we will be able to understand where the Kshs400 million goes annually because our girls do not have the sanitary pads in their schools.

We also know that there is a bad side to have access to information. Hon. Odinga fought for freedom of expression among others, but now the information is being misused. When you go to Facebook, you find people are misusing it. Instead of using it in the right manner to bring people together, they are using it to abuse leaders, each other or cause a lot of animosity

especially on ethnic issues. As we progress to 2017, this will be a very bad way of using information. So, as we fight for access to information, we also need to have it used in the right manner so that it can bring Kenyans together in the right way.

We also need to ensure that the Bill gives Kenyans the right and easy way to correct information both on local and international websites like Google. You find excited people who send wrong information about other people or countries. We can have an easy way of correcting this information once it is put in Google. People are very excited when they want to press the send button without understanding the implications of what they are sending out there. When information goes to Google, it is very hard to retract it. So, as we fight for access to information, we also need to ensure that there is an easy way of correcting information when wrong information is given out there.

As we move ahead with access to information, we also need to protect personal data especially when it comes to hospitals. We need to ensure our data in the hospitals is well protected so that it is not given to the wrong people for the wrong reasons. Also in hospitals, we need to ensure that when a person is taken to the hospital, they are taken through what needs to be done. You find that when somebody goes to hospital, he/she is not even given the consent form to sign. When you go for an operation, some organ can be removed from your body and you never signed the consent form. So, it is good that when people go to hospitals, they are taken through what needs to be done.

We saw a few years ago where some ladies who had HIV/AIDS, instead of them being taken through what needs to be done, their uterus were removed so that they do not get more children. So, they need to have been given the right information at the right time so as to avoid such cases. It was very bad because that was not done with their consent.

We also need to protect whistle-blowers because we all saw what happened to the Auditor-General when he released his report. The information he released was very important for this country and yet, he was attacked. So, we also need to ensure that as you release access to information, we have protection for those people.

In the access to the 30 per cent tenders for the women, youth and people living with disability, it is like a secret in the counties. Nobody wants to tell who has been given those tenders and if you keep on asking, people start wondering why you keep pushing it. It is our job as county women Members of Parliament to know the women, youth and the people living with disabilities who have received those tenders. However, we do not have that information. It should be given freely for people to understand the special women who get the tenders and not others. We need to understand and have that information freely. It is also important that when a request is done for information, there has to be a time limit when it can be accessed not to be waited for indefinitely. There should be a timeline when it can be accessed. The charges for the request, if any, should be reasonable.

Lastly, we hope that the passage of this Bill will also ensure that we do not move ten steps backward. We need to move forward. The Ministry of Interior and Coordination of National Government is very sensitive. We should not come out in the public panicking and arresting journalists because they have exposed something that should not have been exposed. We need to find a way of ensuring that information goes to public use. It will ensure that the country and the citizens know what is going on. Otherwise, Kenyans have a perception that there is corruption in the Ministry of Interior and Coordination of National Government under the pretext of hiding state secrets.

As I support this Bill, I thank Hon. Nyokabi once again. As Hon. Maanzo said, we need to propose amendments to have the information given freely to the public. The programmes that are being done by counties should also be easily accessible to all constituents.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next on my request list is Hon. Chrisantus Wamalwa, Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and congratulate Hon. Nyokabi for the good work done. This Bill is going to operationalise Article 35 of the Constitution, which talks about the access to information.

Kenya as come from very far. It has come from the dark days. We know very well that access to information is very critical for democracy, governance and issues of accountability.

Clause 16 of this Bill talks about the protection of the people who disclose information. Recently, we had disclosures pertaining to the expenditure aspects in the Ministry of Interior and Coordination of National Government. Some journalists from the Nation Media Group, the Star Newspaper and the Standard Group were threatened.

Article 34 of the Constitution stipulates very clearly the freedom and independence of the media. It states further that the state shall not penalise or interfere with their publications. It is high time the media came out and gave the disclosures because Clause 16 of this Bill has protected them. I want to tell the media out there that when it comes to disclosure, we cannot get information without them and, therefore, any information must be disseminated. When it comes to dissemination of information, the media plays a very critical role. For example, as far as the fight against corruption, good governance and accountability in this country are concerned.

We have been told that we have a lot of issues at the International Criminal Court (ICC) at the moment. We know very well that the Assembly of State Parties (ASP) is on-going.

Hon. Pkosing, a Member of this Parliament, has petitioned the ASP. They want to have an audit of the witnesses. The people have a right to access to information because information is power. It is through information that you can make decisions.

In this country, we have many poor Kenyans in the villages who do not even understand that there is Higher Education Loans Board (HELB). Members of Parliament (MPs) are called upon to many fundraisings issues which happen every now and then. Most students who pass their Kenya Certificate of Secondary Education (KCSE) examination to join university are not aware about HELB.

There is a clause in this Bill that provides for proactive disclosure. We see more of reactive disclosure in this country as opposed to public disclosure. It is important that public institutions facilitate access to information which will help Kenyans. For instance, nobody knows what the Ombudsman does. It is high time the Ombudsman woke up to ensure that people in villages like Budalangi, Kiminini and North Eastern know the role of the Ombudsman and how they can access its services.

This is an agricultural country. The fertiliser you use in Nyeri is not the same as the one that is used in Kiminini. This is in line with the Bill that I brought recently. I am happy His Excellency the President assented to it. The responsibility of the Fertilizer Board, which is provided in the Act, will be to sample and analyze the soils so that fertilizer is tailor-made to the nature of soils. The fertilizer used by the people of Trans Nzoia should be different from that, that is used by the people of Ukambani and the Coast. This will help as far as food security is concerned. The issue of proactive disclosure of information is actually very critical.

Article 118 of the Constitution talks about public participation in legislation and that is why it is a requirement to involve the public. When a Bill is brought before the House, an advertisement is placed in the print media calling on stakeholders to come and give their input. Public participation is critical and it is everywhere. For us to facilitate public participation, the Access to Information Bill is very critical. It is supposed to have been there like yesterday.

The other issue concerns roads. Governors say that roads belong to the Members of Parliament (MPs) and yet, they are the ones who are supposed to maintain them. Therefore, we need full disclosure of information as far as classification of roads is concerned. That way, Kenyans will know which roads belong to the MP, the county government and the national Government, in order to put in place issues of social accountability. This will also help us know who is responsible for what.

We are happy that devolution came to decentralize resources. Unfortunately, we are also devolving corruption. It is important that full disclosure must be there. The issue of budgets is very critical at the counties level. When you want to understand the budget at that level, you do not find it. The law must be put in place and there must be a requirement for full disclosure of issues of county budgets.

There are issues of the Finance Bills which are passed in this House so that counties and the Government can raise funds. They are important matters of taxation which must be disclosed. We have unscrupulous business people or agents outside there who masquerade as tax collectors. They collect more because of the ignorance of Kenyans. For us to eliminate ignorance, information has to be there.

I raised the issue about the Independent Electoral and Boundaries Commission (IEBC) when we came to this House. It did not give full information on the number of votes the President garnered. That is inaccessibility to information. When the IEBC Chair was called to take an oath, he said he could not take it because it was during the month of Ramadhan. That was a shame. Countries like Rwanda and South Sudan have already put such a law in place. Why are we lagging behind as a country Kenya? For us to have democracy and proper accountability, access to information is very critical.

We have had problems with Form One selection after the Kenya Certificate of Primary Education (KCPE) examination results are released. We see the Cabinet Secretary coming up with all form of regulations which a student from the village cannot even understand. When it comes to selection of professional courses, particularly at the universities, many students who get straight As are not selected to pursue their courses of choice. We want full disclosure of information so that we can know if some regions are marginalised as far as the selection of courses is concerned.

I get shocked when I go to the village. A poor boy got a straight “A” and he is told he is going to study a degree called “being around”. It becomes a problem to get a job after graduation. You will find that somebody who has scored less---

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Wamalwa. I will add you one minute. There is an intervention. Let me see what is out of order. Let us have the nominated Member, Hon. Isaack Mwaura.

Hon. Mwaura: Thank you. Hon. Temporary Deputy Speaker. I rise on a point of order with regard to the accuracy of the information being given by the Hon. Member Dr. Chris Wamalwa, where he purports that students of this great country are going to universities to study

a degree called “being around.” Is the Member in order to mislead this House that there is such a degree in our public or private Universities?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Chris Wamalwa, as you address the issue, I know it is of interest. It is the first time Hon. Members are hearing of a degree of “being around” and I know you can clarify.

