

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 10<sup>th</sup> November 2015

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### DELEGATION OF PAP COMMITTEE IN SPEAKER'S ROW

**Hon. Speaker:** Order, Hon. Members! Those making your way in, kindly take your seats.

Hon. Members, I wish to introduce to the House a delegation of the Committee on Rural Economy, Agriculture, Environment and Natural Resources of the Pan-African Parliament which is seated in the Speaker's Row. The delegation comprises of the following Members:-

1. The Hon. Abdoulie K. Jalwa - Leader of the delegation
2. The Hon. Roy Banda
3. The Hon. Abdallah Ibrahim
4. The Hon. Bekeyi Sogoyou
5. The Hon. Mamed Sidibe
6. The Hon. Eugene Kparkar
7. The Hon. Suliaman Sisay
8. The Hon. Patrick Mayombe
9. The Hon. Aminata Niang
10. The Hon. Goodness Khanyisile
11. The Hon. David Moyenga
12. The Hon. Rethabile Marumo
13. The Hon. Mokhtar Zerouali
14. The Hon. Saloun Cisse
15. The Hon. Faycal Tebbin, and
16. The Hon. Rabiya Binégde

*(Applause)*

The delegation is accompanied by the Committee Clerk, Mr. Galal. They are in the country to attend the Second Pan-African Parliamentary Summit on Climate Policy to be held from 10<sup>th</sup> to 13<sup>th</sup> November, 2015 in Kenya.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and thank them for finding time to attend that conference. Our very own Hon. (Dr.) Wilber Ottichilo will be actively participating in the conference.

I thank you.

Next Order.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 10<sup>th</sup> November, 2015:-

The Budget Review and Outlook Paper, 2015 for the Financial Year 2016/2017 and 2018/2019 Mid-Term Expenditure Framework.

The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) for the year ended 30<sup>th</sup> June, 2014 and the Certificate therein in respect of Mathioya Constituency, Kiharu Constituency, Narok South Constituency, Gem Constituency, Muhoroni Constituency, Kisumu East Constituency, Kisumu West Constituency, Bondo Constituency, Rarieda Constituency, Homa Bay Town Constituency, Garissa Township Constituency, Chepalungu Constituency, Kajiado North Constituency and Kathiani Constituency

Thank you.

**Hon. Speaker:** Hon. Members, the Budget Review and Outlook Paper, 2015 for the Financial Year 2016/2017 and 2018/2019 Mid-Term Expenditure Framework are referred to the Budget and Appropriations Committee.

Let us now have the Chairperson, Departmental Committee on Energy, Communication and Information.

**Hon. Kamau:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Tuesday, 10<sup>th</sup> November, 2015:-

The Report of the Departmental Committee on Energy, Communication and Information on its consideration of the Energy Bill, 2015.

I thank you.

**Hon. Speaker:** Let us have the Chairperson, Departmental Committee on Transport, Public Works and Housing who has a series of Papers to lay.

**Hon. Kamanda:** Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today Tuesday, 10<sup>th</sup> November, 2015:-

The Report of the Departmental Committee on Transport, Public Works and Housing on a study visit to Kuwait from 30<sup>th</sup> January to 6<sup>th</sup> February 2015.

The Report of the Departmental Committee on Transport, Public Works and Housing on a study visit to South Africa from 31<sup>st</sup> January to 7<sup>th</sup> February 2015.

The Report of the Departmental Committee on Transport, Public Works and Housing on the consideration of a public petition by long distance truck drivers and allied workers union on corruption allegations at weighbridges in the country.

**Hon. Speaker:** Obviously, Hon. Members, without any point of order, I can allow some few comments especially now that it is about weighbridges. Many of you may be passing through them. I am sure you may wish to make some comments. I do not know how you pass there but it may be of interest to some people to make comments about weighbridges.

**Hon. Kamanda:** Hon. Speaker, I can read some of the recommendations of the Committee so that I can guide the Members. One of the recommendations is that corruption at the weighbridges needs to be reported to the Ethics and Anti-Corruption Commission (EACC) so that it can take action.

Secondly, when police officers are transferred from weighbridges these days they do not move out. They opt to retire than being transferred. That shows that there is rampant corruption among police officers. The Committee is recommending that a police officer should not serve at any weighbridge for more than one year.

We have also realised, as a Committee, that even Members of this House in a way are not living to the rules they make in this House. You saw sometimes back how some officers were harassed by our colleagues in this House. So, the Committee felt that it is good that we behave as Members of this House.

*(Loud consultations)*

**Hon. Speaker:** Are you through? Ignore all those things.

**Hon. Kamanda:** I am not through, Hon. Speaker.

**Hon. Speaker:** Make it brief. At this juncture, I will allow other Members---

*(Laughter)*

Have you read your Standing Orders?

*(Hon. Onyonka stood up in his place)*

Hon. Onyonka, you cannot just stand and claim to be rising on a point of order. Under what Standing Order are you rising?

**Hon. Onyonka:** Hon. Speaker, I have---

**Hon. Speaker:** Hon. Onyonka, you did not catch my eye. You appear to have caught my ear instead. Under the new dispensation, you are only supposed to catch my eye through placement of an intervention. I do not see your name here. I can see the names of Hon. Gichigi, Hon. Kombe, Hon. Midiwo and Hon. Chepkong'a. I am told you are the last one. This machine does not lie.

Yes, Hon. Harrison Kombe.

**Hon. Kombe:** Thank you, Hon. Speaker. On the issue of weighbridges, we have one at Sabaki which is doing a terrible job. The workers are paid by the county government and yet the weighbridge owners are collecting 70 per cent of the revenue and keeping it. Something should be done about the weighbridges.

Thank you.

**Hon. Speaker:** Yes, Hon. Samuel Gichigi.

**Hon. Gichigi:** Ahsante sana Mhe. Spika. Hata mimi ningependa kuchangia kwa kusema kuwa ule ufisadi ambao tumekuwa tukiona katika sehemu hizo--- Kama tume ya kupigana na ufisadi na Mkuu wa Mashtaka katika nchi hii hajui hali ilivyo, inaamanisha kuwa tuna vyombo kadhaa vya Serikali ambavyo vimelala. Mahakama pia inachangia ufisadi katika nchi hii. Si vyema kama mfanyakazi anaenda mahakamani na kupata amri ya kutotii kuhamishwa kwake.

Akiambiwa aondoke katika hivyo vipimo vya uzani vya magari anakataa kuondoka kisha anaenda mahakamani na mahakama inasema aendelee kukaa hapo. Mahakama pia inachangia ufisadi. Kwa hivyo, Mkuu wa Mashtaka, tume ya kupigana na ufisadi na mahakama zetu zimesaidia sana kuongeza huo ufisadi.

Ahsante sana.

**Hon. Speaker:** Let us have Hon. Midiwo.

**Hon. Midiwo:** Thank you, Hon. Speaker. I rose on intervention because it seemed the Hon. Member who tabled the report was trying to debate his own report. I thought it was out of order. Nonetheless, I was also tickled when Hon. Kamanda was jittery in mentioning the word “corruption”. He tried to bring out the word “corruption” very many times and it was not coming out. He seems to be contradicting himself. In yesterday and today’s daily newspapers, he seems to take a very tribal angle with people who are condemning corruption. It is ironical that Hon. Kamanda can treat the nation and Parliament to a subject on corruption this afternoon. If police officers are corrupt, you know who else is corrupt. I want to plead with the Committee to look at the law properly on the issue of traffic police before it tables a report.

At the end of the term of the last Parliament, we outlawed the so-called traffic police. There is nobody called “Traffic Police” in law. From the Floor of this House, I would even encourage Kenyans to ignore them because there is nobody called “Traffic Police” in law. It is just a corruption ring in the Police Department.

So, this Committee can help this House by doing a proper report and letting Kenyans know that we are dealing with a rogue police department which is a creation of somebody in the police force. As it were, there is no Traffic Department.

Thank you.

**Hon. Chepkong’a:** Thank you, Hon. Speaker. I have just listened very keenly to the Chairman of the Departmental Committee on Transport, Public Works and Housing make his presentation with respect to the petition that was made by long distance truck drivers. This is a very serious matter.

The EACC, in its quarterly report, made a report to this House to take action with respect to this question of weighbridges. I would have expected one of the recommendations to be directed to Hon. Asman Kamama’s Departmental Committee on Administration and National Security so that they can deal conclusively with this question of corruption at weighbridges.

As it is, the recommendation from the Committee is to the EACC and yet the EACC has made conclusive findings that weighbridges are full of very corrupt people. It is incumbent upon the Departmental Committee on Transport, Public Works and Housing to come up with stringent recommendations that can be implemented by the Ministry of Roads and Infrastructure to ensure that those people who are manning weighbridges are not there for more than one year. I agree with Hon. Jakoyo Midiwo that there is no one called “Traffic Police”. All of them are policemen. On the second limb of his assertion that people should ignore policemen, of course he is uttering unlawful words. He knows he can be arrested for ignoring lawful instructions from police.

It is incumbent upon this House to come up with legislation to regulate weighbridges to ensure that persons who are deployed to these weighbridges are not there on a permanent basis because these have become dens of corruption. We need to get rid of corruption but we cannot get rid of it if we allow people to go to court when they are transferred. The Judiciary is also to blame. The Judiciary should not be entertaining every application and granting injunctions. If you grant an injunction for an officer to be transferred from one place to another, that is

indiscipline on the part of the Judiciary. That is misuse and abuse of power which the Judiciary has been granted. They cannot use it to stop lawful instructions which have been issued to officers. We should have seen a recommendation against the Judiciary here and it should have come to our Committee, so that we can also take action with regard to the Judiciary.

Certain orders that are being issued, including the ones gagging Parliament from exercising its diplomatic right of freedom of speech, are wrong. We are told that when matters come before us we cannot discuss them. That is a rogue institution. We cannot be gagged from discussing any issue. We should be allowed freedom of expression just like they are also allowed freedom of expression. Although I agree with the recommendation from the Chair, we should make proposals to amend the Traffic Act to ensure that we move officers, in particular those who are manning weighbridges.

**Hon. Onyonka:** Thank you, Hon. Speaker. The reason I was trying to raise a point of order was that the Chairman, a man whom many of us respect highly, had actually decided to mention a matter which affects a colleague in this House. Since the case is in court, that would have been *sub judice*. I was trying to caution the Chairman that he should have left out that because the case is in court. Even when that is the case, in the 9<sup>th</sup> and 10<sup>th</sup> Parliaments, the issue of weighbridges was discussed and recommendations made. I hope he will include in his report what came out from the 9<sup>th</sup> and 10<sup>th</sup> Parliaments and what he has done now, so that this House can come up with a solution once and for all.

I know the Government is now using X-Ray machines at the Port of Mombasa, there is a tracking system. Maybe there is a possibility we do not need the weighbridges at all. That is something we will have to look at when we start debating the matter.

**Hon. Speaker:** Very well. The last one on this is from Hon. Florence Kajuju. Hon. Members, this is not debate. It is just a few comments. The point raised by Hon. Richard Onyonka goes to our own Standing Order No.89 on matters that are *res-sub judice*, but we are not yet there since this is just about corruption on weighbridges. I do not think there was any reference to any specific matter that is before court. No reference was made, but I think you only made the observation and thought that we may be straying that way.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Speaker. This report is very important. We have been speaking about integration and free movement of goods and services. At our weighbridges, there is no free movement of goods and services. A lot of time is wasted at the weighbridges.

As we discuss this report, we should look at instances where trade has been hindered. We cannot speak about integration when a lot of time is wasted at the weighbridges. We have also been talking about non-tariff barriers. These are issues that we need to address. If corruption at our weighbridges is addressed, this will be the best way to go. Even as we move on to deal with issues of the Customs Union, the Monetary Union and the Common Market Protocol, this is going to help us.

Along the Thika Superhighway, there is a weighbridge and a lot of time is wasted. This has been the nest of corruption. Just as the Chief Justice has introduced the payment of fines on our roads, the Ethics and Anti-Corruption Commission officers should ensure that people are fined on the spot, so that we can discourage this vice.

**Hon. Speaker:** Finally, this refers to something that Hon. Kamama may have an interest in because of his Committee. Let us have him.

**Hon. Abongotum:** Thank you, Hon. Speaker. I agree entirely with the recommendations submitted by the Chair of the Committee on Transport, Public Works and Housing and I wish to

recommend that we need to have radical reforms within our weighbridges. Most Kenyans do not believe that we can tackle corruption within the weighbridges. It has been an issue and even as a Committee, we have suggested that if it is possible, we privatise all our weighbridges. That is where corruption is so live that it is an eyesore to this country.

Officers at weighbridges are not willing to even take promotions. If you transfer an officer or promote him or her to the position of Corporal and post them to, maybe Garissa or Kacheliba, they do not want that promotion. They do not want that promotion because they get better returns at the weighbridges. To the extent that officers are refusing to be promoted because they are getting money at the weighbridges, we need radical reforms.

We need to benchmark with Rwanda. If you give money to an officer in Rwanda you will be arrested. Why are our officers taking bribes in the open? It has become advanced that they now use *M-pesa*. They make calls from Mariakani to Athi River and the *M-pesa* system is used to network issues of corruption.

I want to sit with my colleague, Hon. Kamanda, and come up with radical reforms. It is no longer business as usual. I am not even sure whether the EACC has the capacity to deal with this problem. That is why police officers are always number one every year when it comes to corruption. We must kill this thing and decide this year and not next year.

**Hon. Speaker.** Next Order!

## NOTICE OF MOTION

### ECONOMIC EMPOWERMENT FUND FOR PERSONS WITH DISABILITIES

**Hon. (Ms.) Lay:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that Article 21(3) of the Constitution mandates state organs to address the needs of persons with disabilities; noting that this vulnerable group continues to face numerous challenges in getting access to the Uwezo Fund, the Youth Enterprise Development Fund and the Women Enterprise Development Fund; deeply concerned that there is no clear mechanism to ensure that persons with disabilities get their share of the funds; this House resolves that 30 per cent of each of these funds be channeled through the Economic Empowerment Fund under the National Council for Persons with Disabilities.

**Hon. Speaker:** At this point, for the purposes of drawing the House's attention to a function happening in the country, I want to invite Hon. Amina Abdalla, the Chairperson of the Departmental Committee on Environment and Natural Resources to make an announcement.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. The National Assembly in partnership with the Pan-African Network on Climate Justice, United Nations Development Programme (UNDP), Oxfam and the African Union (AU) will be holding the second Pan-African Parliamentarians Summit on Climate Change tomorrow and Thursday, at the Safari Park Hotel.

