

PARLIAMENT OF KENYA

NATIONAL ASSEMBLY

THE HANSARD

Thursday, 12th March 2020

The House met at 2.30 p.m.

The Speaker (Hon. Justin Muturi) in the Chair

PRAYERS

PETITIONS

SETTLEMENT OF SHAREHOLDERS OF GWATANIRO MUTUKANIO COMPANY

Hon. Speaker: Hon. Members, Standing Order 225(2)(b) requires the Speaker to report to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office has received a petition submitted by one Mr. Peter Kairang'a of P.O. Box 7183, Nakuru, calling for the settlement of over 25,000 shareholders of Gwataniro Mutukanio Company, in what the petitioner asserts is their rightfully-owned parcels of land in Nakuru and Laikipia.

The petitioner avers that Mutukanio Gwataniro Company raised money from its shareholders with the objective of investing the funds in buying land for them to settle on. The company, according to the petitioner, owns a total of 82,000 acres in Nakuru and Laikipia, as well as the Amigos House, Oyster Shell building and three plots in Nakuru Town, farm houses in Bahati, various buildings in Laikipia and Rumuruti, among other properties.

Balloting of land is said to have been undertaken in 1983 in a bid to ensure that each shareholder got a piece of the company's land, but the initiative was extremely flawed and as a result over 25,000 shareholders did not obtain any land.

Further, in areas such as Malan-Ngarua, balloting was done on non-surveyed land, and several company properties including Amigos House, Oyster Shell were grabbed or illegally sold without the consent of the shareholders under the direction of company directors and the then provincial administration.

It is on account of these misgivings that the petitioner seeks the intervention of this House primarily in spearheading investigations into the affairs of Mutukanio Gwataniro Company with a view to attaining recovery of the irregularly allocated plots of land and other lost properties and restoring them to the rightful owners, and for the conduct of a fresh survey of the Mutukanio Gwataniro land.

Pursuant to the provisions of Standing Order 227, this Petition therefore stands committed to the Departmental Committee on Lands. The Committee is requested to consider the Petition and report its findings to the House and to the petitioner in accordance with Standing Order 227(2).

I thank you.

Next is petition by Member for Mathare.

IMMINENT EVICTION OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Speaker. I rise to present Petition No. 007 of 2020, regarding the imminent eviction of residents of Hospital Ward in Mathare Constituency by the Kenya Police.

I, the undersigned, on behalf of concerned residents of Hospital Ward in Mathare Constituency draw the attention of the House to the following:

THAT, Hospital Ward in Mathare Constituency is home to over 30,000 residents, who have lived on that land for over 20 years and have constructed both temporary and permanent residences on the land;

THAT, the said land has several public utilities such as schools, hospitals, children's homes for the vulnerable and homeless children, a playground for children, among other essential public amenities;

THAT, recently, the Kenya Police Depot situated in Hospital Ward claimed to have been issued an allotment letter to occupy the parcel of land where the Depot is situated as well as the entire land in the Ward that is currently occupied by residents of the Ward, particularly Kosovo and Mathare 4B areas;

THAT, residents of Hospital Ward, particularly those in Kosovo and Mathare 4B areas, are living in fear of imminent eviction by the Kenya Police Depot, who are alleging to have been issued title deeds for all parcels of land in Hospital Ward;

THAT, it is an indisputable fact that Kosovo and Mathare 4B areas have been in existence as settlement areas in Mathare Constituency since 1967 and 1995, respectively;

THAT, the police have since prevented youths and children from accessing and using the only available community playground in Hospital Ward on account of the alleged ownership of the playground;

THAT, if the imminent occupation of Hospital Ward land by the Kenya Police is not mitigated, residents will be rendered homeless and cut-off from accessing critical social amenities like schools, hospitals, children's homes and playgrounds;

THAT, efforts to resolve the matter between the constituency, community and political leadership of Mathare Constituency on the one hand and the Kenya Police on the other hand have failed to yield satisfactory response; and

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands—

- a) Inquires into the matters raised in this Petition relating to the alleged ownership of land in Hospital Ward in Mathare Constituency, with a view to ensuring that rights of residents to land are not subverted by the Kenya Police.
- b) Intervenes, through the relevant Government Ministries, to halt any potential eviction of residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved.
- c) Intervenes, through the Ministry of Lands and the National Land Commission, to ensure that land in Hospital Ward in Mathare Constituency is adjudicated and verified

residents issued with title deeds and appropriate sections of the land designated for public amenities safeguarded.

And your petitioners will ever pray.

I thank you, Hon. Speaker.

Hon. Speaker: Hon. (Dr.) Rachael Nyamai, you have so much on your hands, but I believe you are up to the task. That Petition is also referred to that Committee. Am I seeing an intervention from Hon. Wamunyinyi?

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): On a point of order, Hon. Speaker. For the Petition by Hon. Oluoch, you will recall that we continuously have experienced this kind of dispute and sometimes it has grown into conflict that destabilises peace in the area. As you direct that this Committee deals with this Petition, there are other petitions related to land which involve the military and some security agencies which should also be expedited. We need to get the final outcome of what the Committee would have established.

I wish to support the petitioner and appeal that these matters be addressed and finalised in a manner that is satisfactory and acceptable to all the parties.

I thank you.

Hon. Speaker: Very well. What is the intervention by Hon. Wamalwa? Or it was inadvertent?

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker. Sorry I do not have a point of order.

Hon. Speaker: Next Order!

PAPERS LAID

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

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House, today, Thursday, 12th March 2020:

Annual Report and Unaudited Financial Statements of the Independent Electoral and Boundaries Commission for the Financial Year 2018/2019.

Hon. Speaker, I have never done this: unaudited accounts. I want to withdraw that.

The Speaker: The House cannot consider unaudited accounts.

Hon. Aden Duale (Garissa Township, JP): The House cannot table unaudited accounts. So, the Table Office and the Clerk's Office must relook at that.

Hon. Speaker, I beg to lay the following Paper on the Table of the House:

List of Nominees to 20 Constituencies Committees from the National Government Constituencies Development Fund Board as follows:

Bomachoge Borabu; Endebess; Kiambaa; Kitui West; Kuria West; Laikipia North; Laisamis; Lugari; Makueni; Mosop; Naivasha; Nambale; Ndaragwa; Saboti; South Imenti; Teso South; Tharaka; Tigania West; Tongaren and Wajir West.

Hon. Speaker: I hope that the Members concerned and who represent those constituencies from whom the names have come will check the list even as I refer the Paper to the NG-CDF Committee. It is good for the Members concerned to check the names and other details. We found out that details like whether the person is female or male, and if male, whether it is a male-man or male-woman or persons living with disabilities... Check whether the ones who are shown as youth are indeed the right people who come from your constituencies.

Leader of the Majority Party, the Floor is yours.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I think the error was on our side. This is the Annual Report of the Independent Electoral and Boundaries Commission for the Financial Year 2018/2019. I think our Table Office added “unaudited” which is not the case.

Hon. Speaker: Maybe that is why they used the word “unaudited”.

Well, that Report is referred to Departmental Committee on Justice and Legal Affairs. It is also important that other Members be encouraged to get copies of the Report by the Independent Electoral and Boundaries Commission for the Financial Year 2018/2019 so that when Hon. Cheptumo tables his report, you debate it on a position of knowledge and information.

Next is the Chairman of the Departmental Committee on Agriculture and Livestock, Hon. Aden, the Floor is yours.

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House, today, Thursday, 12th March 2020:

A Report of the Departmental Committee on Agriculture and Livestock on its consideration of the Crops (Amendment) Bill (National Assembly Bill, No. 25 of 2019).

Hon. Speaker: Next is the Chairman of the Departmental Committee on Parliamentary Broadcasting and Library, Hon. Nyamoko, the Floor is yours.

Hon. Joash Nyamoko (North Mugirango, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House, today, Thursday, 12th March 2020:

A Report of the Committee on Parliamentary Broadcasting and Library on its consideration of the Public Participation Bill (National Assembly Bill, No. 69 of 2019).

Hon. Speaker: Next is by the Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House, today, Thursday, 12th March 2020:

Reports of the Departmental Committee on Justice and Legal Affairs on its considerations of:

- 1) The Constitution of Kenya (Amendment) Bill (National Assembly Bill No.19 of 2019 by Hon. Florence Mutua M.P.)
- 2) The Constitution of Kenya (Amendment) Bill (National Assembly Bill No.40 of 2019 by Hon. George Kariuki M.P.)
- 3) The Constitution of Kenya (Amendment) Bill (National Assembly Bill No.53 of 2019 by Hon. Boss Shollei M.P.)

ORDINARY QUESTIONS

Question No.052/2020

KENYAN CITIZENS IMPRISONED IN THE REPUBLIC OF SOUTH SUDAN

Hon. Speaker: Hon. Members, the first Question No.052 is by the Member for Gilgil Constituency who has written to seek that the Question be deferred as she is attending to constituency matters. I have acceded to the request and therefore, the Question is deferred.

(Question deferred)

The next Question is by the Member for Kiyo South, Hon. Daniel Rono, the Floor is yours.

Question No.053/2020

ISSUANCE OF TITLE DEEDS TO RESIDENTS OF ROKOCHO
CHANGACH BARAK IN SOY NORTH

Hon. Daniel Rono (Keiyo South, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

Could the Cabinet Secretary provide the status of the progress of processing of title deeds for the residents of Rokocho Changach Barak in Soy North, Keiyo South Constituency, Elgeyo Marakwet County?

Hon. Speaker: That Question is to be replied before the Departmental Committee on Lands. The next Question is by the Member for Mwatate, Hon. Mwadime.

Question No.054/2020

STATUS OF DE-SILTATION OF MWATATE DAM

Hon. Andrew Mwadime (Mwatate, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Water, Sanitation and Irrigation the following Question:

(i) Could the Cabinet Secretary provide the status of de-siltation of Mwatate Dam in Mwatate Constituency considering that it was budgeted for during the Financial Year 2018/2019?

(ii) What is the status of the construction of Mzima Springs Phase II Water Projects in Mwatate Constituency and when will it be completed?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Environment and Natural Resources. The last Question is by the Member for Kisauni, Hon. Mbogo Menza.

Question No.055/2020

MEASURES TO PROTECT ENVIRONMENT FROM POLLUTION
IN KISAUNI CONSTITUENCY

Hon. Mbogo Ali (Kisauni, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Environment and Natural Resources the following Question:

(i) Could the Cabinet Secretary explain the measures put in place at the national level to protect the environment from pollution arising from discharge of untreated waste along the roads and open areas in Loma, Bombo, Maji Machafu Villages, Green Estate, Kiembeni Police Station and Jomo Kenyatta Public Beach in Kisauni Constituency?

(ii) What action is the Ministry taking to ensure the environment is protected from such pollution and more specifically to curb continued pollution in the said areas?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Committee on Environment and Natural Resources. The next segment of this Order is Statements.

STATEMENTS

Hon. Speaker: There is a Statement sought by Hon. Joshua Kutuny, Member for Cherangany. I think Hon. Kutuny is more active elsewhere than here.

The next Statement is by Hon. Ibrahim Abdi Mudi.

INTERRUPTION OF COMMUNICATION SERVICES IN MANDERA

Hon. Ibrahim Abdi (Lafey, EFP): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Communication, Information and Innovation, regarding persistent interruption of mobile telephony connectivity services in Mandera County.

Hon. Speaker, communication is fundamental to the existence and survival of human beings as well as any organisation. Recently, residents of Mandera County have been experiencing interruption of mobile telephony connectivity services from service providers from time to time. The service providers have been switching off customers' network services for hours in parts of Mandera County without issuing prior explanation or notices thereby breaching its contractual obligation to its customers.

Hon. Speaker, the effects of the disconnection of services is far-reaching, especially to the business community as small transactions are executed through the available platforms, particularly mobile phone-based money transfers, finance and micro-financing services.

In addition, lack of consistent communication services has led to the residents living in fear thus hindering them from undertaking their daily activities.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee focusing on the following:

(i) Could the chairperson explain why the service providers have been interrupting and disconnecting their customers' mobile telephony services for hours in Mandera County, particularly in Mandera Town, without prior notices?

(ii) What steps has the Government taken to ensure that the service providers do not breach contractual obligations with their customers?

(iii) What measures has the Government put in place to ensure consistency and quality provisions of services by the telecommunication providers?

Thank you, Hon. Speaker.

Hon. Speaker: Chairman, Departmental Committee on Communication, Information and Innovation, Hon. Kisang.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker. The Statement that the Member seeks is serious because without communication life becomes difficult. As we all know, people across the country now transact mobile money services through communication networks. It is only that the Statement request has just come in. We have a retreat with the State Department of Broadcasting and Telecommunication tomorrow. We will endeavour to give them the information.

However, I am promising that we will report back to the House in the next two weeks.

Hon. Speaker: In the next two weeks?

Hon. William Kisang (Marakwet West, JP): I am sure Hon. Abdi Mude will be okay with that. Are you satisfied?

Hon. Ibrahim Abdi (Lafey, EFP): Yes, I am satisfied.

Hon. Speaker: Very well. For the second time, we go to the Statement request by Hon. Joshua Kutuny? The Member is absent not desiring to be present. Some Committee Chairs have complained that some Members raise Questions but they do not appear before the Committees on the dates when Cabinet Secretaries are scheduled to appear to respond. The practice that you will find in many jurisdictions is when a Member is not present – if he or she has not requested for a deferment – the Question is dropped so that it does not continue to appear within the official records as pending business.

I want Chairs of Committees to adopt this practice. Do not come here to report that the Questioners do not appear before the Committees. Just drop the Question. A very good example is this request for Statement by Hon. Joshua Kutuny, which is hereby dropped and shall not appear anywhere in our records for the next six months.

(Hon. Joshua Kutuny's Statement request dropped)

Hon. Members that is the way it should be. If you are filing a Statement request or a Question and for whatever reason you are unable to be present, you can either write to request that it be deferred or that another hon. Member – whom you must nominate – will ask the Question or make the Statement request on your behalf. However, you do not just disappear into thin air and assume that we will know that you still have intentions of either asking the Question or pursuing the Statement request.

Therefore, this is the method and style I want the Chairs of Committees to adopt. If you have not been requested or the request has not come from the Speaker's Office or from the Office of the Clerk, communicating any desire by a Member that his or her Question or Statement request be deferred for whatever reason, please, just drop it. It just means that the Member has lost interest or the reasons for which he or she wanted to ask the Question or file the Statement request has since been addressed in some other ways, however those ways may be.

I know, Hon. Rasso, you have a different issue. Do not ask about the issue at hand. This one is finished.

Hon. Gikaria. Member for Nakuru Town East.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Speaker. I concur with the directive you have given. However, we were seeking your indulgence on the following:

First, let me give the example of the Chair, Departmental Committee on Agriculture and Livestock, who at one time in a Committee expected the respective Cabinet Secretary to attend the meeting. Unfortunately, he neither came nor sent anybody. So, we had to send away the Chairman and we did not know what to do next. Do we bring up the matter with the Hon. Leader of the Majority Party so that we can re-invite the Cabinet Secretary or do we just deal with it at the committee level so that we can answer the Question that was asked by an Hon. Member? I think you will give us direction.

Secondly, I had a small issue which I wanted your indulgence on. I brought three amendments, one in the National Government Constituencies Development Fund (NG-CDF) Act, another one in the National Construction Authority (NCA) Act and another one in the Penal Code. My constituents are still being charged over some colonial laws of loitering, immoral

intent and prostitution because they are found in the streets. These are the things that we wanted to have amended in the Penal Code. I brought this amendment last year, four months ago and it expired.

Secondly, the NCA demands that youth, women and people with disabilities must get their certificates in three categories. We allow them the 30 per cent procurement rule but again put a lot of barriers. I had also asked if they could be exempted or upon application be given certificates, then they can pay once they start working, but I was told to wait. I have been following with the legal department to date.

Lastly, one of the fundamental aspects of the NG-CDF is poverty eradication. When I pay fees for a young man in secondary school, once he acquires technical skills, we need to at least do something for purposes of empowering him. However, you cannot fund a small project for these young people to start utilising their skills. So, I had brought a small amendment on matters that we should not only deal with security and education, but move to the next phase of actualising the intention of the NG-CDF, which is poverty eradication. I set aside Ksh7 million to start a small leather industry and a small book making...

Hon. Speaker: Hon. Gikaria, in as much as I could have sympathy with what you are saying, those are administrative matters. What you need to do is write to me indicating the dates you made your proposals so that I can follow it up administratively because you are talking of last year and four months. I am unable to start chasing the diaries of all those years. I am sure in your records, in your office, you have letters which you wrote your proposals and forwarded them. If you wrote to me, I will demand an explanation as to the cause of the delays. It may well be that it is either before the legal department or with the other committees such the Budget and Appropriations Committees (BAC) or the Select Committee on the NG-CDF. I am not in a position now even to entertain any discussions. Like several Hon. Members have done, write to me and we shall fast-track.