Hon. Wakhungu: Thank you. Having been a scholar who has even taught at the University and Hon. Mwaura is my very good friend, he needs to understand the context in which my argument is based. Here is a student who has scored a straight A. Professional courses are given as first priority to people who have scored As. When we say “being around” we mean courses which are not professional. They are not specific. When it comes to the job market, priority as far as employment is concerned favours people who have done professional courses. For instance, a student has scored an “A” from the rural village. When it comes to admission at the university, he is given some emerging degrees which are not even recognized. So, when I talk of full disclosure, I know we have cluster subjects ----

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over but for the interruption regarding the degree of “being around”, I can add you one minute.

Hon. Members: No! No!

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I am the Temporary Deputy Speaker.

Hon. Wakhungu: Thank you. Exempt information is critical. We have information that might be a threat to the security of this country. Hon. Nyokabi, I am happy that this Bill has provided for where there is some information that is detrimental as far as national security is concerned, and which cannot just be given out to the public. We also have issues of privacy. I have seen some medical reports for private cases. You do not have to access such private information. I am happy that this Bill has taken care of it. At least, now, the media is protected. It should be able to bring that information that is going to be for the public good. No one is going to harass them, but they must be objective.

I thank Hon. Nyokabi that. This Bill that you have brought is wonderful. I request Hon. Members to pass it quickly so that it can be operational.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over and you are not on the microphone. The issue of the degree of “being around” arose as a matter of lack of information. It was of interest to many Members who were on intervention, but now they are okay.

Let us have the Hon. Member for Kiharu. Hon. Irungu Kang’ata.

Hon. Kang’ata: Thank you. I rise to support this Bill. Allow me to say that this is a very wonderful and creative Bill. The best part of this Bill was the fact that there is no new body that is being created by this Bill. I have heard our dear President saying that we have so many parastatals and statutory bodies being created by Parliament. They are bloating our workforce and wage bill. Therefore, I initially feared that this Bill is about to do the same but only for me to read Clause 2 and see that the interpretation of the term “Commission” means. It reads:-

“The Commission on Administrative Justice established by Section 3 of the Commission on Administration Chief Justice Act of 2011.”

So, to that extent, may I say that, that is a very wonderful aspect of the Bill. We are only assigning more duties to the statutory body that was created in the year 2011. I would want to point out some of the issues that the Mover of this Bill needs to correct.

First, is the issue of the inter-play between private and public entities in this Bill. There appears to be some form of confusion. I draw your attention to Clause 2 on the interpretation of the term “Information” and I read:-

“Information is defined as includes all records held by a public entity---.”

So, the operative term here is public entity. It, therefore, presumes that information which has been detailed in this Bill is only the one held by a public entity. I doubt as to whether that was the original intention of the drafter of this Bill. That is because in several other clauses, there is so much reference of the term private entity. Even Article 35 which this Bill intends to effectuate clearly shows that even private information in the hands of private entity can be disclosed according to the Bill.

Therefore, I would urge my dear colleague to amend Clause 2, definition of the term “information” so that it includes private entity.

Secondly, I draw the attention of the drafter of this Bill to Clause 6 which is on exempt information. The way Clause 6 has been drafted appears to be limiting that right. It is what we call a draw-back clause because the Bill gives the right using the right hand and by using the left hand via Clause 6, it appears to limit that right. We have sweeping statements in Clause 6 where for instance--- Allow me your kind indulgence to read Clause 6.

In 6 (b) we have a situation where it is certifying that disclosure of information is likely to:-

(b) Impinge the due process of law or endanger the safety of life of any person. That disclosure will be vetoed.

I would imagine any person can always cite such kind of a clause to escape the obligation to disclose information. I am minded by the other saving clause where it is provided in the same clause of Sub-Article 4 that despite anything contained in the above sub-sections, a public entity or private body may be required to disclose information where the public interest in the disclosure outweighs the harm to protected interest. That is a good promise and it checks the above limitations. However, from a drafting point of view, it makes sense for us to reduce instances where you can exempt information from disclosure.

I urge my dear colleague to consider enriching Sub-Article 4 of Clause 6 where the decision as to whether information will be disclosed in regard to the circumstances set therein--- Probably, there can be some form of proceedings where you appear before the Commission. The Commission hears the representations as to why you are going to disclose or why you do not want to disclose. Therefore, you are given that right of audience to prosecute that matter before that commission.

I say that because we do not want to leave this argument at the whims of the Commission. We should allow some form of proceedings where it is something that is somehow *quasi* judicious and the determination is made therein.

I draw the attention of the drafter to Clause 13 which is about correction of information. It is a good clause, but I was wondering on the issue of what we call “reliance of that information.”

Hon. Temporary Deputy Speaker, allow me your kind indulgence to read Clause 13. It provides:-

“At the request of the applicant, a public entity or private body shall within a reasonable time, at its own expense, correct, update or annotate any

personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.”

That is fine, but I was wondering whether when you get this information and then you make a reliance on it, for instance, you transact, and then it turns out that, that information was false. Should the person who provided that information bear some form of loss? I belong to the school of thought that, that person should be made to pay. A good example is an official search in the Ministry of Lands. If you conduct a search only for the search to be erroneous, I belong to the school of thought that the Ministry of Lands should compensate you. That is provided for under the Lands Act. I would imagine that, that would apply to the several registries that we have like the Motor Vehicles Registry. If you go there and pursuant to this law, you obtain a copy of the records and transact only to appear that the record was erroneous, I belong to the school of thought that you made a representation as the Government and as a private citizen, I made a reliance on it and I incurred a loss *bona fide*, namely in good faith. Therefore, I would urge the drafter to put a clause in terms of where a citizen makes reliance of information and undergoes a loss, the person to make good on that loss is the provider of that information.

Allow me also to comment on an issue that I have heard Members talk about. Does this Bill affect counties? I have looked at the definition of a public entity in Clause 2. That definition indicates that a public office is defined in Article 260 of the Constitution or an entity performing a function within a commission, office, agency or any other body established under the Constitution. Article 260 of the Constitution talks of offices which draw money either from the Consolidated Fund or money appropriated by Parliament. To that extent, one can argue that it is true it captures an office within what we call a county. What of statutory bodies which are created by counties? When you look at the Memorandum and the Objects of this Bill, in the final statement, Hon. Nyokabi clearly indicates that this Bill does not concern county governments. I would imagine that many Members would want to get information related to the various counties. This Bill may be construed that some areas of counties are not covered by this Bill.

Therefore, I urge my colleague to be expressly clear in this Bill and expand it to affect counties, so that if you want to get information in counties, we can use this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I now give the Floor to Hon. Patrick Makau.

Hon. King’ola: Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute. I wish to congratulate the drafter of this Bill, Hon. Nyokabi. Indeed, she is the peoples’ lawyer and she remains to be a fighter of peoples’ democracy and rights.

Information is power. This Bill has come at a time when Kenya has come from the dark days where information was scarce. This Bill, combined with the existing laws, is going to help Kenyans to understand their rights. It is in line with Article 35 of the Constitution where Kenyans are guaranteed the right to access information.

This Bill will lead us to the realisation of democracy and the freedom of speech. In Kenya right now, many people lack information. With the enactment of this Bill, more Kenyans will access information and we will have reference. In Kenya, the more information you have, the more access to resources you have. Many people in this country have no information about even the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Development Fund. Those who have the information have already applied for the funds and are benefiting from the funds as opposed to those who do not have the information.

Recently, information on *El Nino* was issued and most people took precautions. Some of them in the Budalangs of this country have gone to higher grounds. If that information was not given on time, we would be having casualties. This obviously means reigning in on our resources. However, I want to take a swipe on Clause 18 which talks about the offences on alteration and defacement of information. I want to urge the drafter that the penalty of Kshs500,000 is small. For example, recently, there was information all over the media houses that consumption of red meat causes cancer. What will happen to such a person? What will happen to pastoralists who have herds of cattle and rely on income from the cattle? If that information is not right and such a person is only fined Kshs500,000, it means that the livelihoods of those people will go down to the drain based on that information. This will cause huge losses.

Clause 19 is on defamatory information. Recently, I cited in this House how defamation can cause panic. A survey was conducted around Athi River in Mavoko Constituency where residents have had breathing problems and chest infections. Information was given that the illness was caused by dust emanating from the East African Portland Cement Company. The people wanted to know what the company was doing to address the problem. We found out that after the company mines and the land lies bare, the company then goes ahead and sells that land. The company was started in 1959 and it has not constructed a single primary or secondary school or a dispensary has been constructed by it. The members of the public decided that they were going to repossess the land, but the Governor of Machakos County said that those are grabbers on land that belongs to the East African Portland Cement Company. Activities on the same land were causing sicknesses to the people and instead of the company paying back to the public by building schools and dispensaries, they go ahead and say that those are grabbers. In fact, the owner of the company pointed a finger at the elected leaders, particularly me, and said that I am a land grabber.

