

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 17<sup>th</sup> March, 2016

The House met at 2.30 p.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### THE COMMUNITY LAND BILL

**Hon. Speaker:** This Communication relates to the Community Land Bill (National Assembly Bill No.45 of 2015).

*(Hon. Wakhungu rose in his place)*

Hon. Wamalwa, you cannot just rise and sit as you choose. You are teaching the new Member bad manners.

Hon. Members, you will recall that during the Morning sitting of today, the consideration of the Community Land Bill (National Assembly Bill, No.45 of 2015) at the Committee of the whole House was deferred and the Committee reported progress. This was essentially to allow Members sufficient time to study the Bill and possibly propose amendments.

As you are aware, the Bill has a constitutional timeline and is one of the pieces of legislation requiring consideration by both Houses of Parliament. In this regard, any Member intending to propose amendments to the Bill has until Monday 21<sup>st</sup> March 2016 to submit any amendments to the Office of the Clerk. This will ensure that the Bill is scheduled for consideration at Committee of the whole House on Wednesday next week.

I also wish to remind the House that the consideration of a Bill during the Committee of the whole House is not occasion for debate. That must be adhered to. Members wishing to contribute to any Bill are encouraged to avail themselves during the Second Reading stage of any Bill so that the Committee of the whole House becomes an opportunity where you only propose amendments, they are moved and seconded. One or two Members can contribute but not the entire House engaging in a debate. That is not the practice you will find in any jurisdiction. In this regard, any Member wishing to propose any amendments, please make sure that you submit them to the Clerk latest Monday.

I thank you.

**Hon. Speaker:** Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Speaker, for that good guidance. The other issue you need to give direction on is that when amendments are provided by Members on the Order Paper,

it gives the opportunity to all Members to scrutinise them and even the relevant Chairpersons of Committees to go through them.

It is now becoming a procedure in this House for people to introduce amendments on the Floor. When an amendment is introduced on the Floor, it denies the Committees, chairpersons of committees and even the Legal Department of Parliament the opportunity to scrutinize them. We need your direction on that.

Finally, Hon. Sumra has made a culture of chewing something called *tambu* in this House and he is charged throughout. He is always charged. This is a House of hon. Members. Before you came in, I talked to the Whip of the other side. We must respect this House. Next time, we are going to have people coming with *Miraa* here. Some will come with other things. I am just saying that. I also chew *Miraa* but I cannot come with it here.

We need people to be very sober in the Chamber and not to be charged. From what I know, when you chew *tambu*, you want to charge yourself. He has just dropped it. I am a leader. My colleagues can testify. Even now he is charged. You can see the way he is behaving. It is because of *tambu*. He cannot even wait for me to finish. I am sure the people of Embakasi did not send him here to chew *tambu* in the Chamber. They have sent him to contribute to the legislative agenda. This is the third year he is doing it.

I need your guidance on that.

**Hon. Speaker:** Hon. Sumra, to the extent that you have been mentioned---

*(Hon. Sumra raised his hand)*

Do not raise up hands. You are seated next to a new Member. When you start showing him that people raise hands---

**Hon. Sumra:** Thank you very much, Hon. Speaker. I am aware. I come and do my duties as a Member of Parliament. Immediately I enter the Chamber, there is no *tambu*. Hon. Duale, let me escort my new Member to come and do his things. I respect this House. There is no *tambu* immediately I enter the Chamber.

**Hon. Speaker:** What is that now?

**Hon. Sumra:** That is my habit outside the Chamber. Hon. Duale, please, I hope it is not a revenge of the Malindi by-election. This is revenge because we were meeting in Malindi and the *tambu* actually worked in the Malindi by-election.

*(Laughter)*

That is why he wants me to leave *tambu*, and I am not leaving. In the next election, you will have more *tambu*. I will have an overdose!

**Hon. Speaker:** Whatever it is, Hon. Sumra, just desist from chewing it. Even if you chew your tongue, try to control whatever it is.

**Hon. Limo:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Limo, you have an intervention.

**Hon. Limo:** Hon. Speaker, I wish to support Hon. Duale because today, I was forced out of the Committee because of what Sumra was chewing. It was very irritating.

**Hon. Speaker:** I will be making a substantive Communication on the issue raised because it is not just ambushing the entire House. Also, given that under the new dispensation

there is a requirement for public participation, when you introduce some of the amendments on the Floor, and the House is making a decision that, perhaps, if you took it out there, the public will also give you views which could enrich the Bill. We should be careful. We should avoid situations whereby we are coming to introduce very substantive amendments on the Floor of the House. I will be making a substantive Communication on that.

Next Order!

## PETITIONS

### STATE OF KIBWEZI-KITUI ROAD

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Speaker. I have a Petition by concerned residents of Kitui South Constituency on the deplorable state of Kibwezi-Kitui Road, Class B7.

I, the undersigned, on behalf of concerned residents of Kitui South Constituency, draw the attention of the House to the following:-

THAT, an elaborate and well-maintained road network is an essential infrastructural establishment that spurs socio- economic development and investment in any region;

THAT, the approximately 150-kilometre Kibwezi-Kitui Road is a major Class B7 highway that traverses Kitui, Makueni and Tharaka-Nithi counties and is a major road link that can open up the eastern and north eastern parts of Kenya for rapid economic exploration, development and investment;

THAT, the highway shortens the distance between Mombasa and Nairobi by about 80 km thereby scaling down the cost of transport and easing traffic congestion that typifies the ever-busy Mombasa Road;

THAT, despite being a Class B7 highway, Kibwezi-Kitui Road has never been upgraded to bitumen standard and yet, all highways of its equivalent across the country are tarmacked;

THAT, since Independence, successive governments have neglected the highway thus leaving it to degenerate into such deplorable state that motorists have shunned it irrespective of the convenience it affords travellers between Mombasa and Nairobi;

THAT, the road has become impassable thereby disconnecting residents from key social amenities like hospitals, impeding the region's economic development and occasioning tragic road accidents that cause loss of lives, especially during rainy seasons;

THAT, in 2012, a feasibility study for tarmacking the road was done, drawings and designs completed under the World Bank funding and an environmental impact assessment for the project gave it a green light and yet, five years later, the work is yet to commence;

THAT, efforts to resolve the matter with the Ministry of Transport and Infrastructure are yet to bear any fruit;

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

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:-

- (i) Investigates the reasons why over 50 years since Independence, the Ministry of Transport and Infrastructure has not upgraded the Kibwezi-Kitui Highway to bitumen standard and yet, all other Class B7 roads in the country are tarmacked.
- (ii) Visits the Kitui-Kibwezi Road to assess the current situation.

(iii)) Establishes whether any funds have been allocated for tarmacking the highway, when construction work is earmarked to commence and the timeline within which construction is set to be concluded.

(iv) Makes any other order or direction that it may deem fit in the circumstances of the plight of the Petitioners. And your Petitioners will forever pray

Thank you, Hon. Speaker.

#### WORKING CONDITIONS AT REA VIPINGO PLANTATION LIMITED

**Hon. Mustafa:** Thank you, Hon. Speaker. I would like to present a public Petition on behalf of employees of Rea Vipingo Limited on non-payment of their salaries and deplorable working conditions.

I, the undersigned, on behalf of the current and former employees of Rea Vipingo Plantation Limited in Kilifi County, draw the attention of the House to the following:-

THAT, Rea Vipingo Plantation Limited employees in various departments have not been paid their salaries for the last three months;

THAT, the management of Rea Vipingo Plantation Limited failed to remit statutory deductions to respective statutory bodies and that the company management failed to keep record of the same;

THAT, employees allegedly work for long hours with meagre pay and experience incidences of physical abuse by the management;

THAT, the employees are exposed to poor working conditions and are not provided with protective gears as required by labour laws;

THAT, it is alleged that the company was sold to a new investor and, therefore, employees are likely to lose their jobs and benefits and, further, that this is the second time the company is changing hands without following the due process of compensating the employees;

THAT, efforts to resolve this matter have borne no fruits;

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

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare:-

(i) Recommends payment of the outstanding salaries to the employees and remittance of statutory deductions to the respective bodies.

(ii) Ensures that the petitioners' plight is addressed.

(iii) Makes any other order and/or direction that it deems fit in the circumstances of the case. And your Petitioners will ever pray.

It is presented and signed by me, Hon. Mustafa Idd, Member of Parliament for Kilifi South Constituency.

Thank you.

**Hon. Speaker:** Well, those two Petitions are respectively referred to the appropriate Committees; namely, the Departmental Committee on Transport, Public Works and Housing for the first one and the Departmental Committee on Labour and Social Welfare for the second one.

Hon. Munuve, do you have something to say?

**Hon. Mati:** Yes, Hon. Speaker. I seek your indulgence to comment a little on the Kibwezi-Kitui-Mwingi-Kase Road. That road is very important to the people of Makueni and

Kitui counties as well as Tharaka-Nithi County. I want to commend my sister, Dr. Rachel Nyamai, for bringing to the attention of this House the deplorable condition of that road. The people of Kitui, in all constituencies, especially Kitui South and Mwingi North which I represent have for a long time been trying to get that road done. Every single Government since Independence has promised to get that road done, but nothing has been done.

We do not blame any government. We blame the leaders in those counties because we have never lacked senior people in any of the regimes since Independence. As a matter of fact, all the successive regimes have had Cabinet Ministers from those districts. At one time, the Vice President of this country emanated from the same district, but that road has never been done. For example, Hon. Nyamai's constituency does not have even one inch of tarmac road. I am proud to have 800 metres of tarmac road in my constituency, which does not go very far in terms of solving the problem of getting my people to Meru, Embu and Isiolo. The people of Kitui, Kibwezi, Mwingi and Tharaka-Nithi may see themselves as having been left out since that is the only road of that calibre and classification in the Republic of Kenya that has not been tarmacked. As a matter of fact, roads in that area are not murramed and yet, murram is available in every part of Ukambani. All we need is a tractor to ferry the murram to the road, water boozers to carry water, *et cetera*.

I support Hon. (Ms.) Rachael Nyamai for bringing the Petition. Our priorities have been misplaced. Some leaders have gone to Parliament and held big positions. Instead of dealing with that road, they have strived to make airstrips in their homesteads as a way of having their own way of getting home so as to avoid driving on the impassable road between Nairobi and their homes. I hope that, that road will cement the relationship between the current Government and the people of Kitui and Makueni counties. If it is tarmacked, the hearts and minds of the people of Kitui and Makueni will forever remember the Government for getting them out of that serious problem.

Hon. Speaker, I thank you for indulging me. I thank Hon. Rachael K. Nyamai for bringing this very important issue to the attention of this house.

**Hon. Speaker:** Hon. Members, the Member said that he is lucky because he has 800 metres of tarmac road. Let us hear Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Speaker. Let me start by thanking Hon. Rachael Nyamai for; once again, reminding this House that, that road is very important to us. The first question relating to this road was asked in this House in the 1960s and in all the subsequent parliaments. The President had promised the people of Ukambani that, that road would be tarmacked. The Deputy President said the same within the last two years. The Cabinet Secretary for the National Treasury had also said the same. We are now saying enough is enough. Why are we saying so? It is because we pay taxes like other Kenyans. The time has come. If the Government cannot put tarmac on that road, let it degrade it from Road Class B to Road Class C or Road Class D, so that we can murram it properly using our Constituencies Development Fund (CDF) monies. The fact that it is classified as Road Class B means that we cannot touch it.

I am surprised that Hon. Munuve can stand here and blame individuals, instead of blaming the Government. That is very bad because the Government of Kenya has been in place since 1963. You might like it or not, but we have a leader in Ukambani and he must be respected. That is a fact. Hon. Munuve might talk. It has become a song he sings every day, but it will not change anything. The leader he is saying is not our leader is, indeed, our leader. He will remain our leader forever. Let us not be taken for granted. Every time he gets a chance to speak, he

abuses his leader. Who else has he heard abusing his or her leader in this House? You are the only one who abuses your leader. You never hear any member from Central Kenya abuse President Uhuru Kenyatta. You never hear any member from Rift Valley abuse Deputy President William Ruto. You come from Ukambani and you abuse our leader!

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, you constantly need to look at Standing Order No.226. It states that Members are allowed to make a few comments, observations or seek clarifications in relation to a petition presented. You have now decided that this is going to be a constituency or county matter. If it is a county matter, then you should take it to the county assembly. Let us not make it a county matter. I can see Major (Rtd) Muluvi wants to contribute.

**Hon. Muluvi:** Thank you very much, Hon. Speaker, for giving me the opportunity. I want to be on record. When the President of the Republic, Uhuru Kenyatta, visited Kitui last year, in the presence of Hon. Mutava Musyimi, I told him that it does not matter because in the fullness of time, the people of Kitui will get that road tarmacked. We are not begging! We pay taxes like anybody else. It is the responsibility of the Government to construct roads. It is not an individual's responsibility. I want to tell Mr. Munuve that it does not matter whether he agrees with anybody, but it is important for him to respect our leaders. I want to be on record. It does not matter whether Jubilee will do it. Because I am a Christian, in the fullness of time, that road will be tarmacked.

**Hon. Speaker:** It is good to have Christians and other believers. I do not want to encourage further testimonies. We will have no more comments on that.

Before we proceed, allow me to recognise the presence of students and pupils from the following institutions:-

- (1) Olbutyo Girls High School from Chepalungu Constituency in Bomet County;
- (2) Munyu Girls High School from Thika Town Constituency in Kiambu County;
- (3) Karen C Primary School from Lang'ata Constituency in Nairobi County;
- (4) Jackridge Primary School from Ruiru Constituency in Kiambu County; and,
- (5) Kikuyu Township School from Kikuyu Constituency in Kiambu County.

They are welcome to observe the proceedings in the National Assembly.  
Next Order!

## PAPERS LAID

**Hon. Chepkong'a:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 17<sup>th</sup> March, 2016:-

The Reports of the Departmental Committee on Justice and Legal Affairs on:-

- (i) The Political Parties (Amendment) Bill, 2016; and,
- (ii) The Election Laws (Amendment) Bill No. 3 of 2015.

*(Hon. Chepkong'a laid the documents on the Table)*

## STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 22<sup>ND</sup> TO 24<sup>TH</sup> MARCH 2016

**Hon. A.B. Duale:** Pursuant to Standing Order No.44(2)(a), and on behalf of the House Business Committee, I rise to give the following Statement regarding the business appearing before the House for the week beginning Tuesday, 22<sup>nd</sup> March 2016:

The House Business Committee met on Tuesday this week at the rise of the House and resolved to give priority to the Division of Revenue Bill (National Assembly Bill No.4 of 2016), as well as Bills with constitutional timelines, committee reports and Motions awaiting debate.