With regard to your earlier question, if the questioner is present, and the CS or whoever is absent, the committee is at liberty in concurrence with the questioner to set another date for the appearance of the CS but immediately inform the Clerk so that he can also write a reminder to the said CS or any other such functionary of the Government Executive.

(Loud consultations)

There is no debate on this. Hon. Sankok, what is there to debate? I am surprised and this is not business. Merely because somebody mentions an area in which you have an interest... Another one will talk of agriculture, another one will talk of livestock another one will talk about goats. Everyone will say that since now he has mentioned about goats, I want to comment. Another one will say this one has mentioned flowers, I want to comment and yet there is no Motion.

What is it Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, we really like your guidance and directive. I was seeking from the Chair, Departmental Committee on Communication, Information and Innovation, direction on the matter of some Hon. Members polarising this nation. Some Hon. Members are moving from one funeral as professional mourners to hotels eating *mandazis*, discussing matters that can only be canvassed inside this House. Impeachment of the Deputy President can only be done in this House.

So, Hon. Speaker, you can give us direction if we can put that in the Order Paper of Tuesday next week or call for a Special Sitting during our prayer days of Friday or Sunday so that Allah and God will be with us as we fight *uganga na uchawi*.

Thank you, Hon. Speaker. Give us direction so that we do not polarise the nation.

Hon. Speaker: Hon. Sankok, I will deal with the business that is before the House and not matters which are before funeral committees or other outfits out there. There is freedom of speech and people are at liberty to say what they want. You remember not too long ago there was something which was quite fashionable: My dress my choice. So, people are at liberty to make all manner of statements, but that is not our business. There is something like Each for Equal and Equal for Each.

Hon. Rasso.

PERSONAL STATEMENT

MISLEADING INFORMATION ON TERRORIST ATTACK IN MANDERA

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Speaker for being magnanimous. I rise under Standing Order 84 to make a short Personal Statement. The whole of last night and today, people have been calling me from my constituency and around the nation, that there was a post on social media that yesterday I survived a terrorist attack in Mandera. Let it be known that the whole of yesterday, I was in Parliament.

Hon. Speaker, as a person who professes the Islamic faith and also a practising Muslim, I condemn the activities of *Al Shabaab* in Mandera and in the whole of North Eastern Region. For that reason, whatever has appeared in the social media, I want to tell my family, friends and constituents that it is fake news and is part of the misleading social media that we continue to experience as leaders.

I thank you, Hon. Speaker

Hon. Speaker: Very well. Last on that segment is the Hon. Leader of the Majority Party.

BUSINESS FOR THE WEEK COMMENCING 17TH TO 19TH MARCH 2020

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order 44 (2)(a), I rise to give a statement on behalf of the House Business Committee (HBC) which met this Tuesday at the rise of the House to give priority of business for consideration.

On Tuesday next week, we will consider a Motion on the approval of the nominees to the 80 NG-CDF committees. We will also consider the Second Reading of the following Bills should we not conclude them today:

- (i) The Care and Protection of Older Members of Society Bill.
- (ii) The County Outdoor Advertising Control Bill.
- (iii) The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill.

All those three Bills are from the Senate.

- (iv) The Parliamentary Pensions (Amendment) (No. 3) Bill National Assembly Bill No 57 of 2019, and

(v) The Impeachment Procedure Bill, (Senate Bill No. 15 of 2018)

Hon. Speaker, as Hon. Members are aware, we are scheduled to proceed on a short recess next week on Friday as per the calendar of the House.

In this regard, the HBC will prioritise the Division of Revenue Bill, 2020 for Second Reading and Committee of the whole House on Wednesday, 18th March 2020. In addition, approval of nominees for appointment as Commissioners to the Teachers Service Commission (TSC) and the Chief Executive Officer (CEO) to the National Government Constituencies Development Fund (NG-CDF) Board will be fast-tracked to enable their conclusion before the House proceeds for recess.

Hon. Speaker, we will consider in the Committee of the whole House the Gaming Bill, 2019 and the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No.57 of 2019). The HBC has also given priority to the following Report for debate next week if not concluded today: The Committee on Environment and Natural Resources on the Inquiry into the Encroachment of the Riparian Areas in Kenya.

Hon. Speaker, I wish to commend the Departmental Committee on Finance and National Planning, Departmental Committee on Justice and Legal Affairs, Departmental Committee on Lands, Departmental Committee on Communication, Information and Innovation, Committee on Delegated Legislation and the Departmental Committee on National Security and Administration and indeed, all other Committees that have tabled their Reports this afternoon for the good work.

Hon. Speaker, the Reports of nearly all the Bills before the House have been tabled by the respective Committees. The only ones remaining according to the schedule given will be tabled next week on Tuesday, Wednesday and Thursday before we go on recess.

In accordance with the provisions of Standing Order 42A (5) and (6), I wish to convey that the following Cabinet Secretaries are scheduled to appear before Committees as follows:

- (a) Cabinet Secretary for Lands and Physical Planning will appear before the Departmental Committee on Lands on Tuesday, 17th March 2020 to answer Question from the following Members: Hon. Ruweida Obo, Gideon Keter, Hon. Kabinga Wachira, Hon. Benjamin Mwangi, Hon. Mary Wamaua and Hon. Catherine Waruguru.
- (b) Cabinet Secretary for the Ministry of Labour and Social Protection will appear before the Departmental Committee on Labour and Social Welfare on Thursday, 19th March 2020 to answer Questions from the following Members: Hon. Gideon Mulyungi, Hon. Samuel Atandi, Hon. Peter Kihara and Hon. Wilson Sossion.
- (c) Cabinet Secretary for the Ministry of Health will appear before the Departmental Committee on Health on Thursday, 19th March to answer Questions from the following Members: Hon. Halima Mucheke, Hon. Githua Wamacukuru and Hon. Ruweida Obo.

Hon. Speaker, the HBC will reconvene on Tuesday, 17th March 2020 at the rise of the House to consider business for the following week. I now wish to lay this Statement on the Table of the House.

POINT OF ORDER

SELECTIVE ISSUANCE OF PUBLIC LICENCES

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Member, just take a seat, you can sit anywhere.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): On a point of order, Hon. Speaker. I needed your indulgence before we support the Report on the Business Laws. There is something grave that is happening on the issuance of public licences in this country and selective application. This is especially to MPs and, indeed, people who are categorised as politically exposed persons and this includes all of us, our families and spouses. There is a trend that has come to my attention that we are being shut out of the financial banking system.

After the National Youth Service (NYS) scandal was reported and a Statement given by the Director of Public Prosecutions (DPP), there are banks which have taken action to close out all accounts associated with anyone who is involved in politics including their families. The Constitution is very clear especially on giving of licences through various regulatory authorities. The purpose is not to exclude any person in Kenya but to include all persons.

As we move to the efficiency of transacting business in Kenya through a Report that is about to be adopted by this House, when you shut out this able group of people selectively, it amounts to having a financial holocaust because we are being singled out one by one. The discretion is being given by either banks or in the case of the Hon. Member who was talking about the unavailability of services...

Hon. Speaker: Hon. Musimba, as you can see there are Members who have completed their week's engagement with Parliament and I need to sort out something. I have sympathies with what you are saying. Let me advise; the best way for the House to express itself is if you can come up with a substantive Motion to discuss that matter that would result in some resolution of the House. Even if I allow the entire House to speak, you will be crying to yourselves.

(Hon. (Dr.) Patrick Musimba spoke off record)

Hon. Musimba, I am advising you on how the House can work. You just want *bonga* points to be recorded for having said something that the House did nothing about. This is because there is no business before the House.

I want to advise you because you are able to carefully study the provisions of Article 127 of the Constitution of Kenya which details the functions of the Parliamentary Service Commission. I can tell you for sure that it does not give any such functions like the ones you want to ascribe to now. Hon. Musimba, there is no need of having a debate. Take your seat, including the Member for Murang'a.

(Hon. (Dr.) Patrick Musimba stood up in his place)

Hon. Musimba, you are at liberty to remain standing. You are out of order. Take your seat. Hon. Musimba since you have refused to sit and continued to engage the Speaker, I order that you leave the Chamber for the balance of the day. Hon. Musimba out! Some of you are getting into trouble with the banks that way.

(Serjeant-at-Arms escorted Hon. (Dr.) Patrick Musimba out of the Chamber)

Hon. Members, let me make it absolutely clear. As I have said, I have sympathy with the issues the Hon. Member has raised because I am sure all of us are alive to them, but as a House we cannot resolve them through a point of order. What is the Speaker expected to do? To issue

orders in vain? The Speaker can only act on resolutions of this House. So, any of you or indeed even Hon. Musimba when he sobers up, can bring a substantive Motion including this evening. I will approve it for the House to be able to deliberate, discuss and look into all the issues that appertain to it. Anyhow, that was a brief interlude.

BILLS

CONSIDERATION OF REPORTS AND THIRD READINGS

BUSINESS LAWS (AMENDMENT) BILL

Hon. Speaker: Debate on the Committee of the whole House on the Business Laws (Amendment) Bill (National Assembly Bill No. 80 of 2019) was concluded yesterday in Committee. What remains is for the Question to be put and for Third Reading.

(Question put and agreed to)

Hon. Speaker: Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the Business Laws (Amendment) Bill (National Assembly Bill No. 80 of 2019) be now read a Third Time. I also request Hon. Washiali to second.

Hon. Speaker: Hon. Washiali, the Whip of the Majority Party.

Hon. Benjamin Washiali (Mumias East, JP): Hon. Speaker. I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: It is the desire of the House that I put the Question. Having confirmed that the House has quorum, I put the Question.

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

THE KENYA INSTITUTE OF CURRICULUM DEVELOPMENT (AMENDMENT) BILL

(Hon. (Ms.) Sabina Chege walked in the gangways)

Hon. Speaker: The ever mobile or migratory Member for Murang'a, please, take your seat.

Hon. Members, this is a Private Member's Bill moved by Hon. Joyce Emanikor. Debate on the Report of the Committee of the whole House on this Bill was concluded yesterday in the morning.

I, therefore, proceed to put the Question.

(Question put and agreed to)

Hon. Speaker: Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I cannot see Hon. Joyce Emanikor. I am now being forced to do Private Members' Bills. In my community they say responsibility comes with some cost and there are no resources that follow. Let me help the mover, my good friend, Hon. Emanikor.

Hon. Speaker, I beg to move that the Kenya Institute of Curriculum Development (Amendment) Bill (National Assembly Bill No. 33 of 2019) be now read a Third Time. I also request Hon. Jimmy Angwenyi to second.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, I beg to second.

*(Hon. (Ms.) Jane Njiru stood in her place
as the Speaker was on his feet)*

Hon. Speaker: Member for Embu, we are in the Chamber. It is not done that way.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: It is the desire of the House that I put the Question. Again, having confirmed that the House has quorum, I put the Question.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

THE LIVESTOCK AND LIVESTOCK PRODUCTS MARKETING BOARD BILL

Hon. Speaker: Again, this Bill was moved by Hon. Bashir Abdullahi, the Member for Mandera North. The Committee concluded debate on this Bill and, again, like the other two, what remains is for the Question to be put and Third Reading.

(Question put and agreed to)

Hon. Speaker: Mover.

Hon. Major (Rtd.) Bashir S. Abdullahi (Mandera North, JP): Hon. Speaker, I beg to move that the Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No. 2 of 2019) be now read a Third Time. I also request Hon. Adan Haji to second.

Hon. Speaker: Let us have Hon. Haji, the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives.

Hon. Ali Adan (Mandera South, JP): Thank you, Hon. Speaker. I beg to second.

(Hon. (Ms.) Gertrude Mwanjanje walked into the Chamber)

Hon. Speaker: Member for Kilifi, just where you are is okay.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: It is the desire of the House that I put the Question. Again, having confirmed that the House still has quorum, I put the Question.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

Hon. Speaker: Next Order!

MOTION

ADOPTION OF ANNUAL REPORTS ON STATE OF JUDICIARY

THAT, the House notes the Annual Reports on the State of the Judiciary for Financial Years 2016/2017 and 2017/2018, submitted to the House, pursuant to the provisions of Article 254(1) of the Constitution and adopts the recommendations of the Departmental Committee on Justice and Legal Affairs as contained in the Reports of the Committee, laid on the Table of the House on Thursday, 9th May 2019.

(Hon. William Cheptumo on 10.3.2020)

(Resumption of Debate interrupted on 11.3.2020 – Afternoon Sitting)

Hon. Speaker: Order, Hon. Members! We are still in business. Before we go to indicate the position with regard to this Motion, allow me to recognise the presence, in the Speaker's Gallery, of students from Moi High School Kabarak, Rongai Constituency; Nakuru County. They are welcome to observe the proceedings of the House this afternoon.

Hon. (Dr.) Wamalwa Kibunguchy was on the Floor of the House when time lapsed yesterday. He has a balance of six minutes.

Hon. Members, this is the debate on the Annual Reports of the State of the Judiciary for the periods of 2016/2017 and 2017/2018 which was submitted by the Departmental Committee on Justice and Legal Affairs (JLAC). Is the Hon. (Dr.) Wamalwa Kibunguchy in the House? The Member being absent, not desiring to be present, forfeits the balance of his time.

Hon. Members, it is the desire that we conclude this business today because several of you have already contributed, but I can see there is still interest. The first person on the list is Hon. (Dr.) Otiende Amollo, Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker.

Hon. Speaker, I want to commend the JLAC for this Report covering two years. The Committee has done a good job. I have read the Report in its entirety and it covers a number of very important things. The first—which is also captured in the summary at (i)—is the idea of

urging the Judiciary to fast-track establishment of the Office of the Ombudsman by legislation. I want to confirm that when I was the Ombudsman of the Republic of Kenya, I had the good fortune to persuade the Chief Justice (CJ) to establish this office administratively. Establishing it by legislation will go a long way. It is safe to add that it is important to note that any legislation that establishes this office must have necessary linkage with the overall Office of the Ombudsman in the Republic of Kenya so that there does not appear to be any competition in terms of jurisdiction and to smoothen their working relations.

Secondly, this Report urges the need to establish infrastructure for the courts. Essentially, this urges the Judiciary to establish more courts to ensure access to justice. This is a good thing but I urge Members that in the reality that we live in — where the Judiciary does not get all the funding it requires — we can also do something about this. I urge Members to consider saving part of the allocation in terms of the NG–CDF towards establishment of the structures of the law courts. This can be done. I have done this in Rarieda and I am aware that at least 10 constituencies in this Republic have set aside land or buildings towards this effort. If we were to do this, we would ensure that there is a greater reach for the Judiciary across the country.

Hon. Speaker, this Report covers the issue of transfer of tribunals. There are over 50 tribunals and many ministries are sticking to them for whatever reasons. I support the Report in terms of ensuring transfer of jurisdiction of the tribunals to the Judiciary as contemplated by law.

This Report covers the issue of funding of the Judiciary and here is an important point. It captures the need for the National Treasury to ensure sufficient allocation to the Judiciary. While I support that idea, I fault the idea of urging the National Treasury to do so. Article 173 of the Constitution puts that responsibility on us, not on the National Treasury. Under Article 173 of the Constitution, once the Chief Registrar of the Judiciary has prepared estimates, he or she submits them to the National Assembly. It is up to us in the National Assembly to engage with the Chief Registrar of the Judiciary and determine the allocation. Once we have determined it under Sub-Article 4 on approval it becomes a charge on the Consolidated Fund.

Hon. Speaker, we have not emphasised this point enough in the last 10 years. We purposefully created a Judiciary Fund so that the Judiciary may be independent and its sufficient funding would be ensured by the House. This Fund has not been activated for the last 10 years. The reason was that the regulations under the Constitution and Judicial Services Act had not been passed by this House. I am aware that by the time this Report was signed, this House had not passed those regulations but this House has since passed those regulations, last year. I urge that, to this extent, you may need to issue a Communication to indicate that the Judiciary Fund is now activated and Article 173 of the Constitution is fully in operation. So that, we as a House, the Judiciary itself and the National Treasury will understand that as we move forward, we will need to observe the dictates of Article 173. There is no more hindrance.

While the Report is very good, there are some aspects that I decry. I decry the fact that in 2020 we are discussing a Report of 2016. Indeed, a Report that came at a time that the CJ who was there then had long retired. I decry the fact that while this Report was signed on 9th May 2019, we are coming to discuss it in March 2020. We must figure out a way of efficiently determining and discussing these matters. I respect the fact that the Committee met six times on this Report and perhaps that is where the issue lies. We may need to capture the fact that it is not really for the Committee to dig so deep into some of those matters as to delay this Report by years, as much as to transmit that Report with necessary observations so that we can interrogate it quickly and move on. Now that it has covered two years, I am sure that moving forward, we will be discussing them much sooner.