This Bill should be aligned with the existing laws. It is high time defamation becomes a criminal offence. If you are implicated today on wrong information, Chapter 6 of the Constitution is real. You might be barred from running for an elective position due to such defamation. The enactment of this Bill is going to make people desist from giving wrong information.

Recently, when the Controller of Budget gave information about the misuse of funds in this country, she became the peoples' enemy number one. It is high time that, as legislators, we make laws that will help the righteous prince of this nation to move ahead.

Hon. Temporary Deputy Speaker, it is only yesterday that we were enacting a Bill on Basic Education and I saw ourselves being enemies of our own. When you decide in a committee, a sub-county committee or a county committee of county education board that a Member of Parliament can only attend at will and has no power to vote. It is surprising. This is because we represent the National function at our level. If we do not have a right to vote, how then do we control or give right information to our people.

*(The Temporary Deputy Speaker
(Ms Mbalu) left the Chair)*

(The Temporary Deputy Speaker)

(Ms. Shebesh) took the Chair)

This Bill should include the counties. Right now, a market is build and the amount is not put there. It is after realizing what was paid that you are told that the market cost Ksh50 million. If the board at the counties had showed how much money had been put into that market, even the residents and constituents would have asked if really Ksh50 million got into such a market. The right information must be given by governors. There is nowhere a Member of this House can go to the county government and be given the budget or even the supplementary budget. You are told Ksh15 million was spent on a road but the work done there is shoddy. If information was given to the residents of that area, even the whistle-blowers will have a reason to blow it. Right now, it seems like information is barred from residents and unless this Bill incorporates the counties so much will go to waste, some stolen and corruption will not come to an end. It is a high time we join Hon. Nyokabi in trying even at the committee level to put our inputs so that this Bill becomes the umbrella of information passage.

With those few remarks, I wish to support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) (Shebesh): I give the Floor to Cyprian Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill.

At the outset, let me thank Hon. Nyokabi for bringing up this Bill. After a long struggle as she put it when moving the Motion that this Bill has been trying to get to the Floor of this House through former Members of this august House and it has been an uphill task. At last, it is here with us.

I congratulate her for having made that effort. It is up to us Members of this 11th Parliament to join hands and see that this Bill sails through and put it into law. That will be a big landmark for her, this House and the country for which we pass these bills and laws, and especially the common *mwananchi* who has been in the dark or who does not know exactly what is happening because of the bureaucracy which has been there since independence. We are not in the days of colonialists where everything in this country was surrounded by secrecy; where everything was almost in the domain of those people who knew or mattered; and the general public who were the recipients of those services; or people who needed it most or who had the democratic right to be given that chance to know what was happening had been in the dark and had been the ones who had been on the receiving end and had been the ones losing. As a matter of fact, if one is not informed and is ignorant, anything can happen. If you know there are elephants in the forest and you just work towards that forest ignorantly, the chances of losing your life by being thronged on by those elephants or a lion that might be inside is very high. If you are informed, you can go there cautiously and know when to cross that forest. Therefore, information being a source of power is a right to every Kenyan. I support this Bill because if information is disseminated the way it should be, the right people who need it, it will assist in disclosing so many things in this country.

At the outset, lack of disseminated information and not being open in what we, as a country or government departments are doing, is what is leading to the escalating corruption in this country. If something is done under secrecy, whatever damage is done there, nobody will ever know. If it is known, it can be quantified or arrested early. If somebody has got an ailment and has not disclosed it to a doctor, that ailment will keep on destroying that body until it will be

too late. That body will be destroyed or somebody might die. If it is discovered early through information, it can be solved. Presently, you can see what is happening with our ministries. Every day, our courts are parading Government officers left, right and center including officers of this august House who are working for the Parliamentary Service Commission. The other day, they were in court and have been doing those things under the noses of everybody. But because everything has been surrounded by secrecy, nobody could tell what was happening until when it burst is when we get to hear about it.

We have the Kenya Gazette, an important Government document where important matters are advertised or published. If you ask Kenyans what is a Kenyan Gazette and how it looks like, I do not think 1 per cent might be aware. Our learned lawyers in the Judiciary might know because that is where you will get them. This is where matters like succession issues are put. That is where, for example, somebody wants to defraud other siblings of their property. They go and publish something in the Kenya Gazette where you secretly collude with the people who publish that document. It is hid somewhere until time lapses and damage is done. When you try to retract it, you are told time is gone. There are issues like the one of auctioneers where we are told that once you publish what you are going to sell or do it in the newspapers, maybe, two dailies, you have disseminated information. Here we are talking of land in Kapenguria, deep hills of Meru and any other place. When you publish in *Daily Nation*, *Star* or *Standard Newspaper*, it will be seen in Meru, Mau, Nairobi, Mombasa and elsewhere. It will not reach those corners of the place where that land is. The auctioneer will then come and sell your land because you will be asked when you published the land, when it was in the papers and which paper it was. Maybe, that fellow is an illiterate. He might have seen that paper and could not tell whether his *shamba* would be sold or not. More so, we need this information to be passed in many languages, including vernacular, so that one can tell what is written there.

I, therefore, strongly support this Bill. We need information published in the right way, within the right time-frame and time necessary given for everybody to get to know what is happening. We now have the social media, website, newsletters and FM stations. During President Moi's era, we used to have Kenya Broadcasting Corporation only. So many things were going unnoticed and things were being done by a very few people in this country. We thank God because today we have many radio FM's which are telling people left, right and center what is happening. Once people are informed, they get enriched and get to know how their country is moving. If information is assimilated properly, it will help us save people from being ignorant of information. Look at the issue of *El Nino* rains. Information has even been passed through some media channels that there is some money which has been spared to save people from the *El Nino* rains. Last week, I was in my constituency, Igembe Central, Meru County, and everybody was flocking into my house and office. They were asking me about the money that is meant for *El Nino*. That is because their homes and schools had been destroyed by heavy rains.

Hon. Temporary Deputy Speaker, yesterday, a church was marooned by water in Kiutini, Igembe Central Constituency. My constituents are asking me for money that was set aside to mitigate the effects of the rains as a result of the *El Nino* phenomenon. As a Member of Parliament, I cannot tell where that money is. If information about the availability of that money is passed properly, we could be telling them to go to the Ministry of Interior and Coordination of National Government, the Ministry of Devolution and Planning, or to the counties to access it. That information is being withheld. We should have it so that, at the end of the day, we can also tell our people what is happening.

The Constituencies Development Fund (CDF) has issues. The Chair of the CDF Committee is here. We also have the secretariat. They always ask us to give them proposals. After giving them proposals, it is said that we will get Kshs100 million. The information has been put in black and white and published by the print media. In the following day, the people know that their constituencies got some money. They do not know that Hon. Lessonet will sit on that money for nine months. People in our constituencies do not know them - they know us. The CDF Committee does not give us any information. We already have plans of putting up a school with so many classrooms and dormitories. We have plans of constructing roads, but where is the money? We have no idea as to when we will get the money. Information should be accurate and timely so that we do not cheat. Government programs should go on well.

Despite all that, we should be careful when we are passing the information. Information should be checked to the extent that we are careful not to abuse peoples' private lives. For example, in the social media we have Facebook which is going overboard. People do things which are un-African. This Bill should have a clause to counter spreading of rumours and abuse of people. We should provide for heavy fines and penalties. We should provide for penalties so that rumour mongers do not take advantage of this Bill.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) (Shebesh): I now give the Floor to Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill by my good friend, Hon. (Ms.) Nyokabi. I want to join my colleagues in congratulating her for looking at the Bill of Rights, which is in Chapter IV of the Constitution, and coming up with a legislation that will help us actualise Article 35 of the Constitution – access to Information.

After the enactment of the 2010 Constitution, I was sent to Malawi by the then Speaker of the National Assembly, Hon. Kenneth Otiato Marende, to represent him in a forum. As we were discussing the progressiveness of the Constitution of Kenya, especially with regard to the Bill of Rights, was hailed by the delegations across the Continent. Those who have read the Constitution of Kenya, 2010 could not fail to notice the progressiveness of the Bill of Rights. One Member of the Tanzanian delegation said that the Kenyan Constitution is impractical – that it is not possible to implement the Chapter on the Bill of Rights. I assured him and the rest of the delegation that we would strive to actualise and make practical this progressive Chapter of the Constitution. In that spirit, it is important that we commend Hon. (Ms.) Nyokabi for coming up with this legislation.

