



REPUBLIC OF KENYA
TWELFTH PARLIAMENT - (THIRD SESSION)
THE SENATE
ORDER PAPER
WEDNESDAY, MARCH 13, 2019 AT 2.30 PM

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers (as listed in the Appendix)
6. Notices of Motion (as listed in the Appendix)
7. Statements (as listed in the Appendix)
8. ***THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 27 OF 2018)**
(Sen. Abshiro Halake, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 12th March, 2019)

(Division)

9. **COMMITTEE OF THE WHOLE**
*****THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)**
(The Senate Majority Leader)
10. **COMMITTEE OF THE WHOLE**
***THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO. 4 OF 2018)**
(Sen. Amos Wako, MP)
11. **COMMITTEE OF THE WHOLE**
****THE IMPEACHMENT PROCEDURE BILL (SENATE BILLS NO. 15 OF 2018)**
(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)
12. **COMMITTEE OF THE WHOLE**
****DATA PROTECTION BILL (SENATE BILLS NO. 16 OF 2018)**
(Chairperson, Standing Committee on Information and Technology)

13. COMMITTEE OF THE WHOLE

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

(Sen. Aaron Cheruiyot, MP)

14. **THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018)

(Chairperson, Sessional Committee on Delegated Legislation)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 12th March, 2019)

15. *THE DETERMINATION OF THE NATURE OF BILLS (PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

(Sen. Mutula Kilonzo Jnr., MP and Sen. Sakaja Johnson, MP)

(Second Reading)

16. *THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO 31 OF 2018)

(Sen. (Dr.) Agnes Zani, MP)

(Second Reading)

17. **THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL (SENATE BILLS NO. 34 OF 2018)

(Chairperson, Standing Committee on Finance and Budget)

(Second Reading)

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

(Sen. Aaron Cheruiyot, MP)

(Second Reading)

19. MOTION - CREATION OF DISABILITY INCLUSIVE SCHOOL CLUBS IN ALL PUBLIC SCHOOLS

(Sen. (Dr.) Getrude Musuruve, MP)

THAT, WHEREAS Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) affirms the equal right of all persons with disabilities to live in a community, with choices equal to others, equal access to services and facilities that are responsive to their needs;

AWARE THAT societal perception of disability is negative, mainly due to lack of socialization and integration during the formative years,;

COGNIZANT THAT participation in school clubs provides important life skills that prepare children holistically for their future and plays a major role in transforming students' lives as they transit to various professions in adulthood;

CONCERNED THAT no policy exists addressing inclusivity in school clubs for persons with disability in the public school system;

...../Motion

NOW THEREFORE the Senate calls upon the coordinated effort of the National Government through the Ministry of Education, and the County Governments through the Council of Governors to develop policy that would ensure inclusiveness of special needs learners in school clubs in public schools beginning at the Early Childhood Development (ECD) level up to and including Secondary School level.

*(Resumption of debate interrupted on Thursday, 21 st February, 2019)
(Balance of time- 2hrs 52mins*

20. **MOTION - THE REALIZATION OF GENDER EQUITY IN ELECTIVE AND APPOINTIVE POSITIONS IN KENYA**

(Sen. (Canon) Naomi Waqo Jilo, MP)

AWARE THAT, the Constitution of Kenya recognizes dignity, economic, social and cultural rights, education, housing and the right to health including reproductive health; and that the principle of equality and non-discrimination is established as a core value of leadership and the national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of marginalized groups, among others;

FURTHER AWARE THAT, the Constitution of Kenya has very progressive articles that indicate commitment to the international and regional obligations arising from treaties and conventions and other Commitments signed or ratified;

COGNIZANT that Kenya has ratified the Convention on Elimination of all forms of discrimination against Women and the Protocol to the African Charter on Human and People’s Rights of the Right of Women which are international instruments that are key to promoting women’s rights;