Hon. Speaker, I support the Report to the extent that it makes a very important observation. It observes that the Supreme Court was never meant as an appellate court for all matters. That point needs to be emphasised thoroughly. With tremendous respect to the Supreme Court, we have witnessed a situation where the Court liberally interpreted its jurisdiction, opened the floodgates and now all the cases were flooding to the court. It then became necessary for them to re-interpret that jurisdiction in an effort to restrict those who access its doors. They have sought to do that by trying to ensure that everyone who appears before them addresses the question of their jurisdiction. It addresses the question: in what way and to what extent are your rights under the Constitution threatened? Using that yardstick, some cases are admitted while some are not. A careful analysis of the jurisprudence suggests that it is almost a discretionary jurisprudence that is as long as the chancellor's foot. Some succeed while some fail in circumstances that are almost similar. I suggest and I agree with the Committee that unless the Supreme Court re-interprets its jurisdiction properly, we may have to do that in terms of legislation.

This Report covers another interesting area of the issue of delayed cases. It must be acknowledged that there is serious delay in cases. What the Report suggests which I am not prepared to accede to as yet is that we should go ahead and fix time limits within which certain cases must be determined. That is a very heavy matter. As necessary as it is, it is a very heavy and even potentially dangerous matter. I would urge that before we get there, we should urge the Judiciary to take the first step in terms of self-regulations. So that the Judiciary would by way of regulations or directions by the CJ, and this was done before, indicate that in corruption cases, if it is at the Magistrates' Court, we expect they will be ready within this period and if they are ready, the cases should have been determined as they have also done with certain election matters and that they would direct given the reality of the circumstance. That direction would be softer. If you put those time limits in the area of legislation, part of it would defeat justice because once you hit that time limit, there is discontinuity either to the advantage or disadvantage of the people who went to court.

That matter must be tied to the last point which I want to make. Part of the reason for the delay is insufficient numbers of judicial officers. We are aware that there are at least 41 judges who ought to have been appointed to the Court of Appeal by now. The President has not done so. As a House, we need to speak with a very loud voice on this that where the JSC has made recommendations for appointment of judges, those judges should be appointed forthwith without delay. We can then commence the process of removal of any judge who was improperly appointed.

Hon. Speaker: Let us have the Member for Molo.

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Speaker. First, I congratulate the Committee for a job well-done.

I have gone through this Report. One of the things that have been addressed in this Report in Chapter 2 has been the backlog of cases. A total of 52,352 cases have taken more than 10 years to be concluded. That means that 52,000 Kenyans have been waiting for justice to be served to them and this has not happened for 10 years. Majority of the backlog cases - 63 per cent of them - are said to lie with the Magistrates' Courts. The Committee recommends that the mandate of those judges is increased so that the backlog of cases in the Magistrates' Courts is improved. Kenya only has 1,200 magistrates with a population of around 45 million Kenyans. A country like Germany has 20,000 judges with a population of 80 million people. In as much as we would like to blame the Judiciary for the delay in conclusion of those cases, the human

resource in terms of the number of magistrates that are serving Kenyans is the lowest in Africa and the world.

The 2010 Constitution created the three arms of Government. In their wisdom, the drafters of the Constitution placed tribunals under ministries. However, it is regrettable to note that out of 60 tribunals, only 20 have been properly put where they are supposed to be and that is under the Judiciary. Cabinet Secretaries have failed to appoint their persons and transfer those functions to the Judiciary. This is against the spirit of ensuring that our Constitution is followed and adhered to. I, therefore, expect that part of the recommendations of this Report should be that forthwith and immediately, the 40 tribunals that are under the ministries should go to the Judiciary so that the spirit of the separation of powers between the Executive, Parliament and the Judiciary is adhered to.

One of the observations of the Report was the jurisprudence that has been done by the courts mainly through several rulings. One that I would like to quote is a public participation ruling that said when you are doing direct procurement, public participation is a must for all parties of interest. A lot of money is lost in this country through direct procurement because some officers just sit down and decide who they will award a particular tender. Provisions in our Constitution do not allow that to happen. As a result, the actual cost of such projects is usually exaggerated and value for money is not achieved. Therefore, this decision by the courts that for direct procurement there must be public participation by all the relevant people and bodies is very welcome. We are hoping that this will not just remain a decision on paper but our officers, especially the ones in the Judiciary, will adhere to it.

There is a decision that we need to make as a country. Every year we spend Kshs1 billion feeding convicts that are on death row. Therefore, a decision needs to be made. Do we need to spend Kshs1 billion feeding those people? We call prisons correction services. Could we decide that these people have corrected their ways and can come back to the society and make a meaningful contribution to our economy? Spending taxpayers' money - a whole billion shillings every year - to feed convicts that are on death row and we call our prisons correctional services is not good for the economy. It cannot even be said to be good for those convicts, the country or taxpayers who sacrifice their taxes to fund the Government.

The Judiciary has complained many times of lack of budgetary allocation. Just like other institutions, the amount of money that is asked for has always been more compared to how much is allocated. The Judiciary has said that the reason they are not able to work is because they are underfunded. This Report notes that the absorption rate by the Judiciary is 67 per cent. That means that they are not able to absorb the amount of money that is allocated to them. They are able to absorb slightly more than half of what they are allocated. Therefore, in as much as we sympathise with the Judiciary with the under-allocation just like all the other institutions, they need to wake up, prioritise their projects, have good systems that ensure money that is allocated to them is absorbed and that services to *wananchi* are not rendered because they are underfunded. As we will come to see, if they are not able to absorb even what they are given, that means that even if they were given much more, they will not be able to work as they should.

I want to end by saying that we need to make a decision. We cannot spend Kshs1 billion feeding people who are doing nothing. Kenyans are working hard to put food on the table, educate our children, pay our medical bills and you are spending Kshs1 billion to feed people on death row. We should decide to, either kill them, send them back to the society, or make sure that the correction services of our prisons actually correct those people so that they can come back to our economy and make meaningful contributions.

With that, I support this Report.

Hon. Speaker: Some of the names here are of Members who have already spoken to the Motion.

Let us have the Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. I have not spoken to this. I thank the Departmental Committee on Justice and Legal Affairs for having brought this Report. The Report has come at the right time because there has been a lot of talk about the Judiciary and the events there. We have heard the head of the Judiciary complain publicly about an array of things. That gives us an audit of what is happening within the Judiciary and possibly for us to input on what can be undertaken.

Some of the things that were flagged out by the Report was funding of the Judiciary which was observed not to be adequate. Even the little that was given to the Judiciary was not guaranteed to reach them. The JSC together with the Chief Justice have continually stated that one of the problems affecting them which hinder their work has been lack of funding.

I support the observations and recommendations of the Committee that we need to increase funding to the Judiciary. The independence of the Judiciary should not be in name only. That independence should be based on an array of things that even include the funding and financing of the Judiciary so that they do not beg the other arms of Government, especially the Executive. At the end of the day, they become the appendix of the Executive and, therefore, can be influenced. This is coming at a time when there are so many serious issues concerning litigation in the country. They are broad issues that even include elections where we are headed to if we will have the referendum. This can only be executed by an independent Judiciary, both in funding and also in law and stature. I support the Report to the extent of increasing funds of the Judiciary so that they remain independent and free from influence. We saw serious independence of the Judiciary when they were adjudicating on the Presidential election petition during the last general election. If the Judiciary is not funded properly, you do not expect any such a ruling at any other time, moving forward.

Hon. Speaker, another issue that has been flagged in the Report is corruption within the Judiciary itself, especially on how they use the cashless payment systems that they adopted as a way of eliminating corruption within the system. Unfortunately, the Report states that this has been infiltrated by people within the Judiciary who are working together with the banks in order to fleece the Judiciary of this money. Actually, the Judiciary must also put itself in order in terms of gaining respect.

As we fund the Judiciary, they must gain respect in terms of coming up with rulings and adjudications that are clear of corruption. Address to the matter of corruption should not be limited to infiltration of their cashless system, it should cover all other forms of corruption. That is how the Judiciary will be respected and the rule of law shall prevail. This is because the rule of law is a very important aspect of existence of any jurisdiction worldwide.

Another issue that has been flagged in the Report is poor terms of service for magistrates, who are key people at the lower level of the court system. In the structure of the court system, the magistrates are near the lowest level. These are the people who handle majority of the cases that emanate from all spheres and regions of Kenya. Magistrates deal with all sorts of litigation, including land disputes, among others. The fact that magistrates are poorly remunerated is exhibited by the fact that they do not even have motor vehicles. As indicated in the Report, this group of adjudicators of law who are susceptible to any form of corruption cannot stand strong because they are poorly remunerated. Coming from a background of labour, I know that the

people who need to be taken care of most, in terms of service, are the magistrates because they deal with many cases that emanate from the ground.

Another issue worth noting is that when money collected by the Judiciary is banked, it does not accrue any interest, for one reason or another. This is especially based on the Public Finance Management Act, which needs to be amended. It is the responsibility of this House to do that quickly so that monies that are collected on behalf of the Judiciary and banked can earn some interest. After all, the banks must also be charging the Judiciary for the work that the banks do for them. This would be another source of income for the Judiciary.

Also flagged out is lack of manpower yet we know very well that a number of judges who were nominated were not accepted. It is in public domain that some organisations went to court to challenge their nomination and force the President to allow the 41 judges to be accepted. This is a matter of urgency. Possibly, this House should pronounce itself on this matter even as the courts do that so that we have the new judges appointed to help reduce the backlog of cases in the Judiciary. The country was not happy when the Judiciary said that some of the matters going to court now will only be heard after five years. That defeats the principle of justice itself because justice delayed is justice denied. Therefore, the judges who were nominated should be appointed quickly to fill the gap.

Finally, is the issue of infrastructure, which one Hon. Member approached through NG-CDF funding. I support this but the structure within the Judiciary should provide a very easy format whereby we, within Parliament, who manage the NG-CDF funds, can help in developing the Judiciary's infrastructure without a lot of red-tape. I have already done a similar thing in Emuhaya Constituency. I have set aside land and money but some red-tape within the Judiciary has slowed down the process. The fact that the population has since increased and the structure of the Government has changed such that we now have even smaller units operating means that there is also need for more justice services to be rendered to Kenyans. I want to ask the Judiciary to make it easy for that process to start so that we can get to all Kenyans covered.

With those few remarks, I support the Motion.

Hon. Speaker: Member for Kilifi North, you may proceed.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker. I would like to support this Report and say a few things. This Report points out the fact that cases take so long because resources are not adequate for the Judiciary, among other things. I would like to dwell on two of the recommendations.

One, just like my learned friend, Senior Counsel Otiende said, we cannot really determine how long judges should take on cases. But more importantly, justice delayed is justice denied. Many times, cases to do with land and environmental issues in this country take very long to be disposed of. Consequently, the families affected by the matters relating to such cases suffer as they wait for a judge to make a determination. So, they live like squatters on the disputed land. They cannot make any investment; they cannot take loans nor do anything on the property they sit on because the case goes on for five to eight years. Sometimes the patriarch or the matriarch of the family passes on and then we have another case of succession on the same property.

We have long unwinding cases, especially at the environmental and land courts. The Judicial Service Commission needs to look at what they can do to ensure that land cases are disposed with as soon as possible. I have in mind the court in Malindi. Kilifi County has some of the historical injustice cases on land, squatters as well as cases of people who took land from the natives. These cases have kept on dragging forever. There is a correlation between the period of time these cases have lasted in court and the poverty levels of the natives in Kilifi County. When

disputes arise and people have to go to court to seek justice, poverty continues within the families because of delayed justice. As the JSC listens to us on this matter, they should ensure that cases do not take that long, so that we can reduce the poverty indices that have kept on rising.

Another thing I would like to talk about is access to justice. There are two ways we can look at access to justice. Where is the court? How far is the court from the citizens? How do I get justice in that court? A lot of times people have to travel very long distances to access justice. For example, if one lives in Mariakani Town, which is within Kilifi County, and one's case can only be listened to by the High Court, one is required to travel all the way to Malindi Town. First of all, the cost of travel is prohibitive. The cost of hiring a lawyer is also prohibitive. The cost of getting justice in this country is very high. Majority of the people we represent here cannot access justice. So, they give up along the way.

So, access to justice becomes a challenge in terms of the distance between the litigant seeking justice and where the court is. We need to build more courts and bring them closer to the people. There have been plans to start mobile courts, but they have not succeeded. We need to bring courts closer to the people so that they can access justice. I remember very ugly incidents especially in Malindi and Mombasa where the Court of Appeal was moved to Malindi instead of Mombasa. People were straining to access the court because, in the whole of the Coast region, if one needed to go to the Court of Appeal, he had to go to Malindi. The lawyers in Mombasa said that they wanted the court in Mombasa. So, there was a lot of pull and shove. That is something that has not been resolved and we need to resolve it. We cannot have a whole region having only one place to go for appeal. We need to take the courts to the people.

When the wheels of justice roll, who powers them? Let me say without fear of contradiction that the court in Malindi has never delivered justice to the local person. Why? Because the local people cannot have a good lawyer because they cannot afford to pay. They cannot pay for the court charges. So, all the land cases that go to the courts, especially the one in Malindi, the local people or peasants lose them. Why do they lose them? They do not lose them because the land does not belong to them, but because of the processes and the costs. The guy with a flamboyant lawyer that can pay the highest cost gets his things done. But the people lose. Let me reiterate what Hon. Otiende Amollo has said, the justice system needs not only to be for the people that have money or people who can afford to pay a smart lawyer, but for everybody. When we sing: "Justice be our shield and defender" in this country, we mean the words of the National Anthem as we seek justice in the country.

I would like to emphasise that let justice be our shield and defender and let everybody have access to justice. I have seen families who we know very well and even the judge knows that a piece of land under dispute belongs to them because they have lived there for many years but, when the matter comes before court, the poor person does not have a lawyer or the lawyer has been provided by the State. You will see a big difference when a lawyer is paid by a client to argue a case. But the one who is appointed by the State looks at his client and realises that he or she cannot fight as hard as he would have if it was another person paying. So, people lose the land and become miserable.

The last point I would like to speak to is evictions and settlement, especially on land matters. I pay a lot of attention to land matters because they affect my people in terms of justice. A judge issues an eviction order, there is a fundamental right to dignity and housing but he does not look at that because the person to be evicted has lost the case. In the process of eviction, because of the order that has been given by the judge, a lot of fundamental rights are injured in

the process. People get maimed and the right to property is interfered with. People suffer during evictions and resettlements. Those are things that we see in one area of the country - the Coast region. We see evictions of families from their tracts of land. Why? It is because somebody went to court. First, if you look at how he obtained the title deed that he takes to court... Many of the people that I lead have never known or understood that for one to claim that land belongs to him, he needs to have a paper that shows it. They live on land but somebody goes to Ardhi House, gets a paper, goes to court, gets an injunction order and eventually a family is evicted. The judge does not look at the process, but gives the police orders to go and evict. He does not consider that the person who is being evicted will lose some fundamental rights in the process, especially the right to a dignified life. The person is thrown out of the place and people do not care where he or she will sleep or eat. Probably, this Parliament requires to enact a law on evictions and resettlement so that, as a judge gives an edict or a verdict on how to get people out of a piece of land which, even if we look at the historical aspects of it, the person who has been given the land does not own it... So, the historical land injustices that we keep on talking about get perpetuated and worsened by courts in this country.

Hon. Speaker, as we note and support this Report, there are certain things we need to look at in the justice system so that justice continues to be our shield and defender.

Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Owen Baya, I believe the Constitution, in creating or establishing the National Land Commission and vesting it with the mandate to inquire into, even on its own motion, matters of historical land injustices, it was expected to address those kinds of matters. Perhaps, as Members of Parliament, you have what it takes. Article 95(2) of the Constitution, provides that the National Assembly resolves issues of concern to the people. I know you are an active member of the Departmental Committee on Lands. So, please, make sure some of those things are addressed there.

(Hon. Owen Baya spoke off record)

Hon. Baya, your time is over. The reason I stayed is because I could see the passion with which you were addressing these issues. That is why I feel that you are in the right Committee. You should propose any changes that are necessary to redress the kind of injustices you have mentioned.

Finally, because all the other Members whose names appear here have contributed, according to the record I have here...

(Hon. Daniel Maanzo spoke off record)

What do you mean? The paper I have shows that this Report was moved by Hon. Cheptumo and seconded by Hon. Daniel Maanzo. That is the record I have. Let me, in the meantime, give a chance to the Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Speaker for identifying that I have not contributed to this Report and I really want to do so.

I have read the Report and realised that there is considerable amount of information and findings in it. The findings are vital in the sense that the Report identifies the challenges the Judiciary has. In particular, as my predecessor, Hon. Baya has articulated the situation in Malindi, it is equally the same in the northern region where land registrations are a challenge and

land courts are there but are hardly seen. Many pieces of land do not have titles and, therefore, to deal with that is also a problem.

What is really frustrating in the northern region in terms of the Judiciary is that there are insufficient courts that can manage or deal with court cases. Court cases in that area, particularly in Wajir South, take a considerable amount of time. There are not enough courts in the country and justice is delayed at all the times. Justice delayed is justice denied, as it is said always. That has been said by my colleagues here.

