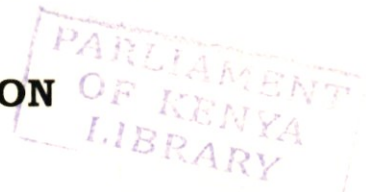




**THE NATIONAL ASSEMBLY (FOURTH SESSION)**

**CONVEYANCE OF A PUBLIC PETITION**

*(No. 31 of 2020)*



**PROPOSAL TO ENACT LEGISLATION FOR PROVISION  
OF MAINTENANCE AND WELFARE OF PARENTS  
AND SENIOR CITIZENS**

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**Honourable Members,** Standing Order 225(2)(b) requires the Speaker to report to the House any petition other than those presented by a Member. I therefore wish to report to the House that my Office has received a petition from an association calling itself Ukongwe Bora Welfare Society of P.O. Box 8076, Code 00200 Nairobi seeking indulgence of this House to enact legislation compelling the Government and individual citizens to take care of the elderly and parents respectively.

The petitioners aver that many senior citizens who retire from productive work retain a vast wealth of knowledge, skills, talents and wisdom which can be harnessed through interaction with younger generations. As such, the petitioners are convinced that the elderly, the senior citizens and parents require comprehensive and mandatory care from both the Government and individual citizens.

It is on account of this conviction, **Honourable Members**, that the petitioners seek the enactment of legislation compelling the Government to provide homes and medical care for the elderly in every county. Further, the petitioners seek to make it mandatory for citizens to provide for their parents failure to which they should be convicted for a specified period. To this end, the petitioners have attached a proposed bill titled "*The Maintenance and Welfare of Parents and Senior Citizens Bill, 2020*".

**Honourable Members**, as you are aware, there is currently before this House *The Care and Protection of Older Members of Society Bill, 2018*, a Bill originating from the Senate, which has undergone First and Second Readings and is awaiting Committee of the Whole House. The said Bill was referred to the Departmental Committee on Labour and Social Welfare for consideration and a report tabled in this House to that effect.

Consequently and pursuant to the provisions of Standing Order 227(1), this Petition and the proposed Bill by the petitioners stands committed to the same Committee for consideration along with the Bill originating from the Senate. The Committee is requested to consider the Petition and report its findings to the House and to the petitioners in accordance with Standing Order 227(2).

**I thank you!**

  
**THE HON. JUSTIN B.N. MUTURI, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

***Thursday, September 17, 2020***



# Ukongwe Bora Welfare Society

4<sup>th</sup> Floor Lotus House, Haileselassie Avenue Nairobi  
P.O.Box 8076 - 00200, Nairobi,  
Cell: 0790 730 853/ 0788 545 156

② Head, Table office  
Please deal  
Arat Kirei  
15/9/20.

To  
The Clerk of the National Assembly,  
Parliament Building,  
NAIROBI.

DLSP  
no proposal  
to refer to  
the

11<sup>th</sup> September, 2020

Dear Sir,

**REF: PRESENTATION OF A BILL FOR INTRODUCTION INTO THE NATIONAL ASSEMBLY**

Ukongwe Bora Welfare Society is a registered membership association under the Societies Rules of 1968. Its mandate is to mainstream challenges experienced by its members throughout their developmental process. The Society recognizes that its membership is an important segment in National Population whose rights must be recognized, respected, protected and promoted.

and  
and  
14/9/20

The Society taps and uses its members working power, qualifications and experiences in economic development. Many of its members have retired from productive work when stronger with a wealth of knowledge, skills, talents, wisdom and energy. In principle, therefore, the Society endeavors to strengthen intergeneration and solidarity among its members and generations, facilitate interaction and respect among all ages and generations, thus aspiring for an inclusive society.