As a country, we made very good progress. There were times when everything in this country was illegal and criminal. If you tried to associate, assemble or tried to get information, it was a matter of the State to either grant or deny the same at will. In my view, this Bill is progressive. As a House, we must pass it. However, I want to point out that I do not agree with the fact stated at the end of the Bill; that it does not concern the county governments. We should re-think about it and send this Bill to the Senate for consideration. Public entities include even the county governments. We will require information from the county corporations. This Bill does not exclude those institutions from providing information to any Kenyan.

Hon. Temporary Deputy Speaker, the people of Kenya are empowered by the Constitution in Article 1. They should get information held by public or private entities. If you read the Chapter on public service, holding of public office or running a public entity, it should

be understood that we seek information in trust. We do it based on delegated power by the people of Kenya. If Kenyans need information, they should get it.

Hon. Temporary Deputy Speaker, there are so many good provisions in this Bill. I do not want to go to the details because this Bill is literally allowing us to access information. There are instances where it has been very difficult to access information. The Waki Commission Report, which we debated the other day, is an example. It is a shame that we took several hours in this House debating whether a report of a Commission should be made public or not. That should be automatic. The passage of this Bill will make it automatic that if you have done anything using public funds, or you interact with the public as you run a private entity, you make any information in your possession accessible to Kenyans.

This Bill will discourage people who are still living in the olden days like, for example, the Cabinet Secretary for Interior and Coordination of National Government, who wakes up one morning and feels that certain information needs to be classified as secret and, therefore, order the arrest of people who merely made public information that was already in the public domain. This Bill will help such people to understand that this country now allows for automatic access to information. If you want to deny anybody some information, the responsibility of demonstrating that it should be withheld rests with you.

I have a problem with Clause 6. I know that Hon. (Ms.) Nyokabi had very good intentions in including this clause. As a matter of fact, there is need to exempt certain information from being disclosed to the public. I want to remind Hon. (Ms.) Nyokabi about the many problems that Kenyans went through – torture and other forms of atrocities committed against Kenyans in the early 1980s and 1990s – were not because there was no legal framework or laws, but because certain individuals in this country, who were dictators and autocrats by nature, felt that they could twist those provisions to their satisfaction. They used lack of clarity in order to frustrate Kenyans. Exempting certain information from being made public because its disclosure is likely to undermine the national security of Kenya looks noble, but the implementers and State public officers are likely to misuse it. An attempt has been made under Sub-clause 2 to clarify the disclosures that are likely to undermine the national security of Kenya.

We have provisions for availing information relating to national security, including foreign relations and activities. I am aware that we have misused a Standing Order in this House which restrains us from adversely mentioning a country that is friendly to us, even if it is infringing on us. When we had issues with Uganda on the Migingo Island – issues which still persist – we raised that matter in the House. We were told that Uganda is a friendly country. I do not know how friendly a country is when its authorities are torturing your people. It cannot be a friendly country. It could have been a friendly country yesterday, but it is not today. I am afraid that if we leave those definitions the way they are, they may be misused.

I am also looking at Part (e) which is the scientific, technology or economic matters relating to national security. When you zero in on economic matters, you might be told that even talking about corruption is talking about an economic matter that is likely to affect the national security. When you talk about the Euro Bond, for example, you may be told not to talk about it because it is going to compromise our national security.

Hon. Temporary Deputy Speaker, we need to be very clear on this particular clause. We probably need to give it more beef to clarify this exemption. Otherwise we may end up, possibly,

with instances where once we pass this progressive law, when it comes to implementing it, we find other officers trying to change it to suit their interests.

I also wanted to talk briefly on Clause 11. We need to critically look at Clause 11. For me, if we are making access to information mandatory, that it is the norm and not the exception, then once someone applies for information to be provided and there is an officer who wants to deny that information, then that officer should bear the responsibility. It should not be a decision of an officer to choose whether to provide information or not. To me, if you are refusing to provide information, you should actually--- We need even to put it that, that officer needs to go to court to demonstrate that, that information should be denied.

I can see my time is over but I want to thank Hon. Nyokabi. This is very progressive and I would urge other Members to take up this Chapter on the Bill of Rights and bring more legislation to actualise it.

Thank you. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Njoroge Baiya.

Hon. Baiya: Thank you, Hon. Temporary Deputy Speaker for also giving me the opportunity to contribute to this Bill. At the outset, I want to thank Hon. Nyokabi for taking the initiative to make this Bill see the light of day in the National Assembly. It is one of the key Bills intended to help in the implementation of the Constitution under Article 35, as has been properly stated. The only difference is that it is not among those Bills that are expressly included in Schedule V of the Constitution. But there is no doubt that even under Schedule V the very last requirement is for any other Bill required to implement this Constitution which, therefore, includes Bills required to be brought under Article 35. There has not been any doubt in the mind of our Committee, that is, the Committee in charge of the implementation of the constitution (CIOC). We have had occasion to summon the respective Cabinet Secretaries (CS) under those dockets to come and tell us why they have not been able to come up with Bills under Article 35, that is, Access to Information Bill and under Article 31, the Data Protection Bill. In this regard, I have also seen what the Departmental Committee in charge of Energy, Communication and Information has actually recorded in the Report they have filed before the House, and what their communication with the CS was.

Just to highlight, the relevant CS says that the Government has formulated the Access to Information and Data Protection Bill and it has been subjected to immense public participation. The CS submitted that it is awaiting Cabinet approval and it is anticipated shortly. Further, he said before the Committee - which is not in the Report that, as is the procedure, the ideal position is where registration is preceded by a policy formulation before the actual Bill is done. Therefore, if the House proceeds with the current Bill as it is without the benefit of a comprehensive policy formulation, the Bill may not achieve the very best of results. Therefore, the Ministry recommends that it will be ideal for the Private Member's Bill - which is now the Bill by Hon. Nyokabi - to be withdrawn in favour of the Government Bills once they are approved.

The CS has subjected the National Assembly to that unenviable position of keeping it waiting for this Bill. It is the case that the last time this Bill was developed by the Ministry was in the year 2012. We are now talking about 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Hon. Chachu? Hon Baiya, give me a minute.

Hon. Ganya: Is Hon. Baiya in order to discourage a Member who has worked so hard and managed to come up with a Private Member's Bill to enable us achieve a major gain in our Constitution in favour of a Government Bill which is yet to see the light of the day? We have constitutional deadlines and the Government has not done what it is supposed to do. Why does the Member not see the need to enrich or change it so that we have a law in this country? Is he in order to discourage her? He is discouraging the Member through the sentiments that I have heard from him.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Respond to that as you continue.

Hon. Baiya: Sorry, Hon. Temporary Deputy Speaker. Possibly, the Member has not really understood me. I am trying to outline the challenges the National Assembly has gone through with the Ministries in coming up with this Bill. The gist of my submission is that we know the Government is making an initiative to come up with the Bill, but they have had the time from 2012. This is past the fifth year yet, they have not done much. This gives us all the more reasons why we should support this Private Member's Bill. That should assuage the Member that I am far from dissuading Hon. Nyokabi who I have actually started by appreciating her contribution. I was only giving the background to illustrate that the Government does not seem to appreciate the significance of this Bill. It seems the Government itself has actually shown a lot of reluctance given that the initial Bill was done in 2012.

At the Committee level, as recently as a month ago, the CS promised to come up with the version of the Bill within two weeks. Therefore, I urge the House to actually take the initiative and develop this Bill involving the Departmental Committee and come up with this Bill. Indeed, we are also going to take the initiative to have the Data Protection Bill developed because the CS has not actually developed it. One of us is actually going to also bring a Private Member's Bill. If the Government wants an amendment, it will be open to them. They can bring whatever amendment.

The importance of this Bill is quite evident as far as implementing this new Constitution is concerned and even Vision 2030 which the Government has committed itself to say it is one of its key goals. It is an issue-based society. Such an issue-based society where politics will be based on issues can only be possible if the public and all the key stakeholders are enlightened and have the right information. Even when it comes to our own politics, some of the challenges we have had in our politics are negative ethnicity, among others. It is quite clear, and the Government has said so within its policy documentation, that the way to overcome this is to actually enlighten the citizens so that they do not base their decisions on simple, parochial and ethnic considerations, but they be based on policy and alternative ways of realising the goals and objectives of development.

The new Constitution has put a lot of emphasis on human rights. It is quite clear that the observance, protection, promotion and fulfilment of human rights cannot be possible or realised without clear information systems. Even in the case of private players, the citizens or whoever wishes to enforce those rights must have access to information.