RECALLING that policy framework to enhance gender equality has also been developed, and include the National Gender and Development Policy 2000, the Kenya Vision 2030, Sessional paper No. 2, of 2006, the National Land Policy, the National Policy for Response to Gender Based Violence, and the National Policy for the Abandonment of Female Genital Mutilation;

NOTING THAT, despite there being sound constitutional provisions and elaborate policy framework to realise gender equity, both national government and county governments have not done enough to realise the achievement of gender equality;

CONCERNED that women in Kenya experience hardships when it comes to elective offices, and are underrated by society with most opportunities for elective and appointive offices being awarded to men;

NOW THEREFORE THE SENATE RESOLVES

- 1) that Parliament fast track the enactment of the law that shall give effect to the one third gender rule; and,
- 2) that pursuant to Article 81 of the Constitution both the National and County governments observe the principle of equality, and empowers the female gender by increasing the appointive position to at least fifty per cent.

...../Key

NOTICE

The Senate resolved on 13thFebruary, 2019 as follows:-

THAT, pursuant to Standing Order 106 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

KEY

******** - Denotes a Majority /Minority Party Bill

******* - Denotes a National Assembly Bill

****** - Denotes a Committee Bill

***** - Denotes any other Bill

A. *THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 13 OF2018)

(Sen. Aaron Cheruiyot, MP)

NOTICE is hereby given that Sen. Kinyua Nderitu, Chairperson of the Senate Standing Committee on Devolution and Intergovernmental Relations, intends to move the following amendments to the County Governments (Amendment) Bill, 2018, at the Committee Stage -

CLAUSE 2

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

Amendment of section 58 of No. 17 of 2012.

2. Section 58 of the County Governments Act is amended in—

(a) subsection (1) by -

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

(c) the secretary to the board who shall be nominated and appointed by the governor with the approval of the county assembly.

(ii) inserting the following new subsections immediately after subsection (1) -

(1A) The secretary to the board shall be an *ex-officio* member of the Board and shall have no right to vote at any meeting of the Board.

(1B) In nominating or appointing a person as a member of the Board, the Governor shall—

(a) observe the principles of gender equity, ethnic and other diversities of the people of Kenya, and shall provide an equal opportunity for persons with disabilities; and

(b) take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution.

(b) subsection (3) by deleting paragraph (c) and substituting therefor the following new paragraph -

(c) in the case of the chairperson -

(i) possesses a minimum of a bachelors degree from a university recognised in Kenya;

(ii) is registered as a human resource management professional of good standing under the Human Resource Management Professionals Act; and

(iii) has at least ten years working experience in a managerial position either in the public or private sector.

No. 52 of 2012.

B. *THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO. 4 OF 2018)

(Sen. Amos Wako, MP)

- (i) **NOTICE** is given that Sen. Samson Cherarkey, Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Public Participation Bill, Senate Bills No. 4 of 2018, at the Committee Stage-

CLAUSE 3

THAT clause 3 of the Bill be amended-

(a) in the introductory clause by inserting the words "and developmental programmes" immediately after the words "in governance processes";

(b) by inserting the following new paragraph immediately after paragraph (f)-

(g) promote participation by non-state actors in decision-making processes.

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) that the public, communities and organisations to be affected by a decision shall have a right to be notified, heard and involved in the decision-making process;

CLAUSE 5

THAT clause 5 of the Bill be amended in sub-clause (2)-

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

(c) independent commissions or offices, boards, authorities or any other public body, the respective chief executive officer or secretary to the public body;

(b) in paragraph (f) by deleting the words "County Secretaries" appearing immediately after the words "County Executive" and substituting therefor the words "respective county executive committee member".

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting the word "specific" appearing immediately after the word "include" in paragraph (a) and substituting therefor the words "any further";

CLAUSE 7

THAT clause 7 of the Bill be amended by inserting the words "publicize and" immediately after the words "authority shall".

...../Amendments

CLAUSE 8

THAT clause 8 of the Bill be amended in sub-clause (4) by inserting the words "including information on the purpose, dates and participants" immediately after the words "of public participation" in paragraph (a).