The following bills have been given priority, should they not be concluded today:-

- (1) The Seeds and Plants Varieties (Amendment) Bill (National Assembly Bill No.43 of 2015);
- (2) The Roads Bill (National Assembly Bill No.26 of 2015);
- (3) The Public Finance Management (Amendment) Bill (National Assembly Bill No.4 of 2015);
- (4) The Warehouse Receipts Systems Bill (National Assembly Bill No.12 of 2015);
- (5) The Election Laws (Amendment) Bill No.3 (National Assembly Bill No.63 of 2015);
- (6) The Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015);
- (7) The Kenya Defence Forces (Amendment) Bill (National Assembly Bill No.41 of 2015).

**Hon. Speaker:** Order, Members! The consultations are too loud. Lower the decibels of your consultations.

**Hon. A.B. Duale:** Members will note that several Bills are awaiting the Committee of the whole House. Among those are the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) and Community Land Bill (National Assembly Bill No.45 of 2016).

On Tuesday 22<sup>nd</sup> March, 2016, the Cabinet Secretary (CS) for Energy and Petroleum will appear before the Departmental Committee on Energy, Communication and Information at 10.00 a.m. to answer Questions from Hon. Abdikadir Ore, MP and Hon. Hezron Bollo Awiti, MP.

The Cabinet Secretary for Transport and Infrastructure will appear before the Departmental Committee on Transport, Public Works and Housing at 11.00 a.m. to answer Questions from Hon. (Ms.) Grace Kiptui, MP, Hon. Kimani Ichung'wah, MP, Hon. (Ms.) Mary Mbugua, MP, Hon. Moses Lessonet, MP and Hon. Irshadali Sumra, MP.

The Cabinet Secretary for Labour and East African Community Affairs will appear before the Departmental Committee on Labour and Social Welfare to answer questions from Hon. Major (Rtd.) Marcus Muluvi and Hon. Francis Mwangangi.

Through you, we will have a *Kamukunji* on Tuesday morning. I hope the Clerk's Office will avail the Chamber from 11.00 a.m. on Tuesday. That *Kamukunji* has one agenda of resolving the membership of the Budget and Appropriations Committee. We have already talked to our colleagues on both sides of the House and in their respective coalitions. Members of Parliament, in their respective Departmental Committees, who want to swap with other Members who are in the Budget and Appropriations Committee, should register with the Chief Whips of the various coalitions.

The House Business Committee will reconvene on Tuesday 22<sup>nd</sup> March, 2016 at the rise of the House to consider business for the rest of the week.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Speaker:** I hope Members observe time so that as many Members as possible can contribute to the meeting in the *Kamukunji* on Tuesday at 11.00 a.m. It will be in this Chamber.

What is your point of order, Hon. Gumbo?

**Hon. (Eng.) Gumbo:** Thank you, Hon. Speaker. I rise on a point of order to seek your guidance on a matter that borders on the responsibilities of this House. Article 95 (2) says:-

“The National Assembly deliberates on and resolves issues of concern to the people.”

Our Constitution in Article 254 (1) states:-

“As soon as practicable, after the end of each financial year, each commission and each holder of an independent office shall submit a report to the President and to Parliament”.

Hon. Speaker, there are several provisions in our Constitution which require holders of constitutional offices to prepare and submit reports to Parliament. I want to refer to one in particular - the one on the Controller of Budget - which says that every four months, the Controller of Budget shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments. I raise this matter because very many times, the Leader of the Majority Party has been bringing reports from holders of constitutional offices and, particularly, from the Controller of Budget. Those reports actually contain matters that concern the people of Kenya and in keeping with our mandate as Members of the National Assembly in resolving matters that concern the people of Kenya; I was just wondering how we are supposed to deal with those reports. That is because the Constitution provides that those reports be tabled here, but it does not say within what time they should be debated or, indeed, after they are debated, what kind of resolutions we are supposed to make on them.

Having walked through this Constitution for a number of years, I think it is now important - so that it does not just become a ritual - that reports that are brought here and the Leader of Majority Party dutifully tables them here--- There have been cases where we have been embarrassed. Reports have been tabled here when some committees are not around and so, no action is taken on them. Would it not be in order then that when those reports are tabled, at least, the House Business Committee provides a framework where we can have a discussion on them? Some of them, like the Reports by the Controller of Budget actually contain matters which concern the people of Kenya. It is important that as the representatives of the people we get a way to pronounce ourselves over the reports, even if it comes to making a decision on it. That way, the House can make a pronouncement.

Hon. Speaker, I just want your guidance on this matter and how we can deal with these express provisions of the Constitution.

Thank you.

**Hon. Speaker:** But you specifically refer to the reports from the Controller of Budget.

**Hon. (Eng.) Gumbo:** Yes, Hon. Speaker, but I also made reference to Article 254(1) of the Constitution which says that, as soon as is practicable, after the end of each financial year,



each commission and each holder of an independent office shall submit a report to the President and to Parliament. This means to both the National Assembly and the Senate.

**Hon Speaker:** The ones that come from the Controller of Budget, if I go step by step, are essentially reports that, in a way, inform the Houses of how funds appropriated to various Government agencies have been utilized for the periods to which they relate. Whenever they are tabled here, they are deemed to have been committed to the relevant committees because, as you would appreciate, each would be with respect to various agencies. So, we would expect that the relevant committees of the House would sit and, indeed, prioritize them as part of their business. It is just like the way we put business here after Prayers. Go through all those things. I am sure in the committees there is no Administration of Oath, except if there are witnesses to appear before the committees to testify on oath.

But I think there is need for committees to adopt this similar procedure where there will be consideration of the number of petitions or reports from the Controller of Budget. The ones from the Auditor-General come directly to your Committee and the Public Investments Committee (PIC). The point you have raised is also important. What happens to the reports from other independent offices? Whenever they are brought, most of them - and I can say this with certainty because I have done so--- If it is, for instance, from the Commission on Administration of Justice (CAJ) for example, I direct those reports to be considered by the Departmental Committee on Justice and Legal Affairs.

We need to develop a mechanism which clearly indicates how they should be dealt with so that the committees are obligated to table some reports on those reports. It is just like what we do with the Public Accounts Committee (PAC), which gives us reports and recommendations on reports that emanate from the Auditor-General regarding Government agencies and parastatals. We will be developing a procedure indicating specifically what should happen to each of those reports even when they are tabled. I hope the Clerk takes note of that.

**Hon. Linturi:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Linturi, what is your point of order?

**Hon. Mwadeghu:** (*Inaudible*)

**Hon. Linturi:** On a point of order, Hon. Speaker. Hon. Mwadeghu, I would like to ask you to indulge the Meru nation because I am speaking on behalf of the Merus.

**Hon. Speaker:** Is there a nation called Meru?

**Hon. Linturi:** Hon. Speaking, people are so fast in judging me than listening to me. I said I am discussing a matter of the Meru within the nation of Kenya.

(*Laughter*)

We are a frustrated lot in view of the fact that this Parliament is waiting for a Mediation Report on the Statute Law (Miscellaneous Amendments) Bill which was passed in this Parliament, and which included the aspect of recognition of *Miraa* as one of the essential crops in this country. We have waited for that Report, but it has not seen the light of the day in this House. What remains is for the Senators to explain my frustrations and those of the Amerus. As a result of the National Assembly coming to our support, the institutions that we respect and which do not take directions from anybody, like the Office of the Director of Public Prosecutions (DPP)--- I do not think there is anything that operates in a *lacuna*. The reason we are frustrated today is that two Germans in Mombasa were charged in a Kenyan court with possession of

*Miraa* and convicted. There is an impression that has been created in this country, and that has been confirmed by our systems and out of the inability by DPP to appreciate issues that touch on the nerve of the people of Meru. It is worrying. There is continued vilification and publicity about *Miraa* being a drug. This is putting us in an awkward position. There has never been medical evidence to show that *Miraa* is a drug. The Kenyan law does not state that *Miraa* is a drug. The continuation of that offence is affecting us. In view of this, I am asking for your guidance on how we should continue relating as we await that Report and know what will come out of it. Our people are crying and asking this Assembly, which deliberates on issues that concern our people, to understand our feelings.

Under Article 95 of the Constitution, I am pleading with all humility, and ask Members of this House to feel what we are going through, share the frustrations and help us in getting a lasting solution to that problem.

**Hon. Speaker:** As you raise the issue, it is important to remember that Hon. Chepkong'a made a report that the Mediation Committee met and is meeting again next week on Wednesday and Thursday to consider that proposed amendment.

**Hon. A.B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. A.B. Duale, what is your point of order?

**Hon. A.B. Duale:** You have just heard from the producer and you have to hear from the consumer now. Hon. Linturi is fighting for the producers. I read in the newspapers today that some Germans were arrested for carrying twigs of *Miraa* and I need to be corrected by the offices of the Inspector-General of Police (IG) and DPP. If that is the case, I will be a more victim in my backyard than even the producers because there are people who trade in and consume *Miraa*. The Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Administration and National Security must summon the IG and DPP, through you. They should tell the country the Articles of the Constitution and laws passed by Parliament that the said court and the people who prepared the charge sheet used.

Hon. Speaker, it is like what is happening in the banking sector. The Governor of the Central Bank of Kenya (CBK) has issued guidelines on withdrawals and deposits to banks which are not based on any law. This House did not pass any law on that. For example, if you withdraw Kshs1 million for a *Harambee* in Gem Constituency, you are told to fill five forms as if it is a police station. The banks are scared that if they do not follow their guidelines, they will be punished. Those guidelines are not based in any law. The Departmental Committee on Finance, Planning and Trade must summon the Governor of CBK.

Hon. Speaker, we now have an arm of Government that anybody who carries or plants *Miraa* is taken to court. The British banned the exportation of *Miraa* to their country. It now means that we are still a colony of Britain. Britain is now saying that anybody carrying *Miraa* must be arrested. We must save the Meru community plus their friends who consume and trade in *Miraa*. I want you to direct the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Administration and National Security to summon the IG and the DPP to ask the existing law under which the charge sheet was prepared. Under Article No. 95 of the Constitution, we deliberate on matters concerning the people and we are supposed to resolve them.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear the person who chaired the Committee on the same stuff.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Speaker. I support what has been said by my brother, Hon. Mithika Linturi. When I got this information, I took upon myself to know the background as to why that charge was preferred. I was interested in knowing the law under which they were charged. What shocked me most is that the two Germans were not charged under the Kenyan laws. They were charged under the East African Community Customs Management Act of 2004. Section 202 of that Act talks about carrying concealed goods and packaging goods. The information I got from the Officer Commanding Station (OCS) of Port Police Station was that those two Germans were carrying two suitcases that contained *Muguka*. Hon. Speaker, you know what I mean by saying '*Muguka*'. The other suitcase was carrying *Miraa*. So, the Meru nation is under persecution. What that means is that any time a farmer grows and transports *Miraa* to Mombasa or any other place, he or she will be charged by police officers. The police officers have failed to look at the laws that apply in Kenya. They have decided to go to the East African Community (EAC) and get laws that they think can sustain a charge. The unfortunate bit is that those two were foreigners. We cannot make laws in this Parliament and they are not being respected by the persons who are supposed to implement them. The Judiciary must take judicial notice of the fact that *Miraa* is not illegal in Kenya, whether you are consuming, planting, transporting or treating it in any manner.

I speak here as a representative of the people of Meru County, who have not less than 500,000 votes. Time has come for this country to decide what it wants to do with the people of Meru in as far as *Miraa* is concerned. I ask the agencies that implement the law to take note of the fact that *Miraa* is not a drug. They should leave our people alone because we feel very frustrated and persecuted by the implementers of the law.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, even when you raise a matter, it is also fair to appreciate that this is the National Assembly. Emphasis is on "national." It is one of the reasons that I keep on reminding you that there is a requirement in Article 91 of the Constitution that political parties must have a national character. I can see some of you want to imagine that it has become a village matter. The matter, having been raised in the National Assembly, must also be made to look national. You want to localise it and make it a village matter. Hon. Midiwo.

**Hon. Midiwo:** Hon. Speaker, Hon. Joseph M'Eruaki is not listening to you. He is irked by the fact that his nation is being raided by injustice.

Article 95 (2) of the Constitution says:-

"The National Assembly deliberates on and resolves issues of concern to the people"

The arrest is just a fact that exacerbates this issue of *Miraa*. We have been treated in this country to a fact that this House must address itself to this issue of *Miraa* being a drug or being prohibited in Europe. In Great Britain, where the issue came about that *Miraa* is a drug, it was found it is not a drug. The issue of our customs officers arresting visitors in Kenya on the basis of *Miraa* being illegal means we are working against ourselves.

Hon. Speaker, you remember that Hon. Raila Odinga wrote to the Prime Minister of England asking them to stop or, at least, rescind the decision to deter us from trading with them on *Miraa*. That position has not changed. However, there are a couple of things that must be addressed. The way our security officers, both customs officers and police officers, behave at our entry and exit points in this country is giving a very bad image to our country. That somebody can be arrested and be charged with a foreign law on our land is primitive and it does not make

sense. We have so many crimes that we can arrest people on, but it cannot be on *Miraa*. The Meru people and people from *miraa*-growing areas are Kenyans. We have no choice but to deal with this issue. I say that with a lot of emphasis. We have no choice but to deal with this issue of *Miraa*. There is no way the British Government can say that *Miraa* is a drug and keep a section of this country poor because they cannot trade with them. We are being too lenient to the British. The British are a colonial force. We do not properly investigate anything that touches on them. We have to ask ourselves. If you go to Laikipia, why do we have foreigners on our land owning huge chunks and tracts of land and keeping a lion and calling themselves conservationists? This House has a duty. If we cannot trade with you, why are you living here? If we cannot merely trade with you, why are you living on our land?

The former Minister for Finance, Hon. David Mwiraria said he wanted to broaden the tax base and reduce taxation to Kenyans. He was a good tax collector. These other governments have refused to go that path. If you go to Karen, the so-called Karen cowboys live in Nairobi and Members of Parliament, who Kenyans think have privileges, cannot go to where Karen cowboys go in Karen. Hon. Mwiraria told me that when he sent his officers to go and try to tax those places, a white guy with a gun walked into his office in Treasury and put the gun on the table and told him: "Do not dare!" Are we living in slavery or are we Kenyans? Are we a sovereign state? We must, as a country, be as angry as leaders elected by people can get.

**Hon. Wamunyinyi:** You are a propagandist!

**Hon. Midiwo:** The former Ambassador for Somalia is calling me a propagandist. You know he is a warlord!

As I end, the second issue is on the people who are in our exit and entry points in our airports. Those are the so-called customs officers and policemen. Kenyans who come from international flights are crying to us that they must open their suitcases. A lady told me that they wanted her to pay taxes on new underwear she bought when she was abroad. Failure to negotiate with a bribe constitutes a crime. We must deal with people who give this country a bad image. There is no way customs can be rogue. We will never have a country. We do not even have much of an image to talk about. As a country, by powers bestowed upon us by Article 95(2), we must help our colleagues from the *Miraa* growing area. We must be very stern with the Dutch Government and the British Government because those were some of our major foreign exchange earners. We will never get anything unless we are tough.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I will give an opportunity to one or two Members. If you do not speak about *Miraa*, the world will not come down crumbling on you. I will give the opportunity to Hon. Joseph M'eruaki because I can see that he almost felt like eating the Leader of the Majority Party, who is next to him.