With regard to other clear issues confronting this country, such as corruption, one of the best panaceas for resolving them once and for all is to make information publicly available so that whoever undertakes Government projects is aware that the country will, in the course of time, have information on how public resources have been used. That will be a strong preventive mechanism for combatting corruption. We have seen the response from the Auditor-General's

Report on Government agencies. This partly arises from the fact that under the old system, we used to have a backlog in terms of audit, spanning over a period of several years.

With those remarks, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, before I give this opportunity to the next speaker, let me recognise the presence of the Youth Parliament from Kakamega County, seated on the Speaker's Gallery.

Welcome to the National Assembly.

(Applause)

I give the Floor to Hon. Chachu Ganya.

Hon. Ganya: Thank you, Hon. Temporary Deputy Speaker for this opportunity.

From the outset, I strongly support the Access to Information Bill, 2015. I want to compliment Hon. Nyokabi for her great effort. This Bill will enable us to have a just society in the sense that the right information will enable us to cherish the fundamental human rights that are the cornerstone of our Constitution. It will also enable us to nurture good governance principles.

Eventually, once the Bill is well implemented, it will enable us to consolidate the democratic gains that we have realised in this country, and enable us to enjoy or benefit from the many fundamental rights provided by our Constitution, especially the Bill of Rights. In totality, this Bill will enable our public institutions to be transparent, and accountable in service delivery.

I want to go to the limitations of this Bill. Do the citizens of this country have a duty or obligation to be open, transparent and accountable to the state? For purposes of Government planning, there are occasions when we need information from the public. This is why we conduct the national census every 10 years as per our Constitution or conduct a poverty-household survey and many other surveys that are done by the Kenya Bureau of Statistics.

We have a situation in this country where citizens deliberately give false information to the state. Such false information ends up distorting our national planning. It is a fact that in the census of 2009, the citizens of this Republic in some counties and regions gave false information. Because of that, we have distorted planning where some people gained constituencies when they did not deserve them. This is very clear as you can see from the number of eligible voters in those regions. Some people get more funds from the Constituencies Development Fund (CDF) because of the distorted figures that they gave the state. Some counties get up to Kshs9 billion or Kshs10 billion while others get Kshs5 billion.

I can speak for the northern counties. Since Independence, we are now almost at the same population. Today, we have a situation where there is total distortion in our national planning, leading to disparities in our development as a nation.

When the Government tries to mitigate such problems, people rush to court and even bribe officials to get judgements in their favour. Today, we have a situation where some areas get billions of shillings they do not deserve while others do not get their rightful share from our national coffers. The citizens must also be accountable to the State and they have a duty to give accurate information to the state. There should be provision for imposition of severe penalties against people who give misleading information to the state.

I want Hon. Nyokabi to come up with amendments to ensure that our citizens are also held accountable by the state and are obligated under the law to give accurate and correct

information to the state. Short of that, we should have severe penalties imposed on them. I am going to propose amendments, if Hon. Nyokabi is not going to do so, during the Committee Stage, to ensure that there is fairness and justice in this nation. I know that I will lose some friends because of the position that I have taken regarding this matter, but I do not give a damn. I am sorry that my words do not sound very parliamentary. It is not right, fair or just. Because of that---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, that is not parliamentary language. Please rephrase that statement.

Hon. Ganya: Hon. Temporary Deputy Speaker, I will rephrase it. I am concerned and feel disappointed to a degree when citizens can distort information and have undue advantage over others because they are overrepresented and are getting more resources from our national coffers. As a result, other regions are lagging behind and are unable to get their rightful share.

If that census had not been distorted, the people of North Horr would have a second constituency. Our Constitution says that Kenya shall have 290 constituencies. Until we amend Article 89 of our Constitution, it will forever remain that way. Eventually, we are going to lose this constituency because this is the only Constitution where there are formulas. These formulas argue that we should have the total number of population and divide it by the total number of constituencies. As a result, some of us have protected constituencies which should not be the case if accurate data or census figures were used during that census.

I hope Hon. Nyokabi will come up with an amendment to ensure that citizens who deliberately give false information to the State to distort the national planning process are penalised.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Yusuf Hassan.

Hon. Abdi: Thank you, Hon. Temporary Deputy Speaker.

I rise to support the Access to Information Bill. I congratulate and thank Hon. Priscilla Nyokabi for moving this important Bill. This Bill is timely and progressive. It will contribute to the realisation of several Articles in our Constitution, and in particular Article 35. As they say, information is knowledge and power. This Bill will bring us one step closer to empowering the ordinary *mwananchi* by accessing critical information on their social, economic and political lives. It will also give them power to know what the bureaucrats are doing on their behalf, and to provide correct information to various public offices.

This Bill works in several ways to empower the ordinary *wananchi* to get the information that he or she needs. I also think that this Bill will contribute to the overall governance of our country. Much of the information that is collected is stored in secrecy or protection of certain interests and objectives which may not be necessarily good for our democratic processes.

I also want to voice my concern about Clause 6. We should reconsider and make it tighter in the sense that all the facts that have been said here and are supporting access to information, can be undermined by the narrow interpretation of Clause 6 by those who are not ready to give information to the public using this Bill.

The other issue that I want to raise is in Clause 13(1) on correction of information. It says:-

“At the request of the applicant, a public entity or private body shall within reasonable time, at its own expense, correct, update or annotate any

personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.”

I would like to suggest that this should be more specific. The interpretation of reasonable time can be used to make it difficult for that information to be corrected. I was wondering in terms of language or drafting whether that could be more specific within a particular period of time to allow correction to take place.

If you look at some elements under Clause 6, you will find that there is much of that information today in the age of information, internet and electronic communication. A lot of information that the Government considers to be secret is in the public domain. If you have the right knowledge or the right technology, you can access that information.

Recently, I attended one of the secret briefings for Members of Parliament done by one of the Government Departments. To my surprise, because I was interested in that particular subject, I found that much of that information that was considered to be confidential was in the public domain. The Bill should also be cognisant of the fact that there are technological developments that make information accessible to the public. It is in fact easier for people with that technology to access it.

The second element that this Bill will help is the quality of information that will be collected in future by public officials. With a Bill like this, many officials particularly those who are conscientious, hardworking and committed to their jobs, will be taking more accurate information. They will be more conscious of the fact that the information that they are taking down or recording for posterity, would be information that could be accessible to the general public and could be interrogated, examined and challenged. Therefore, this Bill will contribute to the type and quality of information that our public officials will record and put on files for future consideration.

With those remarks, I would like to support the Access to Information Bill.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member for Matayos, are you on a point of order?

Hon. Odanga: Hon. Temporary Deputy Speaker, judging from the mood of the House, I want to propose that we reduce the time of contribution to five minutes.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, using your own discretion you can take less time to allow other Members to speak. We have until 12.45p.m. So, if you are contributing, be kind enough. You do not have to take all the time. I now give the Floor to Hon. Moses Injendi.

Hon. Injendi: Thank you, Hon. Temporary Deputy Speaker. As I second this Bill, from the outset, I would to say that information is power. If we make this information available we will be empowering the whole community. If people had the right information at the right time, most of us would not be where we are. For example, looking at the Constitution 2010, if most of the people were given the right to information at the right time, we would not be where we are with the new Constitution. If we had information on counties and what is expected of us in terms of numbers, we would not have voted for this Constitution without making the necessary amendments.

As much as we are talking about availing information, my worry is in Part III where it says that a person must apply for this information so as to have it. This means that persons who

have the ability to make this application will have the chance of getting this information, unlike most Kenyans who are not even aware they can access this information.

I am, therefore, appealing to the Mover of this Bill to put in place mechanisms where these persons can have this information without necessarily asking for it. For instance, most of the vulnerable persons in the society including women and youth are denied basic things in the community because they have no information or they are not aware that they can access this information. We can have institutions like schools that provide information to persons so that they are able to know what is due to them.

There is a case in my constituency, Malava, where senior Government officers were moving around the constituency in the name of looking for votes. They went round distorting information to women that the Government is providing money for widowers when this money is not there. The women are now developing some perception about the Government based on the distorted information. The old on the other hand are not aware that there is a cash transfer programme and there are things that are required of them to get that money. This is because this information is not available. These people are old, probably illiterate and cannot access this information.

I, therefore, request that we avail this information. What is affecting us currently is that we are not availing information. Some of the fora I would recommend to avail information are public *barazas*. Currently, when chiefs and assistant chiefs call for these meetings, the attendance is usually poor. The Mover of the Bill may consider how to structure those public *barazas* so that people can attend and the information is availed to them.