The Society has developed a Bill that compel children to care for parents. Some of the highlights in the Bill are:

- a) Elderly persons unable to maintain themselves through own earnings to be provided for
- b) The government to provide homes for the elderly and medical care in each County
- c) Make it mandatory for every child, grandchild or relative of an elderly person to provide for them
- d) A person entitled to inherit an elderly person's property to support them in commensurate with the property to be inherited
- e) Any person who neglects or abandons his or her parents is liable to jail sentence of three months

RECEIVED  
14 SEP 2021  
CLERK'S OFFICE  
P.O. Box 11000, NAIROBI

③ FM  
Kirei prepare  
a...  
15/9/20

This is therefore a petition to parliament to adopt and process the Bill into an Act of Parliament with the view of protecting old persons in Kenya. Thanking you in anticipation,

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Yvette Bonareri', written in a cursive style.

**Yvette Bonareri**  
**Executive Director**

**A BILL FOR INTRODUCTION INTO THE NATIONAL  
ASSEMBLY AND THE SENATE**

**SPONSOR: UKONGWE BORA WELFARE SOCIETY**

**THE MAINTENANCE AND WELFARE OF PARENTS AND  
SENIOR CITIZENS BILL, 2020**

An Act to give effect to Article 57 (d) of the Constitution of Kenya it provides for effective provisions for the maintenance and welfare of parents and senior citizens and for matters connected therewith or incidental thereto.

Be it enacted by parliament of the Republic of Kenya as follows:-

**CHAPTER 1  
PRELIMINARY**

1. (1) This Act may be referred to as the Maintenance and Welfare of Parents and Senior Citizens Act, 2020. Short title,  
Extent,  
application and  
commencemen  
t
- (2) It shall come into force on such date as when the President will assent to it.
2. In this Act unless the context otherwise requires:- Definitions
- (a) "family member" includes son, daughter, grandson and grand daughter but does not include minor.
- (b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment.
- (c) "minor" means a person, defined in Article 260 as child.
- (d) "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be whether or not the father or the mother is a senior citizen.
- (e) "prescribed" means prescribed by rules made by the Government under this Act.
- (f) "Property" means property of any kind whether movable or immovable, ancestral or self acquired of or would inherit his

property after his death

(g) "Relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

(h) "Senior citizen" means older member of society under Article 260

(i) "Government" means the administrator thereof appointed to deal with matters relating to older members.

(j) "Tribunal" means the Maintenance Tribunal constituted under section 7

(k) "Welfare" means provision for food, health care, recreation centers and other amenities necessary for the senior citizens.

Act to have overriding effect

3. The Provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having, effect by virtue of any enactment other than this Act.

## CHAPTER II MAINTENANCE OF PARENTS AND SENIOR CITIZENS

Maintenance of parents and senior citizens

4. (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him shall be entitled to make an application under section 5 in case of –

(i) Parent or grandparent against one or more of his children not being a minor,

(ii) A childless senior citizen against such of his relative referred to in clause (g) of section 2

(2) (a). The obligation of the children or relative, as the case may be, to maintain a senior citizen extend to the needs of such citizens so that senior citizens may lead a normal life.

(b) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life

(c) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen.

(d) Provided that where more than one relative are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

Application  
for  
Maintenance

5. (1) An Application for maintenance under section 4 may be made –

(a) By senior citizen or a parent, as the case may be; or

(b) If he is incapable, by the area Chief, assistant Chief, Chairperson of Nyumba Kumi or any other person or organization authorized by him; or

(c) The Tribunal may take cognizance *suo motu*

*Explanation:-* For the purpose of this section “Organization” means any voluntary association registered under the Societies Rules 1968, or any other law for the time being in force.

(2) The Tribunal may during the pendency of the proceedings regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub section (1) after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub section (2), for the monthly allowance for the maintenance and expenses for proceedings shall be disposed of within ninety days from the date of the service of notice of the application to such person.

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) An application for maintenance under sub section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order or, if so ordered, from the date of the application for maintenance or expenses of proceedings as the case may be.

(8) If children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceedings as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier.

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.

6.(1) The proceedings under the section 5 may be taken against any children or relative:-

Jurisdiction  
and procedure

- (a) Where he resides or last resided; or
- (b) Where children or relative resides

(2) On receipt of the application under section 5, the Tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed:

(3) For securing the attendance of children or relative the Tribunal shall have the power of a Chief Magistrate as provided under the Criminal procedure.

