



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – THIRD SESSION**

**THE NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, NOVEMBER 06, 2019**

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker issued the following Communications –

**(a) Passage of the Finance Bill (National Assembly Bill No.51 of 2019) a Second Time in terms of Article 115 of the Constitution**

“Honourable Members,

As you are aware, in the afternoon Sitting yesterday, Tuesday, November 5, 2019, this House passed the Finance Bill (National Assembly Bill No. 51 of 2019) for a second time following referral by H.E. the President in terms of Article 115(1)(b) of the Constitution. Following that decision, my attention has been drawn to certain insinuations from Members of the House and from outside the House. The statements are to the effect that -

- (i) sufficient notice was not given with regard to the day on which the President’s reservations on the Finance Bill (National Assembly Bill No. 51 of 2019) would be considered by the House; and,
- (ii) Members were not afforded sufficient time to lobby themselves to garner the threshold necessary to vote so as to reject the President’s reservations on the said Bill.

Honourable Members, on the first claim, may I remind the House and the general public that Standing Order 154(2) of the National Assembly Standing

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

Honourable Members, with regard to the claim of sufficiency of notification, you may recall that during the afternoon Sitting of Wednesday, October 30, 2019, the Leader of the Majority Party, in his Statement to the House under Standing Order 44(2)(c) regarding business for the subsequent week notified the House that the specific Bill was scheduled for consideration on Tuesday, November 5, 2019. As a matter of fact, the Order Paper for that particular Sitting had a *Notice Paper* to that effect. My count of days indicate that the House and the general public had at least six-day notice of the coming up of the matter for consideration.

Moreover, pursuant to Standing Order 38, the Clerk of the National Assembly prepared and published on the Parliament Website the Order Paper for Tuesday, November 5, 2019 on the evening of Friday, November 1, 2019, being four days prior to the material day.

Honourable Members, As you may all contend, it is a matter of public notoriety that both the print and electronic media have on numerous occasions, highlighted that the matter would be coming up for consideration by this House on Tuesday, November 5, 2019. I therefore find it to be absolutely inaccurate for a Member of this House or even the public to claim that there was no sufficient notice regarding the Sitting in which the House would consider the President's reservations on the Finance Bill, 2019.

Honourable Members, with regard to the number of Members who attended yesterday's Sitting, I can confirm that the biometric register and the *electronic log-in system* indicate that a total of not less than two hundred and seventy (270) Members were present at that Sitting- coming in at different times during the Sitting.

Since at the time when I was ascertaining the threshold to make a decision on the Memorandum there were about 161 Members present, you agree with me that the die had been cast, given that there was less than 233 Members present. However, as your Speaker, I would not fault any Member for not being present in the House to exercise his or her right to vote on any matter. Indeed, before proceeding to take the vote, I did order that a Division Bell be rung for ten minutes so that any Member who may have stepped out of the House would return and participate in the making of that decision. It is therefore untrue and

incorrect that Members did not have sufficient time to lobby internally with a view to garner the threshold necessary to vote so as to reject the President's reservations on the said Bill, if that was what the House desired.

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

The House is accordingly guided and the general public to know the truth. I thank you”.

**(b) The ICPD25 Nairobi Summit & Parliamentarians' Forum: November 12-14, 2019**

“Honourable Members, the Governments of the Republic of Kenya and the Kingdom of Denmark in conjunction with the United Nations Population Fund (UNFPA) will be convening the Nairobi Summit on International Conference on Population and Development, (ICPD-25). The Summit will take place next week, from 12<sup>th</sup> to 14<sup>th</sup> November 2019 at the Kenyatta International Conference Centre, KICC under the theme “*Accelerating the Promise*”. The Summit will mark 25 years since the 1994 Cairo International Conference on Population and Development (ICPD) which articulated a bold new vision on the relationships between population, development and individual well-being.

Honourable Members, organizers have informed us that, invited guests include Heads of State, Ministers of Planning, Health, Finance, Education and Social Welfare, Parliamentarians, youth delegates, academia, and other State and Non-State Actors from around the world.