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the words “within six months of the coming into operation of this Act” immediately after the words “the Cabinet Secretary may”.

SCHEDULE

THAT the schedule to the Bill be amended-

(a) in paragraph 2 by deleting the word “continuing” appearing immediately after the words “shall facilitate” and substituting therefor the word “continuous”;

(b) in paragraph 5 by inserting the words “youth, minorities and marginalized communities” immediately after the words “persons with disabilities” in sub-paragraph (2);

(c) by deleting paragraph 8 and substituting therefor the following new paragraph-

8. Every public participation forum shall be undertaken within a reasonable timeframe from the earliest possible time for consultation, allowing a reasonable period for each stage of the process.

(d) in paragraph 11 by deleting sub-paragraph (b) and substituting therefor the following new sub-paragraphs-

(b) the final decision, including the reasons for the decision, is made widely available in a timely manner to the public;

(ba) the final decision is publicized in the same manner required for giving notice for public participation under these guidelines;

(e) in paragraph 13 by inserting the words “and may be subject to penal consequences under any relevant law” immediately after the words “from a meeting” in sub-paragraph (2).

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the word “general guidelines”-

“public participation” means the process through which the public are broadly engaged in understanding and contributing to decision-making processes of the policy making, law making and implementation level.

...../Amendments

TITLE

THAT the Bill be amended in the long title by inserting the words “at the national and county level of government” immediately after the words “effective public participation”;

(ii) **NOTICE** is given that Sen. Petronilla Were Lokorio, intends to move the following amendments to the Public Participation Bill, Senate Bills No. 4 of 2018, at the Committee Stage—

CLAUSE 4

THAT clause 4 of the Bill be amended—

- (a) by numbering the existing clause as sub-clause (1);
- (b) in the new sub-clause (1) by deleting the words “taken into consideration in” appearing immediately after the words “views shall be” in paragraph (d) and substituting therefor the words “the basis of”;
- (c) by inserting the following new sub-clauses immediately after sub-clause (1)—

(2) In conducting public participation, the responsible authority shall—

- (a) allocate sufficient time before the public participation event to create public awareness on the subject matter;
- (b) avail the relevant information to the members of the public with respect to the issue under consideration;
- (c) engage the relevant stakeholders in such manner as the responsible authority shall consider appropriate;
- (d) where the issue under consideration is of a technical nature, avail an independent technical expert to take members of the public through the matter under consideration in detail; and
- (e) put in place a feedback mechanism to enable stakeholders submit their views and to receive feedback on the decisions made by the responsible authority.

(3) Where the issue for public participation relates to a matter that affects the nation generally, the responsible authority shall conduct public participation forums with respect to that matter in at least twenty-four counties.

(4) The responsible authority shall, in determining the counties in which public participation is to be conducted under sub-section (3), ensure that the forums are held in the counties alternately and that the residents in the counties in which the forums are not conducted are carried out through an alternative appropriate method.

...../Amendments

CLAUSE 6

THAT clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)—

(4) The responsible authority shall publicize and publish, by notice in the *Gazette*, the guidelines.

CLAUSE 8

THAT clause 8 of the Bill be amended in sub-clause (5) by deleting the words “in such other manner” appearing immediately after the words “and publicized in” and substituting therefor the words “through such other appropriate platform”.

SCHEDULE

THAT paragraph 10 of the schedule be amended by inserting the following new sub-paragraph immediately after sub-paragraph (4) to read—

(4A) The confidentiality requirement imposed by the responsible authority shall be reasonable and not unduly fetter the rights of the applicant.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 7—

Provision of **7A.** The responsible authority shall provide the resources for public necessary resources for the conduct of public participation. participation under this Act.

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the word “general guidelines” —

“public participation” means an effective and reasonable process in which the public is properly engaged in a given matter of public interest for the purpose of obtaining their views with the aim of facilitating a favourable outcome.