What frustrates us all is that courts of appeal take even more time. Applications take a process that does not have a face of justice simply because there are no enough courts of appeal. There are no enough courts that can hear the population. We have only one court in Garissa that serves the whole of north eastern Kenya. It is not even a Court of Appeal but a High Court. It becomes a challenge because people have to travel all the way from Mandera to Nairobi to seek justice. Justice takes considerable amount of time to be served. This Report has identified that there is an insufficient number of courts that people can go to. Generally, I support the Report. I am quite happy that the Committee has found that there is important work awaiting us in terms of ensuring that the Judiciary is streamlined.

One final thing that I want to add is that the Judiciary is hardly funded enough; it is underfunded. Justice Maraga has come out to talk about it. The last time he spoke in public, he spilled the beans by saying that he does not have sufficient funds to run the Judiciary. That is true. Ours is a House of Budget. We are supposed to see to it that justice is served to the Judiciary.

Hon. Speaker: Hon. Members, let us not lament. Remember the Chief Justice is on record as indicating... Indeed, this Report indicates that the desire is to establish, at least, a high court station in every county. When Hon. Mohamed Sheikh says that there is only one High Court in Garissa and not a Court of Appeal, maybe, he has not read the Report sufficiently or he has not been following the events. More importantly, if you have heard the cry from the Judiciary — the top— then it behoves you to make sure that you fund the Judiciary appropriately. You cannot claim there is no access to justice in your various counties and, at the same time, when it comes to debating matters to do with funding of the Judiciary, many of you are either out in the streets doing other things... You are not representing the people and yet, you want to come here to lament that the Judiciary is not properly funded. Who is going to fund it if you are not here in the House to debate how much the Judiciary is requesting and whether it is tenable?

I should be hearing during that debate the lamentations like the one Hon. Mohamed Sheikh from Wajir South has said that he wants more money allocated to Judiciary because his people desire to have a high court station, at the very least. But during that time, quite interestingly, nobody seems to raise those issues and yet that is the right time. Yes, it is very good that Hon. Cheptumo and his Departmental Committee on Justice and Legal Affairs have brought out these issues just to support what the Judiciary has been telling the rest of the country. It is also good, Hon. Mohamed Sheikh, to point out that. But I want to encourage you that when it comes to allocating resources, I also want to hear your equal voice supporting the Judiciary to get more resources in order to make it possible that, at least, in every county, there is a high court station.

There had been a mistake, Hon. Maanzo. I have directed the Clerk to explain how that mistake happened. Your card has been on top, but the record here shows that you have contributed. That is the only reason I have not given you a chance. Your card was above Hon.

Omboko Milemba and Hon. Baya, but the record I was given shows you are the one who seconded the Motion. This is a serious error by whoever was preparing this list. The Clerk should address this matter because it is quite possible that somebody in the Chair here can deny a Member the opportunity to contribute on the basis of some record prepared showing that the Member has contributed, whereas the Member has not. It is very unfortunate and, more so, when it even shows that Hon. Maanzo actually seconded. But the Chairman of the Committee confirms that his Secunder was Hon. Murugara, Member for Tharaka. Maybe, it is because he has a name “Gitonga”. He is Gitonga Murugara. I know you also have a name “Gitonga” in between. I do not know whether that is what could have caused the controversy. But it is something that the Clerk should tell his people not to repeat.

Hon. Maanzo, before we call upon the Mover to reply.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to contribute to this debate.

Hon. Speaker: Sorry, Hon. Maanzo. Because I can see some of you are walking in and out, let me draw your attention to the next business. Just like Hon. Sheikh was complaining about there not being a court in Wajir, after Hon. Maanzo, the Mover will reply. The next business is a Bill from the Senate. It is such an important Bill titled: “The Care and Protection of Older Members of Society”. I do not know whether the Members who have been coming here in their droves and driving out for the weekend actually went through the Order Paper to see that there is such an important Bill. You all have older members of society in your constituencies. It is a shame that the House can be like this when you have such an important Bill coming.

Hon. Maanzo, proceed.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me this opportunity. I want to take a different tangent on this Report.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: You have just walked in. Allow Hon. Maanzo to make his contribution.

Hon. Daniel Maanzo (Makueni, WDM-K): I want to take a different tangent because quite a number of people who are familiar with the courts have contributed. In the last 10 years or so since the coming into force of the new Constitution and the last two Chief Justices, there has been a lot of improvement in the court systems in the country. Also, there has been an improvement as to the funding of the Judiciary. I am sure that you, having been in the legal profession for a long time and familiar with the country, you are aware of the efforts made since the 1980s to improve the system. A lot of time was taken by the administrators then to make sure that justice is brought near the people. One of the biggest improvements is the court users’ session between the Judiciary, the Law Society of Kenya and the court users in a region. They come together and share something similar to public participation. This is so as to improve on what happens in court, including the handling of sensitive cases like defilement and so on.

Six years ago, I went to Makindu Court. Unfortunately, it had been burnt down by some unknown people at night. The magistrate who was in charge and was conducting the session had a lot of frustrations. He asked me as the new Member of Parliament whether I could pass information on the situation. It did not take long. In one of the courts then, a black snake fell on the desk of the magistrate and that court was in disarray. The courts work with different bodies in the country like the Director of Public Prosecutions and the Prisons Department. Although 22 of them have been listed here, there are more agencies which have not been mentioned, like the Law Society of Kenya. You can imagine that during that situation, prisoners almost escaped! I reported the matter in Nairobi. Now there is a very good building that has been done in

conjunction with the World Bank. Also, in Wote, which is the County Headquarters of Makueni, a new building to host the courts has just been completed. I visited Kitui a few days ago and there are also very big improvements. Those are the counties I have been to. I have been to Mombasa, Kisumu and many other places. There has been a very big improvement in the last 10 years or so when it comes to the court infrastructure. It has really improved access to justice and the treatment of prisoners, among other issues. There has been a lot more.

When we talk about a billion shillings being used on people on death row and people who are generally under the custody of the courts, as much as you want to control that, if there are convictions in the courts and there have been appeals and final judgments issued, those have to be commuted into life sentences under the Constitution. Some of those are very dangerous criminals. Some who through one intervention or another find themselves free, the community attacks them when they get back. So, there is a lot more to be done so that whether those people have been reformed or not and they get out of jail, there is follow up. Such people can be brought back to the community and be useful to it. Therefore, there is very little which can be done on convicts other than counter-checking or coming up with a new law here or improve the law so that there is a way an assessment can be made on those who are serving life sentences.

There is also alternative dispute resolution. It really helps reduce the number of cases and making it easy for some of the cases to be solved by the parties. This is mostly the case with civil cases, and even criminal cases. For the simple cases like assaults, where family members can come together and agree to withdraw those matters, the courts have provided procedures for withdrawal and alternative dispute resolution. It will be good if we employ more of that. The courts are encouraging it where magistrates or judges are in charge, to give opportunity to the parties and through their lawyers to do dispute resolution.

Again, there are many cases of grabbing of the Judiciary's land. The Member for Kajiado abandoned his National Government Constituencies Development Fund (NG-CDF) offices to be occupied by the courts because their land had been grabbed and people were suffering. He uses other offices while the courts use his offices. I believe a method of making sure that where land had been allocated to the Judiciary and has been grabbed like the case in Ngong, alternative land is found so that the Judiciary can develop its infrastructure and the courts so that the people are served easily. When you look at the geographical area of that region, people used to go to Kajiado. That Member has done very well to assist the courts in one way or another.

There is the issue of policy and probably the amendment of the Constitution now that we are talking about amending it. We need to make sure some of the institutions which were left out in the last constitutional amendment in 2010, like the co-operative movement whereby they have a tribunal, are included. Some of the matters being handled at the tribunal level involving SACCOs touch on huge sums of money or matters of higher jurisdiction than just a tribunal. I believe this is the moment for the co-operative movement and other areas to be considered through recommendations to the Building Bridges Initiative (BBI), so as to make sure we have a better law which makes access to justice easier.

Otherwise, I thank you Hon. Speaker and I beg to support.

Hon. Speaker: Very well. Hon. Members, you will recall that you passed several resolutions on 18th February 2020. So, debates on reports of constitutional commissions are limited to a maximum of four hours. So, at this point, I call upon the Mover to reply.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Speaker. I want to very sincerely thank Members for their overwhelming support of this Motion and the two State of the Judiciary Reports of 2016/2017 and 2017/2018.

Yesterday, after moving this Motion, and also this afternoon, I sat through the discussions. I must confess that Members took time to go through the Reports that we tabled. They appreciated the great steps that have been undertaken to transform the Judiciary. From 2016 to date, the Judiciary has undertaken very comprehensive transformation programmes. But this transformation agenda by the Judiciary can only be achieved when we have enough resources allocated to it. The two Reports very clearly covered the areas we need resources to implement the blueprint - *Sustaining Judiciary Transformation Agenda: A Service Delivery Agenda, 2017-2021*.

I also want to say that Members appreciated the fact that, for about the last five successive financial years which are 2016/2017, 2017/2018, 2018/2019 and 2019/2020, we have continued to witness underfunding in the Judiciary. This being the first discussion on the State of the Judiciary Report, I believe we are going to ensure that we allocate sufficient funds to the Judiciary when we go to budgetary allocations in the coming financial year. That is the only way and time we are going to ensure that the proposed recommendations by the Committee on various areas in the Judiciary will be implemented.

I said something yesterday when I was moving this Motion and I want to say it again as I reply today. Access to justice is a very interesting area. When we allocate money for roads in this House, we can see the roads. We can identify the kilometres done and the name of the road. It is tangible. You can feel and see it. It is the same for water projects like a dam. It is the same for housing. You see the houses. It is the same for health. You see hospitals and so on. However, when you talk of justice, you cannot touch it. You cannot even see it.

Yesterday, one of the Members of this House confessed and said that the first time she was able to understand what a court system is was during the election petition she had. That is when she came to the reality that it is important to have a functional Judiciary. I call upon my colleagues here that we represent people who are the consumers of justice; the consumers of access to justice. Those are our people that we represent. My plea to this House is that God has given you the opportunity to allocate money even for that which you cannot touch. Even as we talk of our nation being a very strong economic powerhouse in the region, we can only do that if investors locally and abroad can have their disputes resolved as quickly as possible.

I appreciate that, for the first time, this House is on record on the challenges faced by the Judiciary. We are now able to realise what the Chief Justice has been saying. As I reply, I want to emphasise that the way out of this situation, as submitted by Members here, is Article 173 of our Constitution so that we actualise the Judiciary Fund. I am happy to report to the House that the Judiciary Fund Act, 2015 is already in place.

The regulation was recently passed by this House and we now have no reason not to have the Judiciary Fund, which is going to remove the challenges they are facing. Apart from allocating the little resources to the Judiciary, they also have problems with the National Treasury processes, like the challenge of accessing money through the Integrated Financial Management Information System (IFMIS). I want to call upon all of us in this House that in the Financial Year 2019/2020, we ensure that we do that as a House.

Hon. Speaker, I am happy that, as the Chairman of this House, you have a background of our judicial system having been a magistrate before. You served our country in a big way and, again, today, you are overseeing the operations of the House. It is indeed a blessing that the Chairman of this House, that is, the Speaker, is a legal mind who understands the issues we are discussing here.

Finally, I would like to say that, as much as we will work hard as a House to allocate enough resources to the Judiciary and actualise the implementation of Article 173 of the Constitution, I also call upon the Judiciary to ensure that, as we allocate resources, the absorption rate of those resources is high. As at now, the absorption rate of resources allocated to various public entities is low. If you look at Government expenditures for Financial Years 2016/2017 and 2017/2018, you will note that the absorption rate is low. Although the Judiciary may have challenges associated with IFMIS and frustration from the National Treasury, I urge them to strive to quickly and efficiently utilise the resources that we will be allocating to them.

We currently have 21 courts which require completion in terms of construction. We need Kshs2.1 billion for that purpose, not to mention the mobile courts, renovation of existing courts and so on.

I just want to confirm to the House that we are, as a Committee, going to deal with the next set of Annual Reports of the Judiciary, covering Financial Years 2018/2019 and 2019/2020 so that we become up-to-date in terms of tabling our reports. We will do the same to the other constitutional commissions under our watch. Today, we got the one for Independent Electoral and Boundaries Commission (IEBC). We will move with speed to bring them onboard so that Members can appreciate what is going on in those institutions and be able to approve those recommendations.

I want to assure Members that if this House adopts this Report, we will, as a Committee, ensure that the recommendations are implemented by the Judiciary.

With those remarks, I beg to reply.

Hon. Speaker: Hon. Members, that concludes debate on the Motion. For obvious reasons, the Question will be put when the House sits next week.

(Putting of the Question deferred)

Next Order!

BILL

Second Reading

THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY BILL

Hon. Speaker: Chairperson of Departmental Committee on Labour and Social Welfare.

(Hon. (Ms.) Joyce Korir spoke off record)

The Chairperson is not here. You are the Vice-Chairperson and you do not have a card?

Hon. (Ms.) Joyce Korir (Bomet CWR, JP): I am sorry, Hon. Speaker.

Hon. Speaker: I cannot understand. So, you did not come here to transact business? As the Vice-Chairperson, you knew that you were coming here to move this Bill. It does not mean very well because, surely, you should have had your card. Moving a Bill is a serious business. You should remember that you have so much time to move. So, I am sure you have thoroughly prepared yourself mentally, but the only thing you did not remember was to carry the card. Hon.

(Ms.) Joyce Korir, next time we will not allow you to transact such serious business if you do not come to the Chamber with your card. However, for now, please proceed. I can see it is a very important Bill.

Hon. (Ms.) Joyce Korir (Bomet CWR, JP): Thank you very much, Hon. Speaker. I beg to move that the Care and Protection of Older Members of Society Bill (Senate Bill No.17 of 2018) be now read a Second Time.

Hon. Speaker, I want to inform the House that the Care and Protection of Older Members of Society Bill (Senate Bill No.17 of 2018) underwent the First Reading on 26th June 2019. Thereafter, the Bill was committed to the Departmental Committee on Labour and Social Welfare to review it, pursuant to the provisions of Standing Order No.216(5)(c).

Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order No.127 (3), invited submissions from members of the public on the Bill via advertisements in the national dailies on 28th August 2019. The Committee did not receive any written or verbal memoranda from stakeholders and the public, but we considered the views of the stakeholders that were received by the Senate Committee and included them in the Report.

It is noted that the Senate conducted a public participation on the Bill and the comments from the public were duly considered. Some of the comments from the public were incorporated in the Bill. The reference is in the Senate Report that is available at the Table Office.

Hon. Speaker, the Committee held two sittings to consider the Bill, on 1st November 2019 and 14th February 2020 and deliberated on the provisions that are contained in the Bill. I seek to highlight the provisions of the Bill in brief. The Bill seeks to do the following:

- (i) give effect to Article 57 of the Constitution on the members of the society;
- (ii) provide a framework for the care of the older members of the society; and,
- (ii) establish a framework for the empowerment and protection of the elderly and maintenance of their wellbeing, safety and security.

Hon. Speaker, the objectives and purpose of the Bill includes the following:

- (i) provide a framework that promotes the rights of the older members of the society as enshrined in the Constitution;
- (ii) promote and protect the status, dignity, wellbeing, safety and security of the older members of the society;
- (iii) provide a framework for registration, establishment and management of the service and establishment and management of residential facilities for older members of the society; and,
- (iv) combat the abuse of older members of the society.

Hon. Speaker, the Bill outlines the rights of older members of the society, which include participation in the community life in the generational programmes, establishment and participation in associations, participation in income generating activities, managing their properties, living in dignity and respect, freedom from abuse, receiving care and assistance from families and the state, among other rights.

Hon. Speaker, the Bill provides for the right of protection and safety, including specialised protection in a situation of risk, armed conflict, natural disaster, emergency, *et cetera*, of old members of the society. The provision requires institutions to maintain the inventory of older members and submit it on quarterly basis to the national and county governments and other agencies responsible for disaster management.

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

[The Temporary Deputy Speaker (Hon. Christopher Omulele) took the Chair]

Hon. Temporary Deputy Speaker, the Bill further puts in place measures to ensure that the national Government formulates a comprehensive national strategy or plan of actions and policies promoting the realisation of the rights of older members of the society. The county bill will be expected to establish homes and implement programmes for the care of older members of the society.

The county governments, through the respective County Executive Committee (CEC) members, will be responsible for the registration of homes for older members of the society and will have to ensure that there is continuous monitoring that such homes meet the minimum safety standards.