The Summit is intended to acquaint African parliamentarians on the landscape of negotiations under the United Nations Framework on Climate Change and to create awareness among parliamentarians on Africa's common position on climate change before we head to Paris in December to negotiate the new universal framework for climate change.

His Excellency the President will open this meeting tomorrow. The Pan-African Parliament (PAP) is well represented. The meeting will be closed by the Deputy President (DP)

on Thursday afternoon. Members are welcome to join us at the Safari Park Hotel for this very important meeting.

Thank you.

*(Applause)*

**Hon. Speaker:** It is assumed that everybody is listening. Let us proceed.  
Next Order.

## BILLS

### *Second Reading*

#### THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

**Hon. Speaker:** Hon. Members, debate on this Bill was concluded.

*(Hon. Geni walked into the Chamber)*

Hon. Geni, just freeze.

What remains is for the Question to be put. I hereby proceed to do so.

*(Hon. (Dr.) Shaban on 22.10.2015)*

*(Resumption of Debate interrupted on 29.10.2015)*

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed  
to a Committee of the whole House tomorrow)*

### *Second Reading*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** Hon. Members, once again, debate on this Bill was concluded and what remains is for me to put the Question, which I proceed to do.

*(Hon. A.B. Duale on 29.10.2015)*

*(Resumption of Debate interrupted on 29.10.2015)*

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed*

*to a Committee of the whole House tomorrow)*

THE HEALTH BILL

*(Hon. (Dr.) Shaban on 29.10.2015)*

*(Resumption of Debate interrupted on 29.10.2015)*

**Hon. Speaker:** Hon. Members, debate on this Bill proceeded up to the point where the Mover, Hon. Naomi Shaban and the seconder, Hon. Robert Pukose, had spoken and the Question was proposed. Therefore, the Bill is open for debate by any other Member apart from those two.

The Leader of the Majority Party.

**Hon. A. B. Duale:** Thank you, Hon. Speaker. I beg to contribute to the Health Bill, 2015 as the Member for Garissa Township. The purpose of this Bill is to provide a mechanism on how the national health policy shall be formulated, implemented and coordinated between the two levels of Government. More significantly, this Bill deals with areas of coordination and how technology can positively contribute to better management of health services while curbing negative development.

The aim of this Bill is to establish national health systems whose main purpose will be to afford an enabling environment to progressively realise the right to the highest attainable standard of health to citizens. This includes the right to healthcare services within the framework of reproductive health. This Bill aims to recognise the role of the statutory health regulatory bodies, but it distinguishes between regulatory bodies and bodies which have policy functions at the national Government level.

Clause 7 of the Bill gives effect to the right to emergency medical treatment. The clause makes it an offence for any medical institution or healthcare provider to deny any person emergency medical treatment when it has the capacity to do so. You remember the story of Alex Madaga, a young Kenyan who had an accident and was taken to five hospitals, which all denied him emergency medical treatment because they valued money. The hospitals pegged emergency medical treatment to payment of money. So, this Bill sets the stage right. The clause says the right to emergency medical treatment is the right of every person in this country, only subject to capacity. I am sure that when we get to the Committee of the whole House, we will remove the condition of "subject to capacity". As we progressively move towards making sure that citizens enjoy universal healthcare through the National Hospital Insurance Fund (NHIF), I think the right to emergency medical treatment is a right to every citizen.

Clause 8 of the Bill makes it mandatory for every healthcare provider to inform the user or, where the user of the information is a minor or incapacitated, inform the guardian other things including the user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status could be contrary to the best interest of the user. The clause deals with how far one can go in making full disclosure of a patient's health status. It will no longer be at the discretion of medical doctors.

Let us look at Clauses 16 and 17 of this Bill. This Bill creates directorates within the Ministry of Health, which are to be led by a Director-General and who is the technical adviser to the Cabinet Secretary (CS) on all matters relating to health. The Director-General will be



responsible for preventing and guarding against the introduction of infectious diseases. This is part of streamlining the many directorates that are found within the Ministry of Health.

Hon. Speaker, Clause 27 establishes the Kenya Health Professionals Oversight Authority (KHPOA). Its function is to oversee the regulatory functions of all national health systems, both private and public and to ensure that adequate coordination is done for the joint activities of these bodies.

Clause 48 outlaws human organs transplantation except in a manner provided for. It is streamlining how you can transplant different organs between different bodies and patients. That was not the case before. A framework has been put in place.

Clause 32 creates the establishments of a single regulatory body for the regulation of health products and technologies and by a separate Act of Parliament. This is a very condensed health policy and I am sure there are a number of other small Bills that we need to bring on board. Clause 54 deals with matters relating to health financing and Clause 56 provides that the Cabinet Secretary (CS) shall pursue strategies.

Finally, before I give a chance to my colleagues, I want to go on record that I have nothing against county governments. There are only two things that made me support the Constitutional Referendum in 2010, namely, devolution and the Kadhis' Courts. Those were very fundamental issues in the Kenyan Constitution in 2010. Among the many things that I supported in the Constitution, from the Bill of Rights, my irreducible minimum was the introduction of a devolved system of Government and the retention of the Kadhis' Court, being a person who professes the Muslims' faith.

However, three years down the line I am a very worried man in as far as devolution of the healthcare system is concerned. My constituency is one of the very few constituencies that enjoy the services of a Level 5 hospital. In the last Parliament, Garissa Provincial General Hospital was one of the best healthcare institutions in the north. It used to serve, not only the North Eastern Province but counties like Lamu, Tana River, Isiolo and the whole of Kitui County. At the advent of devolution, the Garissa Level 5 Hospital fell under the County Government of Garissa. The last job I will seek in this country is governorship. I have no intention of seeking to be a governor and I want to be on record that I do not want to become a governor. From where I sit, the best job is being a Member of Parliament.

There was a surgeon in Garissa Level 5 Hospital between 2007 and 2013 who did not even come from northern Kenya. He was from Kibra and was a respected surgeon. When we introduced devolution, all the doctors were removed and, of course, regional and ethnic issues came up. Today, if the Committee on Health walked to that hospital, it would be shocked to find that there is no water. Our women, wives and daughters access maternity services without water. Theatres have collapsed and healthcare workers have not been paid. You cannot imagine the status. When Prof. Nyikal looks at me from where he is sitting, being a former Director of Medical Services and at one time a Permanent Secretary (PS), Ministry of Public Health, he has visited Garissa General Hospital more than thrice. He is now a Member of the Committee on Health. I have said that I have no interest in being a governor and my interest is the people I represent.

Today, that hospital has been reduced to a health centre. I am not saying it should be returned to the national Government. It should still be with the county government, but somebody somewhere must not ethnicise or politicise the health care system. My family is privileged to have one or two doctors working in the private sector or the NGO world. You can

play around with anything else, but not with the health of our people. As we debate this Bill, I am sure Level 5 hospitals in Kisumu, Eldoret, Nakuru, Mombasa, Kakamega and Embu are in dire need of rehabilitation. They are in very pathetic situations. We want to tell our county governments that they are our brothers and sisters. They are Kenyans. They should put efficient and manageable systems to run healthcare.

Clause 72 provides for e-health which shall be recognised as a mode of health service. Clause 79 empowers the CS to bring regulations for better management or carrying out of the provisions of this Bill. So, after passage of this Bill by both Houses and assent by the President, we expect the CS to bring that subsidiary legislation.

With those many remarks, I beg to support.

**Hon. Speaker:** Hon. Nyikal, it just happened that your name is number one on the list.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Speaker. It has come at no better time than now. That health services in this country are in a sorry state is public knowledge. Newspapers and the Press have highlighted it. At least, in this, they said the truth. That something needs to be done urgently is just common sense.

Health services have suffered for many years merely because every time we have a transition that intends to make health services better, we fail to manage the transition. Sometimes we then blame the transition whereas the failure is in the management of transition. Let me give an analogy. Pregnancy is a good thing. The baby inside is good. When the baby is delivered safely, it is a great thing, but if the delivery of that baby is mismanaged, you will have a dead baby. You cannot, therefore, blame the pregnancy and the baby inside. We must blame the management of the labour. This is where we are in this country.

From 2003 when we had one of the major transitions in this country in terms of change of Government, there was hope and a lot of changes were put in place. Health indices between 2003 and 2008 attest to that. The rate of infant mortality dropped considerably. The under-five mortality rate dropped. The use of contraceptives dropped. The only thing that did not change; and we know why, is actually the maternal mortality. This is because it is a systems issue.

In 2008, we split the Ministry of Health. I was involved. This was not desirable but at least it improved the funding to the Department of Public Health. Again, after that, we did not manage it very well. All the same, there was indication that there was improvement. We may want to blame devolution but we must distinguish the principle from the process. What has not been right is the process which we have gone through. It is not only in health. If you go to the Ministry of Environment, Water and Natural Resource and the Ministry of Agriculture, Livestock and Fisheries, you will see the same thing. It is not that devolution is not good; devolution is the best thing, but we hurried it. In fact, the Transition Authority should have been an independent constitutional commission and should not have been under a ministry. In my view, that is where we went wrong.

If you look at the health legal framework, you will realise that we still have the Public Health Act which was promulgated in the 1930s and we have about 32 or so other Acts that go with it. The many Acts have been useful in a way, but the Public Health Act was just that. It did not take into consideration very much the provision of medical or clinical services. These other Acts actually attempted to do that.

We must now look at the socio-economic, political and legal situation in which we are running our health services now. The most important thing is the Constitution. Article 43 (1)(a) starts with nothing other than the right to health of all the social-economic rights. I agree. All

other rights are of no consequences if you are not in good health. All other human endeavours are of no consequence if people cannot enjoy them because they are not in good health. Article 43(2) of the Constitution says categorically that emergency care is a legal right. It is therefore important that we must now have a new Health Act that takes into consideration these new circumstances and the myriad of health Acts that we have. In this House, virtually every---

*(Hon. Makenga crossed the Floor without bowing to the Chair)*

**Hon. Speaker:** Can you warn the Member for Kaiti. You do not just walk across like that. This is the National Assembly. Do not cross over like you are in a farm.

Proceed, Hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** At least every month we have a Bill brought in this House about the health sector. All these Bills stand singularly on their own. It is important that we have an overarching law that will actually oversee all of them. I am sure that is what this Bill is seeking to achieve.

I have said something about devolution. Health has many systems that are in one: The human resource system, the commodity and supply system, the infrastructure and equipment system and the health financing system. All these systems have to be harmonised. It is not because of devolution that we have not been able to do this, it is because of the way we have implemented it. If we had gone the way we put in the law, we would have managed it.

Hon. Speaker, if you look at the human resource system, no sector has so many cadres of human resource like health. No sector has so many commodities and supplies like the health sector. Each one is technically peculiar on its own. No sector has so many equipment which are so sensitive in terms of application to human health like the health sector. No system requires better and properly organised financing like the health sector. We, therefore, need policies, standards and co-ordination that must be adhered to the letter of the law. We are politicians and sometimes we think that where the majority are that is where the truth is. I dare say that in health, even if only one person is right, it is that one person whose idea will be taken. In the health sector, the law that the majority will have their way and the minority will have their say does not apply.

Therefore, this Bill seeks to address how policy will be applied in a devolved system, how to come up with standards and ensure they are adhered to, and how to co-ordinate the system. This is something we must support. There are many other parts that we will have to look at during the Third Reading stage. I will give a few examples. The Bill has provided for the Health Professionals Oversight Authority in Part IV, Clause 27. If it was my wish we would have had a Health Services Commission, but given the way the Constitution is currently that is not possible. I think within the law and the framework of Intergovernmental Relations Act, we can still have these things. The Health Professionals Oversight Authority takes care of the Medical Practitioners and Dentists Board, the Nursing Council, the public health officers, the occupational therapists and others. We can put them together under that.

It also seeks to establish a single Health Technology and Products Authority. Again, we have had issues between the Nursing Council and the Pharmacy and Poisons Board. That is something we will have to look at. It seeks to establish a Health Research Committee. We need that because although medicine is universal, there are peculiarities that research will bring within our local environment. We need something that will bring information that is relevant to us.

Going back a bit, I said that health human resource management is key. That is what has brought the big hullabaloo. I said there are many cadres. I actually meant that we need a Health Services Commission for management of human resource. Since that is not possible, we can put it in the Intergovernmental Relations Act. That matter is not in the Bill, but it is something we will deal with. Whereas we must conserve and protect the Constitution, we must be flexible to let things that are good for the nation be inserted without interfering with the Constitution and this is legally possible.

Hon Speaker, this Bill also establishes the Office of the Director-General. This is a new term. We are used to the term “Director of Medical Services”. This is really necessary and it is the in thing all over the world. We have Director-Generals all over the world. We have many directorates and this takes care of that. I must say, we will need amendments to strengthen the Office of the Director-General more than it is now. The Director-General does not only advise the CS for Health but the whole nation on health. He or she even advises the President, if need be. We can do that without bringing issues of subordinate positions because, we may want to have the Director-General being appointed through the Public Service Commission (PSC) and vetted in this House to give the position the force that it requires. That is something we shall need.

One of the issues of devolution is that we have policies that have to apply across the country; we have standards that have to apply across the country. What I am seeing is that we are confusing policy enforcement and supervision to ensure standards with control. I would like to inform the county governments that we have one country and the running and execution of the health sector is theirs. As the Constitution is we cannot touch that, but they must accept that somebody has to go round and ask: “Is this being done according to the policy? Are we vaccinating our children according to the standards?” This should not be seen as being controlled. That is a very important point if we are going to have our health system---

There is the issue of universal access to health care. That is to a large extent healthcare financing. When I was practising as a medical student, Kenyatta National Hospital (KNH) was the best hospital. My first born child was delivered in the KNH Maternity Ward, which in 1979 was equal to Nairobi Hospital, if not better. That money did not go anywhere. It is still within the country. Those of us who can afford have taken all the money and they are seeking private health care and have left the poor to be served in the public services, which are not adequately financed, leave alone the issue of corruption. So, we must get healthcare financing which is social in nature.

In the insurance industry, most people who are insured are well and they do not use that insurance. In a properly organised system, it is that money that can be used to take care of those who are less fortunate, but perhaps are sick. Therefore, the young who do not need a lot of healthcare, will take care of the old through an insurance system. We must accept that as a country, because indeed even those of us who think we can afford, when we have serious health issues that we cannot afford such as cancer, you may get the first treatment on your insurance and next year you will be out of that insurance. We have had to raise money for people you thought would never need money raised for their healthcare. We, therefore, need a universal healthcare service. I think this will work.