(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases



Provided that if the Tribunal is satisfied that the children or relative against whom an Order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case *ex parte*

(2) Where the children or relative is residing outside Kenya the summons shall be served by the Tribunal through such means as the Tribunal may, specify in this behalf.

(3) The Tribunal before hearing an application under section 5 may, refer the same to the available alternative forms of dispute resolution and such alternative forms of dispute resolution shall submit its findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an Order to that effect.

*Explanation:* for the purpose of this sub-section "alternative forms of dispute resolution" means any of the forms provided for in Article 159 (2) (c).

Establishment of maintenance Tribunal

(4) (1) Judiciary shall within a period of six months from the date of the commencement of this Act by notification in the Official Gazette establish for each County one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

(2) The Tribunal shall be presided over by an officer appointed by the Judiciary.

(3) Where two or more Tribunals are constituted for any County Judiciary shall by general or special order regulate the distribution of business among them.

Summary procedure in case of inquiry

(5) (1) In holding any inquiry under section 5 the Tribunal may subject to any rules that may be prescribed by the Judiciary in this behalf, follow such summary procedure as it deems fit.

(2) The tribunal shall have all the powers of Civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the discovery and production of document and material object and for such other purposes as may be prescribed and the Tribunal shall be deemed to be a Civil Court for all the purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of Criminal Procedure.

(3) Subject to any rule that may be made in this behalf, the Tribunal may for the purpose of adjudicating and deciding upon any claim for maintenance choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist in holding the inquiry.

Order for maintenance

9(1) If children or relatives, as the case may be neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizens as the Tribunal may deem fit and pay the same to such senior citizens as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed in form of circular by Cabinet Secretary for the Ministry in charge of older persons.

Alteration in allowance

10(1) On proof of misrepresentation of mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under section 9, for the maintenance ordered under that section to pay monthly allowance for the maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent Civil Court, any order made under section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly.

Enforcement of Order of Maintenance

11(1) A copy of the order of maintenance and including the order regarding expenses of proceedings as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by either the department under the Ministry in charge of older persons, the National Police Service, Chiefs, or Assistant Chiefs against whom the Order is made.

(2) A maintenance order made under this Act shall have the same force and effect as an order passed under the Criminal Procedure and shall be executed in the manner prescribed for the execution of such order by that Code.

12. When an Order is made under this Chapter, the children or relative who is required to pay any amount in terms of such order shall within thirty days of the date of announcing the order by the Tribunal deposit the entire amount ordered in such manner as the Tribunal may direct

deposit of  
maintenance  
amount

13. Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five percent and not more than eighteen per cent.

Award of  
interest where  
any claim is  
allowed

Provided that where any application for maintenance is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal

15. (1) The Judiciary may, by notification in the official gazette, establish Appellate mechanisms to hear the appeal against the order of the Tribunal.

Constitution of  
Appellate  
Tribunal

16.(1) Any senior citizen or a parent as the case may be, aggrieved by an order of Tribunal may within sixty days from the date of the Order, file an appeal.

Appeals

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was presented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final.

Provided that no appeal shall be rejected unless opportunity

has been given to both the parties of being heard in person or through a duly authorized representative.

(6) The Appellate Tribunal shall make an Endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub section (5) shall be sent to both parties free of cost.

Rights to  
legal  
representatio  
n  
Maintenance  
Office

17. Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner

18. (1) The Government shall designate the Social Welfare Officer or an officer not below the rank of a County Social Welfare Officer by whatever name called as Maintenance Officer.

(2) The Maintenance officer referred to in sub –section (1) shall represent a Senior Citizen or a parent if he so desires during the proceedings of the Tribunal or the Appellate Tribunal as the case may be.

### CHAPTER III

#### ESTABLISHMENT OF OLD AGE HOMES

Establishmen  
t of Old age  
homes

19. (1) The State shall establish and maintain such number of old age homes at accessible fees as it may deem necessary, in a phased manner, beginning with at least one each County to accommodate senior citizens who are indigent.