The other thing I would like to recommend to the Mover to look at is that information should be availed at the school level so that as children are growing up, they get to know what is due to them. Otherwise, I support this Bill and differ with the Mover who said that information on marital status should not be provided. I support that information on marital status be given out.

I am a Catholic and we believe that for one to be elected a chair of a church council, his or her marital status must be known. Therefore, this information is also critical. Whether you are gay or polygamous, that information should be known. I am wondering why the Mover is suggesting that information on marital status must not be provided in the Bill.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Benson Mutura.

Hon. Kangara: Thank you, Hon. Temporary Deputy Speaker. From the outset, I support the Bill. I thank the Mover of this Bill, Hon. Nyokabi. This being a Private Member's Bill, I believe she has done a lot of research to enhance the constitutional requirements. For a Bill to get to this level, it has to go through public participation and I can attest she has done that.

I am a Member of the Constitution Implementation Oversight Committee (CIOC) and this is one of the Bills that we have been pushing the Cabinet Secretary (CS), for the last two years, to bring to the House. I noticed the laxity that either he does not want to ring it or the Government feels threatened to bring this Bill to the House.

I urge my sister to consider the views of the Hon. Members who have contributed that this Bill should apply to the county governments. It should also apply to Parliament. I say this out of personal experience. As a Member of this House I have tried getting information, especially administrative information, but it is not easy. As much as we are pushing other public

entities to disclose information, the public also needs to know what goes on in this House. I do not think we have anything to hide.

On the issue of corruption, the bodies in charge of fighting corruption have highlighted that 70 per cent of corruption cases happen because of procurement, which is shrouded in a lot of jargon. Even the tenderer does not really understand what goes on. Once you bid, apart from the tender opening, the other processes, including technical evaluation, are shrouded in a lot of secrecy and are handled by few people. This is where corruption happens. I believe that if we become more open, we will be able to fight corruption. Every year, the Auditor-General publishes a report on how public entities have been conducting business. In most cases we read, and we can attest, that corruption has happened. However, this is usually when the damage has been done because it is one year down the line. So, if we can have a process where we can prevent corrupt activities, it will be good for this country.

I have seen county governments signing agreements with private entities. For example, the Nairobi County Government signed an agreement with Web Tribe, a private entity, to collect revenue on behalf of the county government. When I got a copy of that agreement, I found an offensive clause, that that agreement was to remain a secret between the two parties, who are the county government officials and the private entity. I believe this is not right. To safeguard public money and interests, we need to be open. Even the community needs to know the benefits that will accrue from some of these agreements.

Recently, I saw the Governor of Kiambu complaining that most of the city residents flock Kiambu hospitals because his county government has stocked medicines in those hospitals. There was a counter from the Governor of Nairobi saying that is not the position. If we have access to information, we can find out from the Kenya Medical Supplies Agency (KEMSA), from which counties buy medicine. It will be easy for us to shame the county governments which are not buying medicines, otherwise the counter accusations will continue. Information will enable us to see who is working and who is not working.

Kenya is usually ranked poorly internationally, and even amongst failed states, because we do not have this law. I believe that with the passage of this Bill, we are going to move towards a better position. Even entities which would like to come and invest in this country will feel safe and secure that at least when they need information it will be given to them and some things that usually happen behind the scenes will not happen.

It is not just a matter of giving information but the accuracy of the information should be paramount. Two months ago two banks were put under liquidation. This also applies to the matter of Kenya Airways (KQ), Mumias Sugar Company and National Bank of Kenya. These are entities which have been giving inaccurate information to the public. The information was somehow cooked to deceive the public that these entities were doing very well, but in real sense there were a lot of issues that needed to be looked into. I believe Hon. Nyokabi has put a provision in the Bill for deterrent measures against such entities. We should not just be given information. The accuracy of the information is paramount.

Lastly, as a member of the CIOC, there are very many Bills that are still pending. This year, as a Committee, we came to this House to seek for an extension of time. I urge my sister to consider taking up the role of coming up with some of the pending Bills.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Njogu Barua.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Bill. From the outset, I strongly support this Bill which is long overdue. This is one of the Bills which are important for good governance. If we do not have access to information and if information is not accurately disseminated, it is going to be very difficult for the country to be governed in a democratic manner.

I am happy to note that this Bill implements, in particular, Articles 33 and 35 of the Constitution of Kenya, 2010. In this regard, the Bill is timely although I have heard members of the CIOC saying that the Bill is delayed.

Information is power. Information is good for decision making. If you do not have access to information on whatever you are doing, it is more unlikely that you will make good decisions. If we make bad decisions as Members of this House, we will not be able to serve our people effectively. So, access to information is necessary for everybody who deserves information.

I would like to emphasise that in terms of development of a nation, and in particular sustainable development, information is an equally important factor of production just as labour and capital are. If one has the required labour and capital but lacks proper information, it becomes very difficult to get a good mix of those two factors of production and come up with a good product. Hence it is only information that can come as the third factor to ensure that the capital and labour are utilised for the benefit of development.

Information is only useful if it is properly processed and disseminated. Dissemination of information is very important for understanding. How information is packaged determines how it is understood and hence how it is consumed. So, it is important that people who have information disseminate it to the communities in a way that the communities understand. Of late, we have seen the emergence of many radio and television stations and they are broadcasting in many local languages of this nation in addition to English and Kiswahili. It is very important that the information reaching the population through the media is accurately presented.

As a representative of peasants who are mainly producers of coffee and tea, we find it very difficult to understand why we can spend a whole year farming coffee without knowing what the price of that coffee will be. The information on the bare minimum cost of coffee or tea per kilogramme will encourage farmers to produce more.

Farmers in Kirinyaga County and many other counties that produce coffee and tea produce it blindly hoping to benefit from the auctioneer. The auctioneer will give the sellers of any commodity the lowest prices possible. I would like to propose that the Government should make an initiative of telling the farmers the bare minimum that they should expect at the end of the year. To get a kilogramme of coffee, you need labour, fertilisers and many other things. The farmer can spend Kshs70 to produce a kilogramme of coffee but at the end of the day, he gets Kshs60 per kilogramme. The whole thing becomes unviable.

Hon. Temporary Deputy Speaker, we, as farmers of tea and coffee, want to be given that opportunity to know the reserve prices and we shall not get anything less than that at the end of the year when we sell our crops.

Distorted information is one of the biggest drawbacks to moving forward and to development. Right now, we are having *El-Nino* rains which have affected infrastructure across the country. The most affected infrastructure are road networks especially murram or earth roads. Yesterday and even today in Gichugu Constituency, some people have been propagating negative information and telling people that the money that is meant for the *El-Nino* rains is with the Members of Parliament. Every county has Kshs150 million for emergency response to the

El-Nino rains. So, when young men and women revolt and rebel and end up destroying roads is something that should not be tolerated. I support that this Bill should involve the counties, so that they can also be put to account. Counties must adopt this Bill and domesticate it and cascade it downwards. County leaderships must be involved in this. They must ensure that they also give correct information to the people.

I have looked at Clause 18, which talks about offences. This is a good clause, but it omits one thing. Something needs to be done against private citizens who comment negatively or inaccurately about public affairs. We should not have people moving around the country spreading falsehoods to Kenyans. The common citizen must also be put under the umbrella of this Bill, so that he or she can be put to account in the event he or she gives false information to other members of the public, hence making them act in a way they should not. I would like Hon. Priscilla Nyokabi to look at Clause 18 and make that extension, so that we can hold private citizens responsible. We should apply this law against such offence.

I would like to finish by talking about the media, namely, the Fourth Estate. I am a member of the Fourth Estate. Free media is an ingredient of good governance. The media must be free. As a Member of the Jubilee Government, I want to say that if a Government wants to operate in a systematic manner, one of the elements that it must embrace is good relationship with the media. The Government should ensure that the media is not harassed for whatever they do as long as they report the issues objectively. Any article in both print and electronic media, must have two elements. One of them is balance. If you talk about one side, you also have to corroborate the information from the other party, so that you are not accused of being biased. The other aspect is that any unbalanced article must be well informed. If we do this, the media will not be a threat to anybody.

With regard to the issue of teachers, Kenyans need to know the truth. Why has this case of teachers taken too long? Can Kenyans be told the truth on when teachers will get a fair deal of whatever they do? This information can help Kenyans know the positions of the Kenya National Union of Teachers (KNUT), the Kenya Union of Post Primary Education Teachers (KUPPET), the Government and the teachers. If those four positions are harmonised, the teachers will get the benefit that they deserve.

