

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd March, 2022

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

PRAYER

PAPERS LAID

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY FUNDS/BOARDS/COMPANIES

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya, proceed.

Sen. Farhiya: Madam Temporary Speaker, I beg to lay the following Papers on the Table of the Senate, today, 2nd March, 2022-

Report of the Auditor-General on the financial statement of Kilifi County Ward Scholarship Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of County Assembly of Mombasa Car Loan and Mortgage Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Tana River County Assembly Car Loan and Mortgage Scheme for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Busia County Agricultural Development Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Busia County Assembly Revolving Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Bungoma County Trade Development Loan Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Bungoma County Assembly – Employee Car Loan and Mortgage Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Trans Nzoia County Public Service Board for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Garissa County Emergency Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Garissa County Municipal Board for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Uasin Gishu County - Education Revolving Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Uasin Gishu County Cooperative Enterprise Development Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Nandi County Assembly Scheme Fund Car Loans and Mortgage for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Kiambu County Executive Staff Mortgage Scheme Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Turkana County Assembly Car Loan and Mortgage Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Taita Taveta County Executive Car Loan and Mortgage Revolving Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lodwar Water and Sanitation Company Limited for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lamu County Youth Development Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lamu County Executive Staff Housing Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lamu County Bursary and Scholarship Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lamu County Disability Fund for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Lamu County Gender and Social Development Fund for the year ended 30th June, 2020.

Report of the Auditor General on the financial statement of Kakamega County Water and Sanitation Company Limited for the year ended 30th June, 2020.

Report of the Auditor-General on the financial statement of Kakamega County Microfinance Corporation for the year ended 30th June, 2020.

(Sen. Farhiya laid the documents on the Table)

The Temporary Speaker (Sen. Nyamunga): Let us go to the next Order.

NOTICE OF MOTION

ADOPTION OF AUDIT REPORTS FOR COUNTY EXECUTIVES FOR FYS
2018/2019, 2016/2017, AND 2017/2018 (VOLUMES I, II AND III)

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, I beg to give Notice of the following Motion-

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments (CPAIC), on consideration of the reports by the Auditor-General on the Financial Statements of the following County Executives for the Financial Year 2018/2019: Embu, Homa-Bay, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Machakos, Mombasa, Nandi, Baringo, Bomet, Garissa, Kajiado and West Pokot, as

contained in Volume 1 of the Report and the following County Executives - Isiolo, Kakamega, Kisumu, Laikipia, Mandera, Marsabit, Nakuru, Narok, Nyandarua, Samburu, Taita Taveta, Trans-Nzoia, Uasin- Gishu, Vihiga, and Wajir, as contained in Volume 2 of the Report, laid on the Table of the Senate on Thursday, 2nd December, 2021.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Next Order.

STATEMENTS

CYBERCRIMES AND DATA INSECURITY IN THE COUNTRY

The Temporary Speaker (Sen. Nyamunga): Sen. Halake is not here. The Statement is deferred.

(Statement deferred)

Next Order.

(The Clerk-at-the-Table consulted with the Temporary Speaker)

The Temporary Speaker (Sen. Nyamunga): We are giving Sen. Halake the last chance. I think this Statement has been deferred more than once. We defer it to the afternoon and see if she will avail herself.

Let us have Sen. Cherargei. He is not in the House nor online. We also defer that one.

INCREASE IN THE COST OF CONSTRUCTION OF THE NAIROBI EXPRESSWAY

(Statement deferred)

The Temporary Speaker (Sen. Nyamunga): Lastly, Sen. Kasanga. She is not in the House nor online.

We defer that Statement to the afternoon.

LACK OF STAKEHOLDERS ENGAGEMENT IN THE DEVELOPMENT OF THE KENYA STANDARDS ON MANAGEMENT OF PERSONS WITH SUBSTANCE ABUSE DISORDERS

(Statement deferred)

The Temporary Speaker (Sen. Nyamunga): The next Order is No. 16.

Hon. Members, for the purpose of records, we want to re-arrange the Order Paper. We have Order Nos. 8, 9 and 10, which are Divisions. We cannot do them now. We also have Order Nos. 11, 12 and 13, which are Committee of the Whole. I do not know see Sen. Olekina for the two Order Nos. 14 and 15.

We are therefore ready to proceed with Order No. 16.

Let us have Sen. Seneta.

MOTIONADOPTION OF SPECIAL AUDIT REPORT ON
UTILISATION OF COVID-19 FUNDS

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Seneta.

(Interruption of debate on the Motion)

POINT OF ORDERDETENTION OF SEN. OMOGENI AT JKIA BY
IMMIGRATION OFFICERS

Sen. Omogeni: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Omogeni.

Sen. Omogeni: Madam Temporary Speaker, I rise on a point of order on a matter that was raised before on the Floor of the House, which touches on the treatment of Senators.

Madam Temporary Speaker, last week I left the country with the permission of the Speaker and the Clerk to attend to official parliamentary business. On my exit at the airport, the immigration officials raised an issue that there is a 'red list' of Senators who are not supposed to travel out of the country. After a lengthy explanation, I was eventually allowed to leave.

However, yesterday on my way back to the country - I am raising this issue because it was raised on the Floor and the Speaker promised to take it up with the concerned authorities within the Government - when I reached at the immigration desk, my passport was confiscated by an immigration officer. I took her name; she is called, Hellen Makokha.

She gave an explanation that she was confiscating my passport because allegedly I left the country whereas there is a 'red list' alert from the immigration officials that Senators should not be allowed to travel outside the country unless there is authority from the Head of Immigration.

I was kept in a room for close to 45 minutes as this lady was making frantic consultations, allegedly with some higher authorities. Having arrived at 10.00 p.m., I did not leave the airport until 10.45 p.m. That is when I was released.

This was happening in the view of many Kenyans who were traveling with me. They saw me being detained. Many of them were sending me text messages wondering whether I had committed any offence warranting my detention.

The Temporary Speaker (Sen. Nyamunga): Sorry, Sen. Omogeni. Sen. (Dr.) Ochillo-Ayacko, what is your point of intervention?

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, I do not mean to interrupt Senior Counsel who is my friend. Each time that I try to queue to say something, this thing automatically goes on. I wanted to speak after him.

I wanted to alert you that my gadget appears to be defective so that when you see it on, you do not rule me out of order. Sorry for the interruption, Senior Counsel.

The Temporary Speaker (Sen. Nyamunga): Sen. Omogeni, please continue.

Sen. Omogeni: Madam Temporary Speaker, this immigration officer, Ms. Hellen Makokha---

The Temporary Speaker (Sen. Nyamunga): I can see another intervention by Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: No, please.

The Temporary Speaker (Sen. Nyamunga): It is okay. Please continue.

Sen. Omogeni: Madam Temporary Speaker, I was treated in the most undignified manner possible. A lawyer who was traveling with me on that plane sought to know whether I needed some legal assistance. He wanted to know whether I had committed a crime that warranted my being detained at the airport. It was the most undignified treatment that I have ever faced as a Senator.

Madam Temporary Speaker, the question I am posing is; do we get permission to represent the Senate on official engagements out of the country-through the permission of the Speaker or we should be getting this authority from another entity out there? That is something that we need to sort out. The Speaker made a promise that he was going to take up this matter with the relevant Government Ministries, but it seems that this matter has not been settled.

You can imagine somebody who has been out of the country for ten days; all they want to do, is get home. When I arrived at the airport, I rang my wife and told her that I wanted *ugali* and *chisaga* on the table but I was then kept at the airport for more than two hours without any justifiable reason whatsoever.

In legal terms, that amounts to false detention. I was falsely detained at the airport for no good reason and you can imagine how heavy my diary is. I was supposed to arrive yesterday, eat my *ugali* and then get to other things. Today, I was supposed to be in Nyamira County organizing for *Baba's* rally tomorrow. However, I have been forced to stay here because I wanted to raise this matter before the House.

Madam Temporary Speaker, this is not the kind of treatment that should be meted on Senators. We do not just leave this country unless we have followed all the channels. In this case, I was in possession of a letter that was issued to me by the Speaker and the Clerk. I was properly out of the country. I want to know whether the Speaker took up this matter with the relevant Government authorities as he promised.

Secondly, we want an assurance as Senators that we will not be subjected to this undignified treatment that I was subjected to yesterday at the airport. I also want to know whether I was singled out for mistreatment because I traveled with my colleague, Sen. Madzayo. I would like to know if he was subjected to the same treatment or I was singled out as Senator for Nyamira County by the lady called Ms. Hellen Makokha.

I hope this matter will be referred to the relevant Committee to summon that lady to appear before this House and explain why that treatment was meted on me. I am not just any other person; I am the Chairperson of the Committee on Justice Legal Affairs and Human rights. I am a Senior Counsel in this country.

That treatment was unwarranted and because of it, I suffered terrible loss of expectation on the way I had planned to go home, a happy person. I went home a very sad person. I want some action to be taken. From the bottom of my heart, I do not want that kind of treatment to be meted out on any other Senator. This matter should be addressed. We should get answers that settle this matter once and for all.

I thank you.

The Temporary Speaker (Sen. Nyamunga): proceed, Sen. Madzayo.

Sen. Madzayo: Asante sana Bi. Spika wa Muda. Ningependa---

The Temporary Speaker (Sen. Nyamunga): You are on intervention. The comments you make should be on intervention. I can also see requests. I do not know if you want to make comments or there is a specific intervention.