Honourable Members, as part of the main Summit, Parliament of Kenya has been requested to co-host a Parliamentarians' Forum in the form of daily 90-120 minutes sessions to be conducted within the precincts of Parliament. These sessions will bring together Members of Parliament from other countries participating in the Summit for peer-to-peer sharing and deliberations.

Indeed, the National Assembly will participate through the Departmental Committees on Health, Education & Research, Labour & Social Welfare and Finance & National Planning as well as the Parliamentary Caucus on SDGs. The Senate will also participate.

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

Honourable Members, since attendance is by formal accreditation, Members who wish to attend may liaise with the aforementioned Committees or the SDG's Caucus for registration and accreditation.

I thank you”.

**(c) Referral of a Bill to a Select Committee under Standing Order 127(6)(a)**

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

- (i) the Public Participation Bill (National Assembly Bill No. 69 of 2019), which was published on October 2, 2019 under Kenya Gazette Notice No. 167 of 2019 and read a First Time on October 29, 2019. This Bill is sponsored by the Select Committee on Parliamentary Broadcasting and Library;
- (ii) the Public Participation Bill (No.2) (National Assembly Bill No. 71 of 2019), which was published on October 11, 2019 under Kenya gazette notice No.170 of 2019 and read a First Time on October 30, 2019. This Bill is sponsored by the Member for Kiminini (The Hon. Chrisantus Wamalwa, MP); and,
- (iii) the Public Participation Bill (Sen. Bill No.4 of 2018) which has been referred to this House after passage by the Senate. This Bill, which is sponsored by the Senator for Busia, Sen. Amos Wako, was published on March 5, 2018 under Kenya gazette notice No.17 of 2018 and read a First Time in the National Assembly on June 11, 2019.

Honourable Members, You will recall that I have since referred the Senate Bill to the Budget and Appropriation Committee for appropriate recommendation as contemplated under Article 114 of the Constitution. On the other hand, I also referred the Public Participation Bill (National Assembly Bill No. 71 of 2019) to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to the provision of Standing Order 127(1) relating to *Committal of Bills and Public Participation*.

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

I thank you”.

5. **PETITIONS**

The following Petition was conveyed by the Speaker:-

**REPEALING OF ALL LAWS RELATING TO IDLE AND DISORDERLY PERSONS**

“Honourable Members, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, Honourable Members, I wish to report to the House that my office has received a Petition from one Mr. Joseph Onyango Owuondo who hails from Embakasi Sub-County and is the holder of National Identity Card number 28373243, calling for the *“repealing of all laws relating to Idle and Disorderly Persons”*.

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

Further, the Petitioner laments that most of these unwarranted arrests occur on Fridays or towards the end of the month in the obvious assumption that the arrested persons will utilize their incoming salaries or wages to secure their release from police custody.

In addition, Honourable Members, the Petitioner avers that the idle and disorderly laws were enacted by the British Colonial Government in a bid to contain and manage Africans, and as such are now both unnecessary and a contravention of Articles 36 and 39 of the Constitution with regard to Freedoms of Association, Movement and Residence.

It is on this premise, Honourable Members, that the Petitioner seeks the intervention of this August House to repeal all laws relating to Idle and Disorderly Persons, including Section 182 of the Penal Code, and to enact legislation to provide for release of Idle and Disorderly or Drunk and Disorderly suspects on free bond upon being charged with misdemeanors.

Honourable Members, pursuant to the provisions of Standing Order 227, this Petition stands committed to the Departmental Committee on Justice and Legal Affairs. The Committee is requested to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2). I thank you!”

6. **PAPERS**

The following Papers were laid on the Table of the House:-

Reports of the Committee on Delegated Legislation on its consideration of: -

- (i) The Public Service Commission Regulations, 2019 (*Legal Notice No. 65 of 2019*);
- (ii) The Private Security (General) Regulations, 2019 (*Legal Notice No. 108 of 2019*);
- (iii) The Value Added Tax (Amendment) Regulations, 2019 (*Legal Notice No. 86 of 2019*); and
- (iv) The Political Parties (Funding) Regulations, 2019 (*Legal Notice No.143 of 2019*).