Hon. Temporary Deputy Speaker, in consideration of the Bill, the Committee made several observations. The Bill provides for the establishment and implementation of community home-based care programmes for the elderly people in the society by county governments. The community based programmes include economic empowerment, delivery of spiritual, cultural, medical, civil and social services, promotion of health of older members of the society through provision of nutritious food and basic health services and promotion of their skills and capacities. These provisions on the enhancement of the Social Assistance Act, 2013 mandates Social Assistance Authority to provide social assistance to persons in need who include poor elderly persons without providing clear guidelines on specific assistance or care to be given to older members of the society. The Social Assistance Act, 2013 makes a provision for social assistance to only poor elderly persons, but the proposed Bill has no such distinctions. It generally seeks to provide care to all old members of the society. For a long time, older members of the society have often been neglected. They are unable to afford decent lives. This Bill seeks to fill legislative gaps to ensure the rights of the older members of the society are adequately addressed.

The Bill outlines the obligations of the national Government with regard to the rights of the older members of the society. Functions of the national Government under the Bill are largely covered in the National Social Assistance Authority as established under Section 3 of the Social Assistance Act, 2013. The Authority is further mandated to carry out monitoring and evaluation, assess the impact of the programme implemented by the county governments, assess feasibility of the programme helping the older persons and putting in place mechanisms for accountability and transparency.

The Committee noted that the Bill obligates the Authority to implement its obligations whose sources of funds currently do not include such monies that may be appropriated by Parliament. It is imperative that the amendment on the Social Assistance Act, 2013 be expedited to enable Parliament to provide funds to the Authority to ensure that it is enabled to implement its obligations as enumerated in the proposed Bill.

The Committee noted that, other than minor, technical and cross-reference errors, the substance of the Bill was in order. In this regard, I want to assure Hon. Members that the proposals in this Bill comply with the provisions of the Constitution and the Standing Orders. I beg to move and request Hon. Omboko Milemba to second.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker. This Care and Protection of Older Members of Society Bill (Senate Bill No.17 of 2018) has come at the correct time because there are serious changes of trends in the society. In the past times, older people invested in their children and expected that their children will take care of them. Those times are long gone. A clear provision must be put in place on how we shall take care of the older people in the society in our country. This is an important Bill given that there is nowhere in this country – including the Hon. Members seated here – where there is no interaction with the older people of the society. You will agree with me that they are always needy and they need assistance. This Bill tries to bring out a clear mechanism on how the national Government will create a framework of assisting those older people of the society and obligate the county governments to also have a structured way of taking care of the older people within our society. That has been well elaborated in the Bill. It includes creating and registering homes for them and continuously taking an audit of the old people each year and reporting it. That will allow us, as leaders, to have an audit report of how many older people of the society are within our areas.

The Committee travelled to several counties among them, Kwale, Busia, Vihiga and Kilifi. In all those counties, we saw the desperate situation in which the older members of the society are living in. The Government has provided a provision through the Social Assistance Act, 2013, which has a limited mandate on the national Government, on how to support. However, that support is limited to those who are above 70 years. Unfortunately, even for those who are above 70 years, there is no continuous uptake of those who obtain that age, for example, today or tomorrow and other days onwards. This Bill is broadening that aspect beyond what the Social Assistance Act, 2013 did to include the general taking care of the older people within the society.

When we moved around, we found out that some county governments, at one particular time, had tried to come up with a scheme to assist old members within our community, but they lacked a law to stand on and act as a podium upon which they could have operationalised their activities. Hon. Members, this Bill will be important in opening that particular aspect to the county governments, so that the older members of the society can be taken care of. In essence, this Bill basically actualises Article 57 of the Constitution. That is the core matter here. Article 57 of the Constitution, 2010 states:

“The State---” No, I am being let down by my eyes which are going too fast. I am realising that I am also growing old quickly. Let me get it clearly as it is in the Constitution. Sorry for that.

Basically, it actually operationalises Article 57 of the Constitution. It states:

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

- (a) to fully participate in the affairs of the 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.”

Basically, that is what this Bill is trying to actualise. That is very important, because the older members of the society risk being abused. That is the crux of the matter.

With those few remarks, and without repeating what was stated clearly by the Mover, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): The first opportunity will go to Hon. Mizighi Mnene, the Member for Taita Taveta.

Hon. (Ms.) Haika Mizighi (Taita Taveta CWR, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this timely Bill. I have heard several times that old is gold. Truly, old is gold. That is where there is wisdom. We have come across so many cases concerning our old people in the villages as we go about our day-to-day activities. We have come across cases of our old people living miserably, simply because they do not have other family members to take care of them. Some of them, maybe, lost family members through death while some of them never had children at all. We have come across cases where older women have been raped simply because they live in the villages alone. So, when I see this Bill, I am a very happy person. For sure, we need the Government to come on board to provide a framework that will promote and take care of the rights of old people in the society.

Having listened to the Mover of the Bill, this Bill is well articulated. We need it to protect the dignity of the old members of our families in terms of their wellbeing, safety and security. I have a case in Taita Taveta which I am still following up on. That is why I am here up to now, to support this Bill. It is a case of a lady who was raped to death. She was an old member of the society. Therefore, as I stand here today, I support this Bill.

(Hon. Mohamed Mohamud stood in the gangway)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sheikh, the Member for Wajir, you may want to acquaint yourself with the rules of the House. You cannot stand between the Member contributing and the Speaker.

Hon. (Ms.) Haika Mizighi (Taita Taveta CWR, JP): Thank you, Hon. Temporary Deputy Speaker. Those older members of our society have special skills that we might not find anywhere else. I have come across older women who have weaving skills. If we do not take care of the older members of the society, we might never have the skills they have anymore. We should take care of them and give them a chance to pass the skills to the next generation. Those older members of our society know a lot of our history and culture and the best practices that were there before. If we support this Bill, I am sure we are going to be in a better place and we are going to protect the older members of the society. Therefore, I support this Bill.

Thank you very much for giving me this opportunity.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nguna Ngusya, you have the Floor.

Hon. Charles Nguna (Mwingi West, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. I want to support this Bill and thank the Senate for coming up with it. There is a saying I want to remind this House. It says: "Old people were young people before young people were people." I picked that saying from an intellect somewhere. The Bill is so clear and very important.

First of all, it provides the definition of an older person. That it is a person of the age of 60 and above. I am sure in this House there are very few people who are over 60 years old. That is why this Bill is timely. I have looked at the objectives of this Bill and they are quite clear. One of the fundamental objectives which is highlighted is to combat the abuse of older members of the society.

I have too many cases in my constituency and in the country at large. When older people are abused, they do not have anywhere to go. They do not even know the procedures. They do not even have resources to use to report the abuses. So, this is one of the key objectives and I like it. If it is properly implemented, we are going to have rights of older people respected in our society.

Another key objective that we need to look at is the protection of their status and dignity, which is very important. When you age, you start being despised and being discriminated against by your people. Most of the time, older people are never respected in our society. One of the rights enshrined in our Constitution is the right to education. Everybody in the society has a right to education. Those elderly people should be able to choose where to school. We have realised that a majority of our counties, in fact all of them, do not have institutions where the elderly can go for education. I recall one incident where one *mzee* went to school, but the society was excited in a negative way. That person used to be loved by every student because he was a grandfather. If we can establish training institutions for the older members of the society, we are going to serve our society very well.

There is another right which the older people have been missing - the right to legal representation. Most of those people in my constituency have too many cases. Some of them have been denied the rights to their property, especially women whose husbands have died. The children take up the property and deny the mothers access even to their houses. If we can have a legal framework and implement this strategy that the Senate has come up with, we are going to protect our older people and get the blessings from them.

There is also the right to admission into public and private premises and public transport. I have travelled to several developed countries, like the UK and the US, and they have got areas, buses and trains only designated for the elderly. That kind of system is lacking in our country. If you walk to a matatu or a public bus here in Nairobi, they do not have space for the elderly. Most of them strain a lot. Unless they are accompanied, they cannot travel. It becomes difficult for them to move from one location to another. If we pass this Bill, let us have spaces designated for the elderly in public transport.

There are too many rights in this Bill. That is why I support it. It has highlighted the obligations of the county governments with regard to the role of protecting young people and giving cash to the elderly. I congratulate the Government for that. It is a national issue being done by the Social Protection Office. There are too many elderly people who have attained the age of 70 years, but still cannot access that cash. The national Government is the only one that has implemented this. I have not seen any county government perform. For example, my County, Kitui, has no programme for the elderly people. So, if we give the national Government this obligation of building the elderly persons houses and helping them access cash, then we will be moving in the right direction as a country. There are too many issues touching on the community-based programmes which shall be established by county governments.

Another key issue which was actually highlighted in this Bill is the notification of abuse of elderly members of the society. We are going to establish a Medical Practitioners Authority which will protect the elderly. There are too many issues I can discuss in this Bill but, with those few remarks, I urge the Members of this House to support it.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Paul Mwirigi, the Member for Igembe South, the Floor is yours.

Hon. John Paul Mwirigi (Igembe South, Independent): Asante sana, Naibu Spika wa Muda kwa kunipa nafasi hii ili niweze kuuchangia Mswada huu. Ni wakati mwafaka wa

kuwashughulikia wazee. Wakati mwingine, wazee hutafuta haki kwenye mahakama yetu lakini hawapati. Ni kana kwamba hawana haki kwa ajili ya umri wao mkubwa. Huu Mswada utawasaidia sana wazee kwa maana unajali maslahi yao.

Kuna pendekezo limetolewa kwenye Mswada huu linaloashiria kuwa Kaunti ziweze kutengeneza orodha ya wazee na kuwasajili. Hivyo basi, kila familia iliyo na mzee itajulikana. Kwa jinsi hiyo, Serikali itajua wazee walio kwenye familia hizo. Afya ni kitu cha muhimu lakini wazee hawawezi kupata bima ya afya. Kwa kuwaorodhesha, Serikali itajua ni familia zipi zilizo na wazee na hata kujua hali yao ya kiafya. Itaweza kuwashughulikia kwa njia nzuri. Wazee wengi wanaaga dunia kwa sababu hakuna watu wanaojali hali yao.

Katika familia nyingi, vijana wamewageuka wazee kiasi cha kuwachapa kwa ajili ya mashamba. Kuna ugomvi mwingi kuhusu mashamba na vijana wanawafurusha wazee kutoka kwenye mashamba yao. Mswada huu utawapa wazee nafuu kwa sababu shida zao zitashughulikiwa. Hata wakipeleka lalama zao mahakamani, watasikilizwa. Kesi kuhusu mashamba yao zitaamuliwa. Wazee hawana nguvu ya kupigana na vijana wao. Hii sheria ikipitishwa, itawashughulikia na hakuna mtu ataingilia maslahi yao.

Kuna wale wazee ambao wako na miaka sitini kuenda juu ilhali hawana vitambulisho. Wengine wanahitaji kusafiri lakini hawana vyeti vya kusafiri. Wapo ambao hawana vyeti vya kuzaliwa. Hii sheria itawasaidia sana kupata stakabadhi hizo. Kule vijijini tunakotoka, wako wazee ambao kwa kweli hawana stakabadhi nilizozitaja. Hata wale ambao walipigania uhuru wa taifa hili, hawana stakabadhi hizo.

Kuna bima ya kuwakinga wazee. Kaunti itakuwa na jukumu kubwa ya kuwasajili wale ambao hawako kwenye orodha ya Serikali Kuu. Kwa sasa, kuna wale wanaolipwa na Serikali kuu na wale ambao hawalipwi. Ie njia ilitumika kupata yale majina, ninaitilia shaka. Katika eneo-Bunge langu, sio wengi wanaofaidika. Lakini kwa ajili ya hii sheria, watafaidika. Hii ni kwa sababu watakuwa wamesajiliwa na kujulikana wako wapi.

Vipo vikundi vya kuwasaidia wazee kujimudu kimaisha katika jamii zetu. Wazee watakuwa na uhuru wa kujiunga na hivyo vikundi na vitawasaidia kutafuta hela za kujikimu na kujiendeleza kimaisha. Sisi huwasikiliza na kuwauliza mawaidha wazee. Watakuwa na mahali pa kukutana na kuzungumza. Aidha, maoni yao yatasikilizwa na serikali za kaunti.

Huu Mswada unanua kuwasaidia wazee ambao hawana mbele wala nyuma. Ni wengi ambao hawana mtu wa kuwasaidia. Wazee watajua kwamba wako na haki ya kufanya chochote kwa sababu hili taifa ni lao pia.

Naunga Mswada huu mkono. Naomba tuupitishie haraka ili wazee wapate haki zao.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mhe. Mwirigi, mchango wako umekuwa wa manufaa sana. Ningependa tu kuelewa jambo moja. Unaposema kuwa hawana mbele wala nyuma, unamaanisha vipi? Ni sawa, lakini! Tutakuwa na mchango kutoka kwa Mhe. Oduol Adhiambo. Tafadhali, chukua usukani.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker for giving me this opportunity to contribute to this Bill, which is concerned with the care and protection of the elderly members of the society.

I thank the Departmental Committee on Labour and Social Welfare and the Senate. We have a national policy on older persons and the ageing. The United Nations Human Rights Commission also has an independent expert on the enjoyment of all human rights of older persons. It is important that we note that even the African Union (AU) has a special treaty on the right of older persons. As we look at this Bill and the key issues that have been raised not only

by the Departmental Committee on Labour and Social Welfare but also by other members, I would like to support and indicate that this Bill is substantial.

Hon. Temporary Deputy Speaker, however, as we look at the key issues that seem to face older members of society, largely the kind of issues that seem to face members who are seen to be vulnerable, sometimes because of age... In some cases, we find that people could be facing vulnerability because of ability, like people living with disabilities (PWDs). There are other instances when people can face vulnerability on aspects such as gender.

It is important that, as we look at the Bill, we take note that we could, in the language that we use in the Bill, be rather passive and come up with a framework that might not necessarily enable us to address the core issues of concern. I raise this because looking at the concerns that older members face, we really are looking at a right because as the Mover indicated, this is a constitutional requirement. When we look at the Bill, there is a sense in which it seems largely to be focused and limited to provision of care, getting older people to be in homes and looking to see whether older persons can have other facilities. There does not seem to be very specific ways of involving or ensuring that the older people's voice is heard as a matter of right.

Hon. Temporary Deputy Speaker, we always hear persons with disabilities say there can be no decisions that will be made without their own voice. We know that when we are thinking about young people, there is a sense in which we can have a very clear stipulation to take care of their voice and their concerns. Similarly, we have largely taken note that there will be active involvement and the inclusion of the voice and concerns of those other categories. It is for this reason that, as I support this Bill, I take note that the Bill, in terms of its language, seems to be rather condescending. There does not seem to be a way in which we are connecting this Bill to the existing policy. Policy is a broad statement of priorities and there is a national policy on older persons. Even as we look at the African Union (AU) Special Treaty on the Rights of Older Persons, only five countries have signed it, and Kenya is not one of them.

I, therefore, reflect as a Member of Parliament whose role is not just legislation but to ensure that the laws that we come up with do justice in representing the rights and create an enabling environment for older persons. I would have liked that this Bill goes beyond the idea of just promotion and protection that does not seem to be honed on very specific policy framework. I say this because it is clear in the Bill. We acknowledge that it is necessary to stimulate and keep the brains of the aging. It is also clear in the Bill, which I agree with, that we need to ensure we protect the elderly from abuse. It is clear that we would want to ensure that we have hearing aid and that we ensure that older persons can vote. However, I look at our country right now and I look at it in the context of what we have come through year-in, year-out. Only yesterday as we were in Session, we had Members walking in and chanting which I suppose is part of their right, but I could not help wondering whether we, as members of the society, are looking at issues from the perspective of the experience of elderly persons.

Hon. Temporary Deputy Speaker, it is my view that, as we deal with the care and protection of older persons, we need to go beyond looking at older persons as though we are the ones to speak for them. I feel that it is extremely important that we get a framework that allows older persons to make their own decisions and, to express their opinions. As we look particularly at the manner in which our country every so often gets embroiled in almost similar issues like corruption, tribalism, nepotism and manners in which sometimes even the very persons expected to be pulling the country together can be seen to be the very ones who seem to be pulling it apart, it is my conviction that, if we were to look at older persons and seek to draw from their rich experience, we would find that Kenya would truly benefit largely.

I would like to thank the Senate and congratulate the Committee. But I must express my strong concern. I am from Siaya County, specifically from Alego Usonga Constituency. One of the things I have noticed is that in the village now we have mothers, some of whom do not even speak a word of English, attempting to speak Kiswahili or English with their children in the rural areas. Part of the reason they do this is that they are of the view that if their children were to speak English or Kiswahili, then there is a sense in which they think that they give their children some promotion or sense of privilege or some sense of superiority... I feel that there is a way in which doing that in effect separates those younger grandchildren, and great grandchildren from the elders and thereby blocking them from benefiting from the wisdom, and from appreciating the very values that we need to observe.

I thank and congratulate the Senate for this Bill. I, however, feel that this Bill needs to be honed a lot more on the policy framework and that it is important to show respect and dignity to older persons.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. (Prof.) Oduol, I am greatly delighted by your contribution. I have personally been educated on this one because we seem to be thinking for the elderly or presuming that we can think for them. We do not seem to be giving them their space as compared to the youth and the other disadvantaged sections of our society. Very good contribution.

