




**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT- SIXTH SESSION**

THE DEPARTMENTAL COMMITTEE ON HEALTH

ADDENDUM

**TO THE REPORT TABLED ON 28TH SEPTEMBER, 2021
ON THE CONSIDERATION OF THE HEALTH LAWS (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 2 OF 2021)**

**DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI**

 THE NATIONAL ASSEMBLY PAPERS TAID	
DATE: 10 FEB 2022	DAY: THURSDAY
TABLED BY:	VICE CHAIR HON. KUTONY B. INZOFU

FEBRUARY, 2022

*Approved
10/2/22
B. Inzofu*

TABLE OF CONTENTS

1.0	CHAIRPERSON'S FOREWORD	5
2.1	KENYA CLINICAL OFFICERS ASSOCIATION	7
2.3	THE ASSOCIATION OF PUBLIC HEALTH OFFICERS (KENYA).....	13
2.4	THE PHARMACY AND POISONS BOARD	15
2.5	THE PUBLIC HEALTH OFFICERS AND TECHNICIANS' COUNCIL	21
2.6	THE KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY.....	24
2.7	THE NATIONAL HEALTH INSURANCE FUND (NHIF)	27
2.8	KENYA MEDICAL ASSOCIATION	31
2.2	KENYA CLINICAL OFFICERS COUNCIL.....	36
2.9	KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS' UNION	37
2.10	MINISTRY OF HEALTH.....	45
2.11	KENYA HEALTHCARE FEDERATION	56
2.12	NURSES ASSOCIATIONS, MIDWIVES, UNION	61
2.13	KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL.....	64
2.14	NURSING COUNCIL OF KENYA.....	68
2.15	KENYA ASSOCIATION OF PRIVATE HOSPITALS	69
2.16	KENYA HEALTH HUMAN RESOURCE ADVISORY COUNCIL.....	70
2.17	KENYA UNION OF CLINICAL OFFICER'S	72
2.18	KENYA NATIONAL UNION OF NURSES	77
2.21	COUNCIL OF GOVERNORS.....	78
2.22	KENYA NATIONAL UNION OF MEDICAL LABORATORY OFFICERS	122
2.23	SOCIETY OF RADIOGRAPHY IN KENYA.....	135
2.24	KENYA MEDICAL SOCIAL WORKERS ASSOCIATION	136
3.0	SCHEDULE OF PROPOSED AMENDMENTS.....	137

ABBREVIATIONS AND ACRONYMS

AG	-	Attorney-General
CEO	-	Chief Executive Officer
CoG	-	Council of Governors
CS	-	Cabinet Secretary
DG	-	Director General
EAC	-	East African Community
KDA	-	Kenya Dental Association
KHPOA	-	Kenya Health Professions Oversight Authority
KMA	-	Kenya Medical Association
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
NEMA	-	National Environment Management Authority
NGO	-	Non- Governmental Organization
NHIF	-	National Health Insurance Fund
PS	-	Principal Secretary
PSC	-	Public Service Commission

ANNEXURES

- A. Signed list of Members who attended the sitting which considered and adopted the report**
- B. Print media advertisement of 5th November, 2021 on public participation**
- ~~C. Minutes of the Committee sittings on consideration of the Bill and adoption of report~~**
- D. Speaker's Communication of the Constitutionality of and Sufficiency of Public Participation during consideration of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021) By the Departmental Committee on Health.**
- E. Speaker's Communication on the import of the Judgement of the Court of Appeal in Civil Appeal No. E084 of 2021 on the Legislative function of the National Assembly in respect of the amendments made to section 3 and 4 of the Kenya Medical Supplies Authority Act as contained in the Health Laws (Amendment) Act, No. 5 of 2019.**

1.0

CHAIRPERSON'S FOREWORD

The Health Laws (Amendment) Bill (*National Assembly Bill No. 2 of 2021*) was published on 1st February, 2021, underwent First Reading on 30th March, 2021 and thereafter committed to the Departmental Committee on Health for consideration and reporting to the House.

In line with the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee placed print media advertisement on 11th March, 2021 requesting for memoranda on the Bill from members of the public and stakeholders. The Committee received thirty-five (35) memoranda. The Committee held six (6) meetings both in-house and with different stakeholders where it received submissions and considered them. The Committee considered and adopted its report on 29th September 2021.

However, during deliberations on the Floor of the House it was noted that the Committee did not expressly indicate how it considered the submissions it received from the public. It was also noted that the Committee did not provide reasons either in agreement or disagreement with the submissions and that the conduct of public participation on the Bill did not meet the threshold required by Article 118 of the Constitution and Standing Order 127.