*(The Hon. Fatuma Gedi - Vice Chairperson of the Committee on Delegated Legislation)*

7. **NOTICES OF MOTION**

The following Notices of Motion to adopt various Reports of the Committee on Delegated Legislation were given:-

- (i) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Amendment) Regulations, 2019, *laid on the Table of the House on Wednesday, November 06, 2019*, and pursuant to the provisions of section 67 of the Value Added Tax Act, 2013 **approves** the Value Added Tax (Amendment) Regulations, 2019 (*Legal Notice No. 86 Of 2019*).
- (ii) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Political Parties (Funding) Regulations, 2019 (*Legal Notice No. 143 of 2019*), *laid on the Table of the House on Wednesday, November 06, 2019*, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act, 2013) **annuls regulation 18** of the said Regulations.
- (iii) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Private Security (General) Regulations, 2019 (*Legal Notice No. 108 of 2019*), *laid on the Table of the House on Wednesday, November 06, 2019*, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b) **annuls in entirety** the said Regulations.

- (iv) **THAT**, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Public Service Commission Regulations, 2019 (*Legal Notice No 65 of 2019*), laid on the Table of the House on Wednesday, November 06, 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b) **annuls in entirety** the said Regulations.

*(The Hon. Fatuma Gedi - Vice Chairperson of the Committee on Delegated Legislation)*

8. **QUESTIONS**

The following Questions were asked –

- a) **Question No. 473/2019** by the Member for Lamu East (Hon. Shariff A. Ali, MP) regarding the dredging of the *Mkanda Channel* in Lamu County for ease of transport by marine vessels and boats at the *Lamu East* and *Lamu Town* routes.

*(To be replied by the Cabinet Secretary for Transport, Infrastructure, Housing & Urban before the Departmental Committee on Transport, Public Works and Housing)*

- b) **Question No. 474/2019** by the Member for Baringo County (Hon. Gladwell Jesire, MP) regarding the progress of the construction of *Sakatia Water Pan* in *Koibaware Village, Saimo Soi Ward* in Baringo North Constituency whose construction commenced on 12<sup>th</sup> April 2015.

*(To be replied by the Cabinet Secretary for the Water, Sanitation and Irrigation before the Departmental Committee on Environment and Natural Resources)*

- c) **Question No. 475/2019** by the Member for Malava (Hon. Malulu Injendi, MP) regarding the appointment of a substantive Vice Chancellor of Masinde Muliro University of Science and Technology.

*(To be replied by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)*

- d) **Question No. 476/2019** by the Member for Wundanyi (Hon. Danson Mwashako, MP) to ask the Teachers Service Commission regarding the processing of retirement and terminal benefits lodged by the following persons; one Mrs. Rose Kambe Mwashinga, a widow of the late Rophus Wana Mghendi of TSC No. 289808, and one Mr. Festus Mngámwa of TSC No. 003584.

*(For Written Reply by the Teachers Service Commission)*

9. **THE WAQF BILL (NATIONAL ASSEMBLY BILL NO. 73 OF 2019)**  
(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

10. **MOTION – ALTERATION OF THE CALENDAR OF THE HOUSE AND RESOLUTION TO HOLD SPECIFIED MORNING SITTINGS**

Motion –

THAT, pursuant to the provisions of Standing Order 28(4) (Calendar of the Assembly) and Standing Order 30(3) (Hours of meeting), this House resolves to-

- (i) alter its Calendar, so as not to hold afternoon sittings on Tuesday, November 12, 2019 and Wednesday, November 13, 2019; and,
- (ii) hold a morning sitting on Tuesday, November 12, 2019.