Finally, Kenya is a member and signatory to many international conventions. These conventions should be domesticated. I can see time is not on my side. Before these conventions are signed, Kenyans must be told what they contain.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Isaac Mwaurea.

Hon. Mwaurea: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and congratulate the Mover, Hon. Priscilla Nyokabi, who has remained true to her calling, and also pass the sentiments of Hon. Millie Odhiambo who says that she has been very supportive of this for quite a long time.

Those of us who have a civil society background have an agenda to continue to advance which made us to come to this august House for the interest of Kenyans.

The other issue on this Bill under Clause 29 is timelines. If you look at an information access officer, you will realise that the individual has five days to determine whether he or she needs to pass over that responsibility to another information access officer and seven days to report back to the applicant. That is challenging. If you go to public entity "A" looking for

information and then you are told that they need to look for that information through another public entity “B”, it will take more than 10 days. We need to look at those timelines.

I must commend the Mover because there is a very elaborate procedure in terms of how you can access information. You apply to this public entity and if that fails, then you have recourse with regard to the timelines provided and further to the Commission on Administrative Justice (CAJ). If you do not get any recourse from the CAJ, then you can go to the High Court. That is very commendable because it is very clear. However, we may need to tighten that procedure, so that by itself, it does occasion red tape that compromises, for example, the urgency with which you may require that information. We know very well that information is power, but when it is not provided at the time you need it, then certain decisions that you are likely to make may be compromised.

The other issue that also comes out clearly is penalties. In my opinion, some of the penalties provided for under this Bill are too lenient. For example, an amount not exceeding Kshs50,000 or imprisonment. We may need to enhance those penalties to take care of those who may want to say that in any case, the fine far outweighs the disclosure of this important information.

Recently, we were treated to a situation where Government officials were being told to be careful about the kind of information they bring to Parliament. Indeed, one Principal Secretary (PS) said that they gave erroneous information because of public scrutiny. We need to ensure that the threshold of penalties is high to deter any individual who may want to use it.

The practice has been that, for example, if you steal from somebody, you will say that you will just go to jail for three years. You may come out of jail after three years if you have stolen Kshs1 billion. We need to ensure that we have proper penalties. The other issue that I also want to speak to is the CAJ. I must commend the Mover because this Bill speaks to Article 35 of the Constitution and to a larger extent to Article 47 on fair and administrative action. It confers powers to the CAJ just like the Fair Administrative Action Bill does on the same.

We have also been treated to a very interesting scenario where the Commission Chair has written to the President asking that the PS, Ministry of Agriculture, Livestock and Fisheries be sacked. Ministries, Departments and Agencies seem not to be responding to requests from the CAJ to provide information on why they are not taking certain actions to accrue benefit to service delivery to the public. We need to look at that. Now that we are giving them new powers, we need to also ask ourselves whether we also need to ensure that they get more funding through Parliament, so that they can occasion the execution of such mandate thereof.

The other issue is the fact that the cost of investigation, if indeed, a public officer has refused to perform his or her duty, is borne by the CAJ. They are supposed to do investigations at their own cost. I indulge the Mover of the Bill to look at this in cases where the CAJ says that they do not have money to investigate why a certain individual did not provide information as requested by an applicant. That is an issue that we need to look at under Clause 24.

The CS is supposed to report after or within two months. We need to reduce that time in terms of annual reports to Parliament. Instead of Ministries, Departments and Agencies reporting annually how they have been responding to applications for access to information, they should do it quarterly so that we can follow up. For example, in quarter one, we know the number of people who requested for information and whether it was expedited and provided.

The other issue under Clause 6 is on national security. I want us to tighten that area because it seems to take on one hand. I know that the consequent clauses provide for issues of

justification of what is public interest but let us not open it up too much so that when we do not have a very progressive regime or institution, they just fall back to that and say it is about national security, Kenyan economy and what have you.

The other issue is about the edited information. What if somebody provides scanty information that seems to speak to the request but in a peripheral manner? We need to look at that provision of edited information so that it is not misused.

Finally, there is an issue of county versus national Government. If you look at Clause 22, you will find that it says that the CAJ powers apply to both national and county governments. Therefore, this should be a Bill concerning counties.

I rise to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ali Rasso.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Speaker. From the outset, I wish to support this Bill. In the interest of time, and I also wish many of my colleagues to contribute, I want to agree with my colleagues that information is power.

Currently, Kenyans are getting information through the social media on WhatsApp, Instagram, Twitter *et cetera*. It appears to be the domain. Everybody logs into the social media to get information. In the process, what we have been treated to is propaganda, incitement, perception and falsehoods.

If Kenyans will be able to access information at every level from every institution, then we will have an informed citizenry that will be able to challenge the order of the day and seek for accountability at every level. Currently, we, Kenyans, are looking for information every day. It is what takes most of our time. It has been said that the Higher Education Loans Board (HELB) is the most difficult institution to access information although it should be the easiest because they disburse public money to young Kenyans who are accessing university education.

I am happy that this Bill does not just talk about the State but other entities that hold information. The most difficult place to also get information from is the NGO world because of activism. More often, they hide information. Through such legislation, we will see them becoming transparent.

My colleagues have talked about the county governments. It is the most contentious area today where information cannot be obtained. If you seek information from the county government, it is considered to be witch-hunting and you are considered to be an opposition that is fighting that county establishment. Most of the time, we are seeking information from county governments in the areas of employment, pay, equal opportunity and affirmative action.

Through this Bill, light will be thrown on some of these aspects so that those in the county governments also begin to realise that they are accountable to the citizenry and elected leaders at every level.

There are a few areas that the sponsor needs to consider, particularly in the area of compulsory information that must be publicised in the media. Once that information hits the media, already an individual has been employed. That is a travesty of justice.

I also wish to talk about whistle blowers. If we did not have whistle blowers in this country today, we would be in a lot of trouble. We must ensure that the whistle blowers are protected because whatever they talk about is in the interest of institutions and the country.

With regard to disclosure of information and the number of days within which an individual will seek information and receive it, we will need to work with a fine tooth comb, during the Third Reading, to ensure that the Bill meets the ambit of this legislation.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ferdinand Wanyonyi.

Hon. F. K. Wanyonyi: Thank you, Hon. Temporary Deputy Speaker for this opportunity to support this Bill.

First and foremost, I thank Hon. Priscilla for what she has done. I was here when she was moving the Bill and I was very impressed. Indeed, she had done a bit of research. She even gave us information I did not even know that this Bill was first presented by Hon. Mukhisa Kituyi in the 8th Parliament. We are now in the 11th Parliament. She has done research on this matter and I thank her for the good work she has done. She gave us detailed information that some of us did not know.

As most people have said, information is power. It opens transparency in what we are doing. It helps us to use our natural resources properly without fear or favour. I know that accessing information is a human right. As citizens of this country, it is our right to get information. Therefore, I know for sure that with that kind of information, I will do what is supposed to be done. I was perplexed by the disclosure by Hon. Nyokabi that out of 108 countries in the world that have passed this law, 17 of these countries are in the African continent, yet we have not done it. She gave a list and I was surprised that South Africa did it in 2007.

You cannot compare Uganda with Kenya in terms of development. She also mentioned that South Sudan passed the Bill in 2015. Burkina Faso, Rwanda and Liberia also passed this Bill. These are troubled countries and yet since the 8th Parliament our country has not passed this law.

It is important that we guard our Foreign Direct Investment (FDI). If we compare ourselves with a country like Rwanda, we will find that it has had a lot of direct investment because the Rwandese Government gives free information to potential investors. There is also free information in Uganda.

I thank Hon. Nyokabi for bringing this Bill to this House.

Therefore, when an investor wants to invest she/he will access information to know how long it will take to form a company.

Hon. Temporary Deputy Speaker, you and I know that it has been taking us as long as four to five months to form a company here. Thanks to the current regime because I understand it now takes about three weeks. That information is not out there because it is not open and free. If it had been open I am sure this country which is strategically placed in Africa could be getting a lot of Foreign Direct Investment. We do not have that because we had not passed this law on Access to Information.

I thank the Mover because we will get the information. Those who are trying to invest in this country would like to know how the business environment is. It cannot be disclosed if this Bill is passed. Therefore, this is a very important Bill and I hope it will take a short time for us to fast-track it so that we move alongside others.

However, it is regrettable as mentioned that other countries have got this information. This Bill was passed before us. We should have passed this Bill long time ago since it was brought before the House in 2002. I hope that we will be able to fast-track this and move on.