(iii) **NOTICE** is given that Sen. Agnes Zani intends to move the following amendments to the Public Participation Bill, Senate Bills No. 4 of 2018, at the Committee Stage-

...../Amendments

CLAUSE 5

THAT clause 5 of the Bill be amended by inserting the following new subclause immediately after subclause (2)-

(2A) The responsible authority shall, in developing the guidelines specified under subsection (1), consult with the departments in the respective entity.

CLAUSE 6

THAT clause 6 of the Bill be amended in subclause (1) by inserting the words "in accordance with this Act" immediately after the words "shall develop guidelines".

CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (4) by inserting the following new paragraph immediately after paragraph (b)-

(ba) particulars of persons or organizations that have taken part in any public participation exercise conducted by the relevant entity.

NEW CLAUSE

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

General penalty.	8A. A person contravenes a provision of this Act commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.
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SCHEDULE

THAT the schedule be amended-

(a) in paragraph 4(2) by deleting subparagraph (f) and substituting therefor the following new paragraph-

(f) radio stations and print media.

(b) in paragraph 5 by inserting the words "including ensuring non-discrimination and reasonable access to information by such persons" immediately after the words "public participation processes" appearing in subparagraph (2);

(c) in paragraph 10(3) by deleting subparagraph (c) and substituting therefor the following new sub-subparagraph -

(c) shall be subject to the limitations on the right to access to information as set out in section 6 of the Access to Information Act.

...../Amendments

NOTICE is given that Sen. Gideon Moi, the Chairperson of the Standing Committee on Information and Technology, intends to move the following amendments to the Data Protection Bill (Senate Bills No. 16 of 2018) at the Committee Stage –

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause –

Application.

3. (1) This Act shall apply to –

(a) the protection of personal data of a data subject in the processing of such data by –

(i) an agency established in the Republic of Kenya; and

(ii) an agency not established in the Republic of Kenya but processes personal data of a data subject who is a resident of the Republic of Kenya; and

(b) the processing by automated or any other means of personal data which forms or is intended to form part of a filing system.

(2) This Act shall not apply to the processing of personal data –

(a) by or on behalf of a public body responsible for national security the purpose of which is the prevention, detection, investigation or punishment of a crime; or

(b) by a person in the course of a personal or household activity.

(3) Despite the provisions of subsection (2)(a) and except where the security of the country, the life, safety or health of a person, or property is in imminent danger, a public body that intends to process personal data without the consent of the data subject shall make an application *ex parte* to a court for orders to process such data.

...../Amendments

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by –

- (a) deleting paragraph (b) and substituting therefor the following new paragraph –
 - (b) the data subject or a guardian, where the data subject is a child or a person who is legally incapacitated, has consented to the collection of the personal data from another source;
- (b) deleting paragraph (c);
- (c) by deleting the words “the interests” appearing immediately after the words “protection of” in paragraph (e)(ii) and substituting therefor the words “fundamental rights and freedoms”;
- (d) deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) the life, safety or health of a person or property is in imminent danger.
- (e) deleting sub-clause (3) and substituting therefor the following new sub-clause –
 - (3) An agency shall collect or process personal data using lawful means that do not intrude to an unreasonable extent upon the privacy of a data subject.

CLAUSE 8

THAT clause 8 of the Bill be amended by –

- (a) re-numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause immediately after sub-clause (1) –
 - (2) Where the data subject is in control of the means of inputting or processing his or her personal data, it shall be the responsibility of the data subject to ensure that personal data is complete, accurate, up-to-date and not misleading.

CLAUSE 9

THAT clause 9 of the Bill be amended by –

- (a) deleting paragraph (e) and substituting therefor with the following new paragraph –
 - (e) the deletion of personal data relating to the data subject which is in possession of an agency; and
- (b) inserting the following new paragraphs immediately after paragraph (f) -
 - (g) be informed of the period within which personal data is to be stored; and
 - (h) data portability.