Sen. Madzayo: Yes, I want to make that intervention

The Temporary Speaker (Sen. Nyamunga): You have pressed the wrong button. I will give you an opportunity to make your contributions to this matter later. Sen. (Dr.) Musuruve, I can see you are also on intervention.

Sen. (Dr.) Musuruve: Madam Temporary Speaker. I tried to put the microphone on so that I can give my comments on Sen. Omogenis' Statement. There is a problem with my microphone. Would you allow me to make my intervention?

The Temporary Speaker (Sen. Nyamunga): Is that why you put the intervention?

Sen. (Dr.) Musuruve: Yes, because the other button does not work on my port.

The Temporary Speaker (Sen. Nyamunga): Go ahead and make your comments. Sen. Madzayo, I will give you an opportunity.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, allow me to say sorry---

The Temporary Speaker (Sen. Nyamunga): Please make your comments brief.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, allow me to sympathize with Sen. Omogeni for that unwarranted treatment. It is very painful for a leader in this country to be treated in such a manner. If leaders can be treated in such a manner, what about the common people that we lead? Ms. Hellen Makokha did an act that was not noble to our colleague.

I interacted with the Director of Immigration and his thoughts about leaders are very different. He has a positive attitude and he gives his ear. There is need to investigate officers under him. Are they trained on how to treat honorable leaders?

If the third in command, our Speaker, who we really respect, has given authority to Sen. Omogeni to be out of the country on legislative matters and international issues is treated in such a humiliating matter, it is a sorrowful and unwarranted situation which should not happen to any one of the leaders of this country.

Kenya is an international state party. Our country participates in many state parties. Globally, we are ranked as one of the countries that honor and ratify international laws. We have enshrined some of the international laws within our Constitution. The act by Ms. Hellen Makokha is very bad. There is need for the team to appear before the Senate and show cause why they treated our Senator in a very humiliating manner.

He has said rightfully that he was supposed to be in his county preparing for the *Azimio la Umoja* meeting but all his plans have been brought down. I am sorry for what happened. We must take action.

Madam Temporary Speaker, when this Statement goes to the appropriate committee, let us ensure justice is done. There are times when you go to the airport and you are treated in a very humiliating way even though you are a leader. It leaves me wondering, if leaders are treated in such humiliating ways, what about those that we represent? There is need for communication skills to be taught to public servants who serve leaders and everyone else in this country.

I thank you and support this Statement. We must take action.

The Temporary Speaker (Sen. Nyamunga): Proceed Sen. Madzayo.

Sen. Madzayo: Asante sana, Bi. Spika wa Muda. Ningependa kujiunga na hio Kauli ya Nidhamu ambayo imeletwa na ndugu yetu Sen. Omogeni. Jambo la kwanza, nilikua katika hio safari ya kuenda ulaya na Sen. Omogeni. Utaona ya kwamba kutoka nchini kulikumbwa na maswali kwa kuwa hakukuwa na ruhusa ya kutoka nchini kwa kuwa kuna barua kutoka Serikali. Niliwauliza wanionyeshe barua hiyo ambayo inazuia mmbunge kufanya kazi yake.

Tukitoka hapa, sisi huwa na idhini ya Bunge hili. Ikiwa barua ile imeandikwa na wewe mwenyewe kama Spika na umeandika kuwa huyu Seneta ameenda safari ya kikazi lakini tunaona kama barua hiyo imepuuzwa na kuna nyingine imekuja na kuzimisha uwezo ya Spika wa bunge hili. Tukitoka hapa hatutoki kama wakora. Tunatoka kama viongozi ambao wanafanya kazi ya Serikali na kazi ya bunge hili ambavyo inatakikana kufanywa.

Kurudi kwangu ilikuwa juzi na mimi pia nilizuiliwa katika uwanja wa ndege. Ni jambo la kusikitisha ya kwamba kiongozi anatoka safarini na kuambiwa asonge kando kwa sababu mambo yake yanaangaliwa. Nilikuwa hakimu katika mahakama Kuu ya Kenya, sijawai fanya kosa wala kupelekwa katika kituo cha polisi hata siku moja. Sijawahi kufanya kitu ambacho kinaweza kunifanya mimi kuchunguzwa katika mambo ya ufisadi au jambo lolote lile. Nilikua na tashwishi sana.

Bi Spika wa Muda, ni jambo la aibu kuona abiria wengine wanatoka ilhali kiongozi anawekwa kando na kukabiliwa na maswali asiyo yaelewa. Maswali kama mbona alitoka nje ya nchi, amerudi kutoka wapi, alitoka vipi na aliingia vipi. Ni jambo la kusikitisha na halina heshima.

Kwa kukosewa heshima hivi na Serikali, tungetaka kujua kama Bunge, tukiongozwa na Kiongozi wa walio wengi, Sen. Poghisio, aliyepeana hiyo idhini ni nani? Tunamtaka aliyepeana hiyo idhini ya kuzuiliwa kwa Maseneta kutosafiri nje, aje mbele ya hili Bunge atueleze ni nani aliyempa hayo madaraka.

Ni jambo la kusikitisha Bi. Spika wa Muda familia au watu wanakungoja nje unaporudi na huku unachakurwa na askari wakichunguza kwa nini ulitoka, kwa nini unarudi na sababu ya kuenda nje. Jambo hili lafaa tulichukulie hatua.

Bi. Spika wa Muda, naomba ulipeleke jambo hili kwenye kamati husika hata ikiwezekana Kamati ya Sheria iwe mojawapo itakayohusika katika uchunguzi huu, ili tuweze kujua na kulifikisha mwisho lisitendeke tena.

Asante.

Sen. Faki: Asante Bi. Spika wa Muda, kwa kunipa fursa hii kuchangia mjadala wa Hoja ya Nidhamu ilioletwa mbele yetu na wakili mkuu, Sen. Omogeni.

Bunge ni taasisi huru. Tunachukua mamlaka yetu kutoka kwa Katiba. Hatuna jukumu la kuripoti kwa taasisi nyingine yeyote katika Jamhuri ya Kenya. Inasikitisha kwamba wabunge wanazuiliwa na maafisa wadogo katika idara ya Uhamiaji wakati wanaposafiri nje kuenda shughuli za Bunge.

Ziara ya Sen. Omogeni na wenzake ilikuwa ziara rasmi iliyoidhinishwa na Spika wa Bunge hili. Fedha zililipwa na Bunge hili kuwawezesha wao kusafiri kuenda nchi waliyohitajika kusafiri. Ni aibu kumlazimisha Sen. Omogeni kukaa uwanjani wa ndege kwa muda wa dakika 45 huku afisa akiulizia juu ya hatma yake.

Sen. Omogeni amezungumzia kuhusu orodha ya

Wabunge wa Seneti ambao iko na Ofisi ya Uhamiaji. Inafaa tujue wazi orodha hiyo imeandikwa na nani, na mbona orodha hiyo imepelekwa huko na wala kutoileta hapa Bunge la Seneti ili tujue wasioruhusiwa kusafiri nje ni akina nani na sababu ya kisheria inayotakikana.

Bi. Spika wa Muda, wiki tatu nyuma, swala hili lilipozungumziwa, tulipitisha kwamba Spika awasiliane na Wizara husika na kwamba sisi kama Maseneta tunaweza kuchukua ruhusa kwa Spika pekee yake. Hatuna jukumu la kuchukua ruhusa kwa taasisi nyingine yeyote.

Jambo hili ni la muhimu kwa sababu wengine wetu tunaazima ya kusafiri karibuni. Hatungependa kupotezewa wakati ama kuzuiliwa uwanjani wa ndege ilhali mambo yanaweza kuzungumzwa au mhusika kujieleza katika Bunge ili jambo kama hili lisirudiwe.

Asante.

Sen. Seneta: Thank you, Madam Speaker. I wish to sympathize with Sen. Omogeni and the team who were held at the airport for four hours. Parliament---

The Temporary Speaker (Sen. Nyamunga): I think it was 45 minutes.

Sen. Seneta: Madam Temporary Speaker, Parliament is an independent institution. Who has given the Ministry authority to plan for Parliament on who to travel, where to travel to and when to travel?

Parliament has its own calendar, activities, and budget. From the Floor of this House, I cannot tell where the Ministry, and for that matter the Immigration Department at the airport, is coming in, in terms of investigating the Members that are travelling.

Madam Temporary Speaker, you should give this House an answer right now and today on why we should be subjected to such kind of treatment. The Speaker has also taken long.

This is an electioneering year. If a Member has a delegation to receive him or her at the airport and then you are detained, they can easily say the issue is related to the Independent Electoral and Boundaries Commission (IEBC) or the political parties.

We are at a time where everyone is campaigning. Our opponents can take advantage of the situation and claim he was detained at the airport because of some funny behavior. It is high time that the Speaker brought this issue to an end.

Thank you.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Temporary Speaker. This kind of violation of the law and the rights of an hon. Member should attract very serious outrage.

Many people think that travelling is a privilege. In fact, as a Senator, that is just your duty. The first and foremost important thing is that you are a citizen and you are free to go anywhere. The reason we seek permission from the Speaker to travel is that we are travelling for duty.

We do not need anyone's permission to travel. I can decide to travel to Uganda today even outside duty. Nobody should think that I am a permanent Senator and stop me. How did these people think that, other than getting permission, Sen. Omogeni could not travel as a Senator or as himself?

We can travel. You can go to any place if you have a visa and have paid for the ticket. Must anyone give you permission to travel? We are only authorized by the Speaker to travel because we are expending public money and going for duty.