The right to healthcare under Clause 7 is in the Constitution and it must be implemented. However, there is an element that makes it difficult to implement, and we must come out and face the facts. We know the person who stayed in an ambulance for 18 hours. In away, staying in

an ambulance for 18 hours helped him. If he had been removed from the ambulance and put on a stretcher somewhere in a corridor in a hospital, perhaps, he could have died earlier. However, it is sad that he eventually died. When we give emergency care, we have to remember that eventually somebody will have to pay for it. The Constitution does not mandate or force the pharmaceutical industry that provides the drugs, the technology industry that provides the machines and the people who provide the oxygen and fluids to give these things for free.

Hon. Speaker, I see that light but I will indulge your generosity to sympathise with my passion and give me a few more minutes.

*(Applause)*

**Hon. Speaker:** Hon. Nyikal, proceed. I have given you an extra 10 minutes already. You are doing very well, and you leave it to my judgment because it is not just for purposes of *Bonga* points. Debate here must also inform the public.

Proceed.

**Hon. (Prof.) Nyikal:** Hon. Speaker, sometimes when hospitals claim they have no Intensive Care Unit (ICU) beds they are scared of taking in the patient. Emergency cases are extremely expensive. Within an hour, you will probably spend Kshs100,000 because of the equipment and drugs you are using. So, they are scared of who will pay for that. However, if they leave it at the constitutional level and say it is a right which must be provided, what are we doing to the facilities that are providing it and the healthcare providers? We must make provisions. I am happy that there is an attempt to do that under Clause 54(i)(e) where we are going to make provisions. We must make those provisions as a country so that people who take care of emergencies are reimbursed. They will not take all those expensive equipment from somebody in industrial area and say: “You know, I offer emergency services and I am going to treat people free of charge and I am not going to pay”. It cannot happen and yet it is a constitutional right.

The constitutional obligation does not extend to the man in industrial area who manufactures the equipment. So, that is something we must do. I thank you for the indulgence but these are issues that we must look at as a country. Processes must not be confused with principles. Devolution is good. It is the process that we have not done properly, and that is what we need to do. Emergency care must be given, but somebody must pay for it. We must have a social healthcare insurance so that the monies of people who are wealthy do not end up in the pockets of insurance companies but are used to treat those who cannot afford.

With those few remarks, I support.

*(Applause)*

**Hon. Speaker:** Well spoken, Hon. Prof. Nyikal. As well, you might have noted that the Hon. Speaker appreciated what you were saying. Those reading the HANSARD should see that before this Bill became law, there was serious thinking that went to it. They can only see that from such contributions. Thank you very much.

Let us have the Chairperson. Hon. Rachael Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Speaker for giving me this opportunity to support this important Bill that the House has been asking for. I would like to thank the Members

who have already spoken in support of this Bill. I would like to say that in the Departmental Committee on Health, we have found Hon. Prof. Nyikal very useful. He has been informative. We have worked very closely with him to ensure that we give the much needed support to the healthcare of this country.

This is a very important Bill that is before this House. This Bill will align the health sector with the current Constitution of this country and bring the sanity required within the health sector. I would like to agree with hon. Members who have spoken earlier that it is true there are many problems we are experiencing in the health sector in Kenya. We know that within six months into the implementation of the new Constitution, health services were devolved. The governors received a heavy responsibility of taking care of the health of Kenyans living within their counties with very little preparedness. For this reason, we need to support this Bill to ensure that we bring order within the health sector.

This Bill will bring order at the national and county levels. As we are aware, the national Government and the county governments have responsibilities within the health sector. At the same time, health being unified, each and everything must be done with the same similarity. This would ensure that all the people in this country are able to access health. It calls for the establishment of a national health system.

Article 43(1) (a) of the Constitution states:-

“Every person has the right –

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.”

Hon. Speaker, I must say that as we attempted to make sure that this Bill is agreeable, we held many meetings. We held meetings with governors and County Executives for Health (CECs) so as to ensure that we remain within the constitutional requirements in the devolved health system. So, I want to appreciate the meetings that we had and the contributions that were given by the Council of Governors, the CECs, all other stakeholders within the Ministry of Health, the Non-Governmental Organisations (NGOs) and all stakeholders, as it were.

As Hon. (Prof.) Nyikal said, this Bill seeks to establish an office. We need to have a very powerful office that can make decisions which are good for the country no matter how unpalatable it may be to some individuals. We want an office that can make a decision which can save the country. This is why we are seeking to strengthen the Office of the Director-General (DG). We want it to support the Cabinet Secretary (CS) and the Principal Secretary (PS) within the Ministry. Aware that at times, the CS and PS may not necessarily be technical people within the health sector, the DG is the person who is relied on 100 per cent to give advice that is needed by the Ministry and the country.

I would also like to say something about the Health Professionals Oversight Authority, which is a new body. We have engaged the regulatory bodies and showed them that having the Health Professionals Oversight Authority does not interfere with their role of registration and coordination. It is an Authority that will put together all the regulatory bodies and ensure that Kenyans have a place to present their complaints. If this Bill is enacted, it will provide the much needed legal framework, guidelines and a new direction. From the Committee level, we felt that devolution of health was hastened. The Constitution clearly stipulated that this should be done within a three-year period so as to give county governments time to get prepared. At the same time, we are saying that if this Bill becomes law, it will provide the direction that is required. It

will help in integrating the national and county governments' health systems and bring order within the sector.

The object of this Bill includes the rights provided therein, to provide for the highest attainable standard of health. As I said earlier, this also includes provision of emergency healthcare. If a Kenyan requires emergency healthcare, then it must be provided. At the same time, the question of payment comes in. This is why we will bring an amendment at the Third Reading where we will suggest that at the same time, payment for that healthcare must also be mentioned. As much as the emergency is needed, Kenyans who are treating patients also need to be compensated. We will be providing for that within the amendments during the Third Reading.

The Bill provides for protection of patients. It will ensure that their well-being, both at the public and private sector is taken into consideration. It will also ensure that a facility will not refuse to give emergency care to a patient just because they do not have funds to pay for it. We have also sought to bring an amendment in future where we would like to have a universal healthcare insurance. We agree that the body that would provide the universal healthcare coverage to this country is the National Hospital Insurance Fund (NHIF). We have given it the support that it requires.

The Bill outlines the respective functions of the national Government and the county governments in line with the Fourth Schedule of the Constitution. However, it was felt that the provisions ought to be harmonised to provide for consultation. We have included consultation in many parts of this Bill so that counties do not feel that devolved functions are taken back by the national Government.

This Bill provides for health impact assessment. The other day in the newspapers, we read about Wajir County where so many people in the same locations were dying of cancer. Why would this happen within a certain location in this country? The Committee is aware of the fact that a lot of money is invested in infrastructure development in this country, but we are not putting as much money to have impact assessment. So, within this Bill, we have suggested the inclusion of health impact assessment so that we are sure that any negative impact as a result of any infrastructure development is taken care of.

This Bill also takes care of waste management. We know very well that waste has an impact on health. It considers handling of the hospital waste. In other countries that are developed and those which are fast developing, matters concerning hospital waste management are very well handled. This Bill has given proper suggestions on this.

Health is one of the core services with its uniqueness and complexities.

Hon. Speaker, this Bill provides various approaches to ensure that every infrastructure development that is being handled and has negative impact, it is taken care of.

We recognise there is an emerging trend in the health sector where majority of the professional bodies are seeking to be enacted into law. You will bear me witness that we have several Bills within our Committee: The Oral Health Bill, the Physiotherapists Bill, the Clinical Officers Bill - It was brought this morning - and the Occupational Therapists Bill. We recognise the professionals would like to be recognised within the law but at the same time, the Committee feels this approach is bringing a lot of fragmentation to the health sector yet all the cadres should be working in harmony. For that reason, it is important that we have proper guidance and come up with an overall authority which takes care of the small regulatory bodies. As much as we try to give them autonomy, they need to be supported from a higher level.

I would also like to say one more thing about the Director-General (DG). As a Committee, we feel this office is extremely important to the country. We will bring amendments where the DG must be competitively selected, vetted and appointed by different existing institutions and various stakeholders within the health sector. We also need to ensure that there is proper guarantee of independence of the statements that the DG may make. As I said earlier, these statements may not be palatable to some people, but could be decisions meant to save the country.

Hon. Speaker, given the distinctness and the interdependence of the two levels of Government and bearing in mind that health is a concurrent function, the Committee is of the opinion that there is need for an intergovernmental mechanism where we ensure that decisions made at the national level are reflected at the county level. This will ensure that counties are comfortable with this Bill. We have ensured that all other stakeholders have been exposed to the Bill as much as possible.

There seems to be lack of clear strategy and approach on how resources that are meant for health are being used within the national and the county levels. This Bill has made an effort to ring-fence funds meant for health at both the national and county levels. As you are aware, we have signed various international treaties. We are working towards the Abuja Declaration of having 15 per cent of our Budget committed to health. It is important that we ring-fence funds meant for health at the national level and the county level. Funds meant for health at the county level are more at risk than the money meant for health at the national level. During our interactions, we realised that funds meant for health at the county level are being used for other services. Therefore, it is difficult for the County Executive Committees (CECs) to ensure that funds are ring-fenced.

Hon. Speaker, majority of the stakeholders submitted and highlighted the issue of health workers' welfare. I would like to agree with Hon. (Prof.) Nyikal, that a Health Services Commission would have been ideal for us to ensure that we take care of our health workers. We do not want to be producers of health workers but they work for other countries as they look for greener pastures. With the current constitutional dispensation, it was not possible for us to suggest the creation of Health Services Commission. However, together with the Council of Governors and stakeholders we met to ensure that our workers are properly compensated and that there are proper structures for their promotion. We do not want to lose them.

The Committee will be proposing various amendments in various areas within this Bill to make it better and stronger. The amendments will also reflect our interactions with the Senate Standing Committee on Health, the Ministry, CECs and other stakeholders during the Third Reading of the Bill.

As I conclude, I would like to appreciate the effort that the Members of the Departmental Committee on Health, have put to bring this Bill this far.

Thank you, Hon. Speaker.

**Hon. Onyura:** Thank you, Hon. Speaker. I rise to support this very important Bill. The Constitution is clear about citizen's right to health. This Article has been referred to by all those who have spoken ahead of me. Since it is in the Constitution, I would also like to start my contribution from there. Article 43(1)(a) of the Constitution provides that every citizen has a right to the highest level of healthcare available. This Bill will come in handy to try and realise or attain that expectation by the Constitution.



We know that health is largely devolved particularly when it comes to healthcare in hospitals, although some functions are partly shared. Referral hospitals, policy issues and the Kenya Medical Supplies Authority (KEMSA) are still under the national Government. This Bill has tried to define the responsibilities and expectations of the county governments and the national Government. In that regard, it is going to clarify issues and probably give guidance in areas where there is ambiguity, confusion and overlaps with regard to interpretation. It is a Bill all of us should support.

Hon. Speaker, the Bill also provides for coordination and consolidation of the various Bills. It has been indicated here that the health sector has so many Acts and sub-legislations. Therefore, there is need to provide a mother Act or an overarching Act, as has been mentioned. This will ensure that any inconsistencies and deviations are quickly picked and streamlined.

So, Hon Speaker, this Bill should bring better coordination and harmonisation among the various health sector Acts; those that have been passed in the past and those that are likely to come. So, that is a very important role of this Bill.

The Bill also provides and recognises the need to review the Acts that have existed while taking into consideration changes in technology and also the continuous changes that happen in the medical sector. The health or medical sector is one of those sectors that are changing all the time with new technologies, new ideas and new discoveries. There is need to have an Act that can recognise this and provide ways of handling the changes as and when they come.

I also want to emphasise something on the universal healthcare. That is where we should really go. If you remember, right from Independence, one of the areas the founding fathers of this country undertook to focus on was the issue of health but up to now, it is not getting any better. Perhaps, it is getting worse. We should really resolve that no citizen should die from diseases that are preventable. In many cases, they die because they cannot afford to go to hospitals or buy medicine. The best thing is to go the way of universal healthcare. This is an area that if we, as Members of the 11<sup>th</sup> Parliament can deliver to Kenyans, they will remember us for a long time. The vehicle that can do that for us is the National Health Insurance Fund (NHIF). It just needs to be reformed and modernised for the processes and systems to be put right. I believe that it is able to attain universal healthcare. It does not have to be in one year, we can do it progressively even if it takes five years. Eventually every Kenyan should get medical attention as and when they need it.

I can also not avoid looking at the state of healthcare and health facilities in this country at the moment. They are in a pathetic condition. Everywhere you go, you get *wananchi* complaining about healthcare, facilities, personnel and lack of drugs. Perhaps, this has been partly aggravated by the hurried nature of devolution. Much as we all support devolution, as an hon. colleague put it, perhaps we hurried and failed to go step by step as had been anticipated in the transitional clauses.

We have also observed certain happenings in the health sector that have been of concern to us. We know what happened to children in Busia sometime back and also what happened to the children who were born in a hospital in Kangundo. I know that investigations are going on but some of these point to lack of capacity, proper professional commitment and perhaps supervision. With a Bill like this that provides for an authority that is supposed to regulate various professional bodies, maybe, that will improve.

There is also an area that is of great concern which was probably introduced with a lot of fanfare; the Managed Equipment Service (MES). It a good idea but the way it is being operated, if we are not careful, we may not get the benefit we wanted.

Finally, the Bill provides for promotion, regulation, documentation and standardisation of traditional medicines. This is an area that had not been given attention, given that a sizeable number of Kenyans actually use traditional medicines. This is an area which with proper research can complement the medicine that we have in hospitals.

With those comments, I beg to support this Bill. Thank you, Hon. Speaker.

**Hon. Limo:** Thank you, Hon. Speaker. This is a very important Bill because one of the fundamental aspects of the Constitution is to provide protection to sick people. But the problem is that these rights which have been provided for by the Constitution have actually addressed one aspect. You are provided with a right which is health, education and security but specifically on health, it has not addressed the question of how. Therefore, it becomes a right on paper. At least, on the right to education, we have seen a lot of effort being put by the Government to provide free primary education and subsidised secondary education, but in terms of health there are many problems. If you go to our counties - someone had mentioned during the making of the Constitution that if we are not careful, this Constitution is going to make or break the country. I am worried that if the health sector is not well regulated, the country will be balkanized. The fact that you come from a certain county does not mean that you have to seek treatment in your county. Why am I saying this? We have seen a precedent being set where when our people go to certain hospitals, they get different treatment. For example, if you come from Nyanza and seek treatment in Samburu, the treatment you will get will be different. Therefore, this Bill has come at the right time. I hope the policies or the thinking and the provisions which have been provided for in this Bill are going to be implemented to ensure first, that there is universal healthcare available for every citizen of this country. Last month, I had a situation where I had to ask many questions. Due to bad luck, three of my constituents who reside in a place called “Kedowa” were involved in an accident around Machakos. Unfortunately, they were admitted to Machakos Hospital, but they were not treated for one month. They were supposed to be operated on but they were taken round in circles. I used all the means I had at my disposal to address that issue, including communicating with the county government. The assurance that they would be treated was given but they were not treated until they were transferred to Kapkatet District Hospital in Kericho. I asked myself whether we are in Kenya. That is the reality on the ground because people are not being treated equally. It depends on where you come from.