*(The Leader of the Majority Party)*

Motion dropped

11. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The Third Chairperson in the Chair

**The Data Protection Bill (National Assembly Bill No. 44 of 2019)**

Clause 3 - amendment proposed –

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

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

*(Hon. Jennifer Shamalla)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –



**THAT**, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) -

“(ba) to protect the privacy of individuals”

*(Hon. Millie Odhiambo)*

(Further amendment moved pursuant to Standing Order 133(2))

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to

Clause 4 - amendment proposed -

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

**THAT**, clause 4 of the Bill be amended—

- (a) by renumbering the existing provision as sub-clause (1);
- (b) by inserting the following new sub-clause immediately after sub-clause (1) —

“(2) In this section, “data subjects in Kenya” includes all persons who are physically present in Kenya, irrespective of their nationality or legal status at the time the data controller or data processor processes the personal data of a data subject”. ”

Proposed further amendment withdrawn

Clause 4 - as amended agreed to

## **PART II**

**THAT**, the Bill be amended by deleting the title to Part II and substituting therefor the following new title—

“PART II — ESTABLISHMENT OF THE DATA PROTECTION AGENCY”

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn

PART II - agreed to

Clause 5 - amendment proposed –

**THAT**, clause 5 of the Bill be amended —

(a) in sub-clause (1)

(i) by deleting the words “the office of the Data Protection Commissioner” and substituting therefor the words “an agency known as the Data Protection Agency”.

(ii) by deleting the word “office” appearing in paragraph (d) and substituting therefor the word “Agency”.

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Agency shall be a semi-autonomous government agency under the Ministry responsible for matters relating to data protection.”

(c) by deleting sub-clause (3) and inserting the following new sub-clauses—

“(3) The Agency shall consist of—

(a) a chairperson appointed by the President;

(b) the Principal Secretary in the Ministry for the time being responsible for matters relating to data protection or a representative;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to internal security or a representative;

(d) the Principal Secretary, national treasury or a representative;

(e) a representative from the Commission on Administrative Justice;

(f) a representative from the Law Society of Kenya;

(g) the Data Commissioner who shall be the secretary to the Agency.”

(3A) The Data Commissioner shall be the head and accounting officer of the Agency and shall appoint other staff of the Agency.”

(d) in sub-clause (4) by deleting the word “Office” and substituting therefor the word “Agency”.

(e) in sub-clause (5) by deleting the word “Office” and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn

Further amendment proposed –

**THAT**, clause 5 of the Bill be amended by deleting sub clause (5) and substituting therefor the following new sub clause—

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to

Clause 6 - amendment proposed –

**THAT**, clause 6 of the Bill be amended—

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

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

“(4) The President shall nominate and, with the approval of the National Assembly, appoint the Data Commissioner”.

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

**THAT**, the Bill be amended by deleting clause 6 and inserting the following new clause—

“6. (1) The President shall, within fourteen days of the commencement of this Act convene a selection panel for the purpose of selecting suitable candidates for appointment as the Data Commissioner.

(2) The selection panel convened under subsection (1) shall consist of one person from each of the following bodies representatively—

- (a) Ministry responsible for matters relating to data protection;
- (b) Ministry responsible for internal security;
- (c) Public Service Commission;
- (d) Kenya National Human Rights Commission;
- (e) the Association of Professional Societies in East Africa; and
- (e) the National Council for Persons with Disabilities.

(3) The selection panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(4) The selection panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

(5) The selection panel shall, within seven days of receipt of applications under subsection (4), consider the applications, interview and shortlist at least three persons qualified for appointment as the Data Commissioner, and shall forward the names of the selected candidates to the President for nomination.

(6) The President shall, within seven days of receipt of the names forwarded under subsection (5), nominate one person for appointment as Data Commissioner, and shall forward the name of the person nominated to the National Assembly.

(7) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of the nominee under subsection (6), consider the nomination received and approve or reject the nomination.

(8) Where the National Assembly approves the nominee, the Speaker shall, forward the name of the nominee to the President for appointment.

(9) The President shall, within seven days of the receipt of the name of the nominee approved by the National Assembly, by notice in the Gazette, appoint the person to be the Data Commissioner.