Consequently on 21st October, 2021, the Honorable Speaker directed the Committee to conduct a second round of public participation to afford members of the public and other critical stakeholders more time to submit their views and recommendations, if any, on the said Bill. The Honourable Speaker further directed that an addendum to the Report be tabled upon the conclusion of that process. Accordingly, the National Assembly advertised, for the second time, in the local dailies on 5th November, 2021, requesting the general public to submit their views on the Health Laws (Amendment) Bill (*National Assembly Bill No. 2 of 2021*).

Pursuant to the directive of the Honourable Speaker made on 21st October, 2021 and the subsequent advert of 5th November, 2021, the Committee invited members of the public and relevant stakeholders to a physical meeting on 16th November, 2021 held at Ole Sereni Hotel, Nairobi. Thereafter, the Committee held two sittings on 27th January and 1st February, 2022 where it considered the stakeholders' submissions and adopted the addendum to the Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings on consideration of the Bill. The Committee further wishes to thank all stakeholders who submitted comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made valuable contribution towards the preparation and production of this report.

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House an addendum to the report tabled on 28th September, 2021 on the consideration of the Health Laws (Amendment) Bill (*National Assembly Bill No. 2 of 2021*).

Hon. Sabina Chege, MP
Chairperson, Departmental Committee on Health

2.0 SUBMISSIONS ON HEALTH LAWS (AMENDMENT) (*NATIONAL ASSEMBLY BILL NO. 2 OF 2021*) BILL

This addendum contains submissions made during the public participation exercise conducted on Tuesday 16th November, 2021 at Ole Sereni Hotel, Nairobi. The Committee received memoranda from the following:

1. Ministry of Health
2. Council of Governors
3. Moi Teaching and Referral Hospital
4. Kenya Clinical Officers Association
5. Kenya Clinical Officers Council
6. The Association of Public Health Officers (Kenya)
7. The Pharmacy and Poisons Board
8. The Public Health Officers And Technicians' Council
9. The Kenya Health Professions Oversight Authority
10. The National Health Insurance Fund
11. Kenya Medical Association
12. Kenya Medical Practitioners Pharmacists And Dentists' Union
13. Kenya Healthcare Federation
14. Nurses Associations, Midwives, Union
15. Kenya Medical Practitioners And Dentists Council
16. Nursing Council of Kenya
17. Kenya Association of Private Hospitals
18. Kenya Health Human Resource Advisory Council
19. Kenya Union of Clinical Officer's
20. Kenya National Union of Nurses
21. Kenya National Union of Medical Laboratory Officers
22. Society of Radiography In Kenya
23. Kenya Medical Social Workers Association
24. Oral Health Association
25. Kenya Medical Laboratory Technicians And Technologists Board
26. Kenya Association of Health Administrators
27. Association of Kenya Medical Laboratory Scientific Officers
28. Kenya Medical Research Institute
29. Pharmaceutical Society of Kenya
30. Kenya Society of Physiotherapists
31. Kenya Nutritionists & Dieticians Institute
32. Association of Kenya Medical Laboratory Assessors
33. Clinical Officers Council
34. National Spinal Injury Referral Hospital
35. Association of Medical Record officers-Kenya
36. Kenya Dental Association
37. Lab Medicine Society Of Kenya

2.1 KENYA CLINICAL OFFICERS ASSOCIATION

The Kenya Clinical Officers Association appeared before the Committee on Tuesday 16th November, 2021. In their submissions, they proposed amendments to the Clinical Officers (Training, Registration, and Licensing) Act No. 20 of 2017, Kenya Medical Training College Act and Health Act, 2017 as follows-

Clinical Officers (Training, Registration, and Licensing) Act No. 20 of 2017

Section 2

1. Retain the definition of Kenya Clinical Officers Association and add the definition-
Director Clinical Services means a Clinical Officer serving in the position of Director Clinical Services or its equivalent and registered under this Act

Justification

To recognize Kenya Clinical Officers Association

Committee Observation

The Committee agreed to the proposal since the Association nominates a member to the Council.

2. New definition-

Of Specialized Clinical Services to mean the practice of Clinical Medicine by specialized Clinical Officers offering specialized services or consultancy in accordance with the Act

Justification

To provide for and acknowledge the specialized clinical medicine practitioners.

Committee Observation

The Committee rejected the proposal since clinical services includes both general and specialized clinical services.

Section 4(1)

3. To retain the composition of the Clinical Officers Council (as provided in Act 20 of 2017 revised 2019) with an amendment which shall now consist of the following persons—
 - (a) A chairperson appointed by the Cabinet Secretary and who shall have—
 - (i) A relevant Bachelors' degree from a recognized university;
 - (ii) At least ten years' relevant experience;
 - (iii) Be registered as a Clinical Officer under this Act
 - (b) The Director General for Health or his or her designated representative;
 - (c) Delete the Chief Clinical Officer" and replace with "-a Clinical Officer serving in the position of Director Clinical Services or its equivalent and registered under this Act."