Another example is a complex issue touching on Level 5 hospitals. There is a silent war among the counties on who should meet the cost of treating referral cases – people from one county who are referred to a Level 5 hospital in another county. We have tried in this House to allocate money to Level 5 hospitals differently, but there is still that perception that Level 5 hospitals belong to certain counties and not the country. Therefore, when we enact a law such as this, to bring together all the issues affecting health, we should ensure that we coordinate properly. We should ensure that county governments understand the difference between policy, standardisation and control. When this Bill was introduced, some people asked why we are legislating on health and yet the health sector is a devolved function. We must make Kenyans appreciate that whereas the health sector has been devolved, the policy has not. Once county governments appreciate the importance of following policy and law, they will offer the services required by the people.

The case of Alex Madaga, who was referred from one hospital to another, after a hit and run accident which turned tragic is shocking. The Constitution provides that no person shall be denied emergency medical treatment. This Bill goes to the extent of defining what emergency treatment is. Are our people properly prepared to appreciate and respect the rule of law? It is wrong for somebody who is involved in an accident next to a private hospital to be thrown out because of the cost. The beauty of this Bill is that it also provides for a way in which this emergency treatment will be reimbursed. I hope that there will be a proper system of implementation and provision of enough finances for these services. In some cases, people have been provided with emergency treatment especially during incidences of terrorist attacks. Unfortunately, some people who may have survived if they had received proper treatment died because they did not have enough money. They could only receive emergency treatment because they did not have money. As Hon. Nyikal has said, emergency treatments are very expensive. Therefore, there is need to provide enough finances and ensure that this Bill is properly implemented.

This Bill has recognised the importance of technology, for example, e-health. Our youth are very good in technology. We need to recognise the importance of bringing in technology. This Bill is very important because it provides for that and recognizes alternative or traditional medicine which plays a key role in this country.

Finally, it has also provided for treatment of people with mental problems. Many a times you will find people who are not mentally stable walking on the road. This Bill has provided for the way in which they should be treated.

I hope for the first time this country will appreciate the need to respect this Health Bill. It will help the country move forward.

**Hon. Midiwo:** Thank you, Hon. Speaker for giving me a chance to contribute to this debate. What a good debate this is. It reminds me of how Parliament used to be. The debate used to be sweet and all Members were relevant.

Looking at the Bill, and listening to the contributions by my colleague Hon. Prof. Nyikal, this Bill is moving in the right direction. But it is not going far enough to do what our country needs. I want to plead with this House that this Bill must not be looked at as a Government Bill, but as a Kenyan Bill. This country needs this Bill. I was here when Parliament tried to implement universal healthcare, but there were too many interests outside Parliament that shot it down.

I disagree with Clause 24 of the Bill which wants to keep the national Government involved in healthcare. The involvement of the national Government should only be in the higher level hospitals and in policy.

This Committee should have looked at some of the areas where our country has not done well. You cannot promise people compulsory or universal healthcare without doctors and nurses. You cannot expect doctors in a hospital in my village. First of all, doctors are not churned out in enough numbers. The conditions of living are not good enough for any doctor to stay in that village. The Constitution calls for one thing, but this House must make it possible. That is why this is a very difficult Article of the Constitution to occasion. This House must think outside the box.

The other day, I was in Indonesia at a conference against corruption. I felt unwell as though I had malaria. I decided to walk into a public hospital so that I could be tested and know if I was really sick. It turned out that I was generally fatigued. I did not see anything magical. In fact, they did not have all these computers they talk about. I looked for a doctor who could

communicate in English. Everybody in the hospital was in military uniform, which would be extreme in our case, but people there were ready to work. When they see you they ran towards you because they know you might need help. The attitude of the health workers was impressive. This House can only do the same through legislation.

Just yesterday, a pregnant woman died in Kiambu. If you speak to our female colleagues or the people we represent, you will find the kind of treatment they get from doctors and nurses when they have gone to hospital to deliver. This happens even in high level hospitals.

Hon. Speaker, my sister died in Nairobi Hospital because the doctor who operated her came back after 48 hours. I told another doctor that I wanted to take the Nairobi Hospital to court and he told me: "I wish you luck", yet he is a senior doctor there. Kenyans are confronted with a scenario that this Bill cannot cure. This is 1 per cent of what we need. We must do something to make it possible for medical practitioners, for example, the sweeper in the medical facility to know that if you want to deal with a sick person, you must be cordial, loving and caring like it happens everywhere else. This is possible and we must do it in law.

In the conversation I had in Indonesia, I was told that as a country, they have a policy to produce not less than 7,000 doctors. As it were, we have all these universities and students are dying to go to university to study medicine or engineering and somebody sits somewhere to decide their fate. Two weeks ago, I read in the newspapers that there is a new version invented in Kenya like *M-pesa* was invented, by a medical student. This boy has invented a version of *Facebook* that is fool proof where you can communicate with another person without communicating with everybody. This boy is at the Medical School, University of Nairobi. If he was given a choice, he would have studied Computer Engineering or something else. We must give people choices. First of all, our doctors must have interest in life and we cannot force people. Somebody probably wants to be a pilot and you cannot force him or her to be a doctor. Those are basic things that I thought this Committee would take time and look into so that our doctors are happy.

After that we should go to the next step. The Doctor in Makueni County must be somebody who wishes and is willing to work in Makueni, because he or she is there. We are now pushing all these universities there. We should have the ability to teach our doctors, at least, the basics. Let us do it in this law, so that in university admission, not less than a certain percentage of students who apply to do medicine must be taken to the university. Not that they must all have grade "A". One may have grade "B", but the university can have an entrance exam. Why are we stuck in an education system that is not helping our people and yet we have put in law that healthcare is a duty of the State? Parliament must also help the State in legislating how the State provides that service.

Hon. Speaker, you cannot tell people that you will give them healthcare if there are no drugs. There are no drugs in our country and it is not that we cannot import, but there is too much corruption. I can tell you with a lot of comfort that now that there is a cash crunch in the country, the only avenue of corruption left for the governors is health. They are now eating blood because they are using supplies of medicine to kill the medical system. Just the other day, one of the boys who work for me went to a dispensary near my home and there was not even Panadol. That system is not working. Let us look for a way in this law to control the price of medicine.

I am diabetic. I went to buy my diabetic medicine in a chemist in Kisumu and it cost me about Kshs3,000 which is way out of reach of ordinary people. It is overpriced. I went to the Nairobi Hospital to fill and it cost Kshs11,000. We must control the price of drugs if we want to

provide for our people. We cannot have traders telling us the cost of drugs. This House must be involved in helping the Government control the price of drugs. We must control them.

I was talking like the boss on this side because this guy is missing. Can I just take up his place?

**Hon. Speaker:** Very well, as the Leader of the Majority Party.

**Hon. Midiwo:** Hon. Speaker, as the Leader of the Minority Party, but I can do the Majority because I am going to be very soon.

*(Laughter)*

**Hon. Speaker:** You have equal speaking time. There is no problem.

**Hon. Midiwo:** Hon. Speaker, by thinking about this Bill, the Government has done its best, but this House must do better because we represent people. Anything that annoys our people when they seek medical services must be put in law, so that once and for all, we have a law that people fear. When nurses are absent in hospitals and workers are rude to patients who is to help our patients? We want to do a law as the people's representatives. It is a requirement of the Constitution. I want to plead with this Committee that before we go to the Third Reading, let us do what is required of us, which is policy. We are the national Government. Let us set the pace for that Committee.

I disagree with this Bill because it wants to create somebody called "Director-General" as spoken by my medical expert, Dr. Nyikal, that can be advisor to the President. No! The President has an advisor because he appoints his Minister for Health. That is the work of that person. This other office that we are creating---

**Hon. Member:** The Minister is a banker!

**Hon. Midiwo:** I agree, but he may be a very good person. He does not have to be a doctor because it is about policy. He should propose policy and bring it here so that Dr. Eseli can say that he has thought like a banker, but this is a good policy. You cannot say that you create many jobs in the counties and there is somebody who has a Masters degree. That is also not good policy. The people that are employed at the county or suggestion of people to be employed by the county cannot be policy. We are expanding the wage bill again and yet we are crying about lack of money. That body cannot and should not pass here. Let us pass laws that provide the consequences of a patient missing drugs or dying at the dispensary. Let us give our courts laws to deal squarely and adequately with people who do not care, but are supposed to care for our patients.

As I wind up, the attempt to nationalise healthcare in a failed system which we were trying to cure is one which I am going to oppose vehemently. The fact that the counties are dysfunctional in terms of health does not mean future counties will be dysfunctional. Let us empower the counties. Let us look at why they are dysfunctional. Like I have said, in our next Budget, we must earmark which money should go to health. With enough supply of money and proper laws, there will be no reason for us not to treat our people. However, I disagree with taking away power and giving it to somebody else apart from Government Ministries. In any case, we are saying that in future, the Cabinet Secretaries (CS) should be in this House so that we can interrogate them on policy. That way, we will do well.

Hon. Speaker, having said all that, I support this Bill. We will bring some amendments. I thank you.

**Hon. Speaker:** You actually stuck to your permitted time of 15 minutes. Hon. Joyce Akai.

**Hon. (Ms.) Emanikor:** Thank you, Hon. Speaker for giving me this chance. I rise to support this Bill. Even as I support the Bill, I would like to pick from where Hon. Jakoyo has left. I look at counties like Turkana, Samburu and others that are lacking in so many things.

Before we even talk of the right to receive emergency medical treatment, in some areas, medical facilities are lacking. The doctor/patient ratio in Turkana is 1:1,000. The nurse/patient ratio is 1:5,000, which is really impossible. Medical facilities are also non-existent. People have to trek for kilometres. We are not even talking about affordability - it is accessibility. We are actually talking of the basics where physical structures are. We do not have medicine and vehicles. For some areas, we should be talking about the basics.

The Constitution provides for the right to the highest attainable standards of health. I support this Bill because it ensures the right to health services, healthcare, reproductive health in terms of accessibility, affordability and access to information, the right to preventive services, curative and rehabilitative services. I would like to concentrate on Part II of the Bill, which talks about rights. Further to the protection of rights, the Bill protects and promotes the rights of children to basic nutrition and healthcare as stipulated in the Constitution - Articles 43 and 53. It is about the rights of the vulnerable groups which include women, the elderly, people living with disabilities, children, youth and minorities to health facilities.

The Bill further establishes a regulatory body which ensures that health products and technologies are accessed. It also ensures safe medication. Quacks will not have space in the medical facilities. We will not have cases like that of “Dr. Mugo”. It also controls clinical trials and ensures that manufacturers and distributors are genuine.

Hon. Speaker, I would like to reiterate the issue of emergency medical treatment. That is because many people have spoken about it. It has also happened to many people. The sad story of Alex Madaga is just a representation of thousands of Kenyans who die outside medical facilities and are not able to receive emergency treatment which includes pre-hospital care, stabilizing the patients before they are transferred and even arranging for referrals where medical facilities are unable to help.

This Bill stipulates that any service provider, be it an individual or an institution, who denies medical service while in a position to help, will be committing an offence and will attract a hefty penalty.

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

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

Hon. Temporary Deputy Speaker, the National Health System in this Bill streamlines and defines respective functions between the counties, national Government and other actors and gives adequate and comprehensive information to those players in terms of the roles and functions they play. The Bill is also in sync with advanced global technology through provision of e-health and use of technology. The establishment of the National Blood Transfusion Service is a good thing and will save lives. We know of many mothers who have lost blood in the

process of delivery. We know of patients who have lost blood as they travel to distant health facilities. We hope that the establishment of the National Blood Transfusion Service will also be devolved so that it can save lives in counties and lower levels of governance.

This Bill also protects the rights of health service providers. It gives them a safe working environment that minimizes transmission of diseases. It also gives them the right to refuse abusive patients; abusive in terms of physical abuse, verbal abuse and sexual abuse. This happens and we are aware that it happens in medical facilities. The Bill does not only protect the rights of the users of health services, but also the providers.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You support the Bill. The Hon. Member for Tongaren, Hon. Eseli Simiyu

**Hon. (Dr.) Simiyu:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I have been sitting here patiently waiting for this opportunity to contribute to this Bill. At the outset, I want to say that this Bill is long overdue because health was precipitately devolved after the last elections. I believe this happened after the governors blackmailed or arm-twisted the Executive to devolve it at ago. Given that, the Health Bill should have come much earlier, in my view, within six months. In fact, this House should be informed that the Departmental Committee on Health has fought a serious war with the Ministry of Health to bring this Bill here, to the extent that we threatened to bring our own Bill. That is when the Ministry succumbed and brought this Bill in April this year.

The mismanagement of healthcare in Kenya is not just a preserve of the county governments. The national Government is in the game too and it has turned everything upside down. In nations where healthcare is fairly advanced, they lease high-end equipment and buy low-end equipment. In our situation, we have turned it over its head and we are leasing low-end equipment and buying high-end equipment - which forms part of mismanagement of healthcare.

The county governments are equally mismanaging healthcare to the extent where when a county buys drugs worth Kshs70 million, it calls the Press and takes a photo as they set off the truck to go and deliver the drugs. Before I came to Parliament, I was in private practice. There was somebody who was doing a study on the cost of healthcare in Kenya and picked my clinic as one of his study centres. When he went through my patient records, it came to transpire that in a year, my clinic, which was a one-man show, was prescribing drugs and medical commodities worth Kshs30 million. So, when a governor buys drugs worth Kshs70 million and goes to the Press with that, you can just see the shallow thinking at the county level. They imagine that drugs worth Kshs70 million are a lot. It can be very few drugs.

Healthcare is the most devolved function and most of the money that is sent to the counties should be in the healthcare sector. But the governors are mishandling it.

There is some serious propaganda which, unfortunately, even some Members of this House have bought, that this Bill seeks to return healthcare to the national Government from the county governments. That is far from the truth. This Bill seeks to deal with just the constitutional mandate of the national Government. The national Government is supposed to take care of national referral services. The Constitution does not say that national referral services are restricted to the Kenya National Hospital (KNH) and the Moi Teaching and Referral Hospital (MTRH) only. National referral services should be available to all citizens of Kenya. That means that the national Government must get closer to the citizens of Kenya. That means that it must have presence even in the counties to offer the national referral services.