There is need to make the Executive understand that traveling is a right of those who can meet the expense. You only get permission if you are expending public money and if you are on duty. That aside, since when did Parliament seek authorization from the Executive to carry out its responsibilities?

This is something we must handle as a House. I believe the first responsibility of every person and institution is to defend itself. Parliament is under attack from whomever. I do not think it is that lady whom I cannot remember the name. That lady has no capacity to harass or intimidate anybody.

There must be some faceless character who wants to portray the majority side as violators of law. That person must be dealt with. I do not think that the President or any responsible person can issue directives to curtail the free movement of Members of Parliament, in their private or official capacity.

As an institution, I urge the Committee to which it will be referred, to move with alacrity and speed and ensure that the dignity and privilege we have as Members of this House, and the right we have as individuals, is defended.

In fact, since I border Tanzania, I intend to walk through Isibania tomorrow because I will be there. I will try to find out who will require a letter to walk into Tanzania. I also border Uganda. I will use a boat to Uganda, using a small letter and will see who will stop me from going to Uganda. I can go there as a private citizen. I even have friends, relatives and fans to pursue across the border.

We cannot have this ridiculous arrangement that we have to explain what we do privately and also seek permission from people who are not our employers, to go out of the country for what we are entitled to do officially. I urge the Committee involved to move with speed and deal with this matter.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Halake, proceed.

Sen. Halake: Thank you, Madam Temporary Speaker. I rise to sympathise with my colleague, Senior Counsel, Sen. Omogeni. I also want to reiterate that freedom of movement, as you know, is guaranteed in Article 39 of our Constitution; that freedom of movement for residents is guaranteed for every citizen, not just for leaders alone.

I think the treatment at our airports is quite demeaning and undignified when I see quite a number of people that have actually gone through done that. When a leader in this country that you know will not run away, who has been on Government official duties is subjected to that, I shudder to imagine what happens to the citizens that we represent.

The Article is very clear that every person has the right to freedom of movement; to enter, remain and reside anywhere in Kenya, and leave. Again, this is violation of the law by state officers. If state officers are violating the laws that they should be upholding, I wonder then what kind of lawlessness this country is going to preside over. As leaders, we have the obligation to ensure that the rule of law is ensured and the dignity of our citizens; both our leaders and also our citizens is upheld. I hope this is dealt with properly and that these issues are arrested before they get out of hand and we become a lawless country.

Madam Temporary Speaker, most leaders and Senators here have international obligations. We are global citizens as well, who have responsibilities and sit on boards outside of this country. In a few days, I will be required to go and represent a sector

somewhere else. It is not Government business, but an obligation for myself as a global citizen.

I would hate to think that because I am a Government official or because I work in Parliament, I am not going to be allowed to dispense my international duties from the day after tomorrow. This needs to be looked at, so that we are not caged just because we are leaders in this country.

I support and look forward to this being resolved.

The Temporary Speaker (Sen. Nyamunga): Sen. Boy, proceed.

Sen. Boy: Asante sana Bi. Spika wa Muda, kwa kunipa fursa hii niweze pia kuchangia kuhusu shida hii ambayo imewatokea wenzetu, Sen. Madzayo na Sen. Omogeni.

Bi. Spika wa Muda, kusema ukweli pia mimi imenifika. Mwezi jana nilikuwa nasafiri na familia yangu kwenda Tanzania. Nilipofika mpaka wa Kenya na Tanzania pale Lunga Lunga na Horohoro, niliwekwa pale *for almost one hour*, huku *passport* yangu ikiwa imechukuliwa na nikaambiwa nisubiri kidogo afisa amepigiwa simu anakuja. Sikujua ni kwa sababu gani.

Alipokuja nikashangaa na kujiuliza kulikuwa na shida gani. Aliniambia niende kwa ofisi. Nikaingia kwa ofisi yake na akaniambia ya kwamba anasikitika kwamba sitoweza kuruhusiwa kwenda safari yangu kwa sababu wamepata mwelekeo kwamba Maseneta hawawezi kuruhusiwa kusafiri kwa ule mda.

Sasa nikajiuliza, kwani kuna shida gani? Sisi ni Wabunge na Maseneta ambao tuna uwezo wa kwenda safari wakati wowote kuwakilisha Serikali na pia kama ni safari ya karibu katika nchi zetu za Afrika hapa tunaweza kwenda. Hii tabia ambayo iliyoko, ni lazima tuweze kujua shida hii itatua namna gani.

Juzi ilikuwa ni mimi; nilikuwa nafikiria ni mimi peke yangu, lakini leo imewafikia Maseneta wenzetu, Sen. Madzayo na Sen. Omogeni. Kesho itakuwa Maseneta wengine na Wabunge wengine.

Kwa hivyo naomba, kama ni Kamati katika Seneti au kamati yoyote ambayo itashughulikia hili jambo, ifuatilie hili jambo ili tuweze kupewa njia mwelekeo ya kufuata. Hii ni kwa sababu kesho, nitasafiri na watoto wangu tena na nikifika naweza rudishwa tena.

Hata saa hii nataka kusafiri kwenda Tanzania kwa sababu mpaka wa Lungalunga ni jirani kabisa. Naogopa kwenda kwa sababu nikifika, naweza kurudishwa tena bila sababu yoyote. Naomba hili jambo lishughulikiwe kwa haraka sana.

Asante.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator.

Sen. (Dr.) Ali, proceed.

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. I am surprised and shocked at what is going on. Whenever I travel out of the country and come back, we follow the process. There are a lot of the processes which happen; fingerprints, camera and what not. Most of the time I enquire what it is that they have to do every time.

We now have everything computerized. Why should you be told to put your fingerprints every time? You are told: "Put your right finger, left finger, thumb and so on." I used to question that and I thought it might be something particularly meant for my ilk.

However, telling Members of the Senate that they cannot travel and they have to be restricted for no particular reason is a very sad affair. This is something that the Senate leadership and the Speaker in particular, should tell us why.

We were surprised before that whenever you want to travel, then the Clerk of the Senate has to write to Ministry of Foreign Affairs and so on. There were already unnecessary and too many procedures even before.

Now, with that in place, if still Senators cannot travel to countries like Uganda, Tanzania or Rwanda, where in some places you do not even need a passport - you just travel with identity cards - then something has to be done.

I possibly survived because most of the time I do not use my diplomatic passport. I just use the normal passport and do not introduce myself. I just go as a normal citizen. However, if you introduce yourself as a Senator and you are still harassed, then I do not know what will happen to the others.

The Committee and the Leadership, especially on the Majority side and the Minority side, and the Speaker, should act on this and give us answers immediately. If the Deputy Minority Leader can be harassed at the airport what will happen to the others? If the Chairman, Senior Counsel, can be harassed what will happen to the other Senators who are not known? This is very sad and we need action and results as soon as possible, probably in the next two weeks.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Kavindu Muthama, Senator for Machakos County, proceed.

Sen. Kavindu Muthama: Thank you, Madam Temporary Speaker, for this opportunity to join my fellow Senators to speak on this issue of travelling. It is good to report that you are travelling. However, in case of an emergency or you need to travel and you are not on duty, and it is just nearby, I do not see why one cannot travel even if it is far.

Sometimes, you may have an emergency which requires you to travel immediately, and there may be no much time to communicate. Mobile telephones fail sometimes and the person you are supposed to communicate with to give you the permission is out of reach. Does that mean that you stop what you have to do?

We also have children and relatives far. Sometimes they can be sick and they need your attention and intervention immediately. If you have to seek for permission to travel, that becomes an issue.

I am not saying it is not wrong to report. It is good to report because we are here. However, in case of an emergency, there has to be an opening for one to travel without facing any problem. This should be looked into.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator.

Finally, Sen. Poghio, you may have the Floor.

The Senate Majority Leader (Sen. Poghio): Thank you, Madam Temporary Speaker. From the onset, I agree with Members. I was hoping that Sen. Omogeni would be here but he is not.

If something is wrong, it is systemically wrong and all we have to say is sorry. I do not hold brief for the Speaker but it is wrong for anybody to unnecessarily detain any citizen, who is not committing any crime or one who is profiled not to travel.

In this case, we are dealing with a situation which is organically and systematically wrong; that a senior Member of the Senate, in this case, the Chairperson of the Justice, Legal Affairs and Human Rights Committee is detained for any reason at all. It is wrong. I hope that the Committee that will deal with this matter, finds it that we cannot have a situation like that happening.

We condemn that act. May I tell the people who did this to our senior counsel and the Senate Deputy Minority Leader, that it is very wrong. I appreciate the fact that they brought this matter now. I hope the Chair will rule that this is wrong.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, this is a very serious matter. It is not the first time this matter is coming to the Floor of this House. For that matter, I want to give a directive.

Hon. Senators, the issues raised by Sen. Omogeni, and canvassed by Sen. (Dr.) Musuruve, Sen. Madzayo, Sen. Faki, Sen. (Dr.) Ochillo-Ayacko, Sen. Halake, Sen. Boy, Sen. Seneta, Sen. (Dr.) Ali, Sen. Kavindu Muthama and Sen. Poghisio are weighty. They also touch on the dignity of hon. Members and the independence of Parliament and the Senate in particular.

Therefore, I direct the Standing Committee on National Security, Defense and Foreign Relations, to investigate this and other previous incidences involving Senate delegations travelling out of the country. In particular, the Committee should summon the Cabinet Secretary for the Ministry of Interior and Coordination of National Government among others.