...../Amendments

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (1) by –

(a) deleting the introductory clause and substituting therefor the following new clause –

(1) Before an agency collects personal data directly from a data subject, the agency shall inform the data subject, in a language the data subject understands, of —

(b) deleting the word “hold” appearing immediately after the words “agency that will” in paragraph (d) and substituting therefor the words “be in possession of”;

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

(h) the rights conferred on the data subject under section 9 of this Act.

CLAUSE 11

THAT clause 11 of the Bill be amended in sub-clause (1) by deleting the words “in the recent past” appearing immediately after the words “taken those steps” and substituting therefor the words “within the past twelve months”.

CLAUSE 12

THAT clause 12 of the Bill be amended –

(a) in paragraph (a) by deleting the words “publicly available” and substituting therefor the words “a matter of public record”;

(b) by deleting paragraph (c); and

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

(f) compliance would endanger the life, safety or health of a person or endanger property;

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) Subsection (1) shall not apply to a data subject where the decision is –

(a) necessary for entering into, or performing, a contract between the data subject and the agency;

(b) authorised by a law to which the agency is subject and which lays down suitable measures to safeguard the data subject’s rights, freedoms and legitimate interests; or

(c) based on the explicit consent of the data subject.

...../Amendments

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words "information on" at the beginning of paragraph (b);
- (b) inserting the words "information on" at the beginning of paragraph (c);
- (c) deleting the word "transmitted" appearing immediately after the words "is to be" in paragraph (d) and substituting therefor the word "disclosed"; and
- (d) deleting the words "processed data" appearing immediately after the words "deletion of" in paragraph (f) and substituting therefor the words "data which has been processed".

CLAUSE 16

THAT clause 16 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new clause (1) by –
 - (i) inserting the words "is a breach of security or there" after the words "Where there" in the introductory clause;
 - (ii) deleting the words "as soon as reasonably practicable" appearing at the beginning of paragraph (a) and substituting therefor the words "within seventy two hours";

(c) by inserting the following new sub-clauses immediately after the new sub-clause (1) –

(2) The notification under subsection (1)(a) shall set out sufficient information to enable the data subject to take protective measures against potential consequences of the data breach, including —

- (a) description of the nature of the breach;
- (b) description of the likely consequences of the breach;
- (c) description of the measures that the agency intends to take or has taken to address the breach;
- (d) recommendation on the measures to be taken by the data subject to mitigate the adverse effects of the breach; and
- (e) where possible, the identity of the person who may have accessed or processed the personal data.

(3) An agency may delay the issuance of a notification under subsection (1) for the purpose of preventing, detecting or investigating a crime by the relevant public entity.

...../Amendments

CLAUSE 17

THAT clause 17 of the Bill be amended –

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) Where an agency is in possession of personal data or where a person believes that an agency is in possession of personal data relating to him or her, that person —

(a) may obtain from the agency a confirmation as to whether the agency possesses such personal data and the purposes for processing the personal data; and

(b) shall have access to that data.

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

(2) An agency to which an application for access to personal data has been made may charge a prescribed fee for the provision of the personal data and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the data subject.

CLAUSE 18

THAT clause 18 of the Bill be amended –

(a) in sub-clause (1) by deleting the word “holds” appearing immediately after the words “an agency which” and substituting therefor the words “is in possession of”; and

(b) in sub-clause (2) inserting the words “or such other personal data relating to the data subject as the data subject may request” immediately after the words “or misleading data”.

CLAUSE 19

THAT clause 19 of the Bill be amended –

(a) in sub-clause (1) by –

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

(c) the retention of the data is necessary for a lawful purpose related to the function or activity performed by the agency;

(ii) by deleting the words “parties to the contract” appearing immediately after the words “contract between the” in paragraph (d) and substituting therefor the words “the data subject and the agency”;

(b) by inserting the following new sub-clause immediately after sub-clause (3) –

...../Amendments

(3A) An agency may, for purposes of subsection (3), anonymise the data retained under subsection (3) in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 20

THAT clause 20 of the Bill be amended by deleting the word “holds” appearing immediately after the words “an agency that” and substituting therefor the words “is in possession of”.