There has been propaganda which has mainly emanated from the Council of Governors that the national Government wants to take back healthcare services. I am aware that the last Cabinet - and Hon. (Dr.) Naomi Shaban was in that Cabinet and she can either disapprove or agree with me - had proposed some hospitals in various counties that were going to remain national referral facilities. The incoming Cabinet perhaps did not look at those minutes. That is where the governors say that the national Government wants to take back their services. We do not want to take it.

Hon. Midiwo has just said that we need to train more health personnel like doctors and others. We can only train those health personnel if we have the facilities to train them. Some of those facilities, the so-called Level 5 and Level 6 out there, must revert to the national Government and offer training facilities so that those counties will also have training facilities for medical personnel, including doctors. Otherwise, the thinking that this Bill wants to take healthcare away from county governments is wrong. It is a piece of propaganda. The same blackmail the Council of Governors used on the Executive, they want to use it on the whole nation. We want the national Government to have presence of national referral facilities in every county. It is a constitutional right of every Kenyan to have access to national referral services.

I cannot see somebody from far off in Turkana coming all the way to Eldoret in order to access national referral services or coming all the way to Nairobi to go to KNH and access national referral services. Those national referral services must be availed to the nearest place.

So, I urge Kenyans not to fall for the propaganda from the Council of Governors, which they are very good at.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): There is a point of order, Hon. Simiyu.

**Hon. (Dr.) Simiyu:** You spoke without interruption. So, I do not know why you are interrupting.

**Hon. Midiwo:** On a point of order, Hon. Temporary Deputy Speaker. Just tell my colleague to relax. I am not interrupting in a bad way. I would want him to explain to the House. He is a Member of the Committee and so, he needs to seduce us to support their proposal. He should then be kind enough to explain to the House what Clause 24 of the Bill means. Maybe, my understanding is different, but I am not a propagandist.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Is he out of order? Hon. Midiwo, did you want some clarification?

**Hon. (Dr.) Simiyu:** He wants me to explain. That is what I was trying to do. Unfortunately, he did not pay attention from the word go.

I said and I repeat it, we do not want to revert healthcare to the national Government. We want the national Government, which is mandated by the Constitution, to extend national referral services to the nearest points. Otherwise, we are implying that the national referral services will only be at KNH and MTRH, which are not accessible to all Kenyans and yet, all Kenyans have a right to national referral services. Most facilities and trained personnel are found at the national referral facilities.

The other problem is that we come up with ideas which we fail to implement. If you look at the National Hospital Insurance Fund (NHIF), people have come from other countries, studied it and gone ahead to implement their national social health insurance funds. An example is Ghana. For us here, we start and leave it. The only way we will implement the clause that



everybody is entitled to emergency medical care is when we will have a social universal health insurance. That means that if you have to go for emergency treatment in a private clinic or hospital or anywhere, that institution will treat you because they will claim a refund. But unless you have that social universal health insurance working, the issue of healthcare for all and people being entitled to emergency care will not work.

The same Constitution says that your right should not infringe on somebody else's rights. So, your right to emergency treatment should not infringe on the right of that health medical practitioner. If he is not going to be paid for treating you, then you are infringing on his right. So, the only way we can remedy that is to have a social universal health insurance in place first and not tomorrow or yesterday. It has to come on track very fast and then we will implement that.

Hon. Temporary Deputy Speaker, with regard to the issue of health personnel, arguments have been posed as to why we cannot have a Health Services Commission. They say the Constitution does not allow. We passed that Constitution with the full knowledge that the Health Services Commission was going to be a statutory---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is over, but I will give you one minute.

**Hon. (Dr.) Simiyu:** Hon. Temporary Deputy Speaker, I think I lost track. I still believe that the Health Services Commission is doable, but there is no political will and there is antagonism towards it.

This Bill had too much input from non-medical people, including lawyers and very little input from serious health thinkers. That is why we are having that problem, where there is an excuse that you cannot have a Health Services Commission and yet, there is a body being formulated. The Council of Governors fears the establishment of a Health Services Commission because they have been mishandling health professionals. They fear that if there was a Health Services Commission, they will not mishandle them. That fear has permeated to everybody and they say that we cannot have a Health Services Commission in this Bill. There is a lot more to say to this, but suffice to say that, I support it. But serious amendments must be brought to this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Well spoken *Daktari*. The Member for Ndhiwa, Hon. Aghostinho Neto.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Speaker. I would like to start from the point at which Hon. Simiyu was trying to explain to Hon. Jakoyo. I think Hon. Jakoyo would better listen to me because I would like to give him some legal understanding of what Hon. Simiyu was trying to say.

I have listened to the first two doctors speak very well and they have spoken to serious issues medical, but what they have refused to understand or speak to are serious issues legal. Hon. Esi Simiyu speaks to Clause 24 of this Bill. What they are trying to do in Clause 24 cannot be done in law simply because if you look at the Sixth Schedule, Clause 15 that they are trying to refer to, it speaks to three years after an election has been done. So, you are phasing them out in a manner that anticipates that these things are not yet devolved. That devolution was supposed to have been happening in phases, and that has not happened. So, you cannot then have a claw-back clause in the manner of Clause 24 of the Bill.

**Hon. (Prof.) Nyikal:** On a point of information.

**Hon. Oyugi:** I am happy to be informed, but at this point---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Agostinho Neto, are you ready to be informed?

**Hon. Oyugi:** I do not want to be informed by Hon. Nyikal. I said that I want tell him things legal because he has spoken things medical.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Neto, it does not matter whether you do not want to be informed, but you should also let the Speaker rule on that. So, allow me to report that you do not want to be informed.

Hon. Nyikal, Hon. Agostinho Neto, does not need your information.

**Hon. Oyugi:** Thank you very much, Hon. Temporary Deputy Speaker. What is bothering members of the Departmental Committee on Health is what is bothering all Members of Parliament. What is bothering all of us is that the health function is not going on very well in the counties. As Members of Parliament, we cannot sit here and constantly cry that things are not going on well without doing anything.

However, the provision to work with is not Section 15 of the Sixth Schedule of the Constitution. What ought to help us is the provision of Article 187 of the Constitution. The provision allows the national Government and the county governments to discuss what roles they can exchange and the manner in which they want to exchange those roles. However, to try to have a claw-back to the provisions of the Constitution in the manner Clause 24 of this Bill proposes is not tenable. So, re-look at the provisions of Article 187 of the Constitution.

The second thing is that I appreciate the fact that Hon. (Prof.) Nyikal is in love with equipment. They want doctors to be compensated and they want people not to be given free emergency medical treatment. However, Article 43(2) of the Constitution is very express. It says emergency medical treatment shall be given. To have a claw-back in the manner the Committee is trying to do in this Bill is a negation of that constitutional right. As a student of law, I know for a fact that you cannot use the provisions of a single legislation like this to take away constitutional provisions. The best they ought to do---

**Hon. (Dr.) Simiyu:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): There is a point of order by Hon. Eseli. What is out of order?

**Hon. (Dr.) Simiyu:** Is the Member in order to imply that Hon. (Prof.) Nyikal and I do not want Kenyans to receive emergency care? What we have said is that Kenyans should receive emergency care, but there should be fair compensation. That is what we have said.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Agostinho, as you make your contribution, clarify to him whether that is exactly what you have said.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Speaker. I have listened to a lot of medical language today and I appreciate the gentlemen. However, they must appreciate what is legal and what is medical. What we are talking about in terms of emergency healthcare is legal. Article 43(2) of the Constitution is very express that emergency medical treatment shall be accorded. You cannot put a condition in the manner you are trying to do in Clause 7(2) by subjecting this right to progressive realisation as per the provisions of Clause 54(2). That cannot happen. It is not the business of a patient to see who is being compensated and how. A patient's business is that the right to emergency medical treatment is a constitutional right, which must be guaranteed. How you provide for it is not by negating the right as the Bill seeks to do.

The third thing I would like to speak to is the constant use of the word "progressive" in this Bill; progressive realisation of the right to health, progressive realisation of economic social

and cultural rights--- You do not make them progressive by using the word “progressive”. The word “progressive” is a function of money issues and what you do with the little money you have. For purposes of progressive realisation of the right to health, for example, the Ministry of Health would be asked what it is doing with the little money it has and what it plans to do in the next couple of years. That is what progressive realisation is all about. The word “progressive” has been used counter in the Bill. If you use that word that way, you are simply taking away all the obligations on the State. Therefore, there is actually no right being guaranteed. Progressive realisation simply means what you are doing with what you have, when you will do it and how best you want to apply the resources you have.

The fourth thing I would like to speak to is Clause 12, and Hon. Jakoyo spoke very well to it, on the rights and duties of healthcare providers. Clause 14 needs to be buttressed because the way doctors and nurses treat patients in this country leaves a lot to be desired. We need a healthcare system and infrastructure that respond to the needs of the people of Kenya; one that ensures all Kenyans realise the right to life in a manner that is productive without unduly interfering with the right of doctors.

Clause 27 on the establishment of professional oversight authority is an interesting provision. This is a good provision, but Hon. Eseli is free to disagree. Hon. Rachel spoke very well to the fact that there are several agencies within the health sector seeking autonomy. It is possible to let all the agencies be autonomous and yet, have one overarching authority that polices all of them. Other jurisdictions have done the same, including South Africa and Britain, which have fairly comprehensive systems. We do not make laws in a vacuum. Policing this sector in this manner, whether you call it over-policing, is the best to do in the circumstances so that we let the psychologists, health records professionals and other health workers do their work.

Lastly, I like the fact that Clause 42 of the Bill provides for the promotion of alternative medicine. Recognising alternative medicine in a Bill like this is very good. Suffice it to say that this is a good Bill that we ought to support. It has come at the right time. There is going to be a lot of thinking that goes through this. The Committee of the whole House stage of this Bill is going to be more volatile than we have ever seen before.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Isiolo County, Hon. Tiya Galgalo.

**Hon. (Ms.) T.G. Ali:** Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill. Health is a very sensitive issue. The county governments have been ill-prepared to take over the health services. Quite a number of counties do not have proper facilities to handle some of the emergencies that occur in their respective areas. Some hospitals in the counties lack medical personnel, equipment and facilities that can help communities.

Quite a number of areas, especially rural and remote areas like Isiolo do not even have proper hospitals. The Level 4 hospital we have was run down a long time ago. Even after the County Government of Isiolo took over, much of the support patients require has not been fully actualised. After devolution, most of the health personnel are so demoralised. Many of them have not been paid for several months. Many of them who were there before were not promoted. The new ones who were recruited were given very high positions. So, those who have been there have been demoralised and they are not able to work as required of them.

This Bill seeks to achieve the establishment of a national health system that will lead to high standard of healthcare services, including reproductive health. This system will improve healthcare services if it is going to be at the county level.

This Bill also defines “national Government”, “devolution” and “county governments”. As it is now, there are a lot of challenges. So, it would be nice to define these terms and clearly divide the roles between the national Government and the county governments.

Hon. Temporary Deputy Speaker, this Bill will also establish the office of the Director-General of health as a technical advisor on all matters that relate to health. This will help in terms of policy development and improvement. If you have a central system that can advise on health issues, that will help in terms of ensuring that we have modern technology and expertise that will help the two levels of Government.

The Bill also seeks to establish the Kenya Health Professionals Oversight Authority to provide an oversight and regulatory role within the health sector as well as continued coordination, support and supervision of activities of regulating bodies.

I support this Bill because it seeks to establish the National Research for Health Committee (NRHC) as an advisory body for research on health. The establishment or development of Kenya National Blood Transfusion Service will help at both levels. We have realised that most of the time, we have emergencies at the county level, but we lack blood transfusion services that are required. If we establish the Kenya National Blood Transfusion Service, we will ensure that blood banks are established at the county level, which will help the communities at the grassroots level.

The e-health and the use of modern technology approach to advance health objectives are also very critical. That will help to coordinate and improve the support that we require for our health personnel and patients at different levels.

This Bill is timely. It is one of the things that are required in this country.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Hon. Member for Bondo, Hon. Gideon Ochanda.

*(Hon. Members stood at the gangway)*

**Hon. Ogolla:** Hon. Temporary Deputy Speaker, I do not know whether I will move this “informal House” away from my front.

Definitely, there is quite a bit of logic in terms of what has been brought out. The Bill is fairly reactionary. To the extent it tries to respond to the operational failures that are evident in the country, particularly in the health sector, it is predominantly ignoring very serious aspects of the Constitution. I want to believe that if we go at this rate, if we cannot handle it in the House, there are chances that it is going to be challenged in a court of law like some of the Bills that we have had before.

Our Constitution generally provides for what needs to happen. Many things did not happen the way they were supposed to happen. First, we did not need to have global transfer of functions the way we did in the first six months. That was the first problem that we had as a country. Secondly, there needed to be assessment of capacities before a function is transferred. If we are transferring a health function to a county government, the question would be: Are they ready? Nobody did this! We transferred functions to county governments that were not ready to

do them. They did not realise that implementing the health sector was so massive that it could not just be left in their hands.

The other problem that we had, and this is fairly manifest, is that the national Government was supposed to facilitate and build the capacities of the county governments. Nobody did this. The national Government, first of all, was not fairly well defined in the Constitution to the extent that we would have made a very clear reference that when we are talking about health issues, there was a national Department of Health in the country. That would have made more sense. Then the Department would be behoved at that particular time to be doing certain things direct. This was going to be exactly in their portfolio. But when it was left to the national Government, there was the problem of the Council of Governors pleading with the President and the President transferring globally all the functions to them and yet, they could not perform them at that particular time. Now we are in a situation where the health sector is crumbling.

Definitely, health practitioners like Hon. Eseli and Hon. Nyikal must come out with a way to sort out this issue. The problem is that they are trying to sort it out, but ignoring certain aspects of the Constitution. If one combined the provisions of the Constitution, all the way from Articles 186, 187, 189, 190 and 191, and looked at them together, definitely, there are answers there in terms of failures of county governments when they are unable to do certain things. When they are unable to perform certain functions, there are reversal arrangements that are supposed to be in place. There are elements of co-operation constitutionally. But the only problem is: Who is supposed to initiate this? Is it when a county government fails that it becomes the responsibility of the national Government to look out for a specific county government to start negotiating or co-operating with it? These are now the operational and fundamental failures that we have here.