The Committee should also find out:

(1) whether there is a Government ban on Senate delegations from traveling out of the country;

(2) who gave directions to that effect? Investigate the officers who are stopping Senate delegations from travelling out of the country; and,

(3) why the Executive is encroaching and interfering with the independence of another arm of Government, in particular, the Senate.

The Committee should treat this matter urgently and table its report by next week on Wednesday, 9th March, 2022. That should be able to take care of that matter.

(Applause)

(Resumption of debate on Statements)

STATEMENTS

The Temporary Speaker (Sen. Nyamunga): We are back to Statements. I give this opportunity to Sen. Halake to make her Statement.

CYBERCRIMES AND DATA INSECURITY IN THE COUNTRY

Sen. Halake: Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order No.47(1), to make a Statement on an issue of general topical concern namely; Cyber Crime and Data Insecurity in our country at this time of elections.

There is a sharp rise in cases of cyber attacks in the country. This is a phenomenon that is increasingly becoming a major threat to businesses, organisations, individuals and Government institutions.

In June last year, many Kenyans were shocked to learn that they had been listed as members of political parties without their consent. This is really disturbing, given the fact that we are on the eve of the General Elections of 2022. How the political parties gained access to people's details is a mystery. It also raises great concerns that the data could be used for malicious and ulterior purposes as well.

This raises many questions concerning the integrity of databases that we hold in different places. This includes even the Office of the Registrar of Political Parties, while making Kenyans anxious, regarding the upcoming elections, following this unlawful registration in different political parties.

This is not the first time that Kenyans are complaining about their data being accessed unlawfully. In 2017, just five months to elections, Kenyans complained about what they referred to as fraudulent acquisition of information for registration purposes. We are seeing a repeat of the same breach of data.

Information and Communication Technology (ICT) are increasing prevalent in electoral management and democratic processes. Cyber security is currently one of the greatest electoral challenges being faced globally. This is especially in a country where the institutions looking at this are quite in their infancy. This House needs to take charge and ensure cyber security.

Madam Temporary Speaker, currently, a broad range of actors, including electoral management bodies, cyber security expert bodies and security agencies should be aware of the latest cyber threats and how best to protect citizens. Inter-agency collaboration is essential for defending elections against digital threats. Therefore, there is need to invest in protecting elections from cyber threats, through an inter-agency collaborative effort.

Digital access also exposes our children to a host of risks. This goes beyond just elections. We are not saying this because we are politicians and we need to protect ourselves but this affects our children as well. They are exposed to harmful content, sexual exploitation and abuse, as well as cyber bullying and misuse of private information. This is as much as it also exposes them to a wealth of benefits and opportunities especially through *e*-learning. We need to be alive to the new realities brought about by crimes committed against children in the cyber space as well, even as we look at the electoral malpractices and processes.

Last year, the Communications Authority of Kenya (CAK) released a quarterly sector statistics report, covering July to September, 2020. According to the report, there was an increase in child online abuse and fraud. Additionally, enterprises such as Savings and Credit Cooperatives Societies (SACCOS), banks, financial services, betting firms and even Government institutions, have been targeted in the general increase of cyber related attacks over the last few years.

Our Constitution recognizes the right to privacy, including the right not have a citizen's personal information in relation to their family or private affairs unnecessarily acquired, revealed or used.

Data protection is also regulated by the Data Protection Act No.24 of 2019. Establishment of the data protection laws aim at protecting individual's rights and privacy to personal information. Accessing, using or processing one's personal

information without authorization is an offence under the Act. It is an infringement of the privacy rights and there is need to protect these rights.

Moreover, the Computer Misuse and Cybercrimes Act of 2018 seeks to detect, prohibit, prevent, respond to, investigate and prosecute computer and cyber crimes. The question that begs is; what are these agencies doing because lawlessness and insecurity of our data is at unprecedented levels especially during this electioneering period? The country needs new strategies to mitigate threats to its cyberspace and come up with more adequate cyber security measures in key sectors.

Madam Temporary Speaker, in view of the above and because of the importance of this matter, perhaps you may also allow us to go into the depth of this, that it be looked into because we need to make sure that even if it is a matter of risk mitigation or taking this opportune time to ensure that we do not see a situation where good leaders are locked out of elections because of cyber security and bad leaders are using these kinds of unprecedented and unlawful methods through the cyber security to advance terrible breakage of the law.

I thank you, Madam Temporary Speaker, for allowing me to present this. I pray that the committee will look into this issue because it is becoming prevalent. From where I sit as the chairperson for the Centre for Multiparty Democracy (CMD-Kenya), cyber security is a threat to our democracy.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Musuruve, do you want to make a comment on that Statement?

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this opportunity. I wish to congratulate Sen. Halake for coming up with this Statement on the Floor of this House. It has come at the right time.

Sometimes when you log in to find out which party you belong to by dialling *509#, you may find that you are in a different party, sometimes even a party that you have never ascribed to. For instance, the day before yesterday when I was checking my details, I was shocked that I belonged to a different party. When I logged in again to find out which party I belonged to, the response was that I belong to no party at all.

This is a serious issue because if you have been a solid member of a party, you pay party fees and do your duties loyally but, eventually, you are told that you are not a member of that party. That is a serious issue that needs to be addressed especially at a time like this.

Madam Temporary Speaker, the Independent Electoral and Boundaries Commission (IEBC) should also be clear and tell Kenyans how solid members found themselves in other parties. They should come on board and answer that.

There is also need for the IEBC to listen to cases. For instance, if a leader has been a solid member of a certain party and they have evidence of what they have been doing but they are said to be members of another party at a time like this, then the IEBC should listen to such cases and put members in their right spaces.

I agree with Sen. Halake that cyberbullying is real even for our children because they have access to cyber cafes. Their minds are still young but they are getting polluted by some information from the media.

As a teacher by profession, I can tell you that media has very bad addiction to children. They are exposed to cyberbullying because of the nature of studies nowadays where they have to use laptops and the internet. You cannot control what your children

are viewing. Sometimes children are shown how to smoke, drink and wife battering. Since they are young, they might think that is the right thing to do.

There is need for the agency to come out strongly. The Ministry of ICT, Innovation and Youth Affairs should also explain to Kenyans what they are doing to ensure that our children and leaders are not affected by cyberbullying.

I am still wondering how they got my documents and details. There is need for personal data protection. A framework needs to be put in place to ensure that people's data are secure and are not used badly. In the same breath, people can use your details to acquire a loan from a bank or take your property and all that.

There is need for this country to put the right measures in place. They should investigate in depth whether the information that is given about members using the internet is rightfully from the members or not.

I hope that when this Statement goes to the right committee, this matter will be investigated so as to ensure that Kenyans are free to use the cyber and their information will not be used against them.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya, please proceed.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity. I also wish to thank Sen. Halake for bringing this issue to the attention of this House.

On 25th February, 2022, I checked my party status and found that I am in People's Trust Party. It had been changed on 22nd February. Before that, I belonged to the Jubilee Party. How do you explain that? I had to remove myself from that party for me to attend the National Delegates Conference (NDC). It is sad that some of these things are happening in this country.

Who even monitors online borrowing? Online borrowing is on the rise and Kenyans are being fleeced. When you are told the interest rate is 10 per cent per month, you assume its per annum. Later on, you come to realise that you are being charged 10 per cent every month. Who takes care of Kenyans interest in such issues?

At this rate, do we even know whether voter registers are safe? If somebody can change my party on 22nd February, should we even trust such a party that can do shady things like deregistering somebody from their own party to another party four days before the NDC? What is that?

Even the land registers are now in digital form. Are we sure that our title deeds are safe?

When the committee investigates this matter, those are some of the issues they should also include. That is about digital safety of our land titles in the Ministry of Lands. If somebody can change the Government data without your permission, what else can they not do online without your permission?

Technology is progressive.

It has changed the world order in terms of how things are done and made things easier. People are able to go online, log in and participate in the discussions of this House and that is progressive. Who is protecting us against the bad effects of online fraud and crime? Our children are no longer safe.

Sometimes a pornographic site just pops up and yet you have never opened it in your life. Who allows such a thing to happen? There are a lot of things that we need to

look at in terms of progressive things and the harmful part of which the impact is so hard that you struggle for so many years in court to recover from the impact of online platform.

Madam Deputy Speaker, the Committee that will deal with this Statement needs to go far and wide in terms of how these things can be done in order to protect Kenyans.

Thank you, so much.

Sen. Kavindu Muthama: Thank you Madam Temporary Speaker for this opportunity and I want to congratulate Sen. Halake for this Statement.

There is a lot of cyber crime and there is no protection for one's privacy. Many of the people are just taking your data and putting it wherever they want. You will find your pictures are being picked from wherever they are and being sent somewhere else. You even find someone taking your picture and joining it with somebody else picture, and yet you were not even together at any given time and they are posted somewhere.

There is a lot of bullying in this cyber crime and especially for politicians. You will find people abusing others through social media. It is also exposing our children.

What my fellow Senators have said is true that people are being changed from their parties to different parties and you wonder how they get all the data and transfer the people, especially, now that we are going for nominations and if you are not registered in your party you will not be able to participate in that process. People are shortchanging other by transferring them from their parties to other parties.

Madam Temporary Speaker, I recommend this and say that the Committee which will look into this must do something very fast especially, now that the nominations are just around the corner in April. If this continues, some people will lose their elections because they have no people to vote for them in their parties because they have been transferred illegally by other people.