**Hon. M'uthari:** Thank you, Hon. Speaker. I am a *Miraa* farmer, chewer and consumer. I respect the consumers of *Miraa* and those who grow it. The fact is that in this country, one can be arrested, taken to court and get imprisoned just because *Miraa* is very bad. I feel as if I do not belong to this country. If we can do such a thing, it means that we are supporting those countries which are making it very difficult for my people to generate income from *Miraa*. So many parents cannot pay school fees because they have lost the economic activity that supports their livelihood. As you give direction, we need to know the way forward so that our institutions will not be used to destroy our livelihood.

Thank you.

**Hon. Speaker:** Finally, let us get some medicine into it! Member for Seme!

**Hon. (Prof.) Nyikal:** Thank you, Hon. Speaker. Let me start by condemning those officers that apparently are using alien laws to arrest people and arraign them in court in this country, regardless of where they come from. The most important thing that we should look at as a country is what is in *Miraa*. Last year, we allocated some money in the Budget for some research to be done on *Miraa*. People are saying that it is not a drug, but we are not coming out, through our research institutions, to find out what is in *Miraa*. My fear is that somebody will come and discover the active ingredients in *Miraa* and make synthetic ones. The plant will then have no use for us. That is exactly what happened to pyrethrum. Kenya was one of the main exporters of pyrethrum. Countries used to come here to look for the flowers until they decided to look at what is pyrethrin and produced pyrethroids. They are manufacturing it in a synthetic manner. We can sell to them our pyrethrum if we want, or they can go on without it. That is the direction to go. The people who are arresting other people and charging them on the basis of foreign law should take the example of the chicken-gate scandal. It has not been handled like that.

Thank you.

**Hon. Speaker:** Are you a grower or a consumer of *Miraa*?

**Hon. Njuki:** Thank you, Hon. Speaker. I come from a place where *muguka* is grown. It is another form of *Miraa*. It is even grown in your village. That is why he did not question what is happening.

The reason as to why I stand here is that I know a team of tourists who have been coming to Kenya every year on holiday to chew *Miraa*. They just come to chew *Miraa* and go back. That is a form of tourism. If we continue to arrest people because of *Miraa*, even the tourism sector will lose. We have to make sure that the people who come to chew *Miraa* are allowed to chew, enjoy their holiday, go back to England and then plan to come back next time.

With those few remarks, I support.

**Hon. Speaker:** Hon. Members, there is nothing to support or oppose. It was a point of order that Hon. Linturi claimed to raise. You heard Hon. Kajuju explain about the charge. It does not say that, that one was carrying a prohibited plant, but it is one of concealing goods. If you conceal goods, it does not mean that they are prohibited. The only thing that can happen now is for our Departmental Committee on Justice and Legal Affairs to call for the charge sheet, look at it and then pronounce themselves as to whether the charge was one of being in possession of a prohibited plant or the one that Hon. Kajuju has just talked about, so that we know what it is that we are talking about.

The impression created is that the plant is banned in the country, illegal or prohibited. There is no such law in this country. The best thing is for Hon. Linturi to write a formal letter, which we will then place before the Departmental Committee on Justice and Legal Affairs to call for the charge sheet. If the charge is what was explained by Hon. Kajuju, then there is nothing that indicates that *Miraa* is prohibited. The country will then know this and those tourists of the kind that Hon. Muthomi Njuki talked about will be encouraged to continue flying into Kenya to chew the plant. Is it a stimulant?

Even if we continue debating, there is nothing that we will do because Hon. Linturi claimed to rise on a point of order. Hon. Linturi, write a formal request, which we will place before the Departmental Committee on Justice and Legal Affairs or any other Committee that we may think is appropriate, to call for the charge sheet. We might be condemning people for the

wrong reasons. If it turns out that Hon. Florence Kajuju is wrong, it could be a different thing. Let us get to the bottom of the matter by calling for the charge sheet. That is the best way we can move.

Hon. Members, and particularly many of you who may have forgotten this, I take this opportunity to give Hon. William Mtengo, the Member of Parliament for Malindi, an opportunity to make his Maiden Speech. He approached me. Therefore, the rest of you must be dead silent.

Hon. Mtengo.

**The Member for Malindi** (Hon. William Baraka Mtengo): Ahsante, Mhe. Spika. Kwanza kabisa, ningetaka kumshukuru Mwenyezi Mungu kwa kuwezesha haya yote. Vita vilivyonileta ndani ya Bunge hili ni kama hadithi ya Biblia ya Goliathi na Daudi ambapo Goliathi alipata kichapo cha mwaka.

**Hon. Sumra:** Unaenda wapi, Hon. A.B. Duale?

**Hon. Speaker:** Hon. Sumra, be silent.

**The Member for Malindi** (Hon. William Baraka Mtengo): Mhe. Spika, ningetaka vile vile kuwashukuru wenzangu, Wabunge wote wa pande zote mbili za Bunge hili tukufu, kwa mapokezi niliyopata. Kwa muda ule mchache niliokaa hapa, wengi wamenipokea vyema na wamenionyesha njia hapa na pale. Nina imani kabisa kwamba tutaendelea kushirikiana kwa minajili ya kuleta maendeleo kwa wananchi wa Kenya. Hiyo ndiyo sababu msingi tuko ndani ya Bunge hili.

Mhe. Spika, vile vile, ningetaka kushukuru watu wa Malindi, haswa, kwa kunipigia kura kwa wingi: kura za hiari; sio kura za kununua; sio kura za vitisho; sio kura za kutuletea magari ya jeshi wala kutupigia kifua. Nawashukuru wote kwa sababu walijitokeza kwa wingi na wakanipigia kura kwa hiari yao. Kutoka chini ya moyo wangu, nataka niwakongole watu wa Malindi.

Vile vile, nataka nimshukuru kinara wa chama chetu, Mhe (Eng.) Raila Odinga kwa mchango wake ndani ya kampeini yangu. Alijitolea kimasomaso. Ningetaka kumshukuru Mhe. Kalonzo Musyoka, Kinara-mwenza ndani ya mlengo wetu wa CORD. Singetaka kumsahau Mhe. Wetangula ambaye alichangia pakubwa, haswa kwa muda wake katika kampeini yetu ambayo ilitupa ushindi mkubwa. Nawaheshimu kwa namna ya kipekee vijana ngangari; vijana wachapakazi na vijana watanashati wa kutoka Pwani wakiongozwa na Mhe. Amason Jefwa Kingi ambaye ni Gavana wetu wa Kaunti ya Kilifi, Mhe. Hassan Ali Joho, Gavana wa Kaunti ya Mombasa, akina mama Aisha Jumwa Karisa, Mishi Mboko na Waheshimiwa wengi ambao nitawataja kwa haraka haraka. Mhe. (Eng.) John Mruttu, Gavana wa Taita Taveta, Mhe. Stewart Madzayo, Seneta wetu wa Kaunti ya Kilifi, Mhe. Rashid Bedzimba, Mhe. Abdullswamad Sheriff Nassir, Mhe. Bady Twalib, Mhe. Omar Mwinyi, Mhe. Kamoti Mwamkale, Mhe. Mwanyoha, Mhe. Zuleikha na bila kumsahau Mhe. Ababu Namwamba, Katibu Mkuu wa chama chetu. Namshukuru Mhe. Sumra kwa muda alioutumia ndani ya eneo langu la Malindi.

**An hon. Member:** *Tambuu.*

**The Member for Malindi** (Hon. William Baraka Mtengo): Sikumuona akitafuna *Tambuu* huko Malindi.

Nataka kumshukuru Mhe. Wamalwa na Waheshimiwa wengine wengi wa Bunge hili la Kitaifa na wajumbe wa serikali zetu za ugatuzi waliotoka sehemu tofauti za Kenya kuhakikisha wamekuja kusaidiana na sisi ili kupata ushindi.

Langu ni kuhakikishia watu wa Malindi na Wakenya kwa jumla kwamba tutasimama kidete. Enzi za watu kutishwatishwa kwa misingi ya kisiasa imepitwa na wakati. Sisi wa mlengo huu hatutatishwa kamwe na hatutayumba. Yetu ni kuchapa kazi tulete maendeleo.

Nawahakikishia watu wa Malindi kwamba nitakufa nao kuhakikisha tumeleta maendeleo Malindi ili watoto wa Malindi wasome, wakulima wa Malindi wafanye kilimo chao wanavyotaka, wavuvi wavue samaki watakavyo, akina mama wetu waende kwenye hospitali na zahanati zetu na kupata huduma muafaka, usalama udumike, barabara zijengwe na maendeleo yakithiri. Hayo ndiyo yaliyonileta ndani ya Bunge hili.

Mhe. Spika, nasema kuwa sheria zilizoundwa ama zinazoundwa ndani ya Bunge hili la Kitaifa ni sharti zifuatiliwe. Tuliona vitimbi wakati wa uchaguzi mdogo wa Malindi. Mambo hatujawahi kuyaona. Tuliona vitisho, kupigiwa kifua na pesa nyingi, lakini tulichukua msimamo na tukasimama. Nawaambia Wakenya enzi za kuona vitimbi zimepitwa na wakati. Ni sharti tusimame kidete na Kenya yetu iende mbele.

Ningetaka kuwaasia viongozi walioshika nyanja hizi katika sekta ya usalama na sekta ya ulinzi wahakikishe kwamba usalama umedumishwa na mwananchi wa Kenya aende kupiga kura kwa uhuru wake katika uchaguzi mkuu ujao.

Labda, ningepata kura nyingi zaidi ya hizi isipokuwa ni kwa sababu watu wetu walitishika. Tuliona vifaru vya jeshi vimewekwa nje ya vituo vya kupiga kura. Tuliona askari wengi ambao hatujawahi kuwaona katika sehemu zetu na mambo ya kututisha. Kwa ruhusa yako, ningomba Waziri anayehusika na mambo haya ayachunguze; yasiwachwe wazi wazi. Tunataka Bunge hili lipate ripoti kamili. Hakuna shida ya usalama Malindi wala tatizo la usalama.

*(Hon. Wakhungu consulted loudly)*

Naomba ulinzi wako Mhe. Spika.

**Hon. Speaker:** Hon. Wamalwa, you should not interrupt the Member when he is giving his Maiden Speech.

**The Member for Malindi** (Hon. Willam Baraka Mtengo): Mhe. Spika, singetaka mji wetu wa Malindi ambao ni uchumi wetu, uchumi unaotegemea utalii, uharibiwe sifa. Sasa, ukichukua askari na kuwaweka ndani ya mji wa utalii, si ni kuwatisha? Ujumbe ambao tunatuma upande ule mwingine ni ujumbe wa kutatanisha. Haya ni maswali ambayo ningependelea na kuomba tupate majibu ndani ya Sakafu hii ya Bunge, kama Mbunge wa eneo Malindi. Wale watu walikuja kwa minajili gani? Vifaru vya jeshi siku ya kura tena kando ya vituo vya kupiga kura vililetwa kwa minajili gani? Baada ya vituo kufunga, askari wote walitoroka. Vifaru vingi viliondoka na vichache vikabaki kwa vituo vya kupiga kura.

Miongoni mwa watu wangu ambao walinichagua kwa kura nyingi, bado tunapata ripoti kuwa wameshikwa. Wanashikiwa nini? Tunataka tujue. Hata kwa ule upande mwingine, tunajua watu wengi walishikwa na fedha nyingi nje ya vituo vya kupiga kura siku ya kupiga kura. Ambia Wakenya fedha zile ulikuwa unafanya nazo nini ukishikwa nje ya vituo vya kupiga kura siku ya kupiga kura. Ulikuwa unafanya nazo nini kule? Wameachiliwa na wengine waliachiliwa muda mchache baada ya kushikwa. Tunataka majibu. Watu wetu wanataka majibu wakiwa kule mashinani.

Nashukuru Tume Huru ya Uchaguzi na Mipaka (IEBC) kwa kazi waliyofanya. Sisi si malaika. Tungetarajia hali bora zaidi. Kwa muda ule na yaliyojiri, tunataka tuwashukuru na tuwakongole kwa kazi waliyofanya. Nina imani kwamba watafanya uchaguzi unaokuja vyema wakiboresha huduma zao lakini wana mambo machache ya kurekebisha. Kwa kiwango kikubwa, nawashukuru kwa sababu uchaguzi ule ulikuwa mwema.

Mhe. Spika, natoa kongole kwa ofisi nyingine mbali na ofisi yako. Hapa Bunge wamenipokea vizuri. Nimefanyiwa mapokezi mazuri na bado naendelea kama Waheshimiwa wengine. Nashukuru.

Nashukuru Wakenya na kuwaomba watusaidie. Kwa ule muda nimekaa hapa, nimeona kazi ya kutunga sheria ni ngumu. Nawaambia wenzangu wa upande ule mwingine kwamba ni sharti tushirikiane kwa sababu tuko hapa kuwapa Wakenya huduma. Nataka kuingia mlengo wa historia njema. Tuwape Wakenya huduma ili tuwe na sura ya kuangalia wananchi wetu tutakaporudi mashinani kuomba nyadhifa za uongozi.

*(Hon. Ichung'wah gestured to Hon. Willam Baraka Mtengo)*

**The Member for Malindi** (Hon. Willam Baraka Mtengo): Ahsante.

**Hon. Speaker:** Hon. Kimani Ichung'wah, you risk being punished.

**The Member for Malindi** (Hon. Willam Baraka Mtengo): Mhe. Spika, nataka niwaambie wale wachache walio wanafiki waliofikiria vibaya na waliokuwa wakisambaza porojo za kusema Malindi ni yao: “Ng’ooo!” Malindi ina wenyewe na watu wa Malindi waliongea. Tunawangoja. Hata mkaja leo, bado tutawanyoa. Wembe ni ule ule wa kutu. Msimamo ni ule ule.

Nawashukuru Wakenya wote. Nachukua fursa hii kuwaambia wenzetu ambao kidogo wameanza kuteleza kwamba tunawakaribisha nyumbani. Tuweke siasa kando. Tulete maendeleo kwa watu wetu wa Malindi.

Mwenyezi Mungu atulinde. Mwenyezi Mungu atubariki. Ahsante, Mhe. Spika. Mtengo aliwatenga kule Malindi.

Ahsanteni.