In the end, we have a situation where there are failures in individual county governments. In my view, that would have been the spirit of the Constitution - that when individual county governments realised that there are certain functions that were conferred on them and they were unable to perform them, they were supposed to re-engage the national Government on individual basis. This is exactly where the problem is. They are trying to engage the national Government in a union style where all of them are thinking that they are at one level and are able to operate in the same way.

This is where the CoG is not looking at things right. Individual county governments, upon seeing a failure and seeing that their capacities cannot absorb what is supposed to be done, need to re-engaged the national Government and particularly the Department of Health to see that those functions are done with the support of the national Government. It is allowed even now. Up to now, any county government, be it my Siaya County, is allowed to come up as an individual county government to engage with the Department of Health to indicate that they are still unable to operate Level 5 or Level 4 and can only operate up to Level 2 or Level 3. Then the rest, upon negotiation, they can agree with the national Government that, that happens. The problem comes in that we are now trying to solve this issue of inability through this kind of a Bill. I want to bring in this caution – and the caveat is in front of us - that there are going to be a lot of problems, especially with the Constitution.

The other thing that I want to bring out is the whole issue of what happens to the other sectors. Many other sectors in our Government are facing more or less similar situations. Today alone, in our Committee, we were handling the issue of a Motion that we had passed. It was

dealing with the prices of milk. We got it very clear that there is no way the Government can control the prices of milk, which was liberalized in 1992.

Besides that, there are all manner of national Government agencies and a number of Government efforts in trying to come up with things that can make the production cost go down. One of them is the dairy board which is coming up with all manner of issues and strategies. The dairy board is not a board of any county government. So, we were wondering how they are going to be relating with county governments. When they are talking about putting coolers and stuff like those together the way it is being done in Murang'a County, we asked: "Did you work together with Murang'a?" They said: "No, Murang'a was on its own". I am trying to bring about the fact that there are many other sectors that are faced with this kind of situation. This will not work if each sector is going to come up with a Bill addressing these operational problems rather than using the Constitution for purposes of addressing the issues. The Constitution has a lot of things.

The other thing is this: We are going to be blamed as Parliament because if you look at Article 190 of the Constitution, the legislations that are supposed to facilitate what I am talking about are supposed to be a function of the Legislature. In case of failures, Parliament is supposed to come up with a legislation to exactly show that: "If this and that happens, this is exactly what needs to happen to a county government or to that function". It is us who have not done that. So, I want to believe that, in as much as the spirit of the Bill is very clear, it is going to contradict the Constitution quite a lot. There are certain good things that are there in the Bill, even in terms of the definition of "health facilities". It is very clear that it comprises both private and public health facilities. The public, sometimes, think that when you talk about a health facility, you are only referring to a public health facility. But it now includes the private ones. There are quite a lot of other things that are creative. The only problem they are going to face, particularly when they are handling the issues of the emergencies, is that emergencies are going to be repaid or reimbursed by somebody. Kenyans are very difficult when it comes to free things. A lot of medical conditions might end up being medical emergencies where everybody wants to run for reimbursement. This is going to be very difficult to operationalise. It would have been very useful to have unused insurance premiums to address this kind of a situation.

I end by saying that we need to be very clear and sober to the idea that the Bill has quite a number of things that are going to be in conflict with the Constitution. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Kwanza, Hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, thank you for giving me the opportunity to contribute to the Bill. I also support the Bill. As it has been said, this Bill should have come much earlier at the time when we were actually devolving.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, can you save me from my colleagues here?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, can we save Hon. Ferdinand Wanyonyi together? You are saved.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Temporary Deputy Speaker for helping me because there was a heated argument here. Before the doctor disappears, I want to say that we

talked about emergency. Part II of this Bill is very explicit on cases of emergency. It has been advanced by Hon. Eseli and Hon. Elmi that one must pay for emergency treatment.

I have in mind a recent case where somebody who was involved in an accident was referred to more than five hospitals, but he was never treated. By the time that person started getting treatment, it was too late. He died. This Bill comes out very clearly and says that if you come in contact with a hospital or a dispensary, you should be given first-aid. You and I are always travelling, you can find yourself in a case where---

**Hon. (Prof.) Nyikal:** On a point of information, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Hon. Wanyonyi! There is an intervention by Hon. Nyikal. What is your intervention?

**Hon. F.K. Wanyonyi:** I know what I am talking about.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Hon. Member! You are getting out of order. Hon. Nyikal, what is your intervention?

**Hon. (Prof.) Nyikal:** It is a point of information.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let me get to understand whether Hon. Wanyonyi needs it. Hon. Wanyonyi, Member for Kwanza, are you ready for his information?

**Hon. F.K. Wanyonyi:** I do not need his information because I know.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): So, Hon. Nyikal, he does not need your information.

**Hon. (Prof.) Nyikal:** Accepted.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, they are distracting my discussion. If they listen to me---

**Hon. Ng'ongo:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You would rather state what is out of order.

**Hon. Ng'ongo:** Thank you, Hon. Temporary Deputy Speaker. My point of order is a very serious matter.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): What is out of order?

**Hon. Ng'ongo:** It is a matter bordering on the integrity of this House. Our Standing Orders do not allow a police officer or anybody to come and arrest anybody within the precincts of Parliament. I do not under-value what the Member of Parliament for Kwanza is saying, but I thought that this is a very serious matter. The Criminal Investigation Department (CID) officers--

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**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Do you have any information to that effect?

**Hon. Ng'ongo:** The CID officers have invaded Parliament and arrested one of the journalists in the precincts of Parliament. I have no problem with journalists being arrested---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order! Thank you, Member for Suba. That is relevant, but you know in which office to do it. As a House, we have already heard it.

**Hon. Ng'ongo:** Hon. Temporary Deputy Speaker, I just want to bring it to the attention of the Chair. This is a very serious matter.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, the message has been passed.

**Hon. Ng'ongo:** We do not want to go back to the periods when the late Martin Shikuku was arrested.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Though it is irrelevant to the discussion ongoing, you have already passed your message.

**Hon. Ng'ongo:** The House is under siege---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You have already passed your message even though it is a bit irrelevant. It will be handled in the right manner. Actually, it is not Hon. Wanyonyi who was out of order. So, Hon. Wanyonyi, you are protected. There was nothing out of order as far as your contribution was concerned. Carry on. For this matter, I will add two more minutes.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Temporary Deputy Speaker. You have always been kind. What he is saying is important.

During emergency cases, this Bill says that the first hospital you get to is the first contact that should stabilise the condition of patients. That dispensary or hospital will take care of that person as one awaits medical help. It is wrong for institutions to insist that they must be paid first before that help is given to a patient. This clause is very clear. Our brothers in the health services are saying that one must pay because one will be depriving that particular hospital or institution the right to get money. That is the point we are coming from. We have cases where Kenyans die because when they are taken to the nearest dispensary or hospital, they are first asked if they have money. I have a case where a lady almost died when she wanted to deliver. The first thing she was asked was to make a deposit. This is not medically ethical. It is true that it is business.

Recently, I travelled to India, which is actually the second most populous country in the world. They have facilities that we actually admire. I was so impressed when I went to a hospital called Apollo. I am sure Hon. (Dr.) Nyikal knows about it. I was surprised one of the patients there comes from my constituency – and I pray that she gets better. I saw about 10 other Kenyan patients when I was in India two weeks ago. All of them were looking for medical services that could actually be provided here - only that our medical services are not subsidised. Therefore, you will find people leaving this country for other countries to look for medical care. India, which has billions of people, is able to provide social health services where health services are actually subsidised. We should do the same. This Bill should have come much earlier so that we lessen the burden being borne by our people. Our people are suffering and I think this Bill is going to cure that.

Hon. (Dr.) Nyikal actually mentioned that devolution of the health services was done prematurely. We should have taken time to determine whether the county governments were prepared to take over that function. I can tell you for a fact that in my county, medical facilities are wanting. They are in a very bad state. For example, the situation is bad in a case where a patient lives far away from a referral hospital. As recent as two days ago, I had to transport a patient from Kitale, which is almost 70 kilometres away, to Moi Teaching and Referral Hospital in Eldoret. The poor child died on the way. I am sure that could have been prevented if Level 5 hospitals were working. Emergency cases such as what I am talking about would have been handled at a Level 5 hospital in my county. So, those services were prematurely devolved. They would have taken time and the process would have been done gradually. If the counties were ready to have the services, we would have devolved those functions.

My county was not prepared because it cannot even pay the personnel. In fact, people are resisting getting employed in hospitals in my place just because they were not prepared. A



patient goes to a dispensary and cannot get drugs even for curing Malaria. We do not know where we went wrong. That can be one of the problems.

Clause 48 talks about traditional or alternative medicines and that is not very clear. It talks about alternative medicines or African traditional medicines. The body that is going to be formed will set minimum standards and prices on African traditional medicine. Some of us have had the benefit of getting treatment from the African traditional medicine. So, there will be a regulatory body that will regulate its standards.

Lastly, it is important that we have the Director-General to assist the Permanent Secretary (PS) and the Cabinet Secretary (CS) because, sometimes, those two may not be qualified as doctors. So, the Director-General will be able to give advice so that they can do what is required.

With regard to cases of elderly people who are 65 years and above; those people helped us. They looked after us when we were young. They should also have money. Last year, we passed a rule here---

**The Temporary Deputy Speaker** (Hon. (Ms. Mbalu): You will have two more minutes because of the interruption that you had.

**Hon. F.K. Wanyonyi:** The 65 year olds should be given the National Hospital Insurance Card. When we come to the Third Reading, we will bring that amendment so that 65 year old Kenyans are given National Hospital Insurance Cards so that they can access hospital facilities as required.

There are cases where a patient is taken to a Government hospital and incurs very heavy expenses. The fellow dies at the end of the day and the next of kin are forced to pay the bills. Something should be done about that. I have had so many such requests. They tell you: "So and so has passed away. Hon. Member, assist us to clear hospital Bill". It becomes very expensive. One of my constituents died in Eldoret and I am now required to pay Kshs720,000. Where do I get it from? My salary is barely more than Ksh200,000. We should come up with an amendment at the Third Reading to take care of those who die while under Government and county institutions and the relatives are unable to clear medical bills.

I support the Bill. It has come too late. It should have been there at the time we were devolving those services to the county governments.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms. Mbalu): Hon. Members, I want to refer you to Standing Order No. 83 on points of order, information and on intervention to any discussion or any message to the House. This matter is on points of order. Let me read for you parts (1) and (2) so that when a Member is contributing, it is important that we raise a point of order or point of information at the right time. We allow interventions, if you want to make an intervention. It is also good to indicate that we have the clerks at the Hon. Speaker's desk. At your seat, you can indicate on intervention so that we do not interrupt Members' contribution, if there is something out of order. Standing Order No. 83. (1) reads as follows:-

" (1) Any Member may raise a point of order at any time during the speech of another Member, stating that the Member rises on a point of order and that Member shall be required to indicate the Standing Order upon which the point of order is based.

(2) When a Member raises a point of order during the speech of another Member, the Member who was speaking shall thereupon resume his or her seat and the Member raising the point of order shall do likewise when he or she has

concluded his or her submission, but no other Member may, except by leave of the Speaker, speak on the point of order.

It is important that we observe points of order and at what point we raise them so that we avoid disruptions. We have very good ones like when Hon. Members pass information to the House on procedures or about what is happening in the precincts of Parliament. This is very welcome and important but we can always follow procedures so that we do not disrupt other Hon. Members. It is so ordered.

Let us have Hon. Gladys Wanga, Member for Homa Bay.

**Hon. (Ms.) Nyasuna:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Bill. We are discussing the Health Bill. This Bill has been very long in coming. We have waited for it for a long time. At some point, we heard that it was lost and nobody could trace it. As days went by, more and more confusion prevailed in the health sector in this country. So, we are very happy to have the Health Bill being debated on the Floor of this House.

A nation can only prosper if its people are healthy. So, as the representatives of the people, it is incumbent upon us to ensure this. Key challenges face the health sector. There is low access, prohibitive costs and poor quality healthcare. As a health management professional, I know that the first step is a health policy. This is what we are doing through this Bill. Then we look at the issue of health financing, health access and quality. Before I get into the Bill, I must say that it should disturb us that today this country spends less on healthcare as a percentage of our Gross Domestic Product (GDP) than we did in the year 2001 or 2002.

It must disturb us. The distance we are from the Abuja Declaration is long. We are at 5 per cent and yet, the Abuja Declaration is at 15 per cent. The global average spending on healthcare is 9 per cent. These are the issues that we must be thinking about as we debate the Health Bill. The issue of health financing, particularly, must be looked at seriously and whether the National Hospital insurance Fund (NHIF) as it is currently constituted is what is going to take us to the universal health coverage that we require. We must look at how efficient the NHIF is. It is now spending much more on administration. Financial sustainability of NHIF itself is wanting.

For us to pay for healthcare in this country, we must take bold steps. What the Health Committee must lead us in reflecting on is this: Is it going to be this Parliament that takes that bold step? Are we going to leave it to a future Parliament? There must be radical steps in any breakthrough. Therefore, the decision is upon us whether we will be taking radical step or we will leave it to another Parliament. I am happy that the Bill makes progress in actualising the right to reproductive health and emergency treatment.

Recently, we had a very serious accident at Homa Bay County. I must thank the administration of St. Camillus Mission Hospital in Migori because when several accident victims were taken there, they took immediate steps by treating them. By the time we came in, they had already had emergency care. We finally paid for it but they were taken in at that point when they did not have money. So, private hospitals must look at paying for emergency treatment as part of their corporate social responsibility. The issue of compensation must be looked at. The sustainability of compensating hospitals that provide emergency care to patients is an issue that must be looked at seriously.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Gladys Wanga, there is an intervention or a point of information from Hon. James Nyikal. Is it true that it is a point of information?

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Speaker, I am happy to receive information from our healthcare *guru*.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let him say it for the sake of us. I should not assume that it is a point of information.

Hon. Member, are you ready for information?

**Hon. (Ms.) Nyasuna:** Yes. I am ready to receive information.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You can inform Hon. (Ms.) Wanga.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker. This is in relation to emergency care and treatment for it. Several Members have taken it that when we say that we must pay, we are saying that patients must pay before they get emergency care. What is proposed in the Bill and what we would want to say is that we must have a social health insurance that ensures universal access to treatment. It is through social health insurance and public funding that we will arrange for payment or compensation for emergency care, but not by the patient. The Committee believes that it is this House that must take the bold step in that direction.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I can see her nodding.

**Hon. (Ms.) Nyasuna:** I thank Dr. Nyikal for that information. With that kind of set up, it will be a very useful move. That is well clarified. Hon. Temporary Deputy Speaker, I hope you will add me two minutes on the basis of that point of information.