- (d) One Clinical Officer elected by members of faculty of Clinical Medicine from Kenya Medical Training College;
 - (e) Delete one clinical officer representing the Kenya Clinical Officers Association who shall be nominated by the Association and appointed by the Cabinet Secretary and replaced with: The Chairperson of Kenya Clinical Officers Association.
 - ~~(f) One clinical officer representing universities training Clinical Officers, elected by the teaching staff from among their members;~~
 - (g) The registrar who shall be the CEO of the council and an ex-officio member and secretary to the Council;
 - (h) Two clinical officers, one in public practice and the other in private practice from each gender nominated by the Kenya Clinical Officers Association;
 - (i) One person with knowledge and expertise in finance or audit registered by the Institute of Certified Public Accountants Kenya (ICPAK) appointed by the Cabinet Secretary; and
- One person representing the public nominated by consumer organisation and appointed by the Cabinet Secretary.

Justification

- a. Inclusion of the Principal Secretary of Health whom the council reports to negates the council's core mandate of advising the Ministry on the training and practice of clinical officers.
- b. It also deprives the council the technical advice from the Director General.
- c. Including a Clinical Officer serving in the position of Director Clinical Services or its equivalent will provide the council with vital technical policy information necessary for the delivery of its functions.
- d. The inclusion of the Director of Kenya Medical Training College which is the main trainer of clinical officers creates a conflict of interest or undue influence on the regulatory body. However, the KMTC representative from the faculty of Medicine and Surgery should be retained.
- e. Self-regulation is the best practice for any profession globally hence the council should be allowed to continue self-regulating.

Committee Observation

The Committee agreed to retain the qualifications of the Chairperson and to include the Director General for Health in the Council, as well as to include more members having the knowledge and expertise in clinical medicine.

Section 4(2)

4. Delete section 4(2) and substitute therefor the following subsection

“All appointments shall take into consideration gender, regional balance, disability and the mix of skills and competencies required for the achievement of the Council's goals.”

Justification

This is to provide a transparent process to elect and appoint Council members and avoid undue interference from the Kenya Medical Training College.

Committee Observation

The Committee agreed to the proposal as it seeks to ensure that appointments shall be made taking into consideration the gender, ethnicity, profession and regional balance.

Section 4(3)

5. Delete section 4(3) and substitute therefor with the following subsection “A person appointed as a member of the council under subsections 1(a), (d), (e), (f), (h), (i) and (j) of this section shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years.”

Justification

There is need to include more subsections that apply to this section, that is 1(a), (d), (f), and (i).

Committee Observation

The Committee agreed to the proposal to set a clear tenure of the Board members.

Section 4(4)

6. Delete section 4(4) and substitute therefor the following subsection
“All appointments to be gazetted.”

Justification

To provide for the gazettement requirement.

This is intended to cure a situation where the Ministry of Health fails to gazette the council members

Committee Observation

The Committee rejected the proposal since the operationalization of the appointments take effect upon gazette by the Cabinet Secretary.

New section 4(5)

7. Delete section 4(5) and substitute therefor the following subsection:

“4(5) The Chairperson shall preside all meetings of the Council but in the absence of the Chairperson the members present shall appoint one of their members to preside at the meeting.”

Justification

To ensure that meetings can be held in the absence of the Chairperson.

Committee Observation

The Committee rejected the proposal since the provisions on the conduct of meetings of the Council are contained in the First Schedule to the Act.

Section 4(6)

8. Delete section 4(6) and substitute therefor the following subsection:

Delete 4(6) Substitute, therefor “a person appointed as a member of the council under subsection 1(a), (d), (e), (f), (h), (i) may cease to be a member of the council

(a) at any time, the member resigns from office by giving notice, in writing to the President or Cabinet Secretary;

(b) has been absent from three consecutive meetings of the council without permission of the chairperson;

(c) is convicted of an offense

(d) Prolonged physical or mental illness from performing his duties as a member of the council.

Justification

Amendment to include more applicable subsections.

Committee Observation

The Committee agreed to the proposal to set clear circumstances in which a member cease to be a member of the Board.

New provision

9. Delete the new section 8(a)

Justification

The proposed roles are being carried out by the Registrar who is the Chief Executive Officer and the Secretary to the Council.

Committee Observation

The Committee rejected the proposal since the functions of the Corporation Secretary are clear and distinct from the roles of the Chief Executive Officer.

Section 20 (5), (6), and (7)

10. Delete s20(5) and substitute therefor the following

“The council shall inspect, register, license, and accredit medical centres, medical clinics, and hospitals for private practice by clinical officers.

Delete s.20(6) and substitute therefore with the following subsection

“(6) No premises shall be used for private practice unless such premises are inspected, registered, licensed and accredited by the council.”

Delete S 20(7) and substitute therefore with the following subsection “The initial inspection for licensing shall be conducted by a joint inspection team.”