CLAUSE 21

THAT clause 21 of the Bill be amended by –

- (a) re-numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause immediately after the new sub-clause (1) –
 - (2) An agency that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “in the case of a data subject who is a child or a person who is legally incapacitated, the guardian” immediately after the words “the data subject” in paragraph (a);
- (b) deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) with respect to information that has made public by the data subject.

CLAUSE 25

THAT the Bill be amended by deleting clause 25.

CLAUSE 27

THAT the Bill be amended by deleting clause 27.

CLAUSE 29

THAT clause 29 of the Bill be amended –

- (a) in paragraph (a) deleting the words “or any other person having authority to make decisions on behalf of the child” appearing immediately after the words “parent or guardian”; and

...../Amendments

- (b) by deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) in the best interest of the child.

CLAUSE 30

THAT the Bill be amended by deleting clause 30.

CLAUSE 31

THAT clause 31 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new sub-clause (1) by –
 - (i) deleting the words “third party” appearing immediately after the word “the” appearing at the beginning of paragraph (a) and substituting therefor the words “Commission satisfied that the other country”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) the transfer is necessary -
 - (i) for the performance or conclusion of a contract between the data subject and the agency;
 - (ii) for the establishment, exercise or defence of a legal claim;
 - (iii) for the protection of fundamental rights and freedoms of a person; or
 - (iv) in the interest of the public.
 - (iii) by deleting paragraph (d); and
- (c) by inserting the following new sub-clause immediately after the new sub-clause (1) –
 - (2) The Commission shall prescribe guidelines for the transfer of personal data outside the country and the filing of reports on personal data transferred outside the country by an agency.

CLAUSE 36

THAT clause 36 of the Bill be amended –

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –
 - (4) Despite the provisions of this Act, a person whose personal data is collected or processed contrary to this Act or who suffers loss as a result of disclosure of personal data may lodge a claim before a court for an appropriate remedy.

...../Amendments

- (b) by inserting the following new sub-clause immediately after sub-clause (4) -

(5) In determining a claim under subsection (4) a court shall consider –

- (a) the nature and the seriousness of the breach;
- (b) the categories of personal data affected;
- (c) any benefit gained or loss suffered as a result of the breach;
- (d) the number of previous violations;
- (e) the duration of time over which the breach occurred;
- (f) any action taken by the agency to remedy or mitigate the breach; and
- (g) the nature and status of the agency.

CLAUSE 38

THAT clause 38 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “five hundred thousand” appearing immediately after the words “not exceeding” and substituting therefor the words “one million”; and
- (b) by inserting the following new sub-clause immediately after sub-clause (1) –
 - (1A) Despite subsection (1), where the offence –
 - (a) committed relates to special personal information the person shall be liable, on conviction, to a fine not exceeding five million shillings or to a term of imprisonment not exceeding ten years; or
 - (b) is committed by a body corporate, the body corporate shall be liable, on conviction, to a fine not exceeding two million shillings or two percent of its annual turnover, whichever is higher.

NEW CLAUSE 18A

THAT the Bill be amended by inserting the following new clause immediately after clause 18 –

Right to data portability.	18A. (1) A data subject has the right to receive personal data which the data subject has provided to an agency, in a structured, commonly used and machine-readable format.
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...../Amendments

(2) A data subject has the right to transmit the data obtained under subsection (1) to another agency.

(3) Where possible, the data subject shall have the right to have the personal data transmitted directly from one data agency to another.

(4) The right under this section shall not apply to circumstances where —

(a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority; or

(b) it may adversely affect the rights and freedoms of another.

(5) An agency shall comply with data portability requests, free of charge and within a period of seven days from the date of the request.