*(Applause)*

**Hon. Speaker:** Very well. Hon. Members, we must maintain that tradition that when Members are making their Maiden Speech, they must not be interrupted, so that they can express themselves uninterrupted.

Next Order.

## BILLS

### *First Readings*

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY  
APPROVAL) BILL

THE HIV AND AIDS PREVENTION AND  
CONTROL (AMENDMENT) BILL

THE COUNTY INDUSTRIAL DEVELOPMENT BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)*



**Hon. Speaker:** Hon. Members, it is fair that I give some direction. These three Bills from the Senate have been referred to various Committees. For the time being, those Committees are also directed to consider not just the Bills as they are, but also with regard to the applications or lack of it of Articles 109(5) and 114. It is important that those two Articles be considered even as you look at the entire Bills to see whether they can be admitted.

Hon. Members, before we go to Committee of the whole House, at the request of the Mover, the Hon. Leader of the Majority Party and the Chairperson of the Departmental Committee on Energy, Communication and Information, the business appearing as (i) is deferred to Wednesday next week. I would also advise that as many Members as possible who wish to present more proposals for amendments do so in good time latest by Monday, so that the Committee is in a position to sit possibly on Tuesday to consider your proposals. So, the House will go into Committee of the whole House to consider the Health Bill No.14 of 2015 and then the rest of the business.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman (Hon. Cheboi)  
took the Chair]*

### THE HEALTH BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Members! We are at Order No.11, the Health Bill No.14 of 2015. Members, the Hon. Speaker has ruled and we will be going by his ruling. We will have two Members at most per item that is to be amended. Those who are exiting, kindly, exit quickly and after that, the rest shall proceed.

*(Clause 3 agreed to)*

#### *Clause 4*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended by inserting the word “palliative” immediately after the word “curative” appearing in sub clause (d).

The purpose of inserting this word is to ensure that it is one of the packages within our health system.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I see no major interests.

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 4 as amended agreed to)*

*Clause 5*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the word “palliative” immediately after the word “curative”.

It is for the same reason that we would like palliative care to be an integral part of our health care system.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I also see no major interests.

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 5 as amended agreed to)*

*Clause 6*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6 of the Bill be amended—

(a) in sub clause (1) by deleting the words “except elective abortions.” appearing in paragraph (a);

(b) in sub clause (2) by deleting the words ‘uncomplicated abortion and post-abortion care and in the identification, management and referral of abortion’ and substituting therefor the words “manage pregnancy-related complications in women”

As a Committee, we find this superfluous because the expression does not add any value. Any abortion whether it is elective or not, has to be managed by medical officers.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to two Members, namely, the Member for Budalangi and the Member for West Pokot.

**Hon. Ababu:** I was timing another clause in a bid to catch your eye in advance.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. You actually caught it. So, you will put it at the intervention slot when that time comes. Let me give a chance to Hon. Nyeris, the Member for Pokot.

**Hon. (Ms.) Changorok:** Thank you, Hon Temporary Deputy Chairman for giving me this chance. I support the amendment. It is a straightforward issue, but we need more clarification on the abortion issue.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. We said two Members per clause. Since Hon. Namwamba did not contribute on this one, I will give a chance to the Member for Kathiani.

**Hon. Mbui:** I was also waiting for another clause like the Member for Budalangi.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Lugari.

**Hon. Angatia:** Thank you. I support the Chairman of the Committee because this is an express statement that medical experts must be involved in issues of abortion. We do not want to allow midwives to carry out some abortions in our villages.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 6 as amended agreed to)*

**Hon. Wakhungu:** On a point of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Member for Kiminini?

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, Clause 6 has (a) and (b) and the Chair of the Committee only gave justification for Clause 6(a). We have not done (b). So it is not in order for us to assume the entire clause has been explained. We need an explanation as we move to (b).

**The Temporary Deputy Chairman** (Hon. Cheboi): The assumption is that Clause 6 was dealt with. Probably in the next one, we will ask the Chair to be very specific on the different parts. That is now water under the bridge.

#### *Clause 7*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be amended, by inserting the following new sub clause immediately after sub clause (2) —

“(2A) A health care provider shall not be liable under this section, until the provisions of subsection (2) have been implemented.”

The purpose of this amendment is to protect health care service providers from incurring liability. They are being encouraged to provide emergency care. They should also be protected.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Tong’i and another member.

**Hon. Tong’i:** Thank you, Hon. Temporary Deputy Chairman for the opportunity. Whereas I am supporting the amendment to Clause 7, there is danger in removing the blame

from the medical provider. The challenges we have today and this is experienced by ladies more than anybody else, is that doctors are very negligent, especially when it comes to child delivery. We have had cases, like I am handling one in my constituency, where a patient had a Cesarean Section and they left scissors in her stomach. The lady had to under another operation to remove that gadget from the stomach. You can imagine how painful that was. It will be dangerous for us to give a blanket protection to all medical providers and say that for provision of services, they are protected from legal course. We need to be careful in cases where there is obvious negligence and let the law take its course, so that we can professionalise the medical profession.

**The Temporary Deputy Chairman** (Hon. Cheboi): Be brief Hon. Tong'i. I am sure you have passed your point. Let us have the Member for Ndhiwa.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairman for giving me a chance to speak to this. I would like to oppose this particular amendment. This is the most important provision in the Health Bill. Article 43(2) of the Constitution speaks to the fact that a person shall not be denied emergency medical treatment. That being a constitutional guarantee, the law sets it very clearly under Article 24 on how you can limit that particular right. Taking away liability from health practitioners is a limitation and denial of that particular right. In fact, the least the Committee should have done is to maintain Clause 7, but delete Clause 7(2A). What the Committee is trying to do in Clause 7(2A) can be achieved by creating provisions in the Health Bill that will facilitate medical practitioners to get money to pay for emergency medical health care. This is not a very good provision.

I oppose it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Members, you have heard that we are having two Members per amendment. We agreed and that was the ruling of the Speaker. We will not bend it and that is the position. Members, make your decision. I can see Hon. Nyikal. It would have been good if he contributed, but we will proceed. The only chance I will give is if there is any need for clarification by the Chair.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman for giving me an opportunity to give an explanation to what this means. We are asking our health providers to provide emergency health care. Part (2A) says that the health provider shall not be liable under this section. The provisions of subsection 2 have been implemented and this is where we are saying that there should be a Fund that will compensate health providers.

We are protecting health providers, so that they are not told they do not provide emergency treatment. We are coming up with a Fund which can facilitate emergency treatment in hospitals. At the same time, we also want to protect health care providers, so that they are compensated. Otherwise, it will not be possible to implement this provision.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, unfortunately, we are going by the ruling of the Speaker. Hon. Midiwo, Hon. K'oyoo, please, make a decision. You vote one way or the other. I understand this is a weighty clause. So, make a weighty decision. Hon. Members, we cannot bend rules in the Committee when the Speaker has made ruling in the main plenary.

**Hon. Wakhungu:** On a point of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are out of order, Member for Kiminini. I have given you opportunity and she has explained. You can vote one way or the other. Make your decision. If you think you want to negative it, it is up to you. I do not know what I am supposed to explain to the House. I have said that in the plenary the Speaker ruled,

rightly, that Committees of the whole House is not a time for debate. We are not going to debate. I will be giving two Members a chance per clause. I should have recognised very easily an expert in the name of Hon. Nyikal. Unfortunately, I had given two Members. Members, make a decision one way or the other.

**Hon. Midiwo:** On a point of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Member for Gem?

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I understand the Communication, but I disagree with it. What we are doing today hinges on this particular clause. We debated this Bill about five or six months ago and we have to remind each other. The Committee has come with a very weighty clause that negates the Bill. I beg you, we do not have to deliberate on all of them, but it is your discretion.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Midiwo, you should understand, being a very senior Member of the House, that whatever is communicated and passed in the main House cannot be negated in the Committee. The option that you have is that in another setting, you can raise it in the plenary and it will be disposed of. I will not, at this point, be able to change a decision that was made earlier in the main plenary. I think Members have had opportunity to look at this in depth. You can make a decision one way or the other. If you really think this is something you want to negate, it is up to you. If you want to pass it, it is up to the membership. Hon. Midiwo, I think this is something we can proceed on.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, through reasoning, I am very interested in this Bill. I asked Hon. Nyikal to email them to me and he did so last night. What about Members who have not seen these amendments? This will be changing the rules of the Third Reading of a Bill. In that ruling, it would only make sense if these things are with us at a certain prescribed time, so that we would be negligent for not looking at them. I have been here for many years and know that that will be unfair to Kenyans.

**The Temporary Deputy Chairman** (Hon. Cheboi): I cannot get you, Hon. Midiwo, because you have raised a point of order and you have actually contributed. I thought you are enriching the debate. I have given you an opportunity twice and if I was to give you again, I do not think you will bring something new. Do I give the Chair of the Committee an opportunity to explain again?

Chair of the Committee, can you, please, clarify the issues that have been raised, especially by Hon. Midiwo? Let us stick to having only two Members to contribute. Listen carefully, Hon. Members, so that you make an informed decision.

**Hon. (Ms.) R. K. Nyamai:** Hon. Members, the import of this clause is that we would like healthcare providers not to be liable until the provisions of Clause 7(2) have been implemented. Clause 7(2) provides for the establishment of a Fund, so that when a doctor provides emergency service, they are compensated through the Fund. The purpose of the amendment is to ensure that emergency care is provided, but at the same time to protect healthcare providers.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have consulted. I am going to allow contributions only on this specific clause because this is the backbone of this Bill. I am going to give an opportunity to four Members. I will start with Hon. Nyikal, then Hon. Namwamba, the Member for Ainamoi and then I will decide who to give the last chance.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, the essence of the amendment is to make sure that people are treated. The best way to make sure that people are treated is to

include a financial provision for whoever is going to treat people. To say that a doctor should treat a person regardless of whether or not he or she will be paid is not right. We can put that in law, but nobody will take care of those who need emergency care. Clause 7(2) provides for funds that will be paid to emergency care providers. Without that amendment, we can put this provision in law, but it will not work.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have not stated whether you are supporting the amendment or not.

**Hon. (Prof.) Nyikal:** I support the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me hear from the Member for Ainamoi so as to balance both sides of the House.

**Hon. Lang'at:** Hon. Temporary Deputy Chairman, I support this amendment. I can read the mood of the Members on the other side. It is wrong to come up with a law which will not be implemented. It is true that injured people have to be given emergency treatment, but somebody must be paid for providing that treatment. Tomorrow, emergency care providers will change the rules to say that they were unable to treat somebody because of certain reasons, but in the real sense, it is about money. It is good for us to state that money should be provided by the State. We can then force emergency service providers to deal with any emergency case because they know that they will be compensated for the treatment.

I encourage Members who are opposing this amendment to support it if their interest is emergency treatment for our patients.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Budalangi.

**Hon. Ababu:** Thank you, Hon. Temporary Deputy Chairman. Let me first of all commend you for allowing this intervention. You have acted as a true wise man from the valley. Ultimately, this is a debating Chamber. This is where we express the collective concerns of the people.

The essence of this clause is to attempt to block a constitutional provision, which amounts to legislating in futility. It is a futile endeavour. We should simply hasten to come up with those arrangements of providing resources to provide that cover. I can understand why doctors in this Committee, including my senior brother, Dr. Nyikal, would be very apprehensive or eager to have a clause such as this legislated. Maybe they are foreseeing the repercussions that they are likely to face. I want to caution this House and the Chair of the Departmental Committee on Health that amending this clause is an exercise in futility. You are attempting to suspend a constitutional provision through an ordinary piece of legislation which is not possible.

Let us freeze this clause. We could proceed with the rest of the Bill or remove it from the Bill. I oppose the amendment and invite the House to oppose it.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to the Member for Kacheliba. That will be it. We will then make a decision.

**Hon. Lomunokol:** Thank you, Hon. Temporary Deputy Chairman for giving me an opportunity. I support the amendment. Last year, we lost lives that would have been saved. We had an example of a man who was involved in an accident and had to wait for 18 hours without treatment. He eventually succumbed to injuries and died. We also had a lady who did not get the required treatment. It is reasonable that as the leadership, we create such a Fund to take care of emergencies. Anybody can be involved in an accident.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will put the Question. I will be very keen to hear which side carries the day.

*(Question, that the words to be inserted be inserted,  
put and negatived)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, let us be keen. I am putting the Question that whatever has been agreed to or negatived becomes part of the Bill.

*(Clause 7 agreed to)*

We are going back to the agreement of at most two Members contributing to an amendment.

*Clause 8*

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 of the Bill be amended in sub-clause (3), by inserting the word “care” immediately after the word “health”.

This is just for flow. It was a typographical error.

**The Temporary Deputy Chairman** (Hon. Cheboi): This is just a typographical error. So, at most, only one Member should speak to this.

*(Question of the amendment proposed)*

I will give a chance to the Member for Mwingi West, Hon. Kitungi. That is a typographical error. We will not take too much time on it.

**Hon. Kitungi:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment as proposed by the Chairperson of the Committee.

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 8 as amended agreed to)*

*(Clauses 9, 10, 11 and 12 agreed to)*

*Clause 13*

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 13 of the Bill be amended by deleting the words “in so far as it is within users” appearing immediately after the words “the duty” and substituting therefor the words “in the absence of any observable incapacity”.

This concerns the duties of the users. It is meant for clarity. It is unrealistic and a burden to health care providers to anticipate the mental capability of a patient.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see quite a lot of interest and I do not know if it is to this specific clause or in general. Let us have the Member for Luanda.

**Hon. Omulele:** Hon. Temporary Deputy Chairman, it should not be a matter of choice for the user, but an obligation that should be adhered to.

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Igembe Central.

**Hon. Kubai Iringo:** Hon. Temporary Deputy Chairman, I agree with the Committee on the proposed amendment.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 13 as amended agreed to)*

*(Clause 14 agreed to)*

#### *Clause 15*

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 15 of the Bill be amended-

(a) in Sub-clause (1)-

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

“(a) develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for the progressive realization of the highest attainable standards of health”;

(ii) by inserting the words “and healthy lifestyle;” immediately after the words “dietetic services” appearing in paragraph (d).

(iii) by inserting the following new paragraph immediately after paragraph (h) -

“(ha) put in place intervention measures to reduce the burden of communicable and non-communicable diseases, emerging and reemerging diseases, and neglected diseases”;

(iv) by deleting the words “national and county referral” appearing immediately after the words “designation of” in paragraph (j).

(v) by inserting the words “through the established inter-governmental relations mechanisms” immediately before the word “coordinate” appearing in paragraph (o);



(vi) by inserting the words “and specialized” immediately after the word “national” appearing in paragraph (t).