Justification

To provide for accreditation of facilities.

Committee Observation

The Committee rejected the proposal because under Standing Order 133(5), the proposal deals with a different subject matter and unduly expands the Bill.

Section 20(9)(e)

11. Delete S.20(9)(e) and substitute therefor with the following subsection

(9)e “Perform procedures and provide specialized services as per their scope of training .”

Justification

There are currently 18 specialties within Clinical Medicine which over the years have increased coverage and access to specialized, quality, and affordable health services.

Committee Observation

The Committee rejected the proposal because under Standing Order 133(5), the proposal deals with a different subject matter and unduly expands the Bill.

Section 24(2)

12. Concur with the proposed changes

Committee Observation

The Committee rejected the proposal and recommended to set the quorum for the conduct of meetings of the Council at five members, since the Council will be comprised of nine members.

First Schedule Paragraph 1(5)

13. No Proposal

Kenya Medical Training College Act

Section 9(1)(e)

14. Retain subsection e “The Chief nursing officer insert (l) after (k);

(l) a clinical officer serving in the position of the director of Clinical Services or its equivalent.

Justification

a. ~~To ensure training standards are maintained and adhered to.~~

b. The quality of training in KMTC has been an issue of concern for the Ministry lately due to non-compliance to laid standards.

c. Clinical medicine and nursing are the two signature programs for KMTC.

Committee Observation

The Committee rejected the proposal and recommended to delete the proposed amendment in the Bill, so as to ensure that the Director General for health is retained in the membership of the Board of Directors of the Kenya Medical Training College.

Health Act, 2017

Section 33(2)

15. Delete section 33(2) and substitute therefor the following new subsection—

(2) A person shall be qualified to be appointed as the Chief Executive Officer to the Authority if the person—

(a) is a health professional and possesses at least a degree or its equivalent from a university recognized in Kenya;

(b) has at least ten years’ experience at management level; and

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

Justification

The proposal is progressive and shall allow other professionals with relevant qualifications to compete. It will also cure the discriminative provisions in the original document.

Committee Observation

The Committee rejected the proposal since the regulation of human resource within the health sector does not need to be headed by a health professional.

First Schedule on the qualifications of the in-charge of Level 4, 5 and 6 hospitals

16. Delete “holds a Master’s degree in medicine, law, business, management, physical science, social sciences or any other relevant field,”

And substitute therefor with the following subsection “is a registered health professional who holds a master’s degree in Medicine, Health System Management, Law, Business Management, Physical sciences, Social Sciences or any other relevant field.”

Justification

Opening Management of health facilities to non-health professionals will negatively impact service delivery for they lack the technical skills necessary for sound decision making.

Committee Observation

The Committee agreed with the proposal so as to ensure that the persons in charge of the various levels of health facilities shall be only those within the medical profession, so as to ensure efficient management and administration of public health services.

Section 18

17. Introduce item (vi) immediately after (v) to read:

(vi) Clinical services

Justification

The lack of a Directorate for Clinical Services to advise the Director-General on clinical services has deprived the Ministry of important information necessary for policymaking.

Committee Observation

The Committee rejected the proposal since in terms of Standing Order 133(5), the proposed amendment deals with a different subject matter that is not contained in the Bill.

2.3 THE ASSOCIATION OF PUBLIC HEALTH OFFICERS (KENYA)

The Association of Public Health Officers (Kenya) appeared before the Committee on Tuesday 16th November, 2021. In their submissions, they proposed amendments to the Public Health Officers, Training, Registration and Licensing Act, No 12 of 2013, NHIF Act, No 9 of 1999, Tobacco Control Act, 2007 and Health Act, 2017, No 21 of 2017 as follows-

Public Health Officers, Training, Registration and Licensing Act**Section 3(3)(h)**

18. Let the professionals regulate themselves as they have the technical competence to oversee compliance of health workers in their practice and training.

Justification

The other nominees namely, the representative of the Attorney General, the representative of the Permanent Secretary of Health, and others may bring other qualifications other than public health and can be sourced when required.

Committee Observation

The Committee rejected the proposal and recommended the reconstitution of the Council to include members having the necessary knowledge and expertise in public health which is relevant to fulfill the objects and functions of the Board.

NHIF Act, No 9 of 1999.

Section 4

19. Representatives in the board of NHIF should be nominees of or appointed by joint health workers on a rotational basis.

Justification

It would be discriminatory and unconstitutional to neglect other cadres who have the necessary competencies.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Tobacco Control Act, 2007

Section 5

20. The Tobacco Control Act should be reconstituted in line with Mwongozo Code. It should however retain the key sectors for example Health, Agriculture, etc.
Add a representative from the Association of Public Health Officers of Kenya (APHOK).

Justification

A representative to be nominated from APHOK as they represent the public health officers and technicians who are the field enforcers of the Tobacco Control Act.