As we deal with the cyber crime, those people who are spreading hate speech through cyber should be dealt with mercilessly and should be punished so that this comes to an end.

Thank you and I support.

Sen. Seneta: Madam Temporary Speaker, I want to congratulate Sen. Halake for having thought of this important Statement. Cyber-crime and data insecurity in the country is rising. Data and privacy is a constitutional right of everyone. This technology is exposing even the social being of the citizens.

I hope you direct this Statement to the Committee of National Security, Defence and Foreign Relations and the Committee of Information, Communication and Technology. The committees should tell us the role that the institutions concerned play in terms of the implementation of two important Bills.

We passed the Data Protection Bill and also another Bill that this House has passed on Computer Misuse and Cyber Crime Act 2018 and it was gazetted. Why was it not implemented? Why are we not implementing these very important Bills that we passed and Parliament? These Bills are passed to protect the misuse of technology not only on the leadership and governance but also on our children. Our young children are exposed to information that they are not supposed to access.

In terms of security, our data is not protected. This Committee should look at the implementation of these two important Bills and give an assurance to the House that our data is safe.

Recently, Members have been subjected to a lot of torture, where your information or data is moved from one party to another without your permission. So, we have been asking ourselves who gives this data to these mushrooming parties to register you without your permission. It is high time that this House and especially the Committee to assure Kenyans of their privacy in terms of the use of technology.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senators. Next Order. We will defer Orders No. 8, 9 and 10.

BILL

Second Reading

THE LANDLORD AND TENANT BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2021)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILL NO 37 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE LIFESTYLE AUDIT BILL
(SENATE BILLS NO. 36 OF 2021)

(Committee of the Whole deferred)

The Temporary Speaker (Sen. Nyamunga): Hon. Members, we are now going to the Committee of the Whole to consider the following Bills: The Law of Succession (Amendment) Bill (Senate Bills No,15 of 2021), The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No.21 of 2021) and The Special Needs Bill (Senate Bills No.44 of 2021)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. Nyamunga) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Nyamunga) in the Chair]

THE LAW OF SUCCESSION (AMENDMENT) BILL,
(SENATE BILLS NO. 15 OF 2021)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we are ready for the Committee of the Whole. The first one is the Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021).

Clause 2

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause –

- Amendment of section 3 of Cap 160. **2.** Section 3 of the Law of Succession Act, hereinafter referred to as the “principal Act”, is amended –
- (a) in subsection (1) by inserting the following new definitions in their proper alphabetical sequence –
 - “child” includes an adopted child and a child who is conceived during the lifetime of a deceased person and is subsequently born after the death of the deceased person;
 - “intermeddling” means –
 - (a) taking possession of, disposing off, charging, receiving, distributing, leasing or using property of a deceased without authority under this Act or any other applicable law;
 - (b) ejecting a surviving spouse or child from the matrimonial home; or
 - (c) any unlawful dealing with a deceased person’s estate;
 - “matrimonial home” means any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property;
 - (b) by deleting subsection (2); and
 - (c) by deleting subsection (3).

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 3

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 3.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 4

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause —

Repeal of section 4. The principal Act is amended by repealing section 32. 32 of Cap 160.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end

Clause 5

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 5 and substituting therefor the following new clause —

Repeal of section 5. The principal Act is amended by repealing section 33. 33 of Cap 160.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 6

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 6 of the Bill be amended —

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph —
- (b) by inserting the following new subsections immediately after subsection (1)—

(1A) The interest of the surviving spouse under subsection (1)(b) shall determine upon remarriage.

(1B) Notwithstanding subsection (1), —

- (a) where the surviving child is not a child of the surviving spouse—
 - (i) the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely and a life interest in one-half of the whole residue of the net intestate estate; and
 - (ii) the surviving child shall be entitled to one-half of the whole residue of the net intestate estate which shall be held in accordance with section 41, and if there be more than one child they shall share equally;
- (b) where the surviving children include a child who is not a child of the surviving spouse —
 - (i) the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely;
 - (ii) the net intestate estate shall, in the first instance, be divided equally amongst the surviving spouse and all the surviving children;
 - (iii) the surviving spouse shall have a life interest in his or her share and that of his or her children under subsection (1B)(b)(ii); and
 - (iv) the share of the surviving child who is not a child of the surviving spouse under subsection (1B)(b)(ii) shall be held in accordance with section 41, and if there be more than one child they shall share equally.
- (b) by inserting the following new paragraph immediately after paragraph (b) —
 - (c) by deleting subsection (5) and substituting therefor the following new subsection -
 - (5) Subject to the provisions of sections 41 and 42 and to any appointment or award made under this section, the whole residue of the net intestate estate shall, on the death or re-marriage of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 7

(Question that Clause 7 be part of the Bill, proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 8

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 8 of the Bill be amended by deleting paragraph (a) and substituting

therefor the following new paragraph —

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

(a) father and mother in equal share; or, if either is dead;

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 9

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 9.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

New Clause 8A

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 8 —

Amendment of section 40 of Cap 160. 8A. Section 40 of the principal Act be amended by inserting the following new subsection immediately after subsection (2) —

(3) Notwithstanding subsection (1), where any of the surviving children is not a child of any of the wives of the deceased, that child shall —

(a) be considered a house in determining the share of dependants in the net intestate estate under subsection (1); and

(b) the share of such child shall be held in accordance with section 41, and if there be more than one child they shall share equally.

(New Clause 8A was read a First time)

(Question, that New Clause 8A be read a Second Time, proposed)

(Question that New Clause 8A be part of the Bill proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

The Title and Clause 1

*(Question that the Title and Clause 1 be
part of the Bill, proposed)*

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Hon. Senators, let us now move to the next Bill, the Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)

THE PRESERVATION OF HUMAN DIGNITY AND
PROTECTION OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO. 21 OF 2021)

The Temporary Chairperson (Sen Nyamunga): Hon. Senators, let us now consider the Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)

Clause 3

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 3 of the Bill be amended –

- (a) by deleting paragraph (e); and
- (b) in paragraph (g) by deleting the word “for” appearing at the beginning of the paragraph and substituting therefor the word “the”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 4

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 4 be amended in paragraph (c) by deleting the words “the marginalised” appearing immediately after the words “and in particular” and substituting therefor the word “vulnerable”.

HEADING TO PART II

THAT the Bill be amended by deleting the heading to Part II and substituting therefor the following new heading –

PART II – OBLIGATIONS OF THE NATIONAL AND COUNTY
GOVERNMENTS

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 5

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 5 of the Bill be amended –

(a) in subclause (1) –

(i) by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) put in place measures that target vulnerable persons to ensure the realisation of their economic and social rights and that such persons have access to goods and services that are of acceptable standards;

(ii) by deleting paragraph (g) and substituting therefor the following new paragraph –

(g) create awareness and build capacity of citizens to enable them develop their understanding, skills and capacity for equitable and effective participation in the formulation, implementation and monitoring of policies, strategies or programmes aimed at realising their economic and social rights;

(b) in subclause (2) by –

(i) deleting paragraph (d) and substituting therefor the following new paragraph –

(d) prioritise the allocation of resources to ensure the realisation of economic and social rights while taking into account the special needs of vulnerable persons within the respective counties;

(ii) deleting paragraph (g) and substituting therefor the following new paragraph –

(g) identify factors that impede the realisation of economic and social rights and their causes and institute corrective measures.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 6

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 6 of the Bill be amended –

(a) in subclause (1) by deleting the word “oversee” appearing immediately after the words “The Commission shall” and substituting therefor the words “monitor and report on”; and

in subclause (2) by inserting the words “of governance” immediately after the words “national values and principles”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 7

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 7 of the Bill be amended in subclause (1) –

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

(d) identify factors that impede the economic development of, and access to, essential financial services by vulnerable persons and make recommendations to the Cabinet Secretary on policies and strategies necessary to address those factors;

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

(g) make recommendations to State entities responsible for the delivery of social assistance programmes at the National and county level of government on measures necessary for the effective delivery of the programmes;

(c) by deleting paragraph (h) and substituting therefor the following new paragraph –

(h) in collaboration with relevant stakeholders, create awareness on the realisation of economic and social rights.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 8

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 8 of the Bill be amended –

(a) by deleting subclause (1) and substituting therefor the following new subclause –

(1) In preparing a county integrated development plan provided for under section 108 of the County Governments Act, each county government shall prepare a county strategic plan for the realisation of economic and social rights as a component of the county integrated development plan.

(b) in subclause (2) by deleting paragraph (c) and substituting therefor the following new paragraph –

(c) programmes and policies aimed at social protection and the promotion of economic and social rights of vulnerable persons within the county;

(c) in subclause (3) by –

(i) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) adopt strategies and plans that enhance the availability, accessibility, acceptability and adaptability of goods and services aimed at facilitating the realisation of economic and social rights;

(ii) deleting paragraph (g); and

(iii) deleting paragraph (h) and substituting therefor the following new paragraph –

(h) formulate strategic plans that respond effectively to issues affecting the realisation of economic and social rights within the county and provide such safety nets as may be necessary.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 9

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause –

Objectives of a county strategic plan. 9. The principal objective of a county strategic plan prepared under section 8 shall be to enhance the ability of a county government to secure access, availability, acceptability, adaptability and quality of goods and services necessary for the realisation of economic and social rights.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clauses 10 and 11

*(Question that the Title and Clauses 10 and 11
be part of the Bill, proposed)*

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 12

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 12 and substituting therefor the following new clause –

Approval of 12. (1) The respective county governor shall, within fourteen days of the preparation of a county strategic plan, submit a copy of the plan to the county strategic plans by the county assembly for approval.
county assembly. (2) The county governor shall, upon the approval of the county strategic plan, publish the plan in the respective county gazette and publicise it within the county through such means as provided for under section 95 of the County Governments Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 13 and 14

*(Question that the Title and Clauses 13 and 14
be part of the Bill, proposed)*

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 15

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 15 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause –

(1) A person aggrieved by the decision to implement or refrain from implementing a recommendation under this Part may make an application to court in accordance with Article 22 of the Constitution.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 16

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 16 of the Bill be amended by deleting the expression “20(5)” appearing immediately after the words “right under Article” and substituting therefor the expression “22”.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 17

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 17 and substituting therefor the following new clause –

County Fiscal Strategy Paper to contain measures on social economic rights.