(vii) by inserting the following new paragraph immediately after paragraph (u) –

“(ua) provide policy guidelines and regulations for hospital waste management and conduct of environmental health impact assessment”;

(viii) by inserting the following new paragraph immediately after paragraph (w) –

“(wa) provide policy and training, maintenance of standards and co-ordination mechanisms for the provision of emergency healthcare”;

(b) in Sub-clause (2), by inserting the words “ in consultation through the established intergovernmental relations mechanisms” immediately after the words “Health” appearing in the opening statement.

The purpose is to ensure that we emphasise on various national Government’s duty to consult with stakeholders within the health sector in the implementation.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it Hon. (Ms.) R.K. Nyamai?

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, on the same clause, there are more amendments. I was seeking your guidance whether I should go through all the amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): When you indicate as per the Order Paper, we make an assumption that you are moving it as a whole.

**Hon. (Ms.) R.K. Nyamai:** Apart from Clause 15(a), we also have an amendment in (b) for the same purpose of ensuring that there is consultation. On Paragraph (d), we are inserting the words “healthy lifestyle”, with a purpose of the national Government to adopt its policies towards that.

Under Paragraph (h), we are inserting the following new paragraph “(ha) put in place intervention measures to reduce the burden of communicable and non-communicable diseases, emerging and reemerging diseases, and neglected diseases”. It is for the purpose of ensuring that the national Government takes the responsibility of mitigating occurrence of such diseases.”

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Oyoo.

**Hon. Oyoo:** Hon. Temporary Deputy Chairman, I want to support my colleague, the Chairlady of this Committee. With devolvement of health facilities, this amendment will bring county governments in tandem with the new constitutional dispensation.

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Gem.

**Hon. Midiwo:** I support. Is this where the Committee should have included the responsibility of the national Government to regulate the cost of health on how much you can

charge Kenyans in terms of medicine and consultation? Is this the right place or is there another amendment somewhere? It is good to clarify.

**The Temporary Deputy Chairman** (Hon. Cheboi): Since you are already supporting it, I do not know whether there is anything else that is supposed to be explained.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 15 as amended agreed to)*

#### *Clause 16*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 of the Bill be amended by deleting Sub-clause (2) and substituting therefor the following new Sub-clause -

“(2) The Director General for health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the President.”

The purpose of this is to introduce participation of Parliament in recruitment.

*(Hon. Chumel and Hon. Serut consulted loudly)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chumel and Hon. Bomett, you can do the catching up outside the Chamber as I can see that was a very animated discussion. Keep your decibels a little lower. For Members who do not know Hon. Bomett, that is another name of Hon. Serut and Hon. Chumel is the Member for Kapenguria who is also known as Hon. Moroto.

**Hon. (Ms.) R.K. Nyamai:** This concerns the new Director-General and this position does not exist in the Ministry of Health. The feeling of the Committee is that it is important to involve Parliament and the Public Service Commission (PSC), so that we have the most qualified persons.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Tharaka Nithi.

**Hon. (Ms.) B. N. Nyaga:** Thank you, Hon. Temporary Deputy Chairman. The position of the Director-General is a big one in the Ministry of Health and we need them to be vetted by Parliament and the PSC, so that we have the best candidate. I support the proposed amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Kaiti.

**Hon. Makenga:** Hon. Temporary Deputy Chairman, I support the amendment by the Chairlady of the Committee. This being a new position in the health sector, it is important that the Director-General is vetted competitively, so that the best candidate is appointed to head that

important sector in our country. I support vetting by Parliament and appointment by the President.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 16 as amended agreed to)*

*[The Temporary Deputy Chairman  
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Chairlady  
(Hon. (Ms.) Mbalu) took Chair]*

*Clause 17*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have the Committee Chair.

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 17 of the Bill be amended by—

- (a) deleting paragraph (a) and substituting therefor the following new paragraph -  
“(a) be the technical advisor to the Government on all matters relating to health within the health sector”.
- (b) by deleting paragraph (j) and substituting therefor the following paragraph -  
“(j) provide guidelines for registration, licensing, certification and gazettement of all health facilities”;

The purpose of this amendment is to ensure that we have a technical advisor to the Government on all matters concerning health. Sub-clause (j) proposes to provide guidelines for registration, licensing, certification and gazettement of all health facilities. This is to ensure that at any given time, the Government receives the best technical advice on matters relating to health.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Makali.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. I am convinced the idea of having a technical advisor is good for the health sector. This amendment is good for this country. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Nyikal, Member for Seme.

**Hon. (Prof.) Nyikal:** I wanted to contribute on the previous amendment.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 17 as amended agreed to)*

*Clause 18*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 18 of the Bill be amended by inserting the words “in consultation with the Director General” immediately after the words “Cabinet Secretary”.

As we have said in the earlier clause, the Director-General is the technical expert. That is meant to ensure that he or she is being consulted.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Narok South.

**Hon. ole Lemein:** I rise to support the amendment from the Committee Chair. Given that the Director-General is the technical person, it is important for him or her to be consulted in health matters.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Maanzo

**Hon. Maanzo:** Thank you, Hon. Hon. Temporary Deputy Chairlady. Just like the Attorney-General (AG) is the advisor of the Government, the Director-General is like the AG of the health sector. He is the person who gives all the technical advice. I support this amendment, so that there is proper consultation. The law ensures that the Director-General is consulted, participates and gives technical advice where necessary in matters relating to health.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Since you are all supporting, it is a very direct and straightforward amendment.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 18 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, I must remind you that this is a process. Members who are here, it is important that we get a vote on this.

*(Clause 19 agreed to)*

*Clause 20*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended —

(a) in the opening statement by inserting the words “and in consultation through the established inter-governmental relations mechanisms” immediately after the word “Constitution” .

(a) by deleting paragraph (1) and substituting therefor the following new paragraph -

“(1) making due provision and develop criteria to compensate health care facilities for debts arising through failure to secure payment for bills for non-payment of treatment of indigent users”.

The purpose of this amendment is to ensure that we have a forum for consultation. We propose that there should be an inter-governmental relations mechanism for consultation.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Committee Chair, have you explained the import of the amendment?

**Hon. (Ms.) R.K. Nyamai:** The importance of this amendment is to ensure that functions are exercised within a framework of consultation and cooperation as provided in Article 6 of the Constitution. It further aims at making provisions and developing criteria for compensation of health care facilities for debts that may arise from failure to secure payment for bills or for non-payment of treatment of indigent users. The importance of this is also to protect service providers from operating under an atmosphere where they do not get compensated for the care that they provide.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Kapenguria.

**Hon. Chumel:** Thank you, Hon. Temporary Deputy Chairlady. I stand to support the amendment moved by the Committee Chair. Consultation is very important especially now that there is some misunderstanding between the county governments and the national Government. This is very important. Consultations will improve service delivery.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me hear from Hon. Richard Tong’i, Member for Nyaribari Chache.

**Hon. Tong’i:** I support the amendment because it is meant to enrich the Bill.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 20 as amended agreed to)*

*(Clauses 21, 22 and 23 agreed to)*

*Clause 24*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, Clause 24 of the Bill be deleted.

This clause concerns devolution. The Committee feels that provisions of Clause 24 have already been overtaken by events because devolution of health has already happened.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. George Ogalo, Member for Rangwe.

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Chairlady. This is a very important deletion. Trying to meddle and assuming that certain devolved functions of health will still be considered before being devolved is a pretence. Devolution has taken off. The three-year phase of the Transition Authority (TA) has ended. Every devolved function must be devolved.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me have Member for Narok South.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support the same. Indeed, it is a very straightforward amendment. The Committee Chair says that this function has been devolved.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Clause 24 deleted)*

*(Clauses 25 and 26 agreed to)*

#### *Clause 27*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT Clause 27 of the Bill be deleted and replaced by the following new

clause-

Establishment  
of Authority

27. (1) There is established an Authority known as the Kenya Health Professions Oversight Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

Hon. Temporary Deputy Chairlady, this provides for the establishment of the Kenya Health Professions Oversight Authority within the healthcare. The purpose of this is to ensure that all the regulatory bodies within the health care system are regulated by one body.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Ndhiwa.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairlady. I would like to support the establishment of the Authority because it will oversee all the health professions. It is a good idea. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Abdinoor Ali.

**Hon. Abdinoor:** Hon. Temporary Deputy Chairlady, I would like to support the establishment of Kenya Health Professions Oversight Authority because it will provide transparency and accountability in the health sector.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Narok South.

**Hon. ole Lemein:** Hon. Temporary Deputy Chairlady, I am concerned about the issue of creating Authorities. The Government is in the process of streamlining the existing Authorities. Even though the idea sounds good, creating another authority is a challenge with money implications.

With those few remarks, I oppose the amendment.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed)*

*(Clause 27 as amended agreed to)*

#### Clause 28

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT Clause 28 of the Bill be deleted and replaced by the following new

clause-

The Board of  
the Authority

28. The Authority shall be administered by a Board which shall consist of-

- (a) a chairperson appointed by the Cabinet Secretary who shall be a health professional who meets the requirements of Chapter six of the Constitution of Kenya;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to health or a designated representative;
- (c) the Director-General for health or a designated
- (d) representative;
- (e) the Attorney General or a designated representative;
- (f) two representatives nominated by the health regulatory bodies established under an Act of Parliament;
- (g) two representatives nominated by the health

- professional associations registered by the Registrar of Societies who are not regulated or registered by any regulatory body;
- (h) one representative from the private sector appointed by the Cabinet Secretary;
  - (i) one representative from consumer rights bodies appointed by the Cabinet Secretary; and
  - (j) the Chief Executive Officer.

The purpose of this is to establish the board of the Authority and to determine membership among other activities that are conducted within a board situation.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Lugari, Hon. Savula.

**Hon. Angatia:** Hon. Temporary Deputy Chairlady, I support the amendment, but with caution because health is a devolved function. However, the board membership does not have a nominee from the Council of Governors. This will bring a big issue and they will even go to court and block the enactment of the Bill. First, it is indicated in the Bill that the chairperson shall be appointed by the Cabinet Secretary. The other members of the board will be the Principal Secretary of the Ministry of Public Health and Sanitation and the Director-General of Health. The others are the Attorney General or a designated representative, two representatives nominated by health professional associations registered by the Registrar of Societies and who are not regulated or registered by any regulatory body, one representative from the private sector appointed by the Cabinet Secretary, one representative from consumer rights bodies appointed by the Cabinet Secretary and the Chief Executive Officer. Where are the governors' representatives?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me give an opportunity to one more Member. Hon. Kaluma.

**Hon. Kaluma:** Hon. Temporary Deputy Chairlady, I oppose this provision particularly Clause 28(a). We are moving from a situation where the Cabinet Secretary is being given discretionary powers to appoint so powerful people.

Secondly, this Authority is composed of so many Government officials. I do not know what meaningful role one representative from the consumer rights will be playing. The board is full of Government representatives. I doubt that we need such an Authority. We need to have a more inclusive body in terms of the matters that Hon. Savula has raised.

With those few remarks, I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Budalangi.

**Hon. Ababu:** Hon. Temporary Deputy Chairlady, there is absolutely no convincing rationale for creation of these additional organs at the national level for a service that is fully devolved. The health sector is really struggling. It would be remiss of us, as representatives of



the people, if we sit here and fail to acknowledge the fact that provision of health care services is struggling. It is struggling because the national Government is still suffering from the hangover that they can continue to control a service that is devolved. Resources are not flowing to the counties at the speed and in the amounts required. We will encumber the sector, which is already struggling if we create an additional layer of bureaucracy. What is this craze about creating Authorities in the Jubilee Government? They are creating one Authority after another. What are these Authorities for? These are just avenues to create employment for 2 per cent of the population of this country to the exclusion of the rest of the nation. This is a clause that is absolutely not justified.

I oppose it and urge Members to throw it out of this Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, I want to remind you that we passed the establishment of the Authority in Clause 27. We are now dealing with the board of the Authority. I want to get clarification from the Chair. You can always move a further amendment. Let me put it back to the Chair to explain the rationale for establishing the board.

**Hon. (Ms.) R.K. Nyamai:** Thank you very much, Hon. Temporary Deputy Chairlady, for giving me this opportunity.

This is a very important Authority to have. I would like to give an example of yesterday when we passed a Bill by Hon. Neto. The Bill will establish a board for people who have trained in keeping medical records, nursing, clinical medicine and other cadres within the health sector. The board will include all of them because health is unitary. You cannot treat health as each of the cadres. You need one unitary Authority that puts all of them together, so that they are regulated.

The purpose of this board is to ensure that we have quality health care since health concerns life. Some of the regulatory bodies deal with quality of commodities. Those commodities have to be checked by an Authority. Other Authorities deal with service provision. We have various categories of nurses and doctors covered by such regulatory Authorities. It is a matter of life and death. The board will deal with control of quality of health care.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me hear from one of the experts in the medical field. Hon. Nyikal, you have the Floor.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, there are two points here. One point is that this is purely about standards. It is not about service provision. So, this health regulatory body's role is to check standards within the function of the national Government. As the Chair has said, we have about 10 of them. I will give you the kind of problem that will be faced in terms of standards and adhering to them.

If these bodies are operating independently without an organisation, you find that people are allowed to practise in nearly all these cadres in this country. Clinical officers, medical practitioners, nurses and pharmaceutical technologists can practise. So, what has been happening is that if one body goes on inspection, then they only inspect medical practitioners. They do not inspect clinical officers, nurses and laboratory people. It was so chaotic that people would hide. It was felt that there is need to have a body where they can do joint inspection so that if you go to a hospital, there is a pharmacy, a laboratory and there are nurses. So, you need one body that can harmonise what all these people do.

The function of standards is not devolved. It is a function of the national Government. I agree with the Member who said that the standards they will be applying will affect county

governments. I agree there will be need for further amendments in the representation, so that we have somebody from the county. However, Clause 28(e) states:-

“Two representatives nominated by the health regulatory bodies established under an Act of Parliament”

This may give you more members than just two because each regulatory body may pick two. We were arguing whether that is important. I accept the county representative and there could be further amendment to include representation from the county. If we do away with this Authority, we will have so much chaos in the country in terms of standards. In fact, now that we are devolved, we need a national Authority that can harmonise all these people. Since we came to Parliament, we have passed, at least, four regulatory Authorities on top of 10 that were there before. If they are left to work on their own, it will be chaotic. I agree there is need for representation from the county. There should be further amendment to get a person appointed by the Council of Governors (CoGs). I would go that way, but to throw out this Authority completely will cause chaos in the country. This is a national function.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Nyikal, you are at liberty to move a further amendment to this. Let us have Hon. Midiwo.

**Hon. Midiwo:** Thank you. First, let me disagree with my respected brain, Hon. Nyikal, that, if we reject this amendment, there will be no Authority. There is already an Authority established in the Bill. So, we are just negotiating the composition.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Midiwo, please, prosecute your point.