It is important to make the board more geared to the needs of the public as opposed to the government.

Committee Observation

The Committee agreed to the proposal to have the representation of public health officers in the Board, as well as to include persons having relevant expertise and representatives of the relevant stakeholders.

First Schedule: Levels 4, 5 and 6.

21. The position is to be subjected to a competitive process open to all qualified health professionals with requisite managerial competence.

Justification

The proposal seeks to promote fairness.

Committee Observation

The Committee agreed to the proposal to retain the health professionals to be in charge of public health facilities.

Health Act, 2017. No 21 of 2017.**Section 49**

22. Remove the qualification that limits the Chief Executive Officer (C.E.O) to be a medical practitioner and substitute it with the C.E.O to be a health professional with a degree in a health-related field and a masters in a relevant health science field.

Justification

Limiting the qualifications of the C.E.O to the practice of medicine is discriminatory to other health professionals.

Committee Observation

The Committee rejected the proposal since the Bill provides that the Chief Executive Officer shall possess a degree from a university recognized in Kenya, without specifying that the degree must be in the health profession.

2.4 THE PHARMACY AND POISONS BOARD

The Pharmacy and Poisons Board appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Pharmacy and Poisons Act, Cap 244 and the Medical Laboratory Technicians and Technologists Act No. 10 of 1999 as follows-

Pharmacy and Poisons Act, Cap 244**Clause 3**

23. Clause 3(1) should be amended by—

Amending subsection (a) by inserting the qualifications of the Chairperson

- (i) Be a registered pharmacist of good standing with a degree in Pharmacy; and
- (ii) Have at least ten years of experience in the pharmaceutical sector.

Deleting subsection (d) and replacing it with-

- (d) Director of pharmaceutical services

Deleting subsection (c) and subsection (e)

Deleting subsection (f)(i), (ii), and (iii) and replacing it with-

- (f)appointed by the Cabinet Secretary by virtue of their knowledge or expertise to represent-

- i) community pharmacy
- ii) industrial pharmacy
- iii) Hospital pharmacy
- iv) Pharmacy training institutions

Justification

- a. To comply with the limits set in the *Mwongozo* to have a maximum of 9 members in the Board.
- b. Pharmacy and its regulation is complex and requires a Chairperson and members with the technical knowhow to be able to offer strategic direction to the organization
- c. The office of the Chief Pharmacist is now known as Directorate of pharmaceutical services.
- d. To ensure the Board has members with relevant qualifications and experience for the achievement of the mandate of the PPB.

Committee Observation

The Committee agreed with the proposal to set the qualifications for the chairperson, as well as to have persons with the relevant knowledge and expertise in pharmacy within the Board.

Clause 3B

24. Delete this amendment

Justification

The National Quality Control Laboratory is a Directorate under the Pharmacy and Poisons Board.

The amendment seeks to comply with international best practices proposed by the World Health Organization (WHO) and the African Union (AU) Model Law on Regulation of Medical Products and Health Technologies by proposing that the National Quality Control Laboratory (NQCL) operates as a testing agency of the Pharmacy and Poisons Board (PPB) in order to facilitate adequate regulation.

Committee Observation

The Committee rejected the proposal since a deletion of section 3B would amount to the deletion of the functions of the Pharmacy and Poisons Board.

New Clause

25. Insert the following new amendment immediately after the proposed amendment to section 3—

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

- a) suing and being sued;
- b) acquiring, holding and disposing of property; and
- c) borrowing and lending money.

Justification

Introducing the corporate nature of the Board ensures continuous indefinite succession of the Pharmacy and Poisons Board until otherwise dissolved by Parliament.

Committee Observation

The Committee agreed to the proposal providing for the corporate status of the Board to ensure continuity in the functions of the Pharmacy and Poisons Board.

New Clause

26. Section 3B (2) (k) of the Pharmacy and Poisons Act, Cap 244 is amended by inserting the following words-

...conduct laboratory testing of health products and technologies and issue certificates of analysis.

Justification

To provide for the board's function to conduct laboratory testing and issuance of certificates of analysis to align with the Health Act, 2017.

Committee Observation

The Committee rejected the proposal since the functions of the Board are provided in the Act.

Section 35C

27. Delete the proposed amendments to section 35C

Justification

A single national medicines regulatory agency with an inspection and laboratory testing component is in line with global best practices and would thus be considered reasonable in the Kenyan context.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35D

28. Delete the proposed amendments to section 35D

Justification

The practice world over is such that the national medicines regulatory authorities have a quality control facility as part and parcel of the authority.

Countries in the European Economic Area (EEA) and European Union (EU), UK, Australia, USA, Canada, Japan, among others have quality control and inspection departments domiciled in the medicine's regulatory authority.