17. The respective county treasury shall include in the County Fiscal Strategy Paper –
(a) measures aimed at ensuring the realisation of economic and social rights and associated activities for that year; and
(b) any progress made in the realisation of economic and social rights.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 18

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting clause 18.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 19

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 19 of the Bill be amended in subclause (1) by inserting the word “annually” immediately after the words “section 13(2), prepare”.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 20

(Question that Clause 20 be part of the Bill, proposed)

The Temporary Chairperson (Sen Nyamunga): Division will be at the end.

Clause 21

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 21 of the Bill be amended by –

- (a) deleting the marginal note and substituting therefor the following new marginal note –
Public awareness framework.
- (b) deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) collaborate with relevant agencies and stakeholders in each county in enhancing the capacity of residents to effectively participate in county affairs aimed at the delivery of goods and services for the realisation of economic and social rights.

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 22

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 22 of the Bill be amended by inserting the following new paragraph

immediately after paragraph (a) –

(aa) in section 126(1) by inserting the words “including for the realisation of economic and social rights” immediately after the words “strategic priorities” in paragraph (a).

Question of the amendment proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 23

(Question that Clause 23 be part of the Bill, proposed)

The Temporary Chairperson (Sen Nyamunga): The Division will be at the end.

Clause 24

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 24.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 25

The Temporary Chairperson (Sen. Nyamunga): Chairperson.
Sen. Omogeni: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 25.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 21A

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following new clause immediately after Clause 21-

Regulations.

21A. (1) The Cabinet Secretary shall, in consultation with the county executive committee members responsible for finance and the Commission and within twelve months from the commencement of this Act, make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations –

(a) to provide a framework for collaboration between the National and county governments, and monitoring by the Commission on the implementation of this Act;

(b) to provide for the procedures for the conduct of public participation under this Act; and

(c) on the conduct of awareness programmes and the publication and dissemination of information under this Act.

(3) For the purposes of Article 94(6) of the Constitution –

(a) the power of the Cabinet Secretary to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and

(b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

(Question of the New Clause 21A proposed)

(New Clause 21A read the First Time)

*(Question, that the New Clause 21A be read a
Second Time proposed)*

*(Question, that the New Clause 21A be part of the
Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 21B

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after the new clause 21A –

Amendment to

No. 17 of 2012.

21B. The County Governments Act is amended in section 107(1) by inserting the following new paragraph immediately after paragraph (d) –

(e) county strategic plans for the realization of economic and social rights under Part IV of the Economic and Social Rights Act.

(Question of the New Clause 21B proposed)

(New Clause 21B read the First Time)

*(Question, that the New Clause 21B be read a
Second Time proposed)*

(Question, that the New Clause 21B be part of the Bill proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Schedule

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT the Schedule to the Bill be amended-

(a) in the introductory clause by inserting the words “the National Government and” immediately after the words “the effort of”;

(b) in paragraph (a) by deleting the words “different levels of government” appearing immediately after the words “to the different” and substituting therefor the words “respective departments, agencies and institutions”;

(c) by deleting paragraph (h) and substituting therefor the following new paragraph –

(h) whether or not it has put in place sufficient social safety nets such as cash transfers to vulnerable persons;

(d) in paragraph (i) by deleting the words “and those in crisis situations” appearing immediately after the words “of the vulnerable” and substituting therefor the words “persons”.

(Question of the amendment Proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 2

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT clause 2 of the Bill be amended –

(a) in the definition of the word “access” by deleting the words “persons in need” appearing immediately after the words “every person including” and substituting therefor the words “vulnerable persons”;

(b) in the definition of the word “Council of County Governors” by deleting the expression “18” appearing immediately after the words “established under section” and substituting therefor the expression “19”;

(c) by inserting the following new definition immediately after the definition of the word “county executive committee member” –

“county integrated development plan” means the five-year plan developed by a county government in accordance with section 108 of the County Governments Act;

(d) by deleting the definition of the word “Equalisation Fund”;

(e) by deleting the definition of the word “subsidy programme”;

(f) by deleting the definition of the word “person in need”;

(g) by deleting the definition of the word “vulnerable persons” and substituting therefor the following new definition –

“vulnerable persons” include children, pregnant and nursing mothers, older members of society, internally displaced persons, persons with disability, the sick, persons with chronic illnesses, victims of conflict, persons living in marginalised areas, and members of marginalised communities or groups provided that such persons or groups are unable to meet their economic and social rights, and such other groups as may be identified by the Cabinet Secretary or the respective county governor from time to time.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Long Title

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT Bill be amended by deleting the Long Title and substituting therefor the following new Long Title –

AN ACT of Parliament to establish a framework for the realisation of economic and social rights; for monitoring and reporting on the realisation of economic and social rights; and for connected purposes.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Short Title

Sen. Omogeni: Madam Temporary Chairperson, I beg to move-

THAT Clause 1 of the Bill be amended by deleting the words “Preservation of Human Dignity and Enforcement of” appearing immediately after the words “be cited as the”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 1

(Question, that Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we move to the Special Needs Education Bill (Senate Bills No.44 of 2021).

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILLS NO.44 OF 2021)

Clause 3-48

(Question, that Clauses 3, 4, 5, 6,7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 be part of the Bill, Proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 2, The Title and Clause 1

(Question, that Clauses 2, the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

THE LAW OF SUCCESSION (AMENDMENT)
BILL, (SENATE BILLS NO. 15 OF 2021)

The Temporary Chairperson (Sen. Nyamunga): The Mover, Sen. Halake, please proceed.

Sen. Halake: Thank you, Madam Temporary Chairperson. Pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report progress on its consideration of the Law of Succession (Amendment) Bill (Senate Bills No.15 of 2021, and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

THE PRESERVATION OF HUMAN DIGNITY AND
PROTECTION OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILLS NO.21 OF 2021)

Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we are reporting progress on The Preservation and Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No.21 of 2021)

Sen. Halake, proceed

Sen. Halake: Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report to the House its consideration of The Preservation and Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No.21 of 2021) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILLS NO.44 OF 2021)

The Temporary Chairperson: We are now reporting progress on The Special Needs Education Bill (Senate Bills No.44 of 2021)

Mover, Senator (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report progress on its consideration of the Special Needs Education Bill (Senate Bills No.44 of 2021) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

The Temporary Speaker (Sen. Nyamunga): Yes, Sen. Omogeni. What is your Point of Order?

Sen. Omogeni: Madam Temporary Speaker, I have some amendments on Order No.9. That is the Intergovernmental Relations (Amendment) Bill (Senate Bills No.37 of 2021).

I have noticed that the Chairperson is not in the House. I request it to be stood to next week.

The Temporary Speaker (Sen. Nyamunga): Yes, I defer it to Tuesday next week.

Sen. Omogeni: Thank you, Madam Temporary Speaker. Tuesday next week is okay.

PROGRESS REPORTED

THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO.15 OF 2021)

The Temporary Speaker (Sen. Nyamunga): We are reporting on The Law of Succession (Amendment) Bill, (Senate Bills No.15 of 2021).

Proceed Sen. Farhiya.

Sen. Farhiya: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Law of Succession (Amendment) Bill, (Senate Bills No.15 of 2021) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Nyamunga): Mover, Sen. Halake.

Sen. Halake: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report.

I ask Sen. Kavindu Muthama to second.

Sen. Kavindu Muthama: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed)

The Temporary Speaker (Sen. Nyamunga): Next report.

THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION OF ECONOMIC
AND SOCIAL RIGHTS BILL (SENATE BILLS NO.21 OF 2021)

The Temporary Speaker (Sen. Nyamunga): Let us have the Chairperson.

Sen. Farhiya: Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No.21 of 2021) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Nyamunga): Mover, please proceed.

Sen. Halake: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report.

I ask Sen. (Dr.) Musuruve to second.

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed)

The Temporary Speaker (Sen. Nyamunga): The final one is The Special Needs Education Bill (Senate Bills No.44 of 2021).

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILLS NO.44 OF 2021)

Sen. Farhiya: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Special Needs Education Bill (Senate Bills No.44 of 2021) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Nyamunga): Let us have the Mover, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report. I request Sen. Farhiya to second.

Sen. Farhiya: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Nyamunga): Let us go to the next Order.

BILL

Second Reading

THE ELECTIONS (AMENDMENT) (NO.2) BILL
(SENATE BILLS NO. 43 OF 2021)

The Temporary Speaker (Sen. Nyamunga): The Bill is deferred because Sen. Olekina is not here.

(Bill deferred)

Let us go to the next Order.