**Hon. Midiwo:** The ideal scenario would be where the Director General was left to work with a strong secretariat because he or she is already approved by Parliament. To make him sit with some Minister who may be ignorant of health issues is in itself working against ourselves. Suffice to say, now that we are there, there is no way we are going to do this without governors. Therefore, I suggest that we have two representatives nominated by the CoG and then we will support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Midiwo, you can move a further amendment pursuant to Clause 28.

**Hon. Midiwo:** I have moved a further amendment. I move that beyond sub-clause 28(i) we add (j) to say: “two persons nominated by the Council of Governors”

I ask Hon. Kaluma to second.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Kaluma, can you second Hon. Midiwo’s amendment and always wear a good face?

**Hon. Kaluma:** I second that amendment to the extent that it makes this proposed Authority much more inclusive. Having seconded, I will be requesting for an opportunity to make further amendments. I would be proposing at that time the deletion of (a), (b) and (d) and Cabinet Secretaries in (g) and (h).

*(Loud consultations)*

I am still seconding and I know the rules of the House. We cannot have an Authority being constituted by the Cabinet Secretary throughout. If you go this way, there would be no chance for any person associated with the so-called CORD communities in this Authority. We cannot create an Authority of two tribes. This is what this one is about.

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Serut.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Chairlady. I had wanted to bring an amendment that instead of the word “Authority”, we introduce the word “board”, but now that it has been overtaken by events, I have no problem joining my colleagues in amending that provision that we have two nominees appointed by the CoGs. That amendment is in order and I have no problem with it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me have the Chair who has consulted with Hon. Midiwo, the Mover of the amendment to the amendment.

**Hon. (Ms.) R.K. Nyamai:** I support the further amendment by Hon. Midiwo. Yes, we can have a representative of the CoGs.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Kaluma, you seconded the amendment. So, you cannot move a further amendment. Let us deal with Hon. Midiwo’s further amendment first.

You can consult with the Chair and Hon. Midiwo. There is an opportunity for you to move an amendment. Hon. Midiwo, can you clarify? It is about your amendment.

**Hon. Midiwo:** The amendment seeks to introduce (j), which concerns Hon. Kaluma’s on (a) of the same amendment, so that we carry all of them together.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Midiwo, can you allow me to first dispose of your amendment, which was seconded? For the sake of the HANSARD, this is to insert (j) after “(i) two representatives nominated by the Council of Governors.”

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Kaluma, you had an amendment. Have you consulted with the Chair? If the Chair has agreed, consult with the Clerks because we are not allowing amendments on the Floor. You know that very well. Chair, please, consult with Hon. Kaluma and Hon. Midiwo. Hon. Members, let me remind you, as we have said before, the amendment has gone through the Committee and the Chair can help where a matter has been left out.

**Hon. (Ms.) R. K. Nyamai:** Thank you, Hon. Temporary Deputy Chairlady for giving me this opportunity. I have consulted with Hon. Kaluma and removing the Cabinet Secretary and Director-General makes it difficult for the Authority to operate. Since we are making laws for posterity, it is important for us to look at the way the Ministry operates. There is a Cabinet Secretary, a Principal Secretary and a Director-General, who must understand all the activities of the oversight body. I was pleading with the Member to drop his proposed amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): This matter has already passed through the Committee and for the other one, the Chair has already been consulted. In the Committee of the whole House, it is important to understand that we do not allow further amendments. You had all the liberty to look at the proposed amendments. Hon. Kaluma, look at the amendments from (a) to (j). Do you still want to persuade the Chair of the Committee? Can

you meet for one minute? I will give you one minute. You can get your crew to help you consult. Let me get the Member for Budalangi.

**Hon. Ababu:** We are making some very weighty decisions and my conscience is warning me that we are rushing some of these decisions. Maybe we are not giving them keen consideration that is desired. I do not understand why we need to knock out the Cabinet Secretary. It was very clear why counties should be represented and in that one, there is no gainsaying why governors should have a stake. The national Government should also be represented especially from the angle of standards, having some national harmony in the way the sector is run. I would like to plead with my learned friend, Hon. Kaluma, not to get the Cabinet Secretary or the Principal Secretary out of there. I am also telling the Chair of the Committee that the Authority is now a little too large. The membership is a bit unwieldy. You have the Cabinet Secretary and the Principal Secretary and maybe you could do without either. You could either have the Cabinet Secretary or the Principal Secretary for purposes of trimming down the numbers. Definitely, the Ministry should be represented at the highest level possible.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, this was amendment by the Member for Lugari and it was a good observation from the amendment that was agreed between Hon. Midiwo and the Chair. This is something that the Committee would have left and we can allow them. Hon. Kaluma, the Chair sat in the Committee. This amendment would have passed, but she has declined.

Hon. Members, let us be looking at these amendments before they come here because they go through the Committee. We do not want to start moving amendments on the Floor. We are in this House to make laws. It is important to be looking at them before time, so that we can make our amendments at the right place and time especially when Committees are seeking for further amendments.

*(Clause 28 as amended agreed to)*

#### *Clause 29*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Mover.

**Hon. (Ms.) Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 of the Bill be deleted and replaced by the following new

clause-

Powers of the Authority. 29. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, shall have power to—

- (a) control, supervise and administer the assets of the Authority in such manner and for such purpose as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments

- and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest any funds of the Authority not immediately required for its purposes as provided under section 37.

This concerns the powers of the board and it has been redrafted to give expanded set of power to enable the Authority to effectively implement its mandate.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Rangwe.

**Hon. Ogallo:** Hon. Temporary Deputy Chairlady, I think there is problem here. The Bill in Clause 29 is taking about the funds of the Authority and the amendment is talking about the powers of Authority. The Chair wants to amend Clause 30 and not Clause 29. I seek you indulgence.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Rangwe, we are on powers of the Authority. We are not yet at Clause 30, which is about the functions of Authority. Hon. Chair, we have the mistake as observed by Hon. Ogallo. Before that, let me give one more chance to Hon. Jakoyo on Clause 29.

**Hon. Midiwo:** I drop my concern and support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): As we wait for them to consult, let us have Hon. Savula. There is a problem with the microphones. In the meantime you can use the Dispatch Box.

**Hon. Angatia:** Hon. Temporary Deputy Chairlady, I support the amendment. However, there is a provision that is missing from the budgetary process. We are talking about a devolved function, namely the health sector. However, we are drawing money from the account of the national Government through the Ministry of Health. We need to include a provision so that this regulatory body will be partly funded by all the 47 counties in this country.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chair, we are waiting for the two clarifications. We are in Clause 29. The first one was on the funds of the Authority while the second one was on the powers of the Authority. We need to dispose them of one by one.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I agree that the provision on the funds of the Authority cannot be deleted. This provision was in the original draft Bill that we are amending. It is a very important part.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): You are doing well with regard to the clarifications. Let us allow the Chair to consult. It is important to state that the provision on the funds of the Authority is found under Clause 30G.

*(Hon. (Ms.) R.K. Nyamai consulted with Hon. Midiwo)*

**Hon. (Ms.) R.K. Nyamai:** Thank you very much for giving us that opportunity to consult. I propose to amend the Clause such that Clause 29(a) deals with the powers of the Authority. The redrafting has been made to ensure that the Authority has been given powers to expedite its work. Clause 29(b) will take care of the funds of the Authority.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chair, the provision on the funds of the Authority has been stipulated in Clause 30G. It is found on Page 238 of the Order Paper. That is advice for the benefit of the Member for Lugari. Your concern was on the provision of the funds of the Authority. It will be taken care of at that point.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, the funds for the Authority have been taken care of by the next amendment. I would like to stick to the original amendment as per the Order Paper. The matter that has been raised by the Member is taken care of in the next amendment.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Member for Lugari, please, look at New Clause 30G. If your concerns are not taken care of, you can recommit the clause.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

You can consult and recommit that clause. We need to move. There is a process for recommitment.

*(Clause 29 as amended agreed to)*

*Clause 30*

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 30 of the Bill -

(a) be deleted and replaced by the following new clause-

Functions of the Authority. 30. (1) The functions of the Authority shall be to-

- (a) maintain a duplicate register of all health professionals working within the Health System;
- (b) promote and regulate inter-professional liaison between statutory regulatory bodies;
- (c) coordinate joint inspections with all regulatory bodies;
- (d) receive and facilitate the resolution of complaints from patients, aggrieved parties and regulatory bodies;
- (e) monitor the execution of respective mandates and

functions of regulatory bodies recognized under an Act of Parliament;

(f) arbitrate disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Councils; and

(g) ensure the necessary standards for health professionals are not compromised by the regulatory bodies.

(2) The Cabinet Secretary shall, in consultation with the Authority make regulations generally for the better carrying out of the provisions of this section and without limiting the generality of the foregoing, the Cabinet Secretary shall make regulations to prescribe—

(h) the manner and form of coordinating joint inspections with all regulatory bodies;

(i) the procedure for receipt and facilitation of the resolution of complaints from patients, aggrieved parties and regulatory bodies;

(j) the manner of monitoring the execution of respective mandates and functions of regulatory bodies recognized under an Act of Parliament;

(k) the mechanisms for arbitration of disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Authorities; and

(l) mechanisms to ensure that the necessary standards for health professionals are not compromised by the regulatory bodies.

(b) be amended by inserting the following new clauses immediately after clause 30-

Chief Executive  
Officer.

30A. (1) The Public Service Commission shall, through an open, transparent process, recruit a Chief Executive Officer who shall be appointed by the Authority .

(2) A person is qualified for appointment as the Chief Executive Officer to the Authority if the person—

(a) holds at least a degree in medicine from a university recognized in Kenya and is registered by the Kenya Medical Practitioners and Dentist Board.

(b) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and

(c) meets the requirements of Chapter Six of the Constitution;

(3) The Chief Executive Officer shall serve the Authority for a term of five years and shall be eligible, subject to satisfactory performance of his or her functions, for reappointment for one further term.

(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Authority if such person has any direct or indirect interest in the health sector.

(5) The Chief Executive Officer may be removed from office for gross misconduct, violation of the Constitution or any other law or on any other ground as may be provided for in the contract of employment.

(6) The Chief Executive Officer shall be responsible to the Board for the day to day operations of the Authority.

Conduct of business  
and affairs of the  
Authority.

30B. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Third Schedule.

(2) Except as provided in the Third Schedule, the Authority may regulate its own procedure.

Delegation by the  
authority.

30C. The Authority may, by resolution generally or in any particular case, delegate to any committee of the Authority or to any member, officer, employee or an agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

Staff of the  
Authority.

30D. (1) The Board may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Board.

(2) In the appointment of the staff of the Board, the Board shall comply with the values and principles set out in the Constitution and in particular—

(d) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;

(e) exercise transparency in the recruitment process; and

(f) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Terms and  
conditions of  
service.

30E. The staff of the Board shall serve the Board on such terms of service as the Board, on recommendation of the Salaries and Remuneration Commission may determine.

Protection from  
liability.

30F. (1) A member of the Board, or an officer, employee or agent of the Authority or any person acting under their direction is not liable for any matter or thing if that matter or thing is done in good faith for executing the functions, powers or duties of the Authority..

(2) Despite subsection (1), the Board shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by



- failure, whether wholly or partially, of any works.
- Funds of the Authority. 30G. The funds of the Authority shall comprise—
- (a) such funds as may be appropriated by the Parliament;
  - (b) such moneys or assets as may accrue to or vest in the Authority in the performance of its functions or the exercise of its powers under this Act of any other written law; and
  - (c) all moneys from any other source provided for, donated or lent to the Authority.
- Financial year. 30H. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in every year.
- Annual estimates. 30I. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for the—
- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Authority;
  - (b) payment of pensions, gratuities and other charges in respect of members and other staff of the Authority;
  - (c) proper maintenance of buildings and grounds of the Authority;
  - (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
  - (e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate.
- (3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Authority shall not increase annual estimates without the consent of the Cabinet Secretary.
- (4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.
- Investment of 30J. The Board may, subject to the approval of the Cabinet

Funds.	Secretary for the time being responsible for matters relating to finance invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.
Accounts and audit.	30K. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.
No.12 of 2003	(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act
	(3) The Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Authority together with—
	(a) a statement of income and expenditure during the year;
	(b) a statement of the assets and liabilities of the Authority as of the last day of that year;
	(c) a cash flow statement for the financial year; and
	(d) any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.
Relationship with other regulatory bodies.	30L. (1) The obligation to inspect, monitor and evaluate the standard of performance in all the services regulated and professionals engaged in the health sector, both public and private shall be undertaken by the respective regulatory bodies provided that they are not in conflict with the functions of the Authority as stipulated in this Act or under any other written law.
	(2) For the avoidance of doubt the regulatory bodies referred to in subsection (1) shall include—
Cap.260	(a) the Clinical officers Authority established under the Clinical Officers Act;
Cap.257	(b) the Nursing Council of Kenya established under the Nurses Act;
Cap.243A.	(c) the Kenya Medical Laboratory Technicians and Technologists Board established under the Medical Laboratory Technicians and Technologists Act;
Cap. 253.	(d) the Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentists Act;
Cap. 243.	(e) the Radiation Protection Board established under the Radiation Protection Act;
Cap. 244.	(f) the Pharmacy and Poisons Board established under the Pharmacy and Poisons Act;

- the Council of the Institute of Nutritionists and Dieticians established under the Nutritionists and Dieticians Act;
- Cap. 253B. (g) the Public Health Officers and Technicians Council established under the Public Health Officers (Training, Registration and Licensing) Act; and
- No. 12 of 2013 (h) any other body as may be prescribed by the Cabinet Secretary under this Act.”

This Clause concerns the functions of the Authority. The intention of the amendment is to permit the Authority to have a central database for registration of health professionals without creating a duplicate within the authorities.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): I will give an opportunity to Hon. Omulele.

**Hon. Omulele:** Hon. Temporary Deputy Chairlady, this is a proper provision. The functions of this Authority should be well defined and set out.

I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have the Member for Kathiani.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. My observation was that there was a ruling made by the Speaker that only two Members will be allowed to make contributions to every clause. Looking at the weighty issues that are coming up, it looks like we may not be able to execute this Bill correctly if we hurry it up. You have made a comment about this and I need your clarification.

With regard to further amendments, sometimes they do not appear on the Order Paper. The first time we see them is in the House. You are saying that we cannot move further amendments. We need to look at that because it may be tricky to pass the amendments as they are without consultations. You need to guide us. You said it cannot be done but Hon. Midiwo has just done it and it succeeded. I am a bit lost.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): For clarification, please go through the amendments. Hon. Savula, Clause 30G caters for your concerns.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 30 as amended agreed to)*

*Clause 31*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

clause-  
Formation of 31. Any health professionals seeking to form a professional  
professional regulatory body must adhere to the criteria prescribed by the  
bodies. Cabinet Secretary, in consultation with the Authority.