I am also happy with Section 8 of this Bill that speaks to access to health information. Many times, you can go through the health system, particularly in our villages. Somebody can be treated from the beginning to the end and given prescription without them even knowing what they are suffering from. Some things will be scribbled. You will be told to go for a test and come back. Then you are told go and buy some drugs. At the end of the day, you will not have a proper understanding of what your illness is. This is a very important part of this Bill. It ensures that you are given information regarding your own health. It would be important to have that information when you want to seek a second opinion.

There is need to define “specialised health activities”. There is a section of the Bill that speaks on the issue of specialised health activities being done by the national Government. If this is not defined, it is likely to cause confusion at the end of the day. So, in the definitions, we need to say what exactly specialised health activities are, and which ones qualify in this section.

The creation of the authority is very useful. As part of its responsibilities, it should also look at the issue of licensing. We have been treated to the theatre of the absurd by people like Mugo wa Wairimu and others operating clinics without proper licences. People are going to many quacks in town. Coordination and licensing must be looked at seriously by the authority. It must also look closely at the issues of continuous medical training. I know that, currently, there is continuous medical training and points that are awarded. However, when you look at the cases of misdiagnosis that happen, you are left with the question of who exactly is responsible for ensuring that our health providers are continuously updated and trained to a point that they are up to date to deal with the issues that come up now, like emerging illnesses.

People have canvassed the issue of sufficient personnel. It is a very serious issue because when we talk about the Health Bill and healthcare, we cannot speak about it in isolation of the issue of sufficient personnel within our facilities. I am particularly concerned with personnel that is specialised in illness such as cancer and other chronic illnesses. When you go through cancer

treatment in this country, you realise that we have very few personnel who are specialised in the field of oncology. There are very few oncologists. For example, they have to deal with nursing tasks. You find that the same oncologist has to go and come back and do even very basic procedures. You also have to look at the issue of oncology nurses.

As regards to consent, I see that in the Bill it is required that parents and guardians give consent for research. However, consent should also be provided for mature minors. You realise that there are some mature minors who will not consult their parents. So, they will not be free enough to tell their parents some issues. So, the issue of consent for mature minors is also important.

E-health and telemedicine is an important addition. The other important point I want to contribute to is the health centres. When you see the note in the health centre requiring that it has to be a clinical officer in charge of a health centre---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is over. Today, I am at my best philanthropic level. I can add you one more minute as you requested.

**Hon. Okoth:** Give her two minutes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): There should not be a lot of lobbying. Give her just one minute. Put an intervention.

**Hon. (Ms.) Nyasuna:** Thank you very much, Hon. Temporary Deputy Speaker for adding me that minute. I was contributing to the issue of having clinical officers in charge of health centres. Nurses should also be allowed there so that we are not restrictive.

As I finish, there are very disturbing news that has been brought here, that a journalist has been arrested in the precincts of Parliament. That sets us back as far as the freedom of Press and information is concerned. We must condemn that seriously. You cannot arrest a journalist within the precincts of Parliament. I speak to that as the Chair of Information and Public Communication of the Parliamentary Service Commission.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Well spoken. Your one minute was not over. Hon. Priscillah Nyokabi, Member for Nyeri County.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Speaker. I thank all hon. Members who have contributed before on the Health Bill.

I want to start by asserting that I support this Bill. I support the enactment of the Health Bill, 2015. I also want to congratulate the Ministry of Health and the Departmental Committee on Health here for being able to get to this step. It has been a long story. It has been many steps. The country has waited for this law. It does not matter how long we have waited. Now that we are here, it is good that the Committee has completed. It is good that the Ministry of Health has been able to bring this particular piece of legislation before the House so that we can debate and pass it. I hope that even as we improve the Bill and put in amendments, this is one of the laws that we will ensure sees the light of the day. We should ensure that we finish our part. It is a constitutional Bill which will go to Senate. They can finish their part as soon as they can. By the year 2016, we will have a regulatory framework for healthcare in our country.

Hon. Temporary Deputy Speaker, I would like to start with the constitutional framework, Article 43 in particular, and celebrate that the right to healthcare was included in our very progressive Constitution. It states that every Kenyan has a right to healthcare, including emergency treatment.

We continue to see many instances where citizens and Kenyans are not given emergency treatment by our hospitals. I speak as somebody who has attended a funeral of a parent who should have been admitted to hospital because she was sick with pneumonia, but the hospital released her. I have attended a funeral of a cousin who delivered a baby and the hospital asked her if she had money for admission. Because she did not have money for admission, the hospital sent her home. A mother was sent home just two hours after she has delivered a baby simply because she has no money to pay for admission. It is those kinds of instances that this law seeks to cure.

Kenyans are entitled to emergency treatment. Once somebody needs emergency treatment, the question of money cannot be brought at a time when we need to give emergency treatment. We know many instances of people who have needed emergency treatment and our doctors and hospitals have put money, finances and medical cards ahead of treating and rescuing life. I keep on wondering what the Hippocratic Oath means when you, as a doctor, swear that you are going to protect life. It means exactly that! Your first duty must be to protect the lives of our citizens. I hope the law is going to create the necessary penalties, sanctions and regulate not just public hospitals, but also private hospitals. Emergency treatment in this country must be just that.

We continue to bury many *boda boda* accident victims. When a *boda boda* has an accident--- I hear many hospitals have opened a ward in which they put no beds and no emergency treatment. They call it the *boda boda* ward. Most of those *boda boda* victims, many a times, bleed to death. Many times, they do not receive the quick attention they need for them to be saved. With this law, we hope the country gets to the point that emergency treatment is a must for every citizen. Every citizen, wherever they may be or wherever they could be, if they are entitled to emergency treatment, it should be administered.

Hon. Temporary Deputy Speaker, we will be looking at the funding available and ensure that hospitals and clinics are able to give emergency treatment. To our doctors, be they private or public, emergency treatment should be something they must all get accustomed to. Money, medical cards and deposits should not be one of the things that doctors should look into.

I remember a sad case of a friend who was shot in his house after a burglary or a robbery. After the shooting, the wife was strong, lucky enough. She put the husband in the car and drove like a mad woman to the nearest hospital. She got there, but the husband was bleeding. She was hysterical and was left to watch the husband in a very poor state of health. You will not believe that a very big hospital in this country asked that poor wife to give a deposit of Kshs100,000. The wife begged that she would bring the money in the morning. It was about 3 a.m. in the night, and nobody would be able to raise Kshs100,000. She begged that they admit and give him emergency treatment because she would bring the money in the morning. They had to go to another hospital because that particular hospital did not agree. It would not even allow them the loan for a night to bring Kshs100,000 in the morning.

With this law, those are the hospitals we do not want to hear of. Those are the hospitals we think will get the message of this Assembly, that emergency treatment is something you have to give. The lives of our citizens have to come before money, deposits and any of those other things that they keep on asking for.

If you look at the constitutional framework, the question of reproductive health is well covered. The Bill has also addressed the question of reproductive healthcare. As a Member of Parliament for Nyeri County, I hope the law will look at the question of the regional referral

hospitals. In my County of Nyeri, we have the Level 5 Nyeri Hospital. It is the Nyeri Provincial General Hospital. It is a fairly big hospital and it serves not just Nyeri County, but also the surrounding counties. It serves Laikipia, Nyandarua, Murang'a, Kirinyaga and many other counties within Central Kenya. That particular hospital can then not be the burden of one county because the cost required to run it is quite high. I agree with the Bill that the regional referral hospitals or the 11 Level 5 hospitals should go back to the management of the national Government. These are regional referral hospitals and not *per se* county hospitals; they do not just serve the county where they are located.

Hon. Temporary Deputy Speaker, if you look at the allocation of money we get in Nyeri County, when this hospital is left to us, one of our biggest fears is that we might have to close it because we cannot run it to the level of services it is required to have. When that hospital goes back to the national Government, it will get equipment, resources, doctors and specialists like surgeons, who can then serve not just Nyeri County, but the cluster of counties around Nyeri.

The future of our country is to have a Level 5 hospital in each and every county. Because we are not there yet and we do not have 47 county hospitals, the few 11 Level 5 hospitals we have should become regional referral hospitals in line with the Constitution. Once they become regional referral hospitals, all the referral hospitals are in the care, custody and management of the national Government.

There is also need to look at the Level 4 hospitals. Sometimes, they are fairly big and well equipped. I regret that in my own county of Nyeri, we have Kieni Constituency which forms 52 per cent of the county, but does not have a Level 4 hospital. As we look at the distribution of hospitals, it would be advisable and admirable that in every constituency, we have a Level 4 hospital. Those Level 4 hospitals would also require the kind of attention and management that can only be offered by the national Government. The counties should only start handling the Level 3 hospitals, dispensaries and small health centres. Health is a critical function. By asking that these hospitals come back to national Government, we are not rolling back devolution. Devolution and service delivery have got to go together. When the hospitals are as big as what we have in the Level 5 hospitals, then they require being under the management of the national Government.

I support this Bill and the many clauses it has covered. I pray that, as a House, we pass it and make sure we manage health in a better way. We need to manage this county in ways that the health of our people moves closer to the Abuja Declaration. I support more funding up to the tune of 15 per cent to healthcare services in our country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Very well spoken. Member for Vihiga.

**Hon. Chanzu:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to support this Bill.

This Bill touches on what is so close to our lives - health. All the successive campaign manifestos have talked about health. That is eradication of disease, poverty and illiteracy. However, we are still grappling the three. When the new Constitution came in place we thought we had found a solution. The Constitution did not envisage the kind of political competition we have today. There are a lot of conflicting issues when it comes to health matters in this country. The county governments have abdicated their roles and they are hanging in between. Any law that can help us to operationalise or to clarify what the Constitution intended is very important as far as I am concerned. It may not be perfect but if it can help us take some step towards making

improvement on us as Kenyans in understanding what the Constitution contemplated, then it is very important. Bringing services closer to the people was one of the elements. The element of financing is another one. In the process, corruption comes in. When there is corruption, the whole thing gets blurred. That is why there should be very clear separation on what the counties and the national Government should do. Those functions which the county governments do not have capacity to perform---

Hon. Temporary Deputy Speaker, another thing the Constitution anticipated or contemplated was that gradually, the country would develop personnel or capacity in all the counties. By the time we came up with the new Constitution in 2010, the level of development in the country was not the same. It varied. You find that some areas were better off and some areas like Turkana and some of the rural areas which could be near big towns did not have facilities. It is important that through that, there would be gradual improvement of the facilities which are there and provision of those that are lacking so that we have equity and fairness for every Kenyan. That is the bottom line. Whether it is the national Government or counties, the common denominator is the *mwananchi* who should get services. Worse still, every Kenyan pays tax. We have been saying that it is holders of white collar jobs who pay taxes, but ordinary Kenyans who are not employed pay Value Added Tax (VAT) when they buy commodities. If you calculate, you will find that it is a lot of money. For only Kshs100, somebody pays Kshs16 as VAT. When you multiply that by the population of this country, it is a lot of money. Because of that, every Kenyan must get services. Healthcare must be made available.

But the only thing I find that brings a lot of competition is the social health insurance facility. It would have been in place long time back, but because of political competition, sometimes, people and the Government appear to personalise the implementation of the scheme. Competition makes it not to work but it should be something that should be in place so that everybody can be taken care of.

In fact, there is a case of a lady we buried in my constituency in Vihiga County on Saturday. She had gone to a hospital in Kakamega when her baby had already died more than 15 hours before. The hospital in Kakamega did not attend to her. That is because Kenyans have become inhuman. I believe this is corruption where people do not wake up in the morning thinking about the input they are going to make in their offices, but about how much money they are going to make. This combined with a very bad attitude made that lady die. She died because she was not attended to and the baby had died. With modern day medicine, a woman should not die when giving birth. There is caesarean section which is very simple. In fact, some of the doctors, instead of using caesarean when there is need, do it to make money. They know that when they operate on somebody, they will make more money out of that. It is something any person can do with the facilities that we have. So, it is very unfortunate and very sad to the family that she had to die.

There were some young men who were involved in an accident and went to Vihiga District Hospital only for first-aid. They could not get the first-aid and even a drip and yet, they pay tax. Everybody pays tax. When we put this into law which will help our people to access those facilities, it will be very encouraging. There is need for a lot of improvement because we are doing it in a rush to tame a certain situation. I believe with time, we should improve on this. We should begin with the 47 counties. We have some projects which were started some time back and have stalled. The Government is now saying it does not have enough funds. We are not

collecting revenue even in the counties unless we get areas where we can prospect for oil and minerals. At the moment, it is only from taxation that we can serve our citizens.

I believe the Bill will go a long way to improve the situation that is prevailing at the moment. The issue of funding needs to be addressed. We should weigh on how we should fund the services we render. You find county governments spending a lot of money on roads that are going nowhere. If you look at that and compare it with health where you need to have healthy people, water and education which are essential, you find that there is very little activity. They are really misguided. I think it is because some of them are getting money which they did not expect. So, they end up squandering it. So, we should put measures at all levels. I expected this to be done by the Senate. They should put limits on the levels of spending by those counties because you find a county like Vihiga owing banks, contractors and suppliers over Kshs2 billion. When they get money from the Central Government, they are going to pay that at the expense of services. We need some control. As much as devolution is good, we need a lot of controls so that systems can work.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Maragwa, Hon. Peter Mwangi.

**Hon. Mwangi:** *(Inaudible)*

*(Technical hitch)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Peter Mwangi, Member for Maragwa, for you to be properly on record and for the sake of the HANSARD, you need to change your microphone. You cannot be captured on the HANSARD from that microphone. Just put your card in the intervention slot. We can hear you now.

**Hon. Mwangi:** Hon. Temporary Deputy Speaker, as I was saying, do I need to repeat everything I have said?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): No, just carry on.

**Hon. Mwangi:** Hon. Temporary Deputy Speaker, I was talking about a lady teacher from my constituency who had a mental problem and was taken to Mathari Mental Hospital. While there, her eyes were gouged out by the other patients. It took a lot of time for Mathari Mental Hospital to take responsibility. Let those people be treated equally as normal people. Let them be given the protection that they deserve. The issue here is about taking responsibility.

We have seen many people in this country being given wrong diagnosis. I remember my father who was being treated for stomach ulcers in a certain hospital in Thika. When we took him to Kenyatta National Hospital, it was realised too late that he was suffering from cancer. It was too late for us to start giving him proper medication which he needed at that time. This Bill is very good because one can now question doctors who give wrong diagnosis. I urge Members of this House to support it.