CLAUSE 2

THAT clause 2 of the Bill be amended –

(a) by deleting the definition of the word “data controller”;

(b) by deleting the definition of the word “data subject” and substituting therefor the following new definition –

“data subject” means a natural person to whom personal data relates;

(c) by deleting the definition of the word “disclosure” and substituting therefor the following new definition –

“disclosure”, in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data to another person but does not include a disclosure made directly or indirectly by an agency to its employee or agent for the purpose of enabling the employee or agent to carry out its duties and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the agency, the data shall not be considered as disclosed unless the other information is also disclosed;

(d) by deleting the definition of the word “exempt information”;

(e) in the definition of the word “personal data” –

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

(d) the biometrics of a person;

(ii) by deleting paragraph (g); and

(iii) by deleting paragraph (h);
...../Amendments

- (f) in the definition of the word “processing” by inserting the word “storage” immediately after the words “collection, organisation” in paragraph (a); and
- (g) by deleting the definition of the word “special personal information” and substituting therefor the following new definition –

“special personal information” means the personal data of a child or data revealing a natural person’s race, health status or ethnic origin.

SHORT TITLE

THAT the Bill be amended by deleting clause 1 and substituting therefor the following new clause –

Short title and commencement.	1. This Act may be cited as the Personal Data Protection Act, 2018, and shall come into operation six months from the date of assent.
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D. *THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)
(Sen. Aaron Cheruiyot, MP)

NOTICE is given that Sen. Johnson Sakaja, the Chairperson to the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Care and Protection of Older Members of Society Bill, 2018, at the Committee Stage—

CLAUSE 3

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

CLAUSE 4

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

PART II

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

“RIGHTS AND ENTITLEMENTS OF OLDER MEMBERS OF SOCIETY”

CLAUSE 5

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

Rights of
Older
Members of
Society.

5. An older member of society has the right to enjoy the rights conferred under the Constitution and in particular shall not be unfairly denied the right to—

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

NEW CLAUSES

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

Right to
Legal
Capacity.

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

(2) An express or implied disqualification on the grounds of age prescribed in a law, custom or practice shall not deprive an older member of society the right to legal capacity.

Right to
Equality and
Non-
Discriminati
on.

5B. (1) An older member of society shall be entitled to equal protection and equal benefit of the law.

(2) An affirmative action measure aimed to achieve equality of older members of society shall not constitute discrimination.

(3) An older member of society shall live in dignity and security, free from exploitation and physical or mental abuse and be treated fairly.

Right to Documents of Registration.

5C. (1) An older member of society has a right to be issued with a passport, national identity card, certificate of birth and any other document of registration or identification irrespective of their age.

(2) Where a birth certificate is not issued, the older member of society shall use alternative document including a national identity card to serve the purpose.

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

5D. (1) An older member of society has a right to suitable and specialised protection and safety in a situation of risk, including a situation of armed conflict, humanitarian emergency and the occurrence of a natural disaster.

(2) An institution whether public or private shall maintain an inventory of all older members of society and shall submit the inventory quarterly to the national government, county government and other agencies responsible for disaster management.

(3) The national government and each county government shall be responsible for emergency management and shall take appropriate measures to ensure the inclusion of older members of society in every scheme, program, mission as well as its disaster management system during the occurrence of any disaster emergency, for the safety and protection of such persons.

Right to Education.

5E. (1) The national government and each county government shall ensure that older members of society have access to educational, cultural, spiritual and recreational resources.

(2) The Ministry responsible for education shall develop programmes and structures for the education and training of older members of society.

Right to Health

5F. (1) The national government and each county government shall take appropriate measures to ensure that an older member of society who is not covered in an existing medical scheme gets affordable, accessible, adequate and quality free medical care.

(2) Medical assessment reports for older members of society shall be free of charge in public health institutions.

(3) An older member of society shall not be compelled to undergo any test as a precondition to or for continued enjoyment of provision of health cover.

Right to Admission into Public and Private Premises, and Public Transport

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

Right to Sports, Recreation, Leisure and Culture.

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

Right of Access to Justice

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

CLAUSE 6

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

...../Amendments

CLAUSE 26

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

(f) the number of older members of society who have died in the home within the year and the cause of death; and

(g) the number of accidents in the home and complaints reported in relation to older members of society.