Regionally, the quality control laboratory is a department of the Regulatory authority that is the National Drug Authority of Uganda (NDA) and the Tanzania Medicines and Drugs Authority (TMDA).

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35E

29. Delete the proposed amendments

Justification

The practice world over is such that the national medicines regulatory authorities have a quality control facility as part and parcel of the authority. Countries in the European Economic Area (EEA) and European Union (EU), UK, Australia, USA, Canada, Japan, among others have quality control and inspection departments domiciled in the medicine's regulatory authority.

Regionally, the quality control laboratory is a department of the Regulatory authority that is the National Drug Authority of Uganda (NDA) and the Tanzania Medicines and Drugs Authority (TMDA).

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35F

30. Delete the proposed amendments to section 35F.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35G

31. Deleting the proposed amendments to section 35G.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35H

32. Deleting the proposed amendments to section 35H.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35I

33. Deleting the proposed amendments to section 35I.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35J

34. Deleting the proposed amendments to section 35J.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35K

35. Deleting the proposed amendments to section 35K.

Committee Observation

The Committee agreed to the amendment to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

New Clause

36. Insert the following transitional provisions-

(1) In this Section-

- (a) “effective date” means the day upon which this Act comes into operation; and
- (b) “Laboratory” means the National Drug Quality Control Laboratory established by section 35D of the Act;
- (2) On the effective date, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the Laboratory, shall by virtue of this subsection, vest in the Board.
-
- (3) On the effective date, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the Laboratory shall, by virtue of this subsection, be deemed to be vested in, imposed on or enforceable against the Board.
- (4) On the effective date, any staff employed by the National Quality Control Laboratory shall be deemed to be an employee of the Pharmacy and Poisons Board.
- (5) The Board of Management existing before the effective date shall be dissolved and any appointments thereof revoked by Legal Notice.
- (6) The person who immediately before the effective date occupies the office of the Director appointed by the Board of Management shall serve as head of a Directorate as determined by the Pharmacy and Poisons Board.
- (7) Any reference in any written law or in any document or instrument to the Laboratory shall on and after the appointed day, be construed to be a reference to the Board.

The annual estimates of the Laboratory for the financial year in which the appointed day occurs shall be deemed to be part of the annual estimates of the Board for the remainder of that financial year but such estimates may be varied by the Board in such a manner as the Cabinet Secretary may approve.

Justification

To make provision for the transitional arrangements in view of the merger of the Board and the NQCL.

Committee Observation

The Committee rejected the proposal since the Committee recommended the retention of the National Quality Control Laboratory as a body corporate.

The Medical Laboratory Technicians and Technologists Act No. 10 of 1999

Section 25(2)

37. Proposed amendments.

Justification

- a. It is important to note that in framing the right to health, the Kenyan Constitution under Article 43(1) adopted the right to the highest attainable standard of health.
- b. A unified health system has been envisaged by the law and policy documents, more specifically the mother law, Health Act, 2017.
- c. Further, WHO recommends that in essence, governments are encouraged to follow the growing movement towards harmonized regulatory systems because a proliferation of different national regulations increases costs, hinders access to health care technologies, and can even unwittingly jeopardize the safety of the patient.
- d. The Pharmacy and Poisons Board is established under the Pharmacy and Poisons Act (Cap 244) as the national medicines regulatory authority in Kenya mandated to protect the health of the public by regulating the profession of pharmacy and ensuring the safety, quality and efficacy of health products and health technologies.
- e. The Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB) is established by the Medical Laboratory Technicians and Technologists Act No. 10 of 1999. The object and purpose for which the Board is established is to exercise general supervision and control over the training, business, practice and employment of laboratory technicians and technologists in Kenya and to advise the Government in relations to all aspects thereof.
- f. The PPB is responsible for the regulation of health products and technologies, as stipulated under section 3B of the Pharmacy and Poisons Act.
- g. The KMLTTB has continuously purported to be the regulator for reagents, medical devices and diagnostics including in-vitro diagnostics, which is strictly within the purview of the PPB. This has continuously led to confusion among stakeholders as to the proper regulatory body.
- h. The move by each profession seeking to regulate its own commodities ultimately results in fragmentation and double taxation thus posing a risk to the public as the PPB is unable to assure the public on safety, quality and efficacy in line with its mandate.
- i. A single national medicines regulatory agency is in line with global best practices and would thus be considered reasonable in the Kenyan context.

2.5 THE PUBLIC HEALTH OFFICERS AND TECHNICIANS' COUNCIL

The Public Health Officers and Technicians' Council appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments as follows-

Section 3(3)

38. The section should read as follows-

- (a) A non-executive chairperson appointed by the Cabinet Secretary for Health who shall be—
 - i. A public health officer of not less than ten years standing registered under this Act;

- ii. A holder of a degree from a university recognized in Kenya and is registered under the Act;
- iii. Has served in a position of Senior Management for a period of not less than six years.
- iv. Meets requirement of chapter six of the Constitution.
- v. Meets the requirement of fit and proper test.