The other issue is that we should start looking at how we can give our people a social medical fund where all Kenyans, and especially the senior citizens of this country, are given proper medication. It becomes very hard once a person retires to get proper medical care. That is why if one retires to the rural areas at the age of 60, he will not live beyond the age of 65. This is due to lack of proper medical care. That is why it is good to have one social medical fund which will give equal services to all the citizens of this country.



With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member for Ol Jorok Constituency, Hon. John Waiganjo.

**Hon. Waiganjo:** Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the Health Bill.

We have been expecting this Bill for a long time. It has now come at the right time when our country is experiencing a lot of issues concerning health, particularly when the two levels of government are grappling with issue of devolution. The transfer of functions from the national Government to the county government was done under pressure. I am aware that the devolution of the health function was called for by the Council of Governors. They were really passionate about that function. Therefore, the national Government gave in to pressure and released that function to the counties. The problems we find ourselves in today are political problems, in the first instance, because had the national Government insisted on retaining the health function at the national level, we would not be having those problems. This is a good Bill.

The only problem with this Bill is that it has certain provisions that appear to contradict the express provisions of the Constitution. Therefore, even as we pass this Bill, we need to be fully aware that it requires certain amendments so that it does not contradict the Constitution. We have many other sectors that would have been devolved as functions, and particularly this one. There was a way that the function of health would have been partially devolved. For instance, they would have devolved certain functions that do not necessarily require heavy equipment and retain others at the national level. We probably would have waited to build more hospitals, particularly Level 4 and Level 5 hospitals. We needed to train more personnel. We also needed to consult healthcare professionals, including doctors before we devolved those functions.

The other egocentric mentality is that the governors themselves do not want to concede that some of their counties are not able to handle healthcare. It is very easy. It is in the Constitution that as a county, you can revert some of the functions back to the national Government. Similarly, you can choose which ones to retain and which ones to revert back to the national Government. However, this stand-off between the national Government and the county government does not really help. At the end of the day, it is Kenyans who are suffering. We have seen many deaths. The ones we are talking about here are the ones that have been captured by the media. We obviously know that other than road accidents which occur frequently in this country, we have many other medical conditions that go unnoticed, particularly with regard to child-birth. We know of mothers who have no access to free public facilities. They end up getting their babies at home. In the end mothers lose their babies or both lose their lives. Our private practitioners do not take in patients who do not pay.

There are two ways of looking at this - and this is why this Bill is very important. We would want to see a situation where this law also proposes serious fines and sanctions to private practitioners who refuse to give first-aid for instance, to accident victims or expectant mothers. You cannot put commercial interests first and avoid responsibility. Of course, there is what you can call the duty of care, which is not necessarily mandated by law. If you refuse to exercise the duty of care, it does not necessarily mean that you have broken the law. For instance, if you are passing by a dam and somebody is drowning, the law does not compel you to save that person, but it is upon you to exercise the duty of care to save that person. So, morality and law do not necessarily go *pari passu*. However, we want to penalise public and private institutions which refuse to exercise the duty of care regardless of whether the patient has money or not.

We also need to explore possibilities of reverting some of those functions to the national Government. On this one, we do not necessarily have to have a stand-off. We only need to comply with the Constitution. We need sanity. We need to sit within our counties and see whether our small health centers and our small hospitals are helping our people or whether we should surrender some of the functions back to the national Government and ask the national Government to co-fund them, so that the national Government can also bring down funding to the counties which will agree to surrender some of their functions.

That reminds me that when the national Government was buying some cancer equipment, we saw some governors refusing to accede or even to sign for them and yet, people are dying within their counties. It does not make sense when we play politics with people's lives. We also must realise that apart from the normal diseases that our people die of, we have others that are dying very slowly. I cannot understand, for instance, why we are so blind to the fact that we have many pharmaceuticals companies that are importing many contraceptives into our country. Contraceptives that have been banned in the West are being dumped into this country. Our mothers, women, wives and sisters are taking those contraceptives. We are talking about reproductive health here. We cannot allow the West to dump contraceptives in our country for our women to take in the name of family planning. It really does not make sense.

In fact, we should have a situation whereby any woman who wants to take contraceptives must do it under a prescription. That is why our women are developing high blood pressure, blood sugar, obesity, generally laziness and mood swings.

*(Laughter)*

Some families are breaking up because of those mood swings. Our women are just taking those pills because they have been advised by a woman in the neighbourhood that, that is what she takes and that is why she is not giving birth. Those contraceptives are not even helping because we still continue to raise our population. I would want to advise our Kenyan women that if they have those pills in their bags and they are not prescribed, they should throw them into the toilet. You can even get those babies. Who said babies are bad? We are courting a situation whereby our women are dying slowly because we are not courageous enough to refuse some of these western style family planning methods. Even the reasons that our women are given are not even convincing. We are also refusing to give information on reproductive health and to advise that you can really plan your family without necessarily taking those pills. I think we are at a situation whereby even as we pass this Health Bill, we need to give a lot of information to our citizens.

For instance, we need to look at reproductive health in our schools. The Bill that is coming to the House on reproductive health also has issues. I am saying that without anticipating debate. However, we cannot allow our children to have access to contraceptives because, in the first instance, we do not have enough practitioners who will give those prescriptions. Secondly, our African culture does not allow that.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order! Order, Hon. Member! You have only one minute. Hon. Sunjeev, I can see you on intervention.

**Hon. (Ms.) Sunjeev:** On a point of order, Hon. Temporary Deputy Speaker. Is the Member in order to suggest that contraceptives cause serious mood swings in women? Is this out

of some practical research that can substantiate that fact? I know many women who take contraceptives and they do not have mood swings.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Ol Jorok, the Nominated Member wants you to substantiate whether you have proof that contraceptives cause mood swings in women?

**Hon. Waiganjo:** Hon. Sunjeev Birdi, I have first-hand experience and, secondly, my wife stopped using contraceptives because of those mood swings. I am not talking about things that I am not fully aware of, and I am sure most other men live under such conditions. They have to contain their women when they suddenly take those pills.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): There is a point of intervention. The Member for Lugari, you are not a woman and I wonder whether you have the same intervention. What is out of order or you want to inform Hon. Waiganjo?

**Hon. Angatia:** On a point of order, Hon. Temporary Deputy Speaker. I was just seeking your guidance. The Standing Orders dictate that before you contribute on such a Motion, if you have a personal interest, you have to declare your interest before you start contributing. He has personal interest involving the wife.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member for Ol Jorok, Hon. Savula wants your declaration of your interest. Of course, this was a clarification. It was a point of order. Hon. Birdi wanted you to substantiate whether you can prove scientifically that contraceptives cause mood swings in women.

**Hon. Waiganjo:** Hon. Temporary Deputy Speaker, this debate is supposed to help the Kenyan women and men at the same time. I have informed the House that I am fully aware that those pills cause mood swings in women and my wife got those mood swings and we do not use those contraceptives any more. We plan our family without necessarily using those contraceptives. That is the long and short of it. I want to tell the Kenyan women that if they have those pills and they are not on prescription, they should throw them away and get babies if they may.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your one minute is over, so that you do not get your mood swings. The Member for Rangwe!

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Speaker. I did not know that contraceptives do what my colleague has said. This time round, I will be watching to ensure that those mood swings I see at home are not related to those other things.

However, this is a very important Bill for us at this stage as a country when we are implementing the Constitution, 2010. This Bill is arriving at a time that, as legislators, we can respond to the crisis that is affecting the health sector in this country. The state of health care in this country has deteriorated to an extent that it is becoming a crisis. The other day, my wife was telling me that there was a news item on television of a lady in Kakamega who was begging nurses to help her in a maternity case. The nurse derisively told her that her time of duty was over and she had to go home. She left and that lady died. Those things are horrendous. As Parliament, having this Bill before us, we must take time and completely respond to the crisis affecting the country now.

Kenyans deserve proper healthcare and we, as the people elected to steer policy in this country, have to ensure that ordinary Kenyans can access medi-care using this law.

I have looked at Clause 7 of this Bill, and I have seen an attempt by this Bill to curtail the Constitution. I would like to go ahead and suggest that the emergency care specified in Clause 7(3) must have mandatory capabilities that each and every licensed medical institution in this country must have. We cannot have any medical institution giving false hope to Kenyans. If you are a licensed medical institution, you must, at least, be able to give pre-hospital care. You must also be able to stabilize the health status of an individual or arrange for a referral. If you do not have an ambulance to refer a patient who is in emergency, then you do not have the right to have a licence to practise medicine in Kenya. Clause 7 must be amended when we go to the Committee of the whole House, and the provision in Clause 7(2) must be deleted completely. Every medical institution licensed in Kenya must offer emergency treatment whenever needed.

Hon. Temporary Deputy Speaker, if you look at Clause 7(4), a healthcare provider will be sanctioned for disobeying this constitutional duty. We are giving the person and the institutions a leeway to claim inability as a reason for not providing emergency care. This must be cured. If we are saying that referral is one of the emergency cares that you can give to a patient, then you cannot claim inability of whatever nature. Anybody who fails to give emergency care must be liable for the penalties indicated in Clause 4 and Clause 5.

I am also concerned that, maybe, our colleagues in the Jubilee Coalition are playing a lot of politics with healthcare. During campaigns and when in Government, the Jubilee Government said they were going to provide free maternal care. They have a Bill before Parliament that they can use to actualize their manifesto and the promises that they made to Kenyans, and there is nothing in this that says maternal care will be free in Kenya. So, it means that the Jubilee Government is just doing politics with healthcare and should desist forthwith from talking about healthcare. We have seen total deterioration of healthcare services in this country since the Jubilee Coalition took power.

Hon. Temporary Deputy Speaker, I am encouraged by the First Schedule of this Bill, where we are classifying medical facilities. I would like to insist, under Level 4 hospitals, that the note indicates that each and every constituency in this country must have, at least, one Level 4 hospital. In constituencies where such hospitals do not exist, this Bill from its enactment must insist that the national Government must provide finances to upgrade, at least, one hospital in each and every constituency to a Level 4 hospital. We cannot have a situation where a whole constituency with over 100,000 people does not even have one Level 4 hospital in this day and age. That is dereliction of duty on the part of the national Government which has been in existence all along, and it must now be compelled, as an equalization mechanism, to ensure that each and every constituency, at least, has one Level 4 hospital.

I am glad that Level 5 and Level 6 hospitals are now becoming referral hospitals, which can then make them the function of the national Government. This will respond to an extent on healthcare provision in this country. However, I would like to warn that those Level 5 hospitals are few and far between. The whole of Migori, Homa Bay, Nyamira and Kisii depend on one Level 5 hospital in Kisii. Those Level 5 hospitals must be spread so that each and every county has, at least, one to respond to medical conditions. That way, Kenyans will be able to access healthcare.

I am also glad that for the first time, traditional herbs and alternative medicine is being formalized and will, therefore, be regulated. This is a step in the right direction. It is an African

tradition that we have ignored in our attempt to be Englishmen and this law now provides a mechanism for alternative medicine to come in the realm of formal medication.

With those few remarks, I want to support this Bill and promise to bring amendments at the Committee of the whole House. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You promise is to bring amendments. That will be welcome as per our House procedures. Hon. Member for Kibra. It is a coincidence you are sitting next to each other.

**Hon. Okoth:** Hon. Temporary Deputy Speaker, I also want to say it is a timely matter to have this Bill before this House but, due to the limited time, I would like to be brief in my remarks and contribution.

The first thing that I will point out is that Kenya has international obligations which we have signed up to. I had the privilege to participate in the African Commission on Human and People's Rights, 57<sup>th</sup> Session in Banjul, Gambia and Kenya presented its report on human rights. When we think about economic and social rights that are guaranteed under Article 43 of our Constitution, access to health rights is so important, including emergency healthcare and also the highest standard of healthcare which includes reproductive health rights. This is an opportune time for us to discuss our obligations under international commitments that our Government has made, and which this House has the capacity to oversee. I hope that the Departmental Committee on Health and the Departmental Committee on Justice and Legal Affairs will find ways to bring the report that was submitted in Banjul, Gambia for thorough investigation by this House to see where the gaps are and what this House can do.

I will give you two examples of a particular concern. The first one is on the issue of reproductive healthcare. Under the Maputo Protocol, women have a right to access quality, safe and legal options for abortion among many other issues in reproductive healthcare. You will notice that in Kenya, we have this mentioned in our Constitution that abortion is legal in cases where, in the judgment of a healthcare provider or professional, it is meant to save the life of the mother. But the Ministry of Health has taken away the guidelines that are supposed to guide healthcare providers in this country in understanding their duty, care and responsibility to make sure that, where an abortion is necessary, it can be provided in a legal and safe manner to the women of Kenya. It is not happening because the guidelines were withdrawn since 2011. It is a high time this House and the Departmental Committee on Health held the Cabinet Secretary (CS) accountable to bring those regulations back. It is a commitment under the Maputo Protocol and our Constitution. There is no reason why we should put that aside. Regardless of our religious affiliations, the lives of women and mothers of this country are under jeopardy.

The second issue is the Abuja Protocol. Kenya is a signatory to it and we have ratified it. It requires that we put in 15 per cent of our national spending into healthcare. Imagine that! Fifteen per cent will transform healthcare in this country. Every little village will have a clinic. Every little clinic and dispensary will have the capacity to refer, including an ambulance. Countries like Ghana have done this. They have put aside 10 per cent. They have not even reached the 15 per cent. They have put 10 per cent in education and 10 per cent in healthcare. Healthcare and education systems in those countries have been transformed. So, we do not have to go far to look for good examples. I would like to see whether this House can make history by making a provision in this Bill to ensure that Kenyan's spending on healthcare moves from the measly 6 per cent that we are currently at to 15 per cent. It will be the best investment we will have done to our people. Next will be security. A healthy nation is a productive nation. So, I

would like to see that we meet that commitment under the Abuja Protocol and move our budget to that level.

With those few remarks I support. I will be engaging---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Member for Kibra! You still have more time but since time does not allow, you will have your six minutes to contribute unless you are through with your contribution.

**Hon. Okoth:** Not yet! I will gladly take my six minutes to give more details to the House.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You will have your six minutes in the next sitting.

Hon. Members, I must appreciate the interest. We have more requests including Hon. Joseph Kiuna, Member for Njoro, Hon. Kimani Njuguna, Member for Gatanga, Hon. Ayub Savula, Member for Lugari, and Nominated Member, Hon. Mwaura, amongst others.

Hon. Members, this debate will continue. This is a House of rules and procedures. The time being 6.30 p.m. the House stands adjourned until tomorrow, Wednesday, 11<sup>th</sup> November 2015 at 9.30 a.m.

The House rose at 6.30 p.m.