BILL

Second Reading

THE ELECTION CAMPAIGN FINANCING (AMENDMENT)
BILL (SENATE BILLS NO.51 OF 2021)

(Bill deferred)

[The Temporary Speaker (Sen. Nyamunga) left the Chair]

[The Temporary Speaker (Sen. Kinyua) in the Chair]

MOTIONS

ADOPTION OF SPECIAL AUDIT REPORT ON
UTILISATION OF COVID-19 FUNDS

THAT the Senate adopts the Report of the Standing Committee on Health on the special audit report on utilization of COVID-19 funds by twenty eight (28) county governments laid on the Table of the Senate on Wednesday, 9th February, 2022.

(Motion deferred)

RECOGNIZING AND APPRECIATING THE
ELDERLY BY COUNTY GOVERNMENTS

Sen. Nyamunga: Mr. Temporary Speaker. I beg to move:

THAT, AWARE that in 2006, the National Government initiated the Older Persons Cash Transfer (OPCT) Programme, popularly known as Pesa ya Wazee, which is an unconditional cash transfer programme to destitute elderly persons above the age of 65 years to cater for their subsistence needs;

NOTING THAT the beneficiaries receive a monthly stipend of Kshs2,000 delivered every two months through appointed payment agents, and also entitled to medical insurance through the National Health Insurance Fund (NHIF);

CONCERNED HOWEVER THAT the programme's credibility is marred by issues of delayed payments to beneficiaries, difficulties in processing of payments through the stipulated agents and payments to unregistered persons;

NOW THEREFORE, the Senate recommends that the County Governments complement the efforts of the National Government and assist in resolving these challenges by-

- (i) Developing legislation and policies to protect the elderly including ensuring all elderly persons in their counties are registered in the OPCT programme; and
- (ii) Organise value addition mechanisms such as financial training to help the beneficiaries of the programme to efficiently utilize this allowance.

Mr. Temporary Speaker, Sir, this Motion has been off for quite some time and mostly because of matter of technicalities. However, I want to appreciate what the national Government has done so far in making sure that the elderly are taken care of.

When we looked at the statistics, it was very clear that people who are 70 years and above in Kenya are more than 900,000. The statistics shows they are below one million. This means that the Government can easily take care of its elderly. Our population is between 45 and 50 million as per the report we got. I am not very sure of the actual population of Kenya even after the census of 2019. It is still not clear.

Going by that census, the numbers of the elderly or people who are 70 years and above, it is less than a million. That means it is a figure that the Government can easily deal with.

I believe that more than half of the 900,000 elderly people are those who can take care of themselves. Some of them are living on pension, others may be people who invested and are now enjoying their lives at the age of 70 years and above. That means that the number of elderly people who can be classified as destitute is not so much. It could stand at half a million people or less.

Mr. Temporary Speaker, Sir, most of our elderly are going through a very difficult time. Most of them are elderly people are living with their grandchildren whom their children may be dead or alive. You know the type of grandchildren that most of the elderly people have are children from their children whose parents are dead or did not go to school. Some of their children that the elderly people are taking care of are youth who may not be empowered or cannot live on their own. Such children also benefit from the money that their elderly parents or grandparents receive.

Apart from that, most of the elderly live in very pathetic conditions. If they are not living with relatives who are may not be too caring, they are living with their grandchildren who are also eyeing this Kshs2000. I appreciate what the Government has done so far. However, that money is not enough and it comes very late. The funds should be disbursed after every two months. However, they sometimes go for three, four, five or six months without receiving it. When they receive that money after more than the stipulated two months, they still receive Kshs2,000 only. Every time this money is in arrears for three, four, five or six months, it does not achieve the purpose for which the Government intended.

I appreciate what the national Government is doing so far. However, the county governments should now take up that responsibility. First, they should identify the elderly who are not netted by the national Government. What programme can they put in place to supplement or totally take care of those who have not been netted by the national Government?

Mr. Temporary Speaker, Sir, first, it is so clear to me that the health conditions of some of the elderly persons is not very good. I know most of them are struggling with their health. They need a proper medical cover to take care of them. However, some of them even as they struggle with medical conditions, if they have medical cover which is sure that every time they are not well they can go to the hospitals and get the medical attention that they need.

Secondly, some of the elderly are still in good health condition, even as they ail and suffer from some diseases. There are some elderly people who are healthy enough to some extent and they can be supported. I need those people to be identified. The money which is meant for their upkeep should be given to them.

Apart from just giving them the money, they should go through some training. I know of some areas where such people have been assisted to the extent that they are now able to continue with their lives in a normal way because they have utilized that money over a period of time properly and they can now generate income. They will tell you that you have assisted them long enough and are then able to run their small business, and that you could support the next person. In some areas, we have had such reports.

This is an area that I have taken very seriously. I have been working on it and know the figures. There are areas where people have told us to move on to the next people. Some of them may know how to spend that money and some of them may not. One of the issues that are raised here is that as the elderly receive the monies, they should also be trained on how to spend it. That money can be spent in a more productive way.

I am a believer in food security. This money can help them to concentrate on food security and get involved in some trading. We need to train and support them. It should not be assumed that once you get your Kshs2000, you spend it for the month and wait for the next month. Does mean that when if it delays, you become destitute?

If you are trained to utilize it and multiply it, be it in farming, vegetable farming, poultry, horticulture and any activity that can be carried out, it will go a long way. The elderly will also choose their areas of interest. Capacity building and training can be done for them as needed. The idea is to help those who are able to support themselves.

They cannot be supported forever or until their lives end. However, this should not be for everybody. This is the gist of this Motion.

I would like the county governments to put proper structures and policies in place. If possible, they should put in place laws. That is so automatic. The national Government has done enough; let the county governments also do something because we are working for the common good of the people of Kenya. It does not matter whether the assistance is coming from the national Government, or the county governments. Whatever the national Government is doing is good, but let us also bring on board the county governments and let them put everything in place to assist our people.

With those many remarks, I support this Motion and ask Sen. (Dr.) Musuruve to second it.

The Temporary Speaker (Sen. Kinyua): Sen. (Dr.) Musuruve, you may have the Floor.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me the chance to second this Motion by Sen. Nyamunga. Before I continue, allow me to thank Sen. Nyamunga for raising awareness and bringing this issue on the Floor of this House.

It must be very clear that the neglect of the elderly is something that has happened since time immemorial, even during the olden days. We even see, for those of us who read the Bible in Psalms 71, an old person is clearly communicating with God. He is telling God that-

“I have relied on you from the days of my youth, I have done this and that, but now that I am old, my hair has turned grey, do not reject and abandon me as I pass your laws to the next generation.”

This is something that has always been there since time immemorial. I thank Sen. Nyamunga for bringing this Motion to this House. These people have perpetually been ignored and forgotten despite the fact that they contributed a lot to development our country during their active lives. It is possible for a parent to take care of 10 children, but it becomes very difficult for the 10 children to take of their parent who really struggled with them.

When you look at our Constitution, it is very clear that the elderly have rights as provided under Article 57. It is stipulated clearly that the elderly have full rights to participate in affairs of the society to pursue personal developments, live in dignity, respect and be free from any form of abuse. This Motion by Sen. Nyamunga comes in handy to implement the provisions of Article 57 of the Constitution.

It must be very clear that every person in this world as long as he has breath, he can develop himself. There is no optimal development. Even when you are elderly, it does not mean that you have reached optimal development. You reach optimal development when you have no breath.

The issue that Sen. Nyamunga is bringing on the Floor of this House is a genuine concern and we must treat it with the seriousness it deserves. Two clear things that Sen. Nyamunga would like the Senate to do is to ensure that legislation is in place to protect the elderly. The other thing that she is asking the Senate to do on behalf of the elderly is to ensure there is capacity building on how this money is to be utilised.

Honestly, we must endeavour to support the Government initiatives. When it comes to funds for the elderly, it is a trial that was done in 2008. The Government of Kenya did this when we had districts in place. They did it in Nyando, Thika and Busia districts before it was rolled to the rest of the country. This was an initiative to ensure that issues of poverty are brought to a stop.

It has now gone to very many other counties. In every county the elderly people are supposed to be identified, protected and money sent to them. The Government initiative on this programme was well meaning. This programme is among the many cash transfer programmes that the Government has initiated. The Government has also initiated cash transfers for the orphans, persons with disabilities who are severely vulnerable and continued to intensify and encourage this one that has been brought by Sen. Nyamunga on the elderly.

Madam Temporary Speaker, it must be very clear to our mind that the the elderly face a lot of challenges despite the fact that they have educated their children. Some of these children may be working locally or abroad and they have also started family life so they concentrate on their own issues. Some of these parents end up being neglected. Some have lost their children and spouses and are living alone. They lack basic needs stipulated in Article 43 of the Constitution.

The elderly might not be able to go to hospital. They have no one to take them to hospital. They lack social security and so on. It is, therefore, well-meaning that these funds for the elderly be given at the right time. As Sen. Nyamunga has expressed, they are delayed. It is just in good faith that this money is given at the right time to the appropriate and deserving elderly.

At the moment, there are some elderly people who do not receive this cash. Sometimes it even goes to the wrong pockets. As a nation, we have a duty to ensure that we are protecting them because they did a lot for us during their heydays. When their bones are weak and strengths have failed them, we should not abandon them.