(2) The State may prescribe a scheme for management of old age homes including the standard and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.

*Explanation* – for the purpose of this section ‘indigent’ means any senior citizen who is not having sufficient means as determined by the State, from time to time to maintain himself.

### CHAPTER IV

#### PROVISIONS FOR MEDICAL CARE OF SENIOR CITIZENS

Medical

20. The State shall ensure that:-

Support for Senior Citizens

*i.* The Government hospitals or hospital funded fully or partially by the Government shall provide beds for all senior citizens as far as possible.

*ii.* Separate queue be arranged for senior citizens.

*iii.* Facility for treatment of chronic, terminal and degenerative disease is expanded for senior citizens.

*iv.* A research activity for chronic elderly disease and ageing is expanded in Medical Schools

*v.* There are earmarked facilities for geriatric patients in every County and referral hospital duly headed by a medical officer with experience in geriatric care

## CHAPTER V

### PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZENS

Measures for publicity, awareness etc for welfare of senior citizens

21. The State shall take all measures to ensure that:

*(i)* The provision of this Act are given wide publicity through public media including the television, radio and the print at regular intervals.

*(ii)* The National Government and County Government Officers including the police officers and the members of the Judicial service, are given periodic sensitization and awareness training on the issues relating to this Act.

*(iii)* Effective co-ordination between the service provided by the concerned Ministries or Departments dealing with the law, home affairs, health and welfare to address the issues relating to the welfare of the senior citizens and periodic review of the same is conducted.

22. (1) The State may, confer such powers and impose such duties on a government official as may be necessary to ensure that the provision of this Act are properly carried out and the government officer may specify the officer, subordinate to him who shall exercise all or any of the powers, and perform all or any of the duties so conferred or imposed and the local limits within which such powers or duties shall be carried out by the offices as may be prescribed.

Authorities who may be specified for implementing the provision of this Act

(2) The state shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens accused of witchcraft and other form of life threatening accusations.

23. (1) Where any senior citizen who after commencement of this Act has transferred by way of gift or otherwise, his property subject to the condition that the transferee shall provide the basic amenities and basic and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

Transfer of property to be void in certain circumstances

(2) where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous but not against the transferee for consideration and without notice of right.

(3) If any senior citizen is incapable of enforcing the rights under sub section (1) and (2) action may be taken on his behalf by any of the organization referred to in *explanation* to sub section (1) of section 5.

## CHAPTER VI

### OFFENCES AND PROCEDURE FOR TRIAL

24, Whoever having the care or protection of senior citizen leaves such senior citizen in any place with the intention of wholly abandoning a such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to fifty thousand shillings or with both.

Exposure and abandonment of senior citizens

## CHAPTER VII

### MISCELLANEOUS

26. Every officer or staff appointed to exercise function under this Act shall be deemed to be a public servant.

Officers to be public servants

27. No Civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done or under this Act.

Jurisdiction of Civil courts barred

28. No suit, prosecution or other legal proceeding shall be Government, the State Governments or the local authority or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made thereunder.

Protection of action taken in a good faith.

29. If any difficulty arises in giving effect to the provision of this Act, the State may, by order published in the Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty. Provided that such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

power to remove difficulties

Power of National Government to give direction

30. The National Government may give directions to County Governments as to the carrying into execution of the provision of this Act.

32. (1) The County Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may provide for-

(a) The manner of holding inquiry under section 5 subject to such rules as may be prescribed under section (1) of section 8.

(b) The power and procedure of the Tribunal for other purpose under sub section (2) of section 8

(c) The maximum maintenance allowance which may be ordered by the Tribunal under sub section (2) of section 9.

(d) The scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section (2) of section 19.

(e) The powers and duties of the authorities for implementing

the provision of this Act under sub-section (1) of section 22.

(f) A comprehensive action plan for providing protection of life and property of senior citizen accused of witchcraft and other forms of life threatening accusations under sub-section (2) of section 22.

(g) Any other matter which is to be or may be prescribed,

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before the National Assembly and at the Senate