-
- (b) The principal secretary for Health or his/her representative, appointed in writing.
 - (c) The principal secretary for the time being responsible for finance or his or her representative in writing.
 - (d) The Director General for Health or his/her representative appointed in writing.
 - (e) One registered public health officer being the Director Public Health at the National Government
 - (f) One registered public Health Technician representing the County Governments and nominated by the Council of Governors.
 - (g) One registered Public Health Officer representing training institutions nominated in a forum of approved training institutions offering public health programmes.
 - (h) One registered member being not a public officer, nominated by the professional Association by virtue of gender, disability, regional balance, and their knowledge.

Justification

- a. That the Public Health Officers/Technicians Council is a mandated professional regulatory body should exercise autonomy from direct control of the Ministry of Health who should, to a large extent, have representation as a key stakeholder but not direct control on appointments.
- b. This will permit the regulatory body to oversight all professional matters and inform independent advisory opinions to the Government.
- c. Direct influence through appointments and representation of non-professional persons would negate this function and lose oversight of this professional role and practise standards.
- d. It is also considered that a clear line should be drawn between regulatory bodies and state corporations in the composition of the board members.
- e. The recruitment of the staff members as the secretariat will add to a mix of skills and expertise. Key professionals drawn from ICT, law, economics, accounting, ICT, procurement amongst others to add value to the operations of the Council at the level of secretariat and consultancies. However, corporate governance and strategy level should be supported by professionals in the sector.
- f. In addition, the representation of the principal secretaries of Health and Finance, the Attorney General or his/her representative and one member, being not a public officer appointed by the Cabinet Secretary will add to the mix of skills and knowledge from different sectors that will inform governance and regulation.

Committee Observation

The Committee agreed to set the qualifications for the chairperson, as well as to include more persons having knowledge and expertise in public health which is necessary to fulfill the objects and functions of the Board.

Section 3(3)(h)

39. (i) The Chief Executive Officer who shall be the Registrar and an ex-officio Member of the Council

Section 37(1)(a) should read:

There is established the Disciplinary Committee of the council which shall consist of:

(a) The chairman of the committee which shall be nominated by the Council among the Disciplinary committee members.

Justification

The section proposes deletion of section 3(3) particularly the deletion of the current 3(3)(h) which proposes that the appointee is the chairman of the Disciplinary Committee. The proposal will cure the lacuna occasioned by the proposed deletion of the section.

Committee Observation

The Committee rejected the proposal since the Association of Public Health Officers is retained as contained in the Act.

Section 3A

40. Delete the proposed new section 3(A)

Justification

The roles of the corporation secretary including direct communication with the chairpersons of the Boards/Councils is a potential cause of conflict in the relationship between the governance and management levels.

Currently, there are no gaps in the execution of the functions by the Registrar/CEOs and the inclusion of this position. However, the functions of Corporation Secretary will create an overlap in the execution of functions of the Registrars/CEOs.

Further provision of guidance to the Council on their roles is a function of effective induction of the Council and, if need be, outsourcing of legal services including the utilization of the Attorney General as a Government chief legal advisor.

Further, the mode of operations of regulatory bodies, unlike state corporations, do not require the services of corporation secretaries. However, the Boards/Councils utilize the services of Legal officers at the level of secretariat. Various boards and councils outsource legal services as a cost-cutting mechanism.

Secondly, Boards/Councils generate resources from service fees with little or no funding of the exchequer. The recruitment of corporation secretary will balloon the wage bill for a function that is currently performed by Registrars/CEOs with the guidance of legal officers within the secretariat.

The creation of the position as a mandatory requirement therefore will create disharmony in the operations of Boards and Councils.

Finally, the term “Board” referred to in this section does not have a meaning in the Act and has not been defined

Committee Observation

The Committee rejected the proposal as the functions of the Corporation Secretary are specific and distinct from the functions of the Chief Executive Officer, therefore no conflict would arise between the two roles.

Section 23(2)

41. Amend section 23(2) to read as follows:

- (2) A person shall be qualified to be appointed as the Chief Executive Officer and Registrar of the Council if the person
- a) possesses at least a degree or its equivalent from a university recognized in Kenya and is registered under the Act;
 - b) has at least ten years’ professional administrative experience in matters related to public health or environmental health; and
 - c) meets the requirement of chapter six of the Constitution.

Justification

The mandate and functions of the Council are professional in nature and require technical expertise in addition to administrative experience to manage. Further, regulatory bodies, world over, are administered by professionals or experts.

Committee Observation

The Committee rejected the proposal since paragraph (b) already provides that the person must have professional experience in matters relating to public health.