At the moment, they are getting Kshs2,000. I thank Sen. Nyamunga for bringing up the issue of capacity building. I would also like to argue that Kshs2,000 is not enough for medication and other things that have to be put in place. I congratulate the former Prime Minister, Hon. Raila Odinga, who has pledged that when he takes over this money will be increased to Kshs6,000. My prayer is that we look after the elderly. I am sure that the former Prime Minister will deliver this commitment that he has made and the elderly will remember and pray for him.

Madam Temporary Speaker, we must think about the elderly. We would not have been here without our parents and grandparents. They produced a generation that eventually brought us on board and we are alive. Our children and our children's children will be there because of our elderly people.

We are living in a society that forgets about the elderly. When children get employed, some of them completely forget about home and abandon their parents. Some also feel ashamed of their parents. It is a constitutional demand that everyone should live with dignity. Dignity means being respected and living in respect. This can only happen if we are able to defend our Constitution.

The Constitution is very clear that in the Articles that I have talked about when it comes to the elderly people. However, when it comes to executing, defending and overlooking on this, we are not doing very well.

As Sen. Nyamunga has said, we need to pass legislation to ensure that the elderly taken care of in a dignified manner. Every county government must ensure that they have mechanisms of identifying them. After identification, there must be programmes to build their capacity. We must respect and uphold their rights as stipulated in some Articles of the Constitution.

County governments must allocate money to protect their elderly. This money can be incorporated in the county budget. If 35 per cent of the national revenue goes to county governments as proposed in the Senate, why then should county governments not set aside some funds to assist the elderly people? Some countries have programmes for the elderly. Medication and recreation are free to the elderly because they are paid by the Government. That is why the elderly live long in those countries. The elderly live long when they have recreational facilities, go through physiotherapy and so on.

Mr. Temporary Speaker, Sir, the elderly also need capacity building for them to know their rights. Some of them might not even know that they are covered by the National Hospital Insurance Fund (NHIF). There is need to inter-twine the Older Persons Cash Transfer (OPCT) programme and NHIF, so that the elderly age with grace.

As the Senate, we have a mandate to protect all the citizens of this country, especially the vulnerable ones like the elderly. I encourage Sen. Nyamunga to come up with a Bill to speak to this before Senate goes on recess, so that it is enshrined in law. Even for this to be executed, there is need to have a law. When it becomes the law of the land, it will be followed to the letter. We also need to sanction counties that flout the law on the elderly.

As the Senate, we should not abdicate our mandate of coming up with a framework. The framework will ensure that the elderly are taken care of so that they age gracefully. We need blessings from them and we must appreciate them for the work they did to this country.

Mr. Temporary Speaker, Sir, this Motion should be upgraded into a Bill. If we do so, Sen. Nyamunga's dream will come to fruition. I believe and hope that my fellow Senators will support this Motion for it to see the light of day.

I beg to second.

The Temporary Speaker (Sen. Kinyua): Thank you.

(Question proposed)

The Temporary Speaker (Sen. Kinyua): Yes, Sen. Halake

Sen. Halake: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to support Sen. Nyamunga's Motion on the cash transfer programme for our elderly.

I would like to draw the attention of the country to older members of the society. Article 57 of the Constitution states that-

“The State shall take measures to ensure the rights of older persons—

- (a) to fully participate in the affairs of society;
- (b) to pursue their personal development;
- (c) to live in dignity and respect and be free from abuse; and
- (d) to receive reasonable care and assistance from their family and the State.

Sen. Nyamunga's Motion seeks to implement Article 57 to ensure that what is in our broad laws is broken down to what we do on a daily basis. Additionally, it also seeks to implement Article 43, where our Constitution guarantees every citizen, including the elderly, the right to good standards of health.

Madam Temporary Speaker, while Kshs2,000 is very little, her proposal to have the counties complement this effort is commendable and is something that this Senate---

The Temporary Speaker (Sen. Kinyua): Sen. Halake, I am---

Sen. Halake: Sorry, Mr. Temporary Speaker, Sir. We have had Madam Temporary Speaker on the Chair this morning. I am a bit confused.

Mr. Temporary Speaker, Sir, it also seeks to implement Article 43 of the Constitution, which guarantees our citizens, especially older members of the society, the right to healthcare of good standards.

One of the things that are important, which I urge Sen. Nyamunga to add to her request to this House is to first map out the needs of the elderly. Looking at this, there is a blanket of Kshs2,000 that will be given to all members that qualify.

One of the things that the counties can do, which Sen. Nyamunga can add as part of her plea is to have the unmet needs for care and support of the elderly mapped out and identified at the county level and have solutions aligned to this. The needs of all elderly people in all counties or the entire country are not the same, but there is a blanket proposal for them to be given Kshs2,000. Of course that is also full of challenges.

The most important thing is to get the solution because we know and are aware that the unmet needs are enormous, especially because of the changes in our societal arrangements that every unmet need in each county is not the same.

There are counties where the social fabric is more tightened and there are societies where the children have needs. In addition to the proposed policies and legislative framework, the unmet needs of each county should be identified. Every county should have the numbers and the unmet needs of the elderly people. That would help because sometimes legislation takes too long.

If every county identified the unmet needs, it will ensure that---

The Temporary Speaker (Sen. Kinyua): Sen. Halake, are you saying that we should not have a blanket of Kshs2,000 to every elderly person, but it should vary depending on a person?

Sen. Halake: Well, it should be varied but there are also other issues. If you have Kshs2000, looking after somebody that does not have a family, but just needs healthcare needs through NHIF, then that meets that need. So, we need to differentiate. We cannot treat everybody or every county as equal. Therefore, what we need to do in addition to the legislative is to come up with frameworks that have been proposed very quickly because, sometimes legislation takes too long, we look at the unmet needs in each county.

Counties can do that very quickly because again, it is the front line of service provision and that is the whole idea of devolution to make sure that the counties are at the frontline of service delivery. Therefore, they should have this kind of information of how many elderly people live in their counties; what are their unmet needs of these people and, therefore, what are the solutions that are then aligned to these unmet needs?

Having said that, I congratulate my sister Sen. Nyamunga for highlighting and amplifying the voice on behalf of the elderly who most of the time have been neglected. One of the big things that we do as legislators is to look after the elderly, but also to follow up even for their dues. Even the ones who have been working for Government or different organizations, when it comes to their payment again they are having problems. Even, the Kshs2000 for the Social Safety Net is becoming an issue as well.

In terms of the health needs, nutrition needs, the dignity of the entire think as guaranteed in Articles 53 and 57 of the Constitution for elderly people, this Motion breaks it down, implements and translates the big laws into what we can do immediately.

So, I congratulate her and I support.

Sen. Mwaruma: Asante, Bw. Spika wa Muda kwa kunipa hii fursa, ili kuchangia Hoja hii ya Sen. Nyamunga kuhusu suala la kusaidia wazee ambao wamefikisha miaka 70 na wanahitaji misaada.

Kwanza ningependa kushukuru Serikali yetu ya Kitaifa kwa kuanza mpango mzuri wa Inua Jamii. Huu mpango umesaidia hawa wazee wetu ambao ni baba, mama na ndugu zetu lakini kwa vile wameishi maisha mazuri ya kumcha Mungu wameishi miaka mingi na wamefika mahali ambapo tunapaswa kuwasaidia.

Mpango wa Inua Jamii ni mpango ambao umesaidia wazee wetu kuishi maisha mazuri. Lakini huu mpango umekumbwa na changamoto nyingi kwa mfano ile pesa inayopeanwa ya Kshs2,000 haitoshi. Nikiwa mwenye kiti mdogo wa Kamati ya Labour na Social Welfare, tumejaribu kusukuma na kushinikiza Serikali iongeze hii pesa kwa sababu hao wazee wanaopewa Kshs2,000 kwa Bajeti, kulingana na mfumko wa bei za vitu haitoshi.

Pia pesa hizi haziji kwa muda unaofaa, zinachelewa sana. Zinakuja baada ya miezi mitatu ama minne. Zikichelewa kwa muda wa miezi minne, hao wazee wanatumia nini? Wanapata shida nyingi sana. Ni vizuri pesa hizi zije kwa wakati unaofaa.

Changamoto nyingine ambayo imekumba huu mradi wa serikali wa Inua Jamii ni kwamba Serikali haiandikishi watu wapya. Wale ambao wako wamefikia miaka 70 tayari wanapata pesa. Hao wengine ambao wanafikiwa wapya hawaandikishwi. Tumejaribu kuuliza Serikali kwa nini hawaandikishi hawa wazee wetu, na inasema ni shida ya kibajeti. Lakini ingekuwa ni vyema kuwasajili hawa wazee wote ambao wamefikisha umri wa 70 na tuwe na Bajeti ya kutosha ili wafaidike na mpango huu wa Inua Jamii.

Kuna wazee wengine ambao walikuwa wanapata hizi pesa lakini kwa sasa hivi wameaga dunia na Serikali hajawasajili wapya ili waweze wakipata hizo pesa. Kwa hivyo, ningepomba pia Serikali---

The Temporary Speaker (Sen. Kinyua): Sen. Mwaruma, tutakapo rejelea Mswaada huu, utakuwa na masalio ya dakika 11.

Sen. Mwaruma: Asante Mhe. Spika wa Muda.

ADJOURNMENT

The Temporary Speaker (Sen. Kinyua): Waheshimiwa Maseneta, ni saa sita na nusu za mchana; wakati wa kuhairisha vikao vyetu. Kwa hivyo, Seneti imeahirisha vikao vyake hadi leo saa nane na nusu alasiri.

The Senate rose at 12.30 p.m.