CLAUSE 27

THAT clause 27 of the Bill be amended-

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

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

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

CLAUSE 30

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

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

...../ *Appendix*

APPENDIX

1. PAPERS

- (i) Report of the Auditor-General on the Financial Statements of the County Executive of Embu for the Year ended 30th June 2018;
- (ii) Report of the Auditor-General on the Financial Statements of the County Executive of Nyeri for the Year ended 30th June 2018;
- (iii) Report of the Auditor-General on the Financial Statements of the County Executive of Meru for the Year ended 30th June 2018;
- (iv) Report of the Auditor-General on the Financial Statements of the County Executive of Kilifi for the Year ended 30th June 2018;
- (v) Report of the Auditor-General on the Financial Statements of the County Executive of Migori for the Year ended 30th June 2018;
- (vi) Report of the Auditor-General on the Financial Statements of the County Executive of Kisii for the Year ended 30th June 2018;
- (vii) Report of the Auditor-General on the Financial Statements of the County Executive of Marsabit for the Year ended 30th June 2018;
- (viii) Report of the Auditor-General on the Financial Statements of the County Executive of Taita Taveta for the Year ended 30th June 2018;
- (ix) Report of the Auditor-General on the Financial Statements of the County Executive of Kitui for the Year ended 30th June 2018;
- (x) Report of the Auditor-General on the Financial Statements of the County Executive of Tharaka Nithi for the Year ended 30th June 2018;
- (xi) Report of the Auditor-General on the Financial Statements of the County Executive of Isiolo for the Year ended 30th June 2018;
- (xii) Report of the Auditor-General on the Financial Statements of the County Executive of Mombasa for the Year ended 30th June 2018;
- (xiii) Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the Year ended 30th June 2018;
- (xiv) Report of the Auditor-General on the Financial Statements of Kakamega County Executive for the Year ended 30th June 2018;
- (xv) Report of the Auditor-General on the Financial Statements of Siaya County Executive for the Year ended 30th June 2018;
- (xvi) Report of the Auditor-General on the Financial Statements of Mandera County Executive for the Year ended 30th June 2018;
- (xvii) Report of the Auditor-General on the Financial Statements of Busia County Executive for the Year ended 30th June 2018;

(xviii) Report of the Auditor-General on the Financial Statements of Tana River County Executive for the Year ended 30th June 2018;

...../Appendix

(xix) Report of the Auditor-General on the Financial Statements of Bungoma County Executive for the Year ended 30th June 2018;

(xx) Report of the Auditor-General on the Financial Statements of Turkana County Executive for the Year ended 30th June 2018;

(xxi) Report of the Auditor-General on the Financial Statements of Kisumu County Executive for the Year ended 30th June 2018;

(xxii) Report of the Auditor-General on the Financial Statements of Trans Nzoia County Executive for the Year ended 30th June 2018;

(xxiii) Report of the Auditor-General on the Financial Statements of Lamu County Executive for the Year ended 30th June 2018;

(xxiv) Report of the Auditor-General on the Financial Statements of the County Executive of Kirinyaga for the Year ended 30th June 2018;

(xxv) Report of the Auditor-General on the Financial Statements of the County Executive of Nyamira for the Year ended 30th June 2018;

(xxvi) Report of the Auditor-General on the Financial Statements of the County Executive of Samburu for the Year ended 30th June 2018; and

(xxvii) Report of the Auditor-General on the Financial Statements of the County Executive of Murang'a for the Year ended 30th June 2018.

(The Senate Majority Leader)

2. NOTICE OF MOTION - RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY.
(MINISTRY OF EDUCATION)

THAT AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang'a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

...../Appendix

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba's contribution to our Nation, to rename Murang'a University of Technology to Kenneth Matiba University of Technology.

(Sen. Isaac Mwaura, MP)

3. STATEMENTS PURSUANT TO STANDING ORDER NO. 48(1)

- a) Nominated Senator (Sen. (Dr.) Agnes Zani, MP) to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations on the Policy on the Devolved System of Government.
