



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - THIRD SESSION

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, JUNE 11, 2019 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

a) Processing of Statements

“Honourable Senators,

As you are aware, the Order for Statements provide a mechanism through which Senators may raise pertinent issues affecting their respective constituents or to bring to the fore, concerns that the Senate may need to address through legislation or a change in government policy.

You will recall that in August, 2018, the Standing Orders were reviewed to make the processing of Statements efficient and effective while still affording Senators the opportunity to undertake their representative and oversight roles.

Honourable Senators,

The Standing Orders that relate to Statements include Standing Order 47, on General Statements, Standing Order 48, on Request for Statements and Standing Order 51 on Statements by Committee Chairpersons. Other Standing Orders relating to Statements are Standing Order 52 and Standing Order 53 on Statements by either the Senate Majority Leader or the Senate Minority Leader and Personal Statements respectively.

Honourable Senators,

The above-mentioned provisions of the Standing Orders detail the process and timelines of processing Statements. Specifically, Standing Orders 47(1) and 48(1) require all statements to be submitted to the Office of the Clerk of Senate at least three hours and twenty-four (24) hours, before the Senate meets, respectively. These timelines are necessary for the internal review and approval mechanisms to take effect within the meaning of Standing Order 49 (1) and (2).

Honourable Senators,

Despite the above provisions, over the last few weeks, I have received a number of Statements, most of which fall within the purview of standing order 47 and 48, submitted outside the required timelines. Actually, some of them have been submitted for approval, at the Chair, while the Session is going on. You will agree with me that late submission of Statements leaves me with very limited time to review and to make a considered determination pursuant to Standing Order 49 (2) thereby compromising the accuracy and clarity of the matters that require to be addressed and the referral to relevant Committee(s) of the Senate for consideration.

Moving forward, I wish to advise Honourable Senators to strictly adhere to the provisions relating to Statements. As your Presiding Officer, I will not approve any Statement that does not satisfy the stated timelines and the provisions of Standing Order 49.

Please be guided accordingly.

I thank you!"

b) Visiting Delegation from the Parliament of Sierra Leone

"Honourable Senators,

I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the Parliament of Sierra Leone.

Hon. Members, the visiting delegation consists of the Female Caucus of the Parliament of Sierra Leone who are undertaking a study tour of the Parliament of Kenya.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

- | | |
|---------------------------|---------------------------------|
| 1) Hon. Sidi Tunis | –Leader of Government Business |
| 2) Hon. Paran Tawarally | –Clerk of Parliament |
| 3) Hon. Rosemarie Bangura | –Vice President (Female Caucus) |
| 4) Hon. Josephine Makieue | –Member |

5) Hon. Massay Ngahiteh Aruna	-Member
6) Hon. Hajaratu Faith Samura	-Member
7) Hon. Lolloh Emilia Tongi	-Member
8) Hon. Alice J. Kumabeh	-Member
9) Hon. Cecelia Mabinty Bangura	-Member
10) P.C Haja F.B Koroma Meame – Kajue	-Paramount Chief and Member
11) Hon. Paul Saa Sam	-Male Champion
12) Juliana Sheku	-Gender Programme Officer
13) Josephine Scott-Manga	-UNDP (Governance Unit)

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you.”

4. **MOTION- SITTINGS OF THE SENATE OUTSIDE PARLIAMENT BUILDINGS, NAIROBI**

(The Senate Majority Leader)

AWARE that the Senate of Kenya as established in the Constitution plays a critical role in the linkage of the devolved governments and the national government by representing and serving the interests of the counties and their governments;

FURTHER AWARE that on 21st June 2018, the Senate resolved to hold plenary and Committee sittings in Uasin Gishu County from 24th to 28th September, 2018, and further resolved that similar sittings be held in all regions of the country during the term of the current Parliament;

NOTING that the Senate held its first plenary and Committee sittings away from Nairobi in Uasin Gishu county from 24th – 28th September, 2018 providing an opportunity for several sectors of society to directly engage with the legislative arm of government through public participation on various issues, as well as participate in oversight through inspection of various projects and programs of national and county governments;

COGNIZANT that holding the plenary and Committee sittings of the Senate away from the traditional premises at the Parliament Buildings in Nairobi has great potential to, among others –

- (i) enhance the interaction between the Senate and county governments;
- (ii) bring the Senate closer to the counties and the general public;
- (iii) provide an opportunity to members and staff of county assemblies to learn and borrow best practices from the Senate;
- (iv) promote the role and work of the Senate;
- (v) highlight existing opportunities for people to get involved in the work of the Senate;
- (vi) develop and strengthen capacity and partnerships at the county level; and
- (vii) enhance public awareness regarding the Business of the Senate.