Hon. Mwanyanje Gertrude, the Member for Kilifi, you have the Floor.

Hon. (Ms.) Gertrude Mwanyanje (Kilifi CWR, ODM): Ahsante sana, Naibu Spika wa Muda. Nimesimama kuunga mkono Mswada huu. Mswada huu unanigusa sana. Mimi natoka maeneo ya Kaunti ya Kilifi na imeangaziwa pahali pakubwa sana kwa mauaji ya wazee, waganga na washukiwa wa uchawi. Ndio maana nimesimama kuunga mkono Mswada huu uliotoka Seneti ili tuone vipi tunaweza kuwasaidia wazee wetu.

Mhe. Naibu Spika wa Muda, wazee wetu wanauwawa. Kule Kilifi wanashukiwa kuwa wachawi. Yaweza kuwa ni kweli au si kweli. Mtu akiwa mzee na awe na nywele nyeupe, anaonekana kuwa mchawi, haswa kule Kilifi. Haya yote yanatokea kwa sababu vijana wetu hawajaelimishwa pakubwa kwamba hao wazee ni wenye busara na ndio wanaotupa mawaidha. Kwa sababu ya ukosefu wa ajira kwa vijana, mzee akiwa na nywele nyeupe, kwa sababu ako na shamba ambalo ni mali yake, husingiziwa kuwa mchawi. Anauawa na vijana wananyakua mali yake ili waweze kujikimu kimaisha. Kule kilifi tuko na akina mama wazee ambao wamechiwa mali na mabwana zao. Wao pia huwekwa kwenye vikundi vya wachawi na waganga. Wanauawa ili vijana ama jamii iweze kunufaika na mali hiyo. Naunga mkono vipengee vyote ambavyo vimependekezwa katika Mswada huu. Kulingana na Ibara ya 57 ya Katiba yetu, wazee wako na haki ya kulindwa na kutunzwa.

Kuna pesa za wazee ambazo zinastahili kuwafaidi wazee wenye umri wa miaka 65 na zaidi. Iwapo itanza miaka 60, itakuwa bora zaidi waweze kujikimu wenyewe. Wazee hao kule kwetu wanaishi maisha ya ufukara mkubwa. Tuko na nyumba kule Ganze. Mimi natoka sehemu ya Ganze, ambako kuna nyumba ya wazee kule Mlima wa Ndege. Wazee wale wamewekwa tu pale; hawapati usaidizi wowote kutoka kwa Serikali. Hawana chakula ama malazi. Ni Wabunge tu wanaochangia chakula na kukaa kwao. Haswa Mbunge wa Ganze angelikuwa hapa, ningelimuunga mkono. Ameweza kuwatunza wale wazee, ambao wamefurushwa kutoka kwa familia zao.

Kuna nyumba ndogo pale ambayo inatambulika na hata Katibu Mkuu katika Wizara ya Leba, Mheshimiwa Marwa. Aliweza kunipa mablanketi mwaka jana nikawapelekea kule Mlima

wa Ndege. Huu Mswada ambao umekuja leo, sisi tunauunga mkono. Tuko kule mashinani ili tuone vipi maisha yao, afya yao, na kadhalika, vitashuhulikiwa. Wazee watunzwe na walindwe kama Wakenya mwengine wote.

Tuko na mpaka makanisa. Mimi ni mkatoliki. Wakatoliki wana nyumba za wazee na wanawatunza wazee, lakini sioni kama Serikali inatambua kuweko kwa nyumba za wazee. Wazee hao wanaweza kuingizwa kwenye ule mpango wa kuwatengea wazee pesa za kuwalinda. Tumekuwa na Mswada hapa uliopendekeza kwamba wafungwa ama washukiwa wa mauwaji walioko magereza watengewe Kshs1 bilioni nzima ili waweze kula na kutunzwa. Wazee wetu hawa, ambao hutubariki sisi na ambao wametutunza, hawana kiwango chochote ambacho wametengewa na Serikali kuweza kuwalinda.

Naunga mkono kwa dhati Mswada huu. Nawaomba Wabunge wote waweze kuunga mkono Mswada huu ili wazee waweze kutunzwa. Pia, ningependa nyumba za wazee zijengwe katika maeneo Bunge yote ili wazee wote nchini waweze kulindwa. Ningependa pia wazee katika kaunti zote nchini walipwe pesa za uzee kila mwezi ili nao waweze kuishi vyema kama Wakenya wengine.

Asante.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us hear Hon. Noor Sophia, the Member for Ijara.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute to this very important Bill. First, I want to thank the Departmental Committee on Labour and Social Welfare for its Report on the Protection and Care for the Elderly Members of the Society (Senate Bill No.17 of 2018).

Hon. Temporary Deputy Speaker, this is a very important Bill. It is a Bill that will go a long way to support and protect the elderly members of our society. As stated by the Committee, the Bill provides a framework for caring for the elderly. When put in place, this framework will empower and protect the elderly. I have gone around this country and seen how our society treats the elderly.

During the 10th Parliament, when I was the Chair of the Labour and Social Welfare Committee, I went to Kwale to follow up on the older persons cash transfer scheme. My heart was moved when I saw an 80-year old man thanking the Government for giving him Kshs2,000. Imagine a person at that age appreciating Kshs2,000, saying that, that was the only money he had for his meals. His state of health and condition of living were pathetic. Therefore, this is a very timely Bill that will take care of the wellbeing, safety and security of the elderly in our society.

About three weeks ago, I visited a home for the elderly in the USA. While I was there, I remembered that elderly person from Kwale and could not compare the two scenarios. It was a home that had more than 300 elderly people. It was much smarter than our Parliament, and is clean. It has all the facilities. There are tea dispensers in all corners and all sorts of food. There was a television set in the dining hall. The home has living rooms and nursing homes with nurses on every floor. It has nurse stations with all the medicines. Then we have the critically ill people who are well taken care of. We also have elderly people who are strong enough, and they move around.

I see that dream. One day, we will have that kind of home in Kenya. Thank you very much for bringing this framework. This framework will not take us to the status of the American elderly home that I am talking about, but will help us have homes for the homeless and people who have no security, food and basic needs, as required under the Constitution.

The Bill is very comprehensive. It has a national strategic plan of action and policies promoting realisation of everyone's rights and this is beautiful. This Bill will implement community based programmes for the older members of society. This very beautiful Bill has given roles to the national Government and county governments. I am afraid because we develop very nice plans for this country and create many things but implementation is a problem. We have very beautiful policies and Acts of Parliament in this country that have not been implemented.

I want to ask the Members of this House to support this Bill because it will put in place a community based programme which will include economic empowerment of the elderly, it will also create a spiritual place where they can fulfil their spiritual needs. When the elderly come together they will hold cultural events which will make them feel appreciated and wanted in the society. The elderly do not get medical and social services. With this Bill in place the Government will be held accountable. So, it will have to put in place proper medical care and social services to specifically address the senior citizens of this country.

[The Temporary Deputy Speaker (Hon. Christopher Omulele) left the Chair]

[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) took the Chair]

We must appreciate and accept that senior members sacrificed a lot for this country. It is high time we returned the favour. All of us have relatives who are old or know people in our constituencies and counties who are suffering. Once in a while we visit them but if we put this in place the Government will be held accountable and will serve the elderly.

The Social Assistance Act, 2013 makes provision for social assistance to the poor. As I mentioned earlier this clearly gives assistance to the poor and elderly. The amount given needs to be reviewed. I met an old man who appreciates the Kshs2,000 per month the Government gives him because it sustains him. I think in this era this is little money. We should relook into it and increase the budget for the Ministry of Labour and Social Protection.

As I conclude, we need to ensure the older members of the society are well taken care of. We need to look outside the box, create resources and programmes to help this country give adequate services and reach every person.

With those few remarks I support this Bill and ask Hon. Members...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Sophia, I am sure you were asking them to support. Let us have the Member for Suba North, Hon. Millie Odhiambo Mabona.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. From the outset, I support it because it is good. I also wish to note that there is a Member of the National Assembly who has brought a similar Bill. But I think it is under a different name - geriatric care - which basically is care of older persons.

Perhaps, one of the issues we need to speak to is ensuring whenever Members of the National Assembly and the Senate have similar Bills, there is a way of ensuring they harmonise the Bills and co-sponsor them. This essentially means that if this Bill passes then the one by the Member of the National Assembly who has put in so much work, will go to waste. As we speak, today there was a Bill by the Senate Health Committee on Reproductive Health Care going through public participation. I also have a Bill on reproductive health care with exactly the same

title but the content is somehow different. If the Senate one passes, then mine collapses because the Senate has fewer people.

In essence it will look like the Senate is working and we are not. I was not here when Suba North Constituency was ranked. I was surprised people were creating so much hullabaloo because some of us were given good ranking. People rank us all the time and one of the rankings done in the past about Members contribution in the House shows women Senators are much better than women MPs who are also doing excellent work. But because of our processes and the fact that we are more, it looks like we are not working.

I want to ask the Speaker's Office to hasten and ensure there is harmony. I think this work should go to the Procedure and House Rules Committee. I even know Hon. Amos Wako has a Bill similar to one by a Member from here on public participation. Therefore, we need to harmonise so Members can co-sponsor. Sometimes this sacrifices Bills to the detriment of society. I brought an Assisted Reproductive Technology Bill in the last Parliament which was passed in this House. When it went to the Senate because there was the Reproductive Health Care Bill, they killed mine for no reason yet, it had been overwhelming passed. This sibling rivalry does not help us.

Despite the fact that we know there is a similar Bill in this House. I wish to support and congratulate the Hon. Member for bringing it. When the Mover was moving she said the public did not contribute and they relied on a public participation report from the Senate. I checked and did not see such a report. So, I want to encourage committees when doing serious work, to not just get reports from the Senate but go an extra mile and ensure public participation is done at their level.

When promoting the Assisted Reproductive Technology Bill I mobilised the public to give their views even though they did not want to. This is because they usually complain a lot because of misinformation. This morning, I found a group raising placards against Hon. Esther Passaris, outside a certain church for bringing the Reproductive Health Care Bill and yet it was brought by Sen. Susan Kihika. So, the public should be up to speed. Otherwise, very soon we will say some people are bringing politics to legislation. It is unfortunate that a church was doing so out of ignorance. If it is not ignorance they are just being cheeky. You cannot blame Hon. Esther Passaris for a Bill she has no clue about. I cannot hold a demonstration against you for a Bill you have not brought. I know I have a similar Bill with Hon. Kihika. Even when they have different opinions, instead of picketing outside Parliament, there was a Committee meeting... Why do you not go to that Committee and give your views on what you do not want instead of picketing? I encourage the church that the Bible says there is a time and a season for everything. There is a time to picket and a time to present your views to the Committee. Picketing and praying will not change the law. Go and present to the Committee and then picket and pray after you have given your views. This is because sometimes the church is becoming a joke.

I know of late I might sound like I am very hard but somebody needs to speak because when it is spiritual matters, all of us seem scared. God is one. So, I will not be scared. The judgement for all of us is once. Nobody will live more than once. Each of us will live once. When my time comes, I will go the same way they will go but they must preach the word and not their own views.

Having said that, yesterday my grandchild came to me and she found me reading. She was surprised that I was using my glasses. Then a debate started as to why I was reading with my glasses. She said: "You know we are taught in biology that people use glasses when they are old." We all started laughing because at my age of 50 plus, she thinks I am old. I do not think I

am old. Then suddenly it made me realise that those of us who are sitting here and we are talking about old people like we think is yonder... There is no yonder. You are the old one in this House. So stop thinking about old people like you think they are in another world. You are the ones who are old. I came to this Parliament when people used to call me young. I do not realise when I reach this point people are calling me old even though I am not old but middle aged. However, from their perspective I am that old person.

Because of that, I want us to pass this law knowing that I am passing this law for myself and not for an old woman at home. It is for me. Now when I am walking I cannot be as vibrant as I was before. There are some bones that are cracking in my knees. I fall more easily. It is natural and because of those things, we must provide a safety net for these older persons of the society.

I want to posthumously congratulate my sister, Hon. (Dr.) Joyce Laboso. We worked with her on the Social Assistance Act that everybody is talking about here. One of the things that she tried to look at was just that; taking care of the vulnerable people of the society. Because I know I will not have much time, I just want to say that we need to know that unfortunately because of the circumstances we have in society, even the older persons that should be retired and that we should be taking care of are the ones that are now taking care of fragile households. We have concepts that we never had before. The social safety networks that used to exist are dead and now fathers and mothers have died. You find that it is the older persons who are taking care of their grandchildren. There are even cases where there are children taking care of children because of all these things that are happening.

I thought we are only cleared because of HIV/AIDS. As the cure for HIV/AIDS is coming, coronavirus is hitting us. So, because of that, we are ending up with very fragile groups. I would want to encourage the Government to come up with a very clear policy on older persons and stick to that policy. I know that this same House had developed a policy on children who do not have parents and we came up with a policy that is against institutionalisation yet we come here and within the budget, we put money to build institutions for children who do not have parents. This is the same thing that sometimes we do when we are actually getting to older persons.

You have given me the warning. I would want to encourage that let us make sure that we consolidate these funds and make sure we take care of older persons but within their framework without institutionalisation. With those few remarks, I support and we will be proposing amendments because of lack of time. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That was very well said, Hon. Millie. It was very insightful that when we legislate for old people we think of other people and not ourselves. I think the other very important point that you made, Hon. Millie, is on the need to harmonise legislation between the Senate and the National Assembly. I am sure that one is well captured and it needs to be discussed further to avoid reinventing the wheel and duplication of effort.

Let us have the Member for Molo, Hon. Kimani.

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to add my voice and to support this Care and Protection of Older Members of the Society Bill from the Senate and to congratulate the Senate for coming up with such a Bill.

Article 57 of the Constitution provides for the rights of older people. Therefore, this Bill only comes to give power and more weight to what the authors of the Constitution meant with Article 57 when they said that the older people need to be facilitated to fully participate in the affairs of the society and that they need to be facilitated to pursue their personal development and

live in dignity in addition to ensuring that they receive all the resources and support they need from the State to ensure that as they age, they live comfortable lives. This Bill defines older people as people who are 60 years and above. I like the contribution of my colleague. Some of us think that 60 years when we have just lived half of that time, is a long time to come. We should know that we are also legislating for ourselves because one day we will attain that age. It is very informative.

These people that are over 60 years of age have served this country. If they probably started working at 20 years, they have served this country for 40 years. These are the people that have been paying taxes, that have brought us up and that have added value to this country. Most of the time, I feel, in the spirit of encouraging younger people and making sure that younger people are in positions of influence that create jobs, this resource of experience that these people have ends up going to waste. Most of the time they are not consulted or involved well enough in the running of the country. Most of the time, you even find them languishing in poverty. However, this Bill comes to treat this. When the Jubilee Government took office, they promised that they will be giving a stipend to older people. I am not sure that that has been anchored in law. Therefore, putting this on pen and paper as an Act of Parliament and saying it is the right and responsibility of both national Government and the country governments to take care of these people cannot have come at a better time.

The county governments are obligated by this Bill to create home care centres. Most of the time if you walk around you will see many children homes. However when it comes to “nyumba za wazee” or a place where these old people can go and get care, they are actually very limited. We are proposing in this Bill that every county government must not just be told to do it but be obligated. It is a must that every county government should have a home for older people. In fact, it is even better to have it per sub-county. This is because you find these older people are left by themselves. They do not have anyone to take care of them. They lack the basics like dentures for their teeth or glasses for their eyes or even the very basic.

The rights of these older people in this Bill have been safeguarded by making sure that if an older person goes to hospital and there are signs of physical or sexual abuse or whichever other abuse, then those medical personnel are obligated to report to the authorities. If they do not report to authorities, there is a five year imprisonment or Ksh1 million fine. This is because you find even these bad cultures and cults have most of the time targeted these old people because they live by themselves in the villages and they have nobody to take care of them. Sometimes even when they go to seek medical assistance, those cases go unreported. Therefore, the people who commit the crimes on these people end up being free and end up doing that to the next person. The Bill seeks to make it an obligation for medical people that serve these old people to report to the authorities any signs of abuse. I think it is something that really needs to be supported.

Hon. Temporary Deputy Speaker, the Bill clearly outlines the duties of the home managers in the homes. It is clear on what they are supposed and not supposed to do. These homes have, in the past, been places where people are abused. You have heard cases where children in children’s home are assaulted and trafficked. So, this Bill guarantees security in those homes. In addition, the kind of personnel that should be in these homes is not something to be applauded. The community centres for the elderly must have medical personnel, a counsellor and a security person, so that we do not open up homes in which the elderly will live a terrible life than they would probably live if they were not in those homes.

With those few remarks, Hon. Deputy Speaker, I support the Bill. It is very informative and it covers every area. It seeks to ensure that the elderly people are protected. County governments are obligated to create homes to take care of the elderly. Medical personnel are obligated to report any cases of abuse. The Bill proposes fines and imprisonment for those who abuse the elderly.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Member for Siaya County, Hon. (Dr.) Christine Ombaka.