Under Part II, Clause 6, we have had problems with the Government in giving information. The other day we were here and one Member of Parliament raised a point of order that a journalist of the *Daily Nation Newspaper* had been arrested out there just because he had disclosed some information. As if that was not enough, the journalist was taken to the police station, because this law has not been passed. That means there are some information that we do not even get access to and one of the Cabinet Secretary (CS) was forced to swallow the bitter pill and withdrew. He had to apologise to the public for having harassed that Nation Reporter because he came with that information. Although it had been discussed openly in one of the committees, it was touching on security and expenditure in one of the Ministries. The CS became furious. I remember seeing him on Television asking: "Who gave you the information? If you do not reveal that you will pay for it"

However, with the passage of this Bill, we should get information we are supposed to get. The other thing I want to mention which is very important---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, please wind up in the next one minute because we should be giving the Mover a chance to reply.

Hon. F. K. Wanyonyi: That is what I can say. I wanted to advance information, but I do not want to be selfish. I want others to take part.

Therefore, I thank the Mover and let us fast-track this Bill so that it can become effective. I support the Bill.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now call upon the Mover to reply. I hope you will be able to give some of the Members a few minutes because there was a lot of interest in this particular debate.

Hon. (Ms.) Kanyua: Thank you. As I thank the Members for contribution, I agree with you that some Members have approached me for a minute each.

Therefore, I want to give one minute each to the following. Hon. (Ms.) Odhiambo-Mabona, the Vice-Chair of the Committee; Hon. Kiptanui; Hon. Lelelit; Hon. Shakeel Shabir; Hon. (Ms.) Khamisi and Hon. Bishop Mutua. That totals of six minutes.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Odhiambo-Mabona, have you pressed the intervention button.

Hon. (Ms.) Odhiambo-Mabona: Thank you. I thank Hon. Priscilla for giving me this opportunity. I thank her also for bringing this Bill. Both her and I serve in the International Commission of Jurists that has been very passionate about this Bill and we fought for this for years and I am very happy. I just want to say information is power and we should not be using the issue of security as an excuse to stop people from giving information especially the media.

The other thing I would like to say is that we must find ways of engendering information. We should also be proactive about giving information and not giving it upon demand. That is the only way women, persons with disabilities and the youth can get information in churches, schools, through braille and other means.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Kiptanui.

Hon. Kiptanui: Thank you, Hon. Temporary Deputy Speaker. I want to thank Hon. Nyokabi for this Bill. As a Committee, we held some meetings with various stakeholders in this sector including the Ministry of Information, Communication and Technology, the Private Sector Alliance International Commission of Jurists and the Media Council of Kenya. We also received some memoranda from the Kenya Private Alliance, the Media Council of Kenya and Safaricom Limited. We captured their views which are contained in the Report that we tabled yesterday. As a Committee, we analysed the various submissions from the public. We observed that some of the amendments that have been proposed will improve this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up, Hon. Kiptanui. Let us have Hon. Lelelit.

Hon. Lati: Thank you, Hon. Temporary Deputy Speaker, I wish to thank Hon. Nyokabi for her generosity. Anything that takes us to an open society is a very good thing. I take particular attention to Clause 6, which talks about public interest, which is very important particularly in areas of defence. I do not see how public interest will come in economic issues unless we are trying to protect corruption.

There are other things that Hon. Nyokabi should have included in public interest. A few days ago, we were treated to things like sex toys which were procured by the Ministry of Devolution and Planning. The public of Kenya should be protected against such issues. We should include a clause that says that if things are profane or perverted like sex toys, they should not be seen by the public of Kenya.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Shakeel Shabbir.

Hon. S. S. Ahmed: Thank you, Hon. Temporary Deputy Speaker. This has been a long race and it has been finished by the last baton holder, Hon. Priscilla Nyokabi. I want to congratulate her for her spirited effort.

I want to thank the teams like the ICJ, the Institute for Social Accountability and Article 19. I remember sponsoring this Bill in the 10th Parliament and we are all very happy that it has gone through.

Hon. Temporary Deputy Speaker, Hon. Nyokabi and others, we are all Members of the African Parliamentarians Network Against Corruption (APNAC) and we have been proudly saying in conferences that we have succeeded. Thank you very much and it is a great day.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have Hon. (Ms.) Mishi.

Hon. (Ms.) Khamisi: Asante sana Mhe. Naibu Spika wa Muda. Ningependa kumshukuru Mhe. Nyokabi. Hongera. Ninaunga mkono Mswada huu kwa sababu unaenda sambamba na Katiba. Kuiwezesha sheria hii kufanya kazi ni lazima tuwe na miumbo mbinu na miundo misingi ya kuwezesha elimu ya uraia iwe ni ya lazima ili Wakenya waweze kuelewa kila kitu na wapate ufahamu. Pia, elimu ya watu wazima ama *adult education* inafaa iboreshwe ili watu waweze kupata habari na ufahamu. Pia, tukipitisha Mswada huu, tutaweza kufanya maamuzi bora na kushiriki vyema katika miradi ya kitaifa, kujua miradi ya Serikali Kuu na miradi ya serikali ya ugatuzi. Tutaweza pia kujua majukumu ya serikali ya ugatuzi na huduma ambazo tunafaa kupata kutoka kwa hizi serikali. Tutaweza, pia, kutofautisha miradi iliyofanywa na Serikali Kuu kama vile miradi ya barabara iliyofanywa na *Kenya Rural Roads Authority* (KeRRA), *CDF* na ile ambayo imefanywa na serikali ya ugatuzi.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up, Hon. (Ms.) Mishi. Let us now have Hon. Bishop Mutua.

Hon. Bishop R. Mutua: Thank you, Hon. Temporary Deputy Speaker. I would like to thank Hon. Nyokabi for the Bill and for donating one minute to me. I have two points. This Bill is going to enhance good governance in this country. It is going to promote transparency and accountability in all Government institutions. It is going to reduce the level of ignorance among Kenyans because they will be informed. They will make informed decisions as they demand for services. Most Kenyans have been unable to demand for services because they have been kept ignorant about what is happening. This is the best Bill that we can do at this time. Let the Bill be supported by all of us.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Nyokabi.

Hon. (Ms.) Kanyua: Thank you very much, Hon. Temporary Deputy Speaker. I also thank all Members for their contribution. I want to appreciate the House for the bi-partisan nature in which we have discussed this Bill. You could hardly tell who is from Jubilee Coalition and who is from CORD Coalition. Indeed, this is a good Bill for the country.

I want to quickly touch on the amendments proposed by various Members and Clause 6 in particular. I think we are going to look at that Clause again on the exemptions. We are going to tighten and make sure that national security is not used as a reason or a blanket to cover corruption and many other ills in this country.

I am particularly aware of the history of this country on national security concerns. However, at the same time, we are a country facing insecurity and attacks. We need to balance the two.

On falsifying information, we will take care of that. Penalties also need to be tightened. Let me clarify to all the Members that counties will be captured. This is a constitutional Bill. It will go to Senate and we will look at the provisions on release of information by counties.

Private entities as well will look at that question because it is covered under Article 35 of the Constitution. This law seeks to repel the Official Secrecy Act. There is nothing to save of a regime in the past. But we will borrow provisions that protect unwarranted invasion to privacy. We will take care of provisions that allow Government officers to do their work and to give advice within the ministries as they should. However, the Official Secrecy Act will no longer be tolerable in our country after this law has been passed. Whatever information needs to be exempt, will be exempted under the Official Secrecy Act.

It is true, indeed, this is a good time for our new Constitution to take root and we continue as a House to pursue the laws that follow that pattern. I will particularly be looking at the Housing Bill after this access to information law.

Regarding Dr. Fred Okengo Matiang'i, the Cabinet Secretary for Information, Communications and Technology, we open the door for any amendments that the Government thinks are important and any amendments that his Ministry wants to introduce. I am aware of two namely Information Commissioner or Internal Review Mechanism. Any amendments that the Ministry wants to bring cannot be done now because the ship has left the station. It is, indeed, regrettable that you have a minister who for three years does not bring a law which is as important as this one. Why those ministers continue to fail Jubilee Government, I do not understand.

On the partners and many people who have contributed to this law, both within Parliament and outside, we want to thank them very much and to remind everybody to celebrate the freedom of information day, every year on September 28th as recognised by UNESCO and the African countries, including the African Union (AU) Members.

I beg to Move that the Second Reading of this Bill be completed so that we can move to the next stage of the amendments.

Thank you, Hon. Temporary Deputy Speaker.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Nyokabi and for the Members who have really contributed to this debate. We will not put the question at this time for obvious reasons.

Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.