NOW THEREFORE, pursuant to Article 126 (1) of the Constitution and Standing Order 31 (1) of the Senate, the Senate resolves that its plenary and committee sittings be held in Kitui County from 16th to 20th September, 2019.

Order deferred.

5. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Rose Nyamunga, MP) – in the Chair)

The Tea Bill (Senate Bills No. 36 of 2018)

Re-committal of Clause 4

Clause 4 - Further amendment proposed

THAT, clause 4 of the Bill be amended in subclause (1) by deleting the word “Kericho” appearing immediately after the words “shall be in” and substituting therefor the words “Nairobi City”.

(Sen. Irungu Kang’ata, MP)

Proposed amendment dropped in the absence of the Mover.

Progress Report

Motion made;

THAT, pursuant to Standing Order 148, the Committee of the Whole do report to the House its consideration of the Tea Bill (Senate Bills No. 36 of 2018) and seek leave to sit again tomorrow.

(Sen. Aaron Cheruiyot, MP)

Before the Question was put and pursuant to Standing Order 79, the Acting Chairperson (Sen. Rose Nyamunga, MP) ruled that the Question did not affect counties;

Question put and agreed to.

6. **HOUSE RESUMED** – Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) – in the Chair

7. **THE TEA BILL (SENATE BILLS NO. 36 OF 2018)**

Progress reported;

Motion made and Question proposed;

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

(Sen. Aaron Cheruiyot, MP)

Debate arising,

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79, the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) ruled that the Question did not affect counties;

Question put and agreed to.

8. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Rose Nyamunga, MP) – in the Chair)

Consideration of National Assembly Amendments to the County Government (Amendment) Bill (Senate Bills No. 11 of 2017)

National Assembly amendment to Clause 8.

THAT, Clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

Motion made and Question proposed;

THAT, the National Assembly amendment to Clause 8 of the Bill be approved.

(Sen. Susan Kihika on behalf of the Senate Majority Leader)

National Assembly amendment to Clause 8 - vote deferred

National Assembly amendment to Clause 11.

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor—“(a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal”

Motion made and Question proposed;

THAT, the National Assembly amendment to Clause 11 of the Bill be approved.

(Sen. Susan Kihika on behalf of the Senate Majority Leader)

National Assembly amendment to Clause 11 - vote deferred

National Assembly amendment to Clause 15.

THAT, the Bill be amended by deleting clause 15 and substituting therefor—

Amendment to section 44 of No. 17 of 2012.

15. Section 44 the principal Act is amended by-
(a) deleting subsection (2) and substituting therefor—

“(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person

—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years’ experience in a leadership position at senior management level in a public service or private sector organization; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2)–

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons–

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary-

(i) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and

(j)

(ii) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for re-appointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) –

(3A) The county secretary may be removed from office on the following grounds—

(a) inability to perform functions of the office arising out of physical or mental infirmity;

(b) incompetence;

(c) gross misconduct;

(d) bankruptcy; or

(e) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal, and shall be given an opportunity to put a defence against any such allegations, either in person or through a representative.

(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Motion made and Question proposed;

THAT, the National Assembly amendment to Clause 15 of the Bill be approved.

(Sen. Susan Kihika on behalf of the Senate Majority Leader)

National Assembly amendment to Clause 15 - vote deferred

Progress report

Motion made:

THAT, the Committee of the Whole do report to the House its consideration of the National Assembly amendments to the County Government (Amendment) Bill (Senate Bills No. 11 of 2017) and seek leave to sit again tomorrow.

(Sen. Susan Kihika on behalf of the Senate Majority Leader)

Before the question was put and pursuant to Standing Order 79, the Acting Chairperson (Sen. Rose Nyamunga, MP) ruled that the Question did not affect counties;

Question put and agreed to.

9. **HOUSE RESUMED** – The Temporary Speaker (Sen. (Prof.) Margaret Kamar) in the Chair

10. **THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2017)**

Progress reported;

Motion made and Question Proposed;

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

(Sen. Susan Kihika on behalf of the Senate Majority Leader)

There being no Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 79, the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) ruled that the Question did not affect counties;

Question put and agreed to.

11. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Rose Nyamunga) – in the Chair)

The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No. 2 of 2019)

Order deferred.

12. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Rose Nyamunga, MP) – in the Chair)

The Care and Protection of Older Members of Society Bill (Senate Bills No. 17 of 2018)

Clause 3 - amendment proposed

THAT clause 3 of the Bill be amended in paragraph (b) by inserting the word “dignity” immediately after the words “protect the status”.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 3 - vote deferred

Clause 4 - amendment proposed

THAT clause 4 of the Bill be amended in paragraph (b) by deleting the words “human being” appearing immediately after the words “of every” and substituting therefor the words “older member of society”.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 4 - vote deferred

Clause 5 - amendment proposed

THAT, clause 5 of the Bill be deleted and substituted with the following new clause—

PART II

RIGHTS AND ENTITLEMENTS OF OLDER MEMBERS OF SOCIETY

Rights of Older **5.** An older member of society has the right to enjoy the rights conferred under the Constitution and in particular shall not

- Members of Society. be unfairly denied the right to—
- (a) participate in community life in a position appropriate to their interests and capabilities;
 - (b) participate in intergenerational programmes;
 - (c) establish and participate in associations of older members of society;
 - (d) participate in activities that enhance their income generating capacity;
 - (e) access opportunities that promote their optimal level of social, physical, mental and emotional wellbeing;
 - (f) fully participate in the affairs of the society;
 - (g) pursue their personal development;
 - (h) manage their own property;
 - (i) live in dignity and respect and be free from abuse; and
 - (j) receive reasonable care and assistance from their family and the State.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 5 - vote deferred

Clause 6 - amendment proposed

THAT clause 6 of the Bill be amended in subclause (2) by inserting the word “periodic” immediately after the word “promote” appearing at the beginning of paragraph (c).

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 6 - vote deferred

Clauses 7 - 25

Motion made and Question proposed;

THAT, Clauses 7 - 25 be part of the Bill.

Clauses 7 - 25 - vote deferred

Clause 26 - amendment proposed

THAT clause 26 of the Bill be amended in subclause (1) by inserting the following new paragraphs immediately after paragraph (e) —

- (f) the number of older members of society who have died in the home within the year and the cause of death; and
- (g) the number of accidents in the home and complaints reported in relation to older members of society.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 26 - vote deferred

Clause 27 - amendment proposed

THAT, clause 27 of the Bill be amended-

(a) in paragraph (d) by inserting the words “county executive committee member and” immediately after the words “reports to the”;

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

(f) facilitate the enjoyment of all the rights of older members of society as conferred under the Constitution.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 27 - vote deferred

Clauses 28 - 29

Motion made and Question proposed;

THAT, Clauses 28 - 29 be part of the Bill.

Clauses 28 - 29 - vote deferred

Clause 30 - amendment proposed

THAT, clause 30 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

(f) the right of expression on matters regarding their welfare.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Clause 30 - vote deferred

Clauses 31 - 40

Motion made and Question proposed;

THAT, Clauses 31 - 40 be part of the Bill.

Clauses 31 - 40 - vote deferred

New Clause 5A - insertion of new clause proposed

THAT, the Bill be amended by inserting the following New Clauses immediately after Clause 5-

Right to 5A. (1) An older member of society has a right to legal capacity
Legal and the right to access support necessary to exercise that legal
Capacity. capacity.

(2) An express or implied disqualification on the grounds of

age prescribed in a law, custom or practice shall not deprive an older member of society the right to legal capacity.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5A be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5A - vote deferred

New Clause 5B - insertion of new clause proposed

Right to Equality and Non-Discrimination.	5B. (1) An older member of society shall be entitled to equal protection and equal benefit of the law. (2) An affirmative action measure aimed to achieve equality of older members of society shall not constitute discrimination. (3) An older member of society shall live in dignity and security, free from exploitation and physical or mental abuse and be treated fairly.
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(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5B be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5B - vote deferred

New Clause 5C - insertion of new clause proposed

Right to Documents of Registration.	5C. (1) An older member of society has a right to be issued with a passport, national identity card, certificate of birth and any other document of registration or identification irrespective of their age. (2) Where a birth certificate is not issued, the older member of society shall use alternative document including a national identity card to serve the purpose.
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(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5C be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5C - vote deferred

New Clause 5D - insertion of new clause proposed

Right to
Protection
and Safety in
Situations of
Risk and
Humanitarian
Emergencies.