(10) Where the National Assembly rejects the nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit a fresh nomination.

(11) Where a nominee is rejected by the National Assembly under subsection (10), the President shall, within seven days, submit to the

National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(12) Where the National Assembly rejects the subsequent nominee submitted by the President for approval under subsection (11), the provisions of subsections (5) and (6) shall apply.

(13) In shortlisting, nominating or appointing a person as Data Commissioner, the selection panel, the National Assembly and the President shall observe the principle of gender equity, regional and ethnic balance and shall have due regard to the principle of equal opportunities for persons with disabilities.

*(Hon. Jennifer Shamalla)*

Proposed further amendment withdrawn

Clause 6 - as amended agreed to

Clause 7 - amendment proposed –

**THAT**, clause 7 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c)–

“(ca) holds a master’s degree.

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 7 - as amended agreed to

Clause 8 - amendment proposed –

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

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

*(The Leader of the Majority)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

**THAT**, clause 8 of the Bill be amended in sub-clause (1)-

- (a) by deleting the word “Office” appearing immediately before the word “shall” and substituting therefor the word “Agency”.
- (b) by inserting the following new paragraph immediately after paragraph (j)

—  
“(ja) issuing guidelines on the interpretation of certain provisions of this Act in line with the local and international best practices”;

*(Hon. Jennifer Shamalla)*

Proposed further amendment withdrawn;

Clause 8 - as amended agreed to

Clause 9 - amendment proposed –

**THAT**, clause 9 of the Bill be amended in sub-clause (1) by deleting the word “Office” appearing in paragraph (g) and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clause 9 - agreed to

Clauses 10, 11 & 12 - agreed to

Clause 13 - amendment proposed –

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 13 be amended by-

- (a) inserting the word “competitively” immediately after the words “Data Commissioner shall”;
- (b) renumbering the existing provision as sub clause (1); and
- (c) inserting the following new sub-clause after the renumbered sub-clause (1)-
  - (2) in appointing the staff of the Office under subsection (1), the Data Commissioner shall ensure –
    - (i) that there is regional and gender balance
    - (ii) appointment of persons with disabilities; and
    - (iii) appointment of the youth

*(Hon. Millie Odhiambo)*

(Further amendment moved pursuant to Standing Order 133(2))

Proposed further amendment withdrawn;

Clause 13 - as amended agreed to

Clause 14 - amendment proposed –

**THAT**, clause 14 of the Bill be amended by deleting the word “Office” appearing immediately before the word “shall” and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clause 14 - agreed to

Clause 15 - amendment proposed –

**THAT**, clause 15 of the Bill be amended by deleting the word “the” appearing immediately after the words “First Schedule on” in sub-clause (5).

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 15 - as amended agreed to

Clause 16 - amendment proposed –

**THAT**, clause 16 of the Bill be amended by deleting the word “Office” appearing immediately before the word “shall” and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clause 16 - agreed to

Clause 17 - amendment proposed –

**THAT**, clause 17 of the Bill be amended by deleting the word “Office” appearing immediately before the word “shall” and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clause 17 - agreed to

Clause 18 - agreed to

Clause 19 - amendment proposed –

**THAT**, clause 19 of the Bill be amended by—

- (a) deleting sub-clause (4) and substituting therefor the following new sub-clause —  
“*(4)* The Data Commissioner shall issue a certificate of registration where a data controller or data processor meets the requirements for registration;
- (b) inserting the word “this” immediately after the words “the provisions of” appearing in sub-clause (7).

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

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

- (ea) any measures to indemnify the data subject from unlawful use of data by the data processor or data controller; and

*(Hon. Millie Odhiambo)*

(Further amendment moved pursuant to Standing Order 133(2))

Question of the further amendment proposed;



Debate arising;

Question put and agreed to;

Clause 19 - as amended agreed to

Clause 20 - amendment proposed –

**THAT**, the Bill be amended by deleting clause 20.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Further amendment proposed -

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

Duration of the registration certificate.