The purpose of this deletion is that the clause will ensure that health cadres that desire to be regulated under the statutory body meet some guidelines that will be established by the Cabinet Secretary in consultation with others within the health sector.

*(Question of the amendment proposed)*

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have Hon. Maalim, the Member for Mandera West.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairlady, I was really confused with Clause 30 because it had many amendments. I have no problem with Clause 31.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Member, you can look at it again. There is always a process and you can always come back. Let us have the Member for Keiyo North.

**Hon. Murgor:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment by the Chairlady and the Committee.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 31 as amended agreed to)*

*(Clause 32 agreed to)*

*Clause 33*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 33 of the Bill be amended in Sub-clause (1) by deleting the word “weapons” appearing in paragraph (f) and substituting therefor the word “products”.

This is because weapons cannot be regulated under this law.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Mbui, the Member for Kathiani, you have the Floor.

**Hon. Mbui:** I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. Neto.

**Hon. Oyugi:** I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Savula, you have the Floor.

**Hon. Angatia:** I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. (Eng.) Mahamud.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairlady, the word “weapon” was attached to the word “biological”. If you delete the word “weapon” will you retain the word “biological”? How will the sentence read?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. (Ms.) R.K. Nyamai.

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairlady, our proposal is to delete the word “weapons”. The feeling of the Committee was that the word “weapon” is not used within the health sector.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. (Eng.) Mahamud, you can consult with the Chairlady of the Committee on that.  
Let us have Hon. Dido Ali Rasso, the Member for Saku.

**Hon. Dido:** Hon. Temporary Deputy Chairlady, I was suggesting that instead of using the word “weapons” we substitute it with “biological materials”.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** Hon. Members, we are reading this and leaving out the most important part. We are deleting the word “weapons” and substituting thereof the word “products”. The essence of this is that when we use “biological weapons” then we will get into the realm of the army and products used for warfare. That is not the essence of the Health Bill. When we say “biological products” then they are biological products used for health purposes. The amendment is all right the way it is.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chairlady, please make a comment on that.

**Hon. (Ms.) R. K. Nyamai:** Hon. Temporary Deputy Chairlady, I want to thank Hon. (Prof.) Nyikal for clarifying that. We are deleting the word “weapons” appearing in Paragraph (f) and substituting it thereof with the word “products”

*(Question, that the word to be left out be left out,  
put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 33 as amended agreed to)*

*(Clauses 34, 35, 36 and 37 agreed to)*

*Clause 38*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, Clause 38 of the Bill be amended-

(a) in sub-clause (2) by deleting the expression “(a)” appearing at the beginning of the sub-clause.

(b) by renumbering paragraph (b) as paragraph (a);

(c) by renumbering paragraph (c) as paragraph (b);

(d) by renumbering paragraph (d) as paragraph (c);

(e) by renumbering paragraph (e) as paragraph (d);

(f) by renumbering paragraph (f) as paragraph (e);

Most corrections in this clause are typographical errors and numbering to provide for clarity of content.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 38 as amended agreed to)*

#### *Clause 39*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 39 of the Bill be amended in Sub-clause (1) by inserting a new paragraph immediately after paragraph (l)—

“(m) developing guidelines for the conduct of health impact assessment.”

Hon. Temporary Deputy Chairlady, health impact assessment is meant to ensure that the infrastructure development projects that we have, have an aspect of health. This is because most of the infrastructure development projects that we have also interfere with people’s health.

Thank you.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 39 as amended agreed to)*

*(Clause 40 agreed to)*

#### *Clause 41*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 41 of the Bill be amended by deleting the opening statement and substituting therefor the following new opening statement -

“There shall be established by an Act of Parliament, legislation to—”

This is to ensure that where the Ministry responsible for health does not take appropriate action, then Parliament does.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 41 as amended agreed to)*

*(Clause 42 agreed to)*

**Hon. Tong’i:** On a point of order, Hon. Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There is nothing out of order. Hon. Tong’i, you need to think fast so that you are not left behind. There is nothing out of order because there is no amendment to Clause 42.

*Clause 43*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 43 of the Bill be amended —

(a) in sub clause (1) by deleting the word “African”

(b) in sub clause (3) by deleting the word “African”

It is a straightforward amendment. We felt that the word “African” is too restrictive.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Even if it is a straightforward amendment, let me allow the Member for Nyaribari Chache, Hon. Richard Tong’i, to be the first one.

**Hon. Tong’i:** Hon. Hon. Temporary Deputy Chairlady, I support this amendment because the word “African” limits us to Africa only and yet we are in a global world.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): That is why I say he is always very fast. He knew what he wanted to speak. I will go to the Member for Mandera West.

**Hon. (Eng.) Mahamud:** I support the removal of the word “African” but my worry is we are introducing a regulatory body. A regulatory body will be established. It is not enough to do it under the Council.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): In the amendment to Clause 43, we are deleting the word “African.” There is no addition. That is the previous amendment that we have already passed. We are on Clause 43. Let me hear from Hon. Ali Rasso.

**Hon. Dido:** Thank you, Hon. Temporary Deputy Chairlady. I want to add my voice to the proposed amendment. If we are going to remove the word “African,” then we must remove the words “African traditional medicine” so that we only remain with the words “alternative medicine.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me hear from the Member for Seme before I go to the Committee Chair.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, traditional medicine is not only African. We have things like acupuncture that are going on. We have iodic medicine. Confining it to just African traditional medicine will not be right. Making it “traditional medicine” is broader because sooner or later, when these other traditional medicines are introduced, you will ask where we will place them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. Midiwo.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, I was telling Hon. (Eng.) Mahamud off the record that English is a Luo and Luhya affair. I eat my words.

Clause 43 of the Bill says: “there shall be established a regulatory body by an Act of Parliament to regulate the practice of African traditional medicine.” It is not referring to the body we had established. It is now specific to the African traditional medicine. This has to be deleted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Do you support the deletion of the word “African.”

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, Clause 43(1) has to go.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us hear the Committee Chair.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairlady. I agree with Hon. Nyikal, who is a Member of our Committee that we stick to our amendment. We are saying that we cannot restrict traditional and alternative medicine to the African situation.

As per the matter that is being raised by Hon. Midiwo, we already have a Bill that is going to establish this body. So, we anticipate that it is going to be one of the regulatory bodies that will also be regulated by the oversight authority. This is because we can also not let traditional medicine regulate itself since it has its own health hazards that will affect citizens.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. Nyikal, the member of the Committee. The proposition was to clarify Clause 43(1).

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, this is exactly the reason I was saying that we must have the overall regulatory authority. These Acts of Parliament are many. We have the Psychologists and Psychiatrists Act, the Medical Practitioners and Dentists Board and the nurses body. These traditional practitioners are already proposing to have an Act of Parliament. These are the various Acts that will be harmonized by the bigger regulatory authority. I do not think that we are proposing an authority under this amendment. When this comes to Parliament, we shall be quite clear what that Act proposes. We are concerned about the main authorities that are in place but definitely, it is a small distinct area which will need an Act of Parliament of its own.

*(Question, that the word to be left out be left out,*



*put and agreed to)*

*(Clause 43 as amended agreed to)*

*(Clauses 44, 45, 46 and 47 agreed to)*

*Clause 48*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 48 be amended in sub clause (2) by inserting the word “in” immediately after the word “mentioned”.

We are just inserting the words “in” and “mentioned.” This is a typographical error.

*(Question of the amendment proposed)*

*(Question, that the word to be inserted be inserted,  
put and agreed to)*

*(Clause 48 as amended agreed to)*

*Clause 49*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 49 be amended by deleting sub clause (2) and substituting therefor the following new clause—

“(2) In the absence of a donation under subsection (1) (a) or of a contrary direction given by a person whilst alive and upon death the person’s body remains unclaimed under any other law, the spouse or spouses, elder child, parent, guardian, eldest brother or sister of that person, in the specific order mentioned, may, after that person’s death, donate the body or any specific tissue of that person to an institution or a person contemplated in this subsection.”

Hon. Temporary Deputy Chairlady, this clause is dealing with making of wills. The purpose of the amendment is to provide for a situation where there is more than one spouse, so that we can conform to the Succession Act, which recognises multiple spouses.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Proceed, the Member for Rangwe.

**Hon. Ogalo:** Hon. Temporary Deputy Chairlady, I am wondering whether the Departmental Committee Chair has moved what I am seeing. What I am seeing is that when somebody dies, his relatives have a right to donate his body. However, she has talked of multiple spouses. Can she clarify that?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Departmental Committee Chair, the Member for Rangwe has sought a clarification because he has not followed your explanation. Can you, please, bring him on board?

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I propose that we amend Clause 49 by deleting sub clause (2) and substituting therefor with a new sub clause (2) as shown in the Order Paper. I said that this is to provide for a situation where if there is more than one spouse, we are able to conform to the Succession Act, which recognises marriage and multiple spouses.

Further down, the sub clause is to be amended by inserting the words “and upon death, the person’s body remains unclaimed under any other law” immediately after the words “whilst alive.” The purpose of this amendment is to provide a solution if this clause clashes with the existing legislation regulating succession and to prevent burial disputes or related disputes, which are well regulated within the existing law. The purpose is to ensure that we do not have contradictions with the existing law, and also to recognise marriage and multiple spouses.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The amendment is as contained in the Order Paper. Let me give the opportunity to Hon. Sakwa Bunyasi because the Member for Rangwe said that he has understood the rationale of the amendment.

**Hon. Bunyasi:** Thank you, Hon. Temporary Deputy Chairlady. I find this amendment quite curious. It defines in a very limited way how decision-making will be done in a case of this nature. In many of our communities, this is a matter which is not dealt with by the family but also by the extended family called ‘clan’. It is a very major decision to donate a body. If a body is abandoned, then the issue of brothers or sisters will not arise. That can be done. If the body is not abandoned, to get a spouse or a brother to make a decision to donate an organ will be completely anathema. I am quite surprised at the definition of what constitutes family that is implicit in this amendment.

I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us hear Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, we are talking about bodies that are unclaimed. I am a Member of the Committee. There are societies in this country where relatives abandon bodies in hospitals. Quite often, the hospital has to get rid of the bodies. If anybody claims the bodies, then this does not apply.

There is also the issue of spouses. The only difference is that in the original Act we had the word “spouse” and in this one we now have two spouses. That is how you are bringing ‘any other wife’ so to speak. There are societies where bodies will remain in hospital and nobody will pick them even when the relatives are aware. The relatives would be keen to donate them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Proceed, the Member for Saku.

**Hon. Dido:** Hon. Temporary Deputy Chairlady, sometimes experts might not give us solution to making law. This amendment opens a Pandora’s Box because of how it has been framed. What is the Chair and Hon. Nyikal saying in the case of unclaimed bodies? It is important for us to state that there are unclaimed bodies rather than saying “in the absence of a donation” and then we go down the paragraph to even enumerate that they have living relatives, which is contradictory.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let me give an opportunity to Hon. (Eng.) Mahamud.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairlady, I oppose the amendment. The intention of Clause 49(1) is that a competent person can make a will that his body be donated. Clause 49(2) is redundant because we are saying that if there is no will and the body is unclaimed, then you tell the relatives who have not claimed the body to donate it.

I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us hear the Member for Kathiani. Allow me to put the Question thereafter.

**Hon. Mbui:** Hon. Temporary Deputy Chairlady, if you say that a person's body remains unclaimed, it implies that there is no one to claim it. Further down, the Committee says that a spouse, an elder sister, brother, parent or guardian can donate the body. How can unclaimed body be donated? It is important for this to be made clear.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Proceed, the Deputy Leader of the Majority Party.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, Hon. Members are looking at the traditional bit. I can see the jitteriness in it. Sometimes morgues are filled with unclaimed bodies. In some instances, the relatives of the deceased may be known but they may decide not to claim the bodies because they do not want to incur bills. Unclaimed bodies can be very useful in terms of teaching our medical students or in saving other lives.

**Hon. Ogalo:** Hon. Temporary Deputy Chairlady---

**Hon. (Dr.) Shaban:** Can you listen, please?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Member for Rangwe, Hon. Shaban is speaking in English and not in Dholuo or Kikamba. Can you listen to her?

**Hon. (Dr.) Shaban:** If this is put in law, nobody will come in future to demand an explanation as to why the body of their relative was used for certain purposes.

That is the whole idea.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): If you look at the amendments, you will realise that it is important to know that in the Committee, we just deleted the word "partner" and added the word "spouses."

The Member for Luanda, allow me to put the Question.

**Hon. Omulele:** Hon. Temporary Deputy Chairlady, this is important. I want to agree with the observations of my brother, Hon. Bunyasi. If a body is unclaimed, how do you donate it? You do not own it? For you to donate a body, you must own it in the first place. This provision is redundant. There is a problem with this.

We must delete it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, Hon. Nyikal.

**Hon. (Prof.) Nyikal:** One has to ask where we get the bodies that are used in medical schools. There are people who donate bodies. There are people who do not pick the bodies of their relatives. They willingly give the bodies to whoever wants them. That has been the main source of the bodies. That is what this clause is trying to address.

With that information, Members can now make their decision.

*(Question, that the words to be left out be left out,  
put and negated)*

*(Clause 49 agreed to)*

*(Clauses 50 and 51 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Departmental Committee Chairlady, do you have reservation?

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I would like to call upon the Members of the Departmental Committee to help Hon. Members understand these amendments. These matters are technical. It is important that we understand where we are coming from before we make a decision. I request that we get further information. We are removing the issue of the will. It is a very important aspect of this Bill. We have also removed the aspect of donation of bodies. The reason why we have advancement in training is because we are making use of bodies that have been donated. When we look at this matter traditionally and become so emotional, we may just remove the whole clause. I request the Members of the Departmental Committee to help Hon. Members understand these issues. I would like to request for a recommittal of some clauses.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Rachael, I hear you but you cannot do that at this point. We have already passed Clause 49. Clarifications can be sought later. You can consult and do a recommittal at the right stage. By then you will have consulted sufficiently and agreed on the way forward. Departmental Committee Members, you must be keen when we get to this stage.

Hon. Rachael, you have the Floor to move the amendment to Clause to 52.

*Clause 52*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 52 be amended—

(a) in sub clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the spouse(s), child, parent, guardian, brother or sister of the deceased, in the specific order mentioned, gave consent thereto; or”

(b) in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) in the case where there is no medical practitioner in charge of clinical services, a medical practitioner authorised by the person in charge of such hospital or authorised institution, authorises the post mortem examination in writing and in the prescribed manner.”

Hon. Temporary Deputy Chairlady, the amendment is meant for clarity. We made it clearer by deleting the words “major” and “partner” because the expressions “major partner,” “major sister” and “partner” seemed vague and ambiguous. We have deleted these and substituted them with ‘spouse(s), child, parent, guardian, brother or sister of the deceased, in the specific order mentioned’ so that it is clear.