- 5D. (1) An older member of society has a right to suitable and specialized protection and safety in a situation of risk, including a situation of armed conflict, humanitarian emergency and the occurrence of a natural disaster.
- (2) An institution whether public or private shall maintain an inventory of all older members of society and shall submit the inventory quarterly to the national government, county government and other agencies responsible for disaster management.
- (3) The national government and each county government shall be responsible for emergency management and shall take appropriate measures to ensure the inclusion of older members of society in every scheme, program, mission as well as its disaster management system during the occurrence of any disaster emergency, for the safety and protection of such persons.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5D be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5D - vote deferred

New Clause 5E - insertion of new clause proposed

Right to
Education
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- 5E. (1) The national government and each county government shall ensure that older members of society have access to educational, cultural, spiritual and recreational resources.
- (2) The Ministry responsible for education shall develop programmes and structures for the education and training of older members of society

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5E be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5E - vote deferred

New Clause 5F - insertion of new clause proposed

Right to Health to 5F. (1) The national government and each county government shall take appropriate measures to ensure that an older member of society who is not covered in an existing medical scheme gets affordable, accessible, adequate and quality free medical care.
 (2) Medical assessment reports for older members of society shall be free of charge in public health institutions.
 (3) An older member of society shall not be compelled to undergo any test as a precondition to or for continued enjoyment of provision of health cover.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5F be now Read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5F - vote deferred

New Clause 5G - insertion of new clause proposed

Right to Admission into Public and Private Premises, and Public Transport to 5G. (1)A person shall not, on the ground of old age be denied-
 (a) admission into a premise to which members of the public are ordinarily admitted; or
 (b) the provision of a service or amenity to which members of the public are entitled.
 (2) The proprietor of a premise referred to in subsection (1) (a) shall not have the right, on the ground of a person's age, to reserve the right of admission to the premises against an older member of society.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5G be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5G - vote deferred

New Clause 5H - insertion of new clause proposed

- Right to 5H. (1) An older member of society has a right to participate in Sports, sports, recreation, leisure and cultural activities including Recreation, national and international sports events.
- Leisure (2) Public and private institution with sporting, recreation, and leisure and cultural activities shall ensure that the activities Culture. are sensitive to the needs of older members of society.
- (3) An older member of society shall be entitled to the use, free of charge, of recreational or sports facilities owned or operated by the government during social, sporting or recreational activities.
- (4) The national and county governments shall provide older members of society with a suitable environment for sports, recreation and leisure, including training support and medical personnel.
- (5) Section (4) shall not apply in cases where there is exclusive private hire of such facilities.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5H be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5H - vote deferred

New Clause 5I - insertion of new clause proposed

- Right of 5I. (1) Law enforcement agencies shall take into consideration the Access to age of an older member of society on arrest, detention, trial or Justice confinement.
- (2) A suit involving an older member of society shall be disposed off expeditiously having due regard to their age and suffering.

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

Motion made and Question proposed;

THAT, the new clause 5I be now read a Second Time

(Vice Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 5I - vote deferred

Clause 2, the Title and Clause 1

Motion made and Question proposed;

THAT, Clause 2, the Title and Clause 1 be part of the Bill.

Clause 2, Title and Clause 1 - vote deferred

Progress Report

Motion made;

THAT, pursuant to Standing Order 148, the Committee of the Whole do report to the House its consideration of the Care and Protection of Older Members of Society Bill (Senate Bills No. 17 of 2018) and seek leave to sit again tomorrow.

(Sen. Aaron Cheruiyot, MP)

Before the question was put and pursuant to Standing Order 79, the Acting Chairperson (Sen. Rose Nyamunga, MP) ruled that the Question did not affect counties;

Question put and agreed to.

13. **HOUSE RESUMED** - Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) - in the Chair

14. **THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)**

Progress reported;

Motion made and Question proposed-

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

(Sen. Aaron Cheruiyot, MP)

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79, the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) ruled that the Question did not affect counties;

Question put and agreed to.

15. **THE MENTAL HEALTH (AMENDMENT) BILL SENATE BILLS NO. 32 OF 2018)**

Order for Second Reading read;

Motion made and Question proposed-

THAT, the Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018) be now read a Second Time.

(Sen. (Arch.) Sylvia Kasanga, MP – 29.05.2019)

Debate interrupted on Tuesday, 4th June, 2019 resumed;

And there being no other Senator wishing to contribute;

Mover replied;

And the time being thirty minutes past Six O'clock, the Deputy Speaker interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

16. **SENATE ROSE** - at thirty minutes past six O'clock.

MEMORANDUM

*The Speaker will take the Chair on
Wednesday, June 12, 2019 at 2.30 p.m.*

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