20. A registration certificate issued under section 19 shall be valid for a period determined at the time of the application after taking into account the need for the certificate, and the holder may apply for a renewal of the certificate after expiry of the certificate.

*(The Leader of the Majority Party)*

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 20 - as amended agreed to

Clauses 21, 22 & 23 - agreed to

Clause 24 - amendment proposed –

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

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

*(Hon. Jennifer Shamalla)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 24 - as amended agreed to

Clause 25 - amendment proposed -

**THAT**, clause 25 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)–

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

**THAT**, clause 25 of the Bill be amended by deleting paragraph (g).

*(Hon. Jennifer Shamalla)*

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed -

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

*(Hon. Millie Odhiambo)*

(Further amendment moved pursuant to Standing Order 133(2))

Proposed further amendment withdrawn;

Clause 25 - as amended agreed to

Clause 26 - amendment proposed -

**THAT**, clause 26 of the Bill be amended —

(a) in paragraph (d) by inserting the word “personal” immediately after the word “misleading”

(b) in paragraph (e) by inserting the word “personal” immediately after the word “misleading”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clause 26 - agreed to

Clause 27 - amendment proposed –

**THAT**, clause 27 of the Bill be amended in paragraph (b) by deleting the words “physical or” immediately after the words “data subject has” and inserting the words “or other” immediately after the word “mental”

*(Hon. Millie Odhiambo)*

(Amendment moved pursuant to Standing Order 133(2))

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 27 - as amended agreed to

Clause 28 - agreed to

Clause 29 - amendment proposed –

**THAT**, clause 29 of the Bill be amended by–

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

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 29 - as amended agreed to

Clause 30 - amendment proposed –

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

*(Hon. Jennifer Shamalla)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 30 - as amended agreed to

Clause 31 - amendment proposed –

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 31 - as amended agreed to

Clauses 32, 33 & 34 - agreed to

Clause 35 - amendment proposed –

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 35 - as amended agreed to

Clause 36 - agreed to

Clause 37 - amendment proposed -

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

Commercial use of data.

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

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

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

*(Change of Presidium from the Third Chairperson to the Second Chairperson)*

Further amendment proposed -

**THAT**, clause 37 of the Bill be amended in sub-clause (1) by deleting the words “provide, use, obtain, procure” and substituting therefor the word “process”.

*(Hon. Jennifer Shamalla)*

Further amendment withdrawn;

Clause 37 - as amended agreed to

Clauses 38, 39 & 40 - agreed to

Clause 41 - amendment proposed -

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 41 - as amended agreed to

Clause 42 - agreed to

Clause 43 - amendment proposed –

**THAT**, clause 43 of the Bill be amended in sub-clause (1) by deleting the words “a reasonably practical period’ appearing in paragraph (b) and substituting therefor the words “seventy two hours from the date of the unauthorized access or acquisition”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn

Clause 43 - agreed to

Clauses 44, 45, 46 & 47 - agreed to

Clause 48 - amendment proposed –

**THAT**, clause 48 of the Bill be amended by–

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 48 - as amended agreed to

Clauses 49 & 50 - agreed to

Clause 51 - amendment proposed –

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 51 - as amended agreed to

Clause 52 - amendment proposed –

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

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

*(The Leader of the Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 52 - as amended agreed to

Clause 53 - amendment proposed –

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

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

*(The Leader of the Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 53 - as amended agreed to

Clause 54 & 55 - agreed to

Clause 56 - amendment proposed -

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

Complaints to the  
Data  
Commissioner

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

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

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 56 - as amended agreed to

Clauses 57, 58, 59, 60, 61 & 62 - agreed to

Clause 63 - amendment proposed -

**THAT**, clause 63 of the Bill be amended by-

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

*(The Leader of the Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;