Hon. (Dr.) Christine Ombaka (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

Hon. Deputy Speaker, I support this Bill because it deals with the senior members of society — people we highly value and respect but at the same time, people who are neglected and suffer in the villages where we come from. It is true the elderly in society have been neglected and many of them live below the poverty line. They cannot access medical care and neither do they have food nor shelter.

The Bill is very attractive in the sense that there is a section that deals with home-based care and how the counties should come up with residential areas where the elderly people can stay because they have no shelter of their own. There are certain steps that should be followed when setting up these homes. The homes should be attached to a medical personnel, have certain facilities that are conducive for good living by the elderly, have places for entertainment, and everything that a human being requires. Should they fail to have some of those requirements, then the homes could be closed down. I think that is good because standards are being set. When setting up a home — whether it is a county government project or a private one — standards must be adhered to.

What worries me a little bit, Hon. Deputy Speaker, is the homes that may be established by private means. We need to establish how private they are and where those private persons are getting their funds from so that they can run successfully and efficiently. Can they seek funding from the Government to run those homes? In countries abroad, especially in the United States of America (USA), people who run homes for the elderly, privately, seek funding from the state. The state has a fund where individuals who are interested in starting a home for the elderly apply and get the funds to do so. I do not know whether this Bill will capture that particular bit. Where will those individuals who want to run private homes for the elderly get funding from? That is my question. If there will be funding from the state, that is okay. It is possible to have it in the Bill.

Hon. Temporary Deputy Speaker, I was running a project on HIV/AIDS many years back— when we used to have total war against HIV/AIDS — called Total War Against HIV and AIDS (TOWA). TOWA received funding from the National Aids and Control Council in the Ministry of Health. Individual organisations or individuals would apply and get the funds to deal with HIV/AIDS programmes. In other words, it was assisting the Government to educate the society about HIV/AIDS but the funding came from the State. If we can follow the same process, then that will be good for the elderly people being taken care of in these homes. That should be the next move. If homes are to be established —and we need to keep up with the standards of good living and dignity of the elderly people —then we need good funding for them.

Hon. Temporary Deputy Speaker, I like the bit about entertainment. The elderly people need to be looked after; it should not be about their health all the time but also food, shelter and entertainment. In old age, you need sports, entertainment and activities that will make you a little healthier than you are. So, that bit is very critical. It is true that the elderly in the society have

been neglected and abused for a long time. The contribution from my colleague from Kilifi is very saddening. Although it was in Kiswahili, I could capture what she said. Old people are terribly abused; you find an old woman being raped because she lives alone and there is nobody to protect her. So many of such women live alone in a very terrifying state of affairs and have neither food nor anybody to take care of them. Those are the people to benefit from the homes that are being proposed in this Bill.

Apart from that, Hon. Deputy Speaker, challenges still emerge. Elderly people are suffering in the villages but they also look after children left behind. There are many homes that the elderly people take care of children and yet they get no income. Even the little money that the Government gives them, that is, the Ksh2,000 or Ksh3,000, is never enough. Even here in Nairobi, when you walk around, you see elderly people with their children in the streets. Street mothers and fathers are here. These are the people who need to enjoy this Bill. This Bill should be able to target them so that we can get them out of the streets and keep them in the homes. That is why this Bill is very attractive. It is going to address many areas where the elderly, who live in towns and streets and have no homes, suffer while at the same time encourage individuals to come up with homes. We need to take them back to their counties, if the counties can come up with homes. I was very much attracted with the home-based care where families are sensitised on the rights of the elderly, security, support and ensuring that they enjoy their old age.

Otherwise, I support this Bill. It is a good Bill which comes at the right time when everybody sees old people — who are the image of the nation — suffering unnecessarily. We can support them with this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Well said. Let us have the Member for Kitutu Masaba, Hon. John Mose.

Hon. John Mose (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also add my voice to this very critical Bill.

Hon. Temporary Deputy Speaker, as many of the speakers have said, this is a Bill that should have come earlier but I am sure that if we move with speed and ensure that it is fast-tracked, it will make a lot of sense. The most critical aspects of the elderly people that we really deal with is the total neglect and abandonment that they face. If you look at the way the old people have participated in our upbringing, it is critical that at this particular stage, we take into account the roles that they have played.

Hon. Temporary Deputy Speaker, many of the old people that we are talking about — and this is in respect to people who are 60 years old and above — are very active, aggressive and need personal development. They should not be ignored but should be treated with dignity, respect and freedom from abuse. In most cases, when people are aged 60 and above, many of them have even retired. It is normally assumed that those people are now old and forgotten. Their contribution and participation in society is ignored. Once we bring this Bill into effect, they will see it as an opportunity for personal development and to continue participating in society. They will be seen and respected.

We have gone round in our respective constituencies. I will talk about my constituency of Kitutu Masaba. When you go round, you come into contact with the abject poverty facing the elderly. Many of the elderly are ignored. If you seek to find out why, you will find that they have sons and daughters working in towns but have forgotten them. The coming into effect of this Bill would ensure that even if we abandon or ignore them, the Act will take care of them. Therefore, they would be assured that they would have a household, place to sleep, a meal to take and

respect. Once you do not have a meal or a house and you do not even know where you will sleep, that shows that we have neglected our old people.

I have had an opportunity to go to developed democracies like the United States of America (USA). Recently, I was in China. I marvelled at the way and manner in which the old people are taken care of. They have homes. They are given a stipend which ensures that if one was working, they would always feel comfortable, appreciated and part and parcel of society. In the USA for example, even when the elderly have reached their late 90s, they are given good care. In our society and country, you find that somebody who is 65 years old is totally neglected and is unable to fend for himself or herself. In proposing to establish homes, this Bill is timely in helping our respective places or homes.

Once on the campaign trail, I was confronted by a very old lady of about 80 years. She was scrambling to also get something small. Just out of curiosity, I wanted to know whether this old lady had children. I was shocked to find out that the old lady had well-educated sons and daughters and that they had completely neglected her. They had never gone back to her home. Therefore, the coming into effect of this Bill is something that we should be proud of as a country because the elderly in our society will live with respect and be appreciated. It will also ensure that things like sickness that are normally not taken care of will be handled.

There is the aspect of legislation that states that this would be done by the national Government and the county governments. We need to be very clear when we deal with this so that we do not have a conflict or a scenario where it is not clear who between the national Government and the county governments is dealing with what aspect in respect of this.

We also have old people who are endowed in knowledge. In fact, in terms of our history and culture, once we take care of the elderly then we would ensure that we have secured our past and history. This is the very rich history that we abandon when we get knowledge. There is history that we normally abandon with ease but if this legislation is passed, then we would also have protected quite a lot.

Once we establish the homes that I talked about, we also need to deal with the aspect of food and security. The Government should provide food for those old people so that they are okay in terms of health. Their diseases should also be managed.

This Bill is timely. I urge all my colleagues to move with speed to ensure that we pass this legislation.

The stipend that is provided for the elderly does not reach them. In my constituency of Kitutu Masaba, you will find that very few of the elderly receive the little stipend that the Government provides.

With those remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member for Kwanza, Hon. Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, thank you for the opportunity. I have sat here and listened to nearly everybody from the precious lady who moved the Bill. We should do something about this programme. As the previous speaker - the Member of Parliament for Kitutu Masaba - and others have mentioned, we have a problem. There is a crisis in this country. Let us face the facts. Our children and the children of our children do not care about the elderly. In fact, I heard a case where a child looks at an old man and laughs as if that is a disgrace. Why does he look like that? This is happening. It is our culture. We have to speak the truth. We have to do something about it. As somebody mentioned, we are talking about what will benefit us.

I want the Chairlady to listen to me. We should do much more than take this programme to the county governments. It will not work. We have devolved some functions which are very important and it has not worked. Look at the healthcare system. I do not know whether it is working elsewhere but in my constituency, there is nothing. Look at water; nothing is working there and it is the same with Early Childhood Development and Education (ECDE).

Therefore, maybe at the Third Reading stage of this Bill, which I want to thank the Senate for, this can be anchored into the County Development Fund (CDF) so that we can take care of those people who are suffering. When I go out there not for campaigns or anything but just to see people who are over 60, 70 and 80, I see them being pushed aside by strong fellows because they want money. The strong fellows will come and surround you because they want *kitu kidogo* but those who are suffering out there are the old people.

Hon. Temporary Deputy Speaker, if Members allow at the Third Reading, we should anchor this as a special fund for this programme on the CDF. Most of us here have travelled outside the country. In fact, two days ago, I was in Djibouti and the people who are suffering and sleeping on the streets are the old people. I looked at one of them and I wish they were taking Kenya Shillings because I would have given them some money. The elderly are really suffering and so we want to create standardised homes.

The Departmental Committee on Labour and Social Welfare should take some time off and send some delegations to countries like the UK and the USA to see what they have done to take care of the elderly. Maybe that can work so that we have homes that are very standard for the elderly but not for the rich. Of course, there are people who are 80 years old and they have no problem because they had a very good foundation and very good children who look after them. But we are looking at people who are not as privileged as we are now. We can sponsor the Committee to go and learn from other countries. We have learned from other developed areas before. So we can look at them and see what we can do.

We all agree that today children are no longer looking after their parents. The previous speaker has just said that she saw a lady who is over 80 years old and she was told that her children are very rich out there. Her only child is not even here. He is in Denmark. I do not know whether he will ever comeback because maybe he found a job there just like our children. We are looking at people who are unable to find a way, like we have, and who are out there suffering.

Apart from looking at standard homes which will have entertainments and medical care, we also need to set a criterion of who actually qualifies to go there. We cannot be talking forever. We have the cash-transfer for the old people. I get frustrated and annoyed when members come to my home on a Saturday saying that they have never received the cash-transfer because the system does not work. The Departmental Committee on Labor and Social Welfare can set the eligibility criteria. On a very serious note, we want to respect the old; old is gold. I saw in the newspapers today old men walking from Eldoret saying that they are going to see the President and the Deputy President to unite them. We have to respect our people. I am sure they have something to say. They can show President Uhuru Kenyatta and his Deputy Ruto the way to work. We cannot ignore this generation.

Given that kind of background, I support this initiative but let us go beyond talking and passing it here. Let us set standards and parameters which have to be met for us to see to it that we meet the standards of the UK or the USA. Maybe after this coronavirus outbreak is over, we can send people there do benchmarking because we do not want people to risk their lives. We also have to do some monitoring later to see if it has worked but I am not for the idea that this should be pushed to the county governments. They will never do it because that is where

corruption is. I do not care but I do not want to be misquoted. You may or may not quote me on this but I can give you relevant... Let us move this programme to the national Government. This will definitely get overwhelming support from more people.

Lastly but not least, we should look at it as a package. Let us allocate some money because we can take them there to enjoy the TVs and everything else, but what will you give them. We have this cash-transfer which is not working. Maybe we need to tie it to this Bill so that those who go there can enjoy themselves.

With those few remarks, I want to thank the Departmental Committee on Labour and Social Welfare for whatever they have done. Let us go beyond that proposal. I also thank the Senators for having come up with this Bill but let us see how we can improve it for the future benefit of this country.

I support.

The Temporary Deputy Speaker (Hon. Soipan Tuya): Hon. Mohammed Sheikh, you may proceed. Sorry we had taken out your card erroneously.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Temporary Speaker. I stand to support the Bill about care and protection of the elderly members of our society. This is a very timely Bill and we thank the Senate for bringing it forward.

It is very important that we acknowledge and recognise that the elderly should grow older gracefully and reflect back on their good life. It is important that we support them at this juncture. For those whom God has given the opportunity, everyone will age and when they do, they need the care that they deserve. That is dignity and wellbeing that everyone should get in this world. It is important that we acknowledge the Constitution that has provided for everyone enjoyment of this country's natural resources. When I say natural resources it means everything that is within the borders and boundaries of this country and the elderly should get what everyone else gets.

Chapter 4 of the Constitution, the Bill is of Rights for every citizen of Kenya, specifically speaks about the importance of ensuring that every Kenyan enjoys the rights in the Constitution. This Bill is within Chapter 4 which states that every person has the right to the highest attainable standard of health which includes the right of healthcare services including reproductive health care. It also says that everyone has the opportunity to have accessibility and adequate housing to reasonable standards of sanitation. That is what our elderly require and they need to be supported. They need social security. As they age, they also need education for their own standards because they need to understand more about the way they live, their health and all those things that are important to them.

The Constitution also provides that every person must be provided with the opportunity and not denied emergency medical treatment that they deserve. Many of our elderly do not have that opportunity because in most cases, they live in villages in remote areas that are mostly deserted. As younger people go to urban centres to look for work, the elderly are left in the rural villages. These are the places where our elderly gracefully live for a long time, as God gives them the time. So, rural-urban migration in itself is a challenge for the elderly. I would like to see in the Bill some indication that rural villages are supported simply because that is where our elderly people live. I have not read the entire Bill but I hope it provides something of that sort simply because rural-urban migration has been a challenge in every part of the world.

A few weeks ago, I travelled to Japan. It is quite clear that the majority of the Japanese population is elderly. It is a country facing a lot of challenges in terms of the elderly. Younger people are fewer and fewer people work. Therefore, it has become a challenge for them. But

what Japan has done is that they decided to invest more in the elderly. Although they increased the retirement age a little bit for people to work a little longer, they did not let the elderly people waste away. They decided to add a few more years for them to contribute to the society and make them more mobile. Mobility for an elderly person is an important thing. The more they do work they can manage, the better they are. Providing the elderly with some kind of work or activities that can support them is very important.

The elderly have cultural rights. Article 44 of the Constitution provides that everybody has a cultural right and that right must be observed. Elderly people have lived for many years. They have seen many dawns of the sun. They have seen many things come and go. Therefore, it is very important that we support them in the preservation of the cultural norms that they have observed for many years. This is simply because as industrialisation, mechanisation and modernisation occurred in the world, things shifted in terms of how they were used to live. Therefore, we need to understand that we need to look at the challenges they are facing, in terms of the modernisation of the current world. Supporting them through their cultural rights as provided for in Article 44 of the Constitution is important. We need to understand that.

Article 45 of the Constitution provides that the family, as the fundamental unit of society, should be protected by the State. That means the State protects every individual of the family unit. Our elderly people are members who are part and parcel of our families. That is our beginning or where we started. We want to see the elderly people supported as well. Article 44 of the Constitution also provides for them. This Bill is going to be a support for them to ensure that that Article of the Constitution is operationalised.

In our African culture, our children are our social investment. Unfortunately, in the later years, that seems to be dwindling or seems not to be the case. Our children are our social investment in the sense that if I invest in five of my children by educating them and ensuring that they get good employment, when I age gracefully, they will take care of me well. That is what the African culture has. But, of late, as our children become fewer or our family units become lean, our social investment has become smaller. That is a challenge. I hope this Bill will provide a particular consideration for our elderly when the door of our social investment is closed in the sense that as modernisation continues to influence our way of life, it will obviously impact our way of graceful aging.

Without taking much time, and considering that my colleagues want to support this Bill, this is a timely Bill. We want to make sure that we have a good ending for our elderly people.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Member for Kabondo Kasipul, Hon. Obara Akinyi, you have the Floor.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker for giving me an opportunity to speak to the Bill. At the outset, I support it.

This Bill has come at the right time. Particularly, because of modernisation, the dynamics in society have changed. There is the issue of migration from rural areas to urban areas, as has been mentioned. The family unit has become smaller and support within the family unit has dwindled. At the same time, we are living at a time when being old is viewed negatively by the young generation. You see comments flying around about being aged and you wonder whether people know that as long as you are born, there will be a time when you will also get old.

Therefore, I support all my colleagues who said that this Bill is not actually for old people. It is not for the distant future; it is something that will affect us. As we sit in the 12th

Parliament, this is one area many years to come we will probably sit back happy to have been part and parcel of the Parliament that contributed towards this Bill.

I have read the Bill, and I am happy that it has set out structures on how the home-based programme is going to run. I am happy that the Bill provides for periodic evaluation, and reports will be submitted to authorities on matters relating to the manner in which the homes will be run. The role of managers in the management of the homes and the services that are offered are also in line with the guidelines as provided for. The Bill also provides for appointment of inspectors to ensure that they are run in conformity with the set guidelines. It also provides for integration of existing homes for elderly people with the proposed programmes, where those homes will have a period of, at least, three months to re-register to comply with the guidelines. That is a very good thing.

I have my reservation as to this going to the counties, like the rest, because to speak the truth, in most of our counties there are areas that are devolved, like basic education, where you hardly see anything that has been done at that level. I am one of those who support the idea that it should be left at the national level, and probably at a later time managed through the National Government Constituencies Development Fund (NG-CDF). If you go to constituencies today, you will see clearly that there are projects by the NG-CDF because it has a proper mechanism through which these projects are monitored and evaluated. The monitoring and evaluation that has been provided for in the Bill for the homes is also one of the areas I am happy about because setting up systems and have no way in which you can see whether they are working or not is an exercise in futility.