2.6 THE KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY

The Kenya Health Professions Oversight Authority appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Medical Practitioners and Dentists Council Act Cap 253, Nurses Act Cap 257, The National Hospital Insurance Fund Act, 1999 (No. 9 of 1999), The National Health Insurance (Amendment) Bill 2021 and the Health Act, No. 21 of 2017 as follows-

The Medical Practitioners and Dentists Council Act Cap 253

Clause 5

42. Delete clause 5

Justification

The Council is mandated under section 4(1)(k) of the Act to register and license health institutions and not to accredit them.

Accreditation or certification of health facilities should be given to independent institutions and not specific professional regulators.

Committee Observation

The Committee rejected the proposal since section 4(1)(k) of the Act provides that one of the functions of the Kenya Medical Practitioners and Dentists Council is to register and license health institutions.

Nurses Act Cap 257

New Section

43. Propose the insertion of a new clause to require the Council to recruit and appoint a Corporation Secretary who must be a member of the Institute of Certified Public Secretaries

Justification

To effectively guide the Board

Committee Observation

The Committee agreed to the proposal since the Corporation Secretary will play the vital role of being the custodian of the resolutions of the Council.

The National Hospital Insurance Fund Act, 1998 (No. 9 of 1998)

Composition of the Board

44. Retain as captured in the National Health Insurance (Amendment) Bill, 2021

Justification

The Kenya Health Professions Oversight Authority oversees regulation of training, registration, and practices of all health professionals. It provides oversight to all statutory health profession regulators and is therefore appropriate to represent health professionals in the Board.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

The National Health Insurance (Amendment) Bill 2021

Section 5(1)

45. Proposal for the clause to be amended to read:

“in consultation with the Cabinet Secretary and relevant statutory health regulatory bodies, set the criteria for the empanelment and contracting of healthcare providers for the purposes of this Act.”

Justification

To capture standards set by respective statutory health regulatory bodies.

For inclusivity of all statutory regulatory health bodies whose professionals operate health facilities.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

New section 10A in Act No. 9 of 1998

46. To be amended as:

In consultation with the Chairperson of the Board and the Chief Executive Officer, issue notices for meetings of the Boards.

Justification

Setting the agenda for the Board will require the Corporation Secretary to consult with the Chairperson and the CEO. This is because the board papers usually emanate from the Management.

A situation where the Corporation Secretary bypasses the CEO may impact the working relationship.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital

Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

The Health Act, No. 21 of 2017

Section 49(1)

47. The Board shall appoint a Chief Executive Officer through a competitive process.

Justification

This will be in line with the Mwongozo Code of Governance.

Committee Observation

The Committee rejected the proposal since section 49(1) of the Act provides that the Public Service Commission shall appoint the Chief Executive Officer through an open and transparent process.

2.7 THE NATIONAL HEALTH INSURANCE FUND (NHIF)

The National Health Insurance Fund (NHIF) appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Nurses Act Cap 257 and the Health Laws (Amendment) Bill, 2021 as follows-

National Hospital Insurance Fund Act, No. 9 of 1998

Section 2

48. **Section 2 of the Principal Act is amended by replacing “Minister”**

Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health

Justification

Replacement of a definition in tandem with the current Constitution.

Sections 5,6,9,15,26,27,29,30,31,34,36,38 and the First and second schedules of the Act

49. Amend these sections to delete references to “Minister” and replace with “Cabinet Secretary”

Justification

Removal of an obsolete reference.

Committee Observation

The Committee noted that the amendments were carried in the National Hospital Insurance Fund (Amendment) Bill, 2021 as passed by the House on 21st December, 2021.

Section 4

50. Section 4 of the Principal Act is amended by deleting subsection (1) and substituting therefor the following new subsections-

(1) The management of the Fund shall vest in a Board which shall consist of-

(a) A Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, economics, health or business administration.

(b) The Principal Secretary in the Ministry for the time being responsible for matters relating to health or a representative in writing;

(c) The Principal Secretary in the Ministry for the time being responsible for matters relating to finance or a representative in writing;

(d) One person nominated by the Kenya Health Professions Oversight Authority;

(e) One person nominated by the Federation of Kenya Employers;

(f) One person nominated by the Central Organisation of Trade Unions;

(g) One person, not being a Governor, nominated by the Council of County Governors;

(h) Two persons, not being public officers, appointed by the Cabinet Secretary; and

(i) The Chief Executive Officer, who shall be an ex-officio member of the board.

(1A) The persons nominated or appointed under paragraphs (f) and (g) shall have knowledge and experience in matters relating to finance, insurance, information, communication and technology, law, public health, business management, audit, economics, or any other relevant field.

(1B) The nominating body under paragraph (f) shall afford equal opportunity to men and women, youth, persons with disabilities and minorities and marginalised groups and ensure regional balance.

(1C) The Cabinet Secretary responsible for matters relating to health shall publish the names of the persons nominated under paragraphs