Clause 63 - as amended agreed to

Clauses 64, 65 & 66 - agreed to

Clause 67 - amendment proposed -

**THAT**, clause 67 of the Bill be amended—

- (a) by deleting the word “Office” appearing immediately after the words “assets of the” and substituting therefor the word “Agency”
- (b) in paragraph (a) by deleting the word “Office” and substituting therefor the word “Agency”
- (c) in paragraph (b) by deleting the word “Office” and substituting therefor the word “Agency”
- (d) in paragraph (c) by deleting the word “Office” and substituting therefor the word “Agency”

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clauses 67 - agreed to

Clause 68 - amendment proposed -

**THAT**, clause 68 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “Office” appearing immediately after the words “expenditure of the” and substituting therefor the word “Agency”
- (b) in sub-clause (2)—
  - (i) by deleting the word “Office” appearing immediately after the words “expenditure of the” and substituting therefor the word “Agency”;
  - (ii) by deleting the word “Office” appearing in paragraph (a) and substituting therefor the word “Agency”;
  - (iii) by deleting the word “Office” appearing in paragraph (b) and substituting therefor the word “Agency”;
  - (iv) by deleting the word “Office” appearing in paragraph (c) and substituting therefor the word “Agency”;
  - (v) by deleting the word “Office” appearing in paragraph (d) and substituting therefor the word “Agency”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clauses 68 - agreed to

Clause 69 - amendment proposed -

**THAT**, clause 69 of the Bill be amended by deleting the word “office” and substituting therefor the word “Agency”

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clauses 69 - agreed to

Clause 70 - amendment proposed –

**THAT**, clause of the Bill be amended Kenya by section 70 be amended—

- (a) by deleting the word “Office” appearing immediately after the words “operations of the” and substituting therefor the word “Agency”
- (b) in sub-clause (3) by deleting the word “Office” appearing in paragraph (a) immediately after the words “activities of the” and substituting therefor the word “Agency”

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn;

Clauses 70 - agreed to

Clauses 71 & 72 - agreed to

Clause 73 - amendment proposed –

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 73 - as amended agreed to

Clause 74 - amendment proposed –

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

*(The Leader of the Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 74 - as amended agreed to

Clause 75 - agreed to

First Schedule - agreed to

Second Schedule - agreed to

Clause 2 - amendment proposed –

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

“national security organs” has the meaning assigned to it under Article 239 of the Constitution.

*(The Leader of the Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed-

**THAT**, clause 2 of the Bill be amended by—

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

“data” means information which—

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

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

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

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

*(Chairperson, Departmental Committee on Information and Communication)*

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

**THAT**, clause 2 of the Bill be amended—

(a) by inserting the following new definition in its proper alphabetical sequence—

“Agency” means the Data Protection Agency established under section 5.

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

“consent” means any voluntary, valid, specific, unambiguous and informed expression of the will of a data subject to process personal data and is capable of being withdrawn.

(c) by deleting the definition of “Office”.

*(Hon. Jennifer Shamalla)*

Proposed amendment withdrawn

Further amendment proposed –

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

*(Hon. Millie Odhiambo)*

(Further amendment moved pursuant to Standing Order 133(2))

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments

12. **HOUSE RESUMED** - the Chairperson in the Chair

**The Data Protection Bill (National Assembly Bill No.44 of 2019)**

Bill to be reported with amendments

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

*(The Leader of the Majority Party)*

Amendment proposed-

That, the Motion for Agreement with the Report of the Committee of the Whole House be amended by inserting the following words “Subject to re-committal of Clause 25(g)”.

*(The Hon. Godfrey Osotsi)*

Question of the proposed amendment deferred to another day

13. **MOTION - RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON DEFENCE CO-OPERATION**

Motion made and Question proposed -

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

*(Chairperson, Departmental Committee on Defence & Foreign Relations –  
5.11.2019)*

Debate interrupted on Tuesday, November 5, 2019 resumed;

And the time being Seven o'clock, the Second Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

14. **HOUSE ROSE** - at Seven o'clock.

**MEMORANDUM**

The Speaker will take the Chair on

**(No.101)**

**WEDNESDAY, NOVEMBER 06, 2019**

**(1024)**

Thursday, November 7, 2019 at 2.30 p.m.

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