Thank you.

*(Question of the amendment proposed)*

**Hon. Midiwo:** Put the Question!

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, is it the mood of the House that I should put the Question?

**Hon. Members:** Yes!

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 52 as amended agreed to)*

*(Clause 53 agreed to)*

*Clause 54*

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 54 of the Bill be deleted and replaced by the following new

clause—

Health finance.

“54. (1) The Ministry of health shall ensure progressive financial access to universal health coverage by taking measures that include—

- (a) developing mechanisms for an integrated national health insurance system, including making provisions for social health protection and health technology assessment;
- (b) establishing in collaboration with the department responsible for finance oversight mechanism to regulate all health insurance providers;
- (c) developing policies and strategies that ensure realization of universal health coverage;
- (d) determining, during each financial period and in consultation with individual county authorities, cost sharing mechanisms for services provided by the public health system without significantly impeding the access of particular population groups to the system in the areas concerned; and
- (e) defining in collaboration with the department responsible for finance, public financing of health care framework, including annual allocations towards reimbursing all health care providers responding to disasters and emergencies as

- contemplated under this Act
- (2) The Ministry of health shall, in consultation through the established inter-governmental relations mechanisms—
- (a) provide a framework for collaboration with the ministries responsible for finance, planning and any other relevant department to secure health care for vulnerable groups and indigents;
  - (b) provide a framework for examining means of optimizing usage of private health services as a result of relieving the burden carried by the publicly financed system; and
  - (c) provide a framework for establishing a harmonized common mechanism for coordinating planning and financing and monitoring and evaluation within the health sector.”

Hon. Temporary Deputy Chairlady, Clause 54(1) contains provisions that do not need the national Government to consult in order to execute while Clause 54(2) contains provisions that need consultation with the county governments with respect to operationalising of health financing.

*(Question of the amendment proposed)*

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, I rise to support this with further amendment. I like the suggested amendments but I want us to make it clearer and specific. I would like to further amend Clause 54(c), which says “developing policies and strategies that ensure realisation of universal health coverage.” My amendment will be “including affordable healthcare and ensuring that the cost of pharmaceutical and non-pharmaceutical supplies correspond to prices set by Kenya Medical Supplies Agency (KEMSA) and market forces.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Midiwo, we do not have that further amendment with us. The best thing is to consult with the Chair. We cannot accept such an amendment because this is a process that has gone through the Committee. We do not allow Floor amendments. I want to dispose of that amendment first as they are consulting. The Chair has two amendments. There is one on the Order Paper and another one has just been circulated. As they consult, I will give Hon. James Nyikal a chance, not on your amendment but on the amendment of the Chair.

**Hon. (Prof.) Nyikal:** I have no comment on the amendment of the Chair but I have a further amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Then wait for your time. Let us have the Hon. Member for Saku. This is on the amendment of the Chair.

**Hon. Dido:** Thank you. I support the amendment. However, I wish to pose a question to the Chair and the Committee. We are tasking the Ministry of Health rather than the Cabinet Secretary (CS). Is that in keeping with our law? By saying “the Ministry of Health shall ensure,” it is about responsibility.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Are you supporting or not? If you have any further amendments you can always move them. Hon. Members, unless it is critical

or it is something that is unavoidable then you can bring your further amendments. You know about the Committee process. The amendment has gone through the Committee. Hon. Members, we are at liberty to attend these Committees, to propose our amendments and consult with the Committees. So, as much as we want to make laws and we are making laws not for the sake of it, unless something has been left out that can be accepted as an amendment--- You should also give it to the Chair who can take it and move her amendments with your contributions. I feel that these amendments should be owned by the Chair. Hon. Midiwo, have you consulted? She is in agreement. She can move the amendment or she has agreed that you can move it? Hon. Chair, can you pronounce yourself on the HANSARD?

**Hon. (Ms.) R.K. Nyamai:** I would like to confirm that we have consulted with Hon. Midiwo to make those two amendments within that clause.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The further proposed amendment?

**Hon. (Ms.) R.K. Nyamai:** Yes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Now that you have accepted can you just move Hon. Midiwo's amendment and own it? Hon. Midiwo, please allow the Chair to move the further amendment as if it is from the Committee. The Member for Rangwe, today, you are too active.

*(Hon. Ogalo walked to the Chair's seat)*

Are you a Committee Member? You should have gone to the Committee. *Enda tu. Enda huko muongee* but give the Chair--- Hon. Members, we want this consultation so that the Chair is in acceptance. These are the Committee's amendments and she can own them. Yes, Hon. Chair.

**Hon. (Ms.) R.K. Nyamai:** Thank you. Further to the Committee amendments, I propose that Clause 54(c) be amended by inserting the words "including affordable healthcare and last expense" in (c) and inserting "f" after the words "contemplated under this Act (f) which says "ensure that cost of pharmaceutical and non-pharmaceutical supplies correspond to Kenya Medical Supplies Authority (KEMSA) market prices."

*(Question, of the further amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have Hon. Kaluma.

**Hon. Kaluma:** The amendment will be acceptable, save that immediately we add the word "market forces" then we take away KEMSA. So, there is no "market forces"?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): No. This is not a business Bill. It is a health Bill. Market forces are in other fields.

**Hon. Kaluma:** Hon. Temporary Deputy Chairlady, if that phrase of "market forces" is not there, I support

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Kaluma, please give us your ears. There are no market forces. It is KEMSA.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 54(c) as further amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chair, you have another amendment in Clause 54. Read the one for (f) so that you can pronounce the word “KEMSA” so that we go on record that it is not market forces.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I propose that Clause 54 be amended by inserting the words, “ensure that cost of pharmaceutical and non-pharmaceutical supplies correspond to KEMSA market prices”.

*(Question of the further amendment proposed)*

*(Question, that the words to be inserted be inserted  
put and agreed to)*

*(Clause 54(f) as further amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Chair, move the Floor amendment.

**Hon. Ogalo:** On a point of order.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Member for Rangwe, there is nothing out of order. The Member for Rangwe, I must appreciate that you are in a good mood today. The Chair has ruled and there is nothing out of order. Allow the Chair of the Departmental Committee on Health to continue. You can deal with Hon. Neto. Hon Chair, take your time and move your Floor amendment. Just read as it is.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I propose that Clause 54 be amended further by inserting (g) which states: “defining an essential health package to be financed through payment mechanisms”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Is it Hon. Nyikal’s amendment? You had your own amendment. Hon. Nyikal will move his. Can we share it with you?

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 54 of the Bill be further amended by inserting the following paragraph immediately after (e).

“(g) defining in collaboration with the Cabinet Secretary responsible for Finance a standard health package finance through prepayment mechanisms including a cover for last expense.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): You can give your import before I propose the Question.

**Hon. (Ms.) R.K. Nyamai:** The importance of this amendment is so that we have a proper package of financing health care that will also take care of the last expense. Even in this House, we know that there is a problem with financing of health care, and that many people have challenges with payments of last expenses.

*(Question of the further amendment proposed)*



**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): This one will take care of Hon. Nyikal's amendment. I give the first one to the Deputy Leader of the Majority Party.

**Hon. (Dr.) Shaban:** The amendment by the Chair is being repeated because she had already brought a further amendment to (c) which is catering for the same. For neatness, I propose we need to look at what we said in (c) *vis-à-vis* what is being said in this one.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): It is upside down.

**Hon. (Dr.) Shaban:** No, it has already been said and we are repeating it. For neatness purposes of making laws we need to be very careful so that we do not duplicate.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): That was the Deputy Leader of the Majority Party's good observation. That was a floor amendment that was proposed by the same Chair who did the other one. Let me hear what Hon. Midiwo has to say about it before I invite the Chair again.

**Hon. Midiwo:** My understanding of the further amendment made by the Chair is that it is a new subclause which was originally Hon. Nyikal's but the Chair has improved it. Let me convince my colleague, (Dr.) Shaban that it brings insurance to the last expense, which is not what we had said in (c). It enriches it so that we deal with this thing of who pays the last expense.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes, the Deputy Leader of the Majority Party.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I am in total agreement, the only thing is that there is repetition. In (c) there was a further amendment including affordable health care and last expense. Again, we are talking about the same in the new sub clause. I am saying for neatness purposes we leave it the way it was on the Order Paper. Then we carry it on board in these other amendments. I know this one brings on board what Dr. Nyikal was trying to say.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): The Deputy Leader of the Majority Party before I get back, the Chair has proposed a Floor amendment and she can only talk about it, if it is included in (c). She may also drop it, because we cannot go back to what we have already passed. Can we hear Hon. Nyikal?

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, I may want to hear (c) clearly. It is slightly different from the last amendment that the Chair has made on the Floor which took care of my amendment. Sub clause (c), is not that explicit, unless it is improved. I am very particular about the definition of 'health package'.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, all my colleagues are right. I am only saying that unless we recommit (c) there are some words that we need to delete. This one is clearer than what we are saying in (c).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): For that matter the Deputy Leader of the Majority Party, if you really feel (c) needs to be relooked at, you have the liberty at the re-committal stage. For now, since you are in acceptance that this is a new one and has taken care of other issues allow us to prosecute it. I will give the last chance to Bunyasi.

**Hon. Bunyasi:** Thank you, Hon. Temporary Deputy Chairlady. I support in principal the amendment proposed by the Chair. My only concern is with responsibilities being given to the CS in charge of Finance. The CS, Health is responsible for all the policies in the health sector. To give the responsibility to the CS, Finance is to kill it because if the CS, Health does not cooperate it cannot be done. The responsibility should lie with the CS, Health to prescribe that minimum package. Giving it to the CS, Finance is sidelining it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, if there is need for it to be recommitted I will go back to the amendment by the Chair. Hon. Members, we are in the further amendment. We have heard the sentiments by Dr. Naomi Shaban in (c). If need be there is a process and it will be recommitted. Can you pronounce yourself on whether your clause has been taken care of or it has been withdrawn.

**Hon. (Prof.) Nyikal:** The last amendment on the Floor by the Chair takes care of my amendment so I drop it. However, I will look into recommitment of the Clause.

*(Proposed further amendment by Hon. (Prof.) Nyikal dropped)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): That is quite in order as per the procedures of the House.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 54 as amended agreed to)*

## PROGRESS REPORTED

### THE HEALTH BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Looking at the time, I will now call upon the Chair to report progress.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Health Bill and its approval thereof up to Clause 54 with amendments and seek leave to sit again another day.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) in the Chair]*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order Members! Let us have the Chairperson report to the House.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Health Bill (National Assembly Bill No.14 of

2015) up to Clause 54 and approved the same with amendments and seek leave to sit again another day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let us have the Mover of the Bill, Hon. Nyamai, the Chairperson of the Departmental Committee on Health.

**Hon. (Ms.) R.K. Nyamai:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. (Dr.) Shaban to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Dr.) Shaban** seconded.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Rangwe, you were concerned about the announcement by the Speaker. You are now in order.

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Speaker. I am happy with the way the Bill has been processed. We give notice that at the appropriate time we are going to recommit Clause 7 of the Bill. No facility should be licensed to operate anywhere in this country if it cannot even organise for referral of emergency cases to another facility. Any facility registered or licensed to provide health care in this country must be able to give emergency care now not subject to something happening in the future such as financing being available in those facilities.

At the appropriate time, we will recommit Clause 7 to ensure that emergency care is mandatory to every facility as per the Constitution.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, we are reporting progress. Allow me to give a chance to Hon. Peter Kaluma, the Member for Homa Bay Town.

**Hon. Kaluma:** Thank you, Hon. Temporary Deputy Speaker. This is the greatest day for the health sector in this country. We are happy we have made substantive progress in pushing this important Bill towards the end. However, it is unfortunate that we are not concluding it today due to constraints of time. I would like to thank the Chairlady of the Committee, Hon. (Ms.) (Dr.) Shaban and our own, Hon. (Prof.) Nyikal with the experience which has been demonstrated. As we move forward to debate this Bill to conclusion, I wanted to request that we consider deeply the application of the word “progressive” in Clause 54 particularly when looked at in line with the Constitution.

In my view, it appears as a word that ultimately leads to postponement of the Constitution already as a fundamental right of all citizens; the right to health. When you say “progressive financial coverage”, I would request the Chairlady of the Committee, and of course, the good brains which have been manifested in this House to think through this and the possibility of recommitment among those other provisions as we move forward.

As we move towards recommitment of that provision relating to wills, the cultures of communities of Kenyans should be thought through and seriously taken care of. We do not want to hear of a situation where Hon. (Prof.) Nyikal or Hon. Jakoyo Midiwo pass on and in our community as Luo, if we proceed to view the body and we find that Hon. Jakoyo had done a will committing his body for research in Chiromo Mortuary, we will burn the mortuary.

Among the Luo, the body of a person is the property of a community. You remember the battle over Mr. S.M. Otieno’s body. You can only imagine the battles that will be there on the body of Hon. Jakoyo. I think we will be laying a claim on the body of Obama at a point in time as people from the great Luo nation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kaluma, we are reporting progress.

**Hon. Kaluma:** I hope these thoughts are carried forth by Members as we move to the conclusion of this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kaluma, confirm to the people of Gem that Hon. Midiwo is not dying soon and that he is here to live.

Yes, the Member for Nambale.

**Hon. Member:** He is not in!

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, the Member for Kathiani.

**Hon. Mbui:** Hon. Temporary Deputy Speaker, I am impressed by the quality of expertise in this House. I just want to imagine the kind of trouble we would be in if Hon. (Prof.) Nyikal was not here. In future, Kenyans should make sure that we have a doctor in the House and Hon. (Prof.) Nyikal who is a senior doctor should come back but that is for the people of Seme to decide.

Hon. Kaluma has just shared my sentiments. When I heard the Deputy Leader of the Majority Party speak on why bodies can be disposed of and that there could be unclaimed bodies because of deaths, we need to be careful even if we are recommitting this clause. We do not give away bodies because their owners cannot afford to pay the bills incurred in the morgue. As we move forward, we should protect the poor because that is why we are in this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Midiwo, you have the Floor.

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, I just want to inform Hon. Kaluma that I am not dying soon. They should not be worried about where to bury me. There has been a practice lately where I come from, where because of social issues, there has been a few cases where bodies have disappeared when we are looking for them, especially when the wife thinks that there are other co-wives. There are also other communities in this society which believe that if you are buried somewhere, then you are grabbing land. We want to allow Hon. Nyikal to recommit but he must convince us on this issue about the will and a whole lot of issues like how to dispose of our dead. It must be done when we are alive.

Thank you.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Hon. Members! I must appreciate the commitment by Hon. Members to the Health Bill. The time being 6.30 p.m., the House stands adjourned until Tuesday, 22<sup>nd</sup> March, 2016, at 2.30 p.m.

The House rose at 6.30 p.m.