Let me not take all my time and that of the House because I know a few Members are here and we have half an hour to go.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us now hear the Member for Marakwet West.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill.

As the saying goes, tough times call for tough actions. When we were growing up in the 1970s and in early 1980s, our homesteads used to have great grandparents, grandparents, fathers and mothers, siblings and grandchildren. Because of modernisation and urban migration, most of those who are well-off have moved to urban centres and those who are left at the villages are those who are not doing very well. With time because of scarcity of land, it is only the older generation that is left in the village. While in the village, no one takes care of them. In the 1980s and early 1990s and before that, there was a family system that used to take care of the elderly but now there is no one to take care of elders. That is why the youth look at those who are old as if they are a burden. They do not know that old is gold. I believe this Bill is going to cure this issue in some way so that at least our elders are taken care of. We are all going there. As my colleague said, as soon as you are born, you grow towards being old. Those of us who are in 50s... I was telling a classmate of mine the other day that as soon as you are 50 years, where you are going is nearer than where you came from. So, it is important that we have structures in place so that those who are old do not feel like it is a disease to be old. It is golden.

The Bible says as soon as you are 70 years old, anything above 70 is bonus. There are many people who are enjoying their bonuses but we want them to enjoy the additional bonus in style by being happy so that they die happy. I remember my grandmother passed on when I was in the university in 1990 at 103 years. She asked why she was being left behind but she was very

happy because there were those who were taking care of her. We want the same system to continue so that those who are old are there to tell young people stories, talk about marriages and community culture. We are basically losing our culture because the youth are not staying and engaging closely with the old.

I was very sad when I watched news this week about Kilifi and Kwale counties. Even if you are not old but you have grey hair in that community, they believe you are a witch. I do not know how the youth believe that if you have grey hair, you are a witch. It is very sad. There are very many people who are being killed on suspicion that they are witches in parts of Kilifi and Kwale counties. It is very sad. They need to know that as you start greying, you are gracing well, you need to be respected and there are things that you can pass onto the younger generation.

In these proposed homes, basically community and home-based homes, there are things that the old need. They still need spiritual nourishment. I believe these are some of the things that will continue so that they still learn about the maker, get education and medical assistance. We need to amend the Social Assistance Act, 2013 so that as soon as somebody reaches the age of 65 or 70 years, it is compulsory that they get the National Health Insurance Fund (NHIF) card. The law does not say explicitly but there are those who are getting the stipend of Ksh2,000 per month but the Government is not paying the NHIF contributions. When somebody becomes sick and you take him to hospital, you realise that the cover has lapsed. We need to make it a must so that the National Treasury ensures they pay for the elderly quarterly or annually as soon as they reach 70 years so that our elders do not suffer.

I also wanted to talk about the inspectors. In the Bill, the county governments will employ inspectors to visit homes, assess and do monitoring and evaluation. I know most counties are suffering because of what they call wage bill. There are some counties that are paying up to 90 per cent of the revenue they get from national Government and the revenue that is generated locally and they cannot afford to hire additional staff.

I support what my colleagues have said. Maybe we need to anchor this under the National Government Constituencies Development Fund so that at least we ensure we employ a social worker who is going to visit their homes; somebody who has knowledge in counselling so that it becomes viable. Otherwise as soon as we say it is going to the counties, basically, it is going to die. I tell you for sure that it is not going to succeed. It is important as I had said earlier to tell people that old age is not a disability and we are all going there. My colleague, Hon. Sheikh, said in Japan, they increased the retirement age. Instead of us increasing the retirement age, maybe we need to set up a minimum age limit for Senators so that those who are aging gracefully can go to Senate to champion for the rights of older members of society as they have done here.

As a Committee, we received the Bill that is next on the Order Paper the other day but we did not get any report from the ICT Committee of the Senate. You heard what Hon. Millie Odhiambo said about for this Bill. There is no report at the Table Office. So it is important that as the National Assembly, when we get Bills from the Senate, we do public participation so that we engage the public afresh. I beg to support and end there so that my colleagues can have some time to also support the Bill.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Member for Masinga, you have the Floor.

Hon. Joshua Mwalyo (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. At least I can now say something before 7.00 p.m. This Bill is very important especially for us Members of Parliament and also other elected leaders because

it will help us save some coins in our pockets. Once this Bill is passed and we create these homes the way the other Members of Parliament have been able to express, it is very important to anchor it where it is safe so that it is not abused and neglected. A percentage of money should be put in our yearly national budget, for those homes. The percentage for the old people can be 30 per cent, which is a very big percentage of the Kenyan population.

When we were young, we used to respect the words of the old people or our parents. In fact, in a bus where we used to stand, if we saw an elderly lady, you stood for the lady to sit. Nowadays, you find that a young man sitting and an old woman or a pregnant woman is standing. Respect has gone out through the window. We need to take care of the elderly because our children no longer have the moral standards. The moral decay which has entered the society has spoilt everything for us.

Therefore, the blessings that the children used to get from their parents are no longer there. They do not value it. Nowadays, you find an old lady of 80 years calling you to buy her medicine. When you ask her whether she has children, she tells you she has children but they have refused to buy her medicine. You wonder where the blessings will come from. No wonder young people are dying more than the elderly people. It is because we have neglected even the word of God which tells us to obey our parents so that our days can be increased. If you do not obey and respect them, your days are cut short.

I have realised that the little allowances and money the Government sends to the elderly is helping them live longer. I have watched them come to our centre to withdraw the money from the post office. You will see them smiling once they get the money. They even go to the hotels buy some tea and have good lunch. That smile alone adds more years to them.

Therefore, this is a good Bill that we need to fight for and look for a way the National Hospital Insurance Fund (NHIF) can offer free services to the people aged above 65 or 70 years. They will be left with nothing if you tell them to pay Ksh500 to NHIF every month using the Ksh3,000 they are getting. You will find them neglected by the NHIF yet it is what they are going to depend on. At that age, visiting the hospital is almost a monthly affair. We need to anchor this Bill in a good system which is accountable. It should be a system where people can go and countercheck whether it is working or it has been left to die. Therefore, I really support it.

The management of these homes should be by CEOs. We should run them the way we do other institutions. Such an institution should have a budget that sustains employees, nurses, a hospital or a clinic. There should be a nurse living in that home or nearby there. It is so that when one of them gets sick at night, then he or she can be attended to before being taken to hospital.

With those few remarks, because I can see my colleagues want to contribute, it is very important to remember that these elderly parents of ours sold their possessions to educate us. It is our turn to reciprocate. The young people who are watching us should know that they need that blessing from parents who have educated them. Most young people have moved to the cities with their wives and neglected their parents. Therefore, the Government needs to take care of these parents because they are precious to us.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Waweru Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Speaker, this opportunity to contribute is much appreciated. I would like to say that I support this Care and Protection of Older Members of Society Bill. I thank the Senate for coming up with this extremely timely Bill and also commend the Departmental Committee on Labour and Social Welfare for channeling this through, to get to this level where we are debating and hopefully pass it.

This is a Bill that seeks to give effect to Article 57 of the Constitution. It goes without saying that the Constitution of Kenya 2010 envisaged a situation where all human rights are taken care of for each and every individual. However, we realise that as people age, their needs become a bit more special. Traditionally, we viewed things differently. In the African set up, there was so much respect given to older persons. In fact, it was considered that the older you get the wiser you were to become thus being a custodian of culture and a custodian of the institutional memory of a community. Being the custodian of the wisdom of the community, the elderly were taken care of. Back then, the social fabric was a bit more intact. What would happen is that there were very good social safety nets for each and every member of the community, from the child to the middle aged people to the old people.

Things have really changed since then. We are faced, as a country, by an ism that we have never been able to deal with. This ism is ageism. We are coming to a realisation that ageism is as evil an ism as any other: ageism is evil as tribalism; it is as evil as racism; it is as evil as any other ism you can imagine. It is really growing in this country. We, as a House, that is relatively youthful, in fact I dare say it is the most youthful Parliament our country ever got... We have to be innovative in how we address issues of the elderly. As it has been said here before, age is very transitional. The young person today is not going to be young forever. We who are youthful are not going to be youthful forever. For that reason, I support any effort where we are trying to walk towards protecting the rights not only of the people generally but also of those who need specific care, almost affirmative care, like our old people.

I said that by virtue of providing a framework that promotes the rights of the older members of the society as enshrined in the Constitution, this Bill is timely. However, there is more than talking about promoting the dignity of the older people. Even as we legislate, it is very clear in our minds that there are things that we cannot legislate on. Things like morality are things that we will find very hard to legislate on. Even as we are making these laws, we are calling upon ourselves as a society to also look at the soft issues that cannot be penned on paper. I mean those soft issues that cannot be legislated upon. When we seek dignity for older people, we are seeking acceptance from people who have not got to that advanced stage. We are telling them that the elderly people need special care. This is actually a moral calling that cannot be legislated on.

This Bill seeks to provide a framework for the registration, establishment, management and service of residential facilities for older members of society. This is a good idea. However, my reservation on this is the whole issue of institutionalising our older people. The fact that you are uprooting an individual and putting them in an institution and then expecting them to operate normally as a human being in itself goes against what we are seeking to do, which is seeking more dignity for our older people. In fact, there is an African saying that goes that: it takes an entire village to bring up a child. I believe that it also takes an entire community to bring up its old people. Even as we go into the nitty-gritty of the establishment of these institutions, we have got to find how the finer policy is going to make sure that guardians who bring the old people into these institutions are not dumping them there.

We have an organisation called Kenyan Aged People Require Information, Knowledge & Advancement (KARIKA) in Dagoretti South Constituency. It takes care of our older people without institutionalising them. These older people report to a centre which is in a compound that is actually public land set aside for the older people. They go there to interact with each other. That is where they socialise. We even have younger people coming there to visit the old people. In this centre, they get vocational training which is useful for them as they lead their lives.

Whether it is handiwork or beadwork, the old people get to participate. However, they are not institutionalised. So, the people of the great Dagoretti South Constituency still have the role of taking care of their elderly without institutionalising them. So, even as we think about how to form these institutions, I do believe that there are designated centres where we can have our older people, which are not necessarily live-in centres. The live-in centres should then be left for the very dire and desperate cases of people who do not have families that they can call their own. We do not want to deny a family its duty of taking care of its elderly.

Finally, Hon. Temporary Deputy Speaker, this Bill seeks to combat the abuse of older members of society. As age progresses, abuse also morphs into a special kind of abuse. A number of abuses that our older people go through have been listed here by various speakers who have contributed to this Bill. Some of the abuses that we do not think about more often are even leading to earlier deaths of our older people. An example of such abuse is inheritance. These old people have worked all their lives to get what they call their own. We have seen cases where abuse does not come from outside, but from members of the family. We have had cases of people disinheriting their old members of the family in their sickbeds. An individual shows up in hospital with a form, gets the hand of a sick elderly patient and goes on to imprint the thumbprint on the form! So, the elderly patient is forced to give permission for his or her belongings to be inherited. Their consent is not sought. When such a person learns that it is his or her children who are disinheriting him or her, his or her ailment will fast-forward. Some of them end up even dying because of abuse that is coming from within the family.

More than that, I would like to say that this Bill is timely and we need it to be passed and implemented. I do support Members of Parliament who have said that we cannot domicile this care under county governments. We can think of how it can come under our National Government Constituency Development Fund (NG-CDF) or even the National Government Affirmative Action Fund (NGAAF) so that it is in a place where we know — given that the monies are being disbursed as conditional loans — they will be taken care of.

Thank you very much, Hon. Temporary Deputy Speaker. I do support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I see Hon. (Ms.) Nasri Ibrahim Sahal has handed her boots for the day. Are you still interested? You are next in line. Just give her the microphone. You can go on without your card. Hon. Sahal, you have the microphone. Go on. Hon. Members, you do not have to be anxious. You will still have time because this is spilling over to the next...

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Our society is becoming...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Just a minute, Hon. (Ms.) Nasri Ibrahim Sahal. I was just saying that I can see some Members who have been waiting to contribute and time is not on our side. You need not to be anxious. We have six minutes to go. Unless you decide amongst yourselves to share the six minutes, it is up to you.

Hon. (Ms.) Nasri Ibrahim Sahal.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Our society is becoming insane because, a long time ago, our parents used to take care of their parents and grandparents, but we of this generation do not really care about the old members of our families. Evidence shows that the abuse of the older persons has been on the rise in Kenya with the most common form of abuse being physical. For instance, there are stories of old people being declared witches and being burnt to death. The

elderly are also often victims of theft and are sometimes forcefully stripped of their properties like land and domestic animals.

For that reason, the object of this Bill is to establish instruments and laws which will possibly take care of the elderly. Enacting this Bill will provide older people with constant national protection of their rights by establishing a national standard. Data of violation of these rights will be recorded. Such violations will be easily addressed as long as information of their nature is documented.

This Bill describes the mandate of the national and county governments with respect to older members of the society in as far as effective and coordinated support is concerned. The vital obligation is implementation of the national policy and strategy relating to old persons. Clearly, there are more issues to be addressed than managing the home care centres for old people. These members of our society equally require physical support. There is need to harness delivery of services like medication, mobility and personal care, which will improve the quality of life of us all.

Thank you. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Captain Ruweida.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Asante, Mhe. Naibu Spika wa Muda kwa kunipa nafasi hii ya kuchangia Mswada wa utunzaji na ulinzi wa wazee katika jamii. Wazee ni baraka. Naunga mkono kwa dhati huu Mswada. Nimeusoma na una mambo mazuri sana. Ni lazima tuwe na desturi ya kuheshimu wazee. Nchi zingine zinatushinda. Sisi hapa, tunapoenda katika mahoteli makubwa ndio utaona tabia ya kuheshimu wazee na watoto mwanzo kwa chakula, lakini kule nyumbani wengine hawana hiyo desturi. Ninawashukuru watu wa Lamu. Tunaheshimu sana wazee. Tunawashinda watu wa Kilifi. Kiliffi kuna mambo mengi yanayotokea juu ya wazee.

Ningependa Kamati ijue kwamba Lamu kuna sehemu nyingi hazikufikiwa na mradi huu. Kwa mfano, sehemu za Basuba, kwa sababu ya changamoto ya usalalama. Wazee wako lakini hawakufikiwa na mradi huu. Nataka pia wajue usafiri, kama vile sehemu za Kiunga, ni mbali mpaka Lamu. Mtu mmoja anatumia Ksh5,000 kwa usafiri; kuenda Ksh2,000 na kurudi Ksh2,000, na alale huko kisha aende achukue pesa za miezi miwili, mbazo ni Ksh4,000. Huwa ni kama pesa hizo zinaharibiwa njiani.

Kuna ma-agent ambao wanafaa kuwekwa. Lamu wamewekwa ma-agent wawili. Kwa sababu ya mazingira ya Lamu, inafaa wawekwe ma-agent zaidi ya wanne wakizingatia vile Lamu iko. Shilingi elfu mbili ni kidogo sana kwa wale wazee. Kamati inafaa ishughulike ili waongezwe pesa hizo. Kuna wazee wengine ambao wamefikisha miaka sabini lakini sasa hivi hawawezi kushughulikiwa kwa sababu usajili umefungwa. Hawatapata nafasi hiyo mpaka usajili ufunguliwe tena.

Ahsante. Napatia mwingine nafasi.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kathambi, I do not want to give you a minute. You can contribute for a minute then reserve the nine for the next session.

Hon. (Ms.) Charity Chepkwony (Njoro, JP): Thank you, Hon. Temporary Deputy Speaker. Though it is one minute, I am standing to support the Bill. The best way we can do in this country is, first, to start with the national audit to find out how many older members of society we have in the country.

In this Bill, we also need to come up with a limit of age. What kind of elderly are we talking about? On top of that – though my one minute is coming to an end – old is gold. Most of the time, we have forgotten our elders in this country.

On the idea of which criteria to use to utilise the funds, the way we have seen success of the NG-CDF in this country, I believe we can also channel funds through the NG-CDF because we have social percentage as part of it. This would be another way of making sure that the elderly in the country are catered for. The matters of home-based programmes can also be implemented by counties. However, I would probably propose the NG-CDF in this country to take on the matter of the elderly.

Another reason why I support the matter of which criteria to channel the funds with is because, as single constituency MPs, we have dealt with the elderly on the ground. Most of them are seriously affected on matters of peace and security. Therefore, it would be a very good chance for the State to make sure that our elders are no longer neglected in the society. Therefore, the Bill on the Care and Protection of Older Members of Society is important. It has come at the right time.

I support.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Remember, you still have eight minutes. So, you can still organise your thoughts and come back next time to finish.

Hon. Members, the time being 7.00 p.m., the House stands adjourned until Tuesday, 17th March 2020, at 2.30 p.m.

The House rose at 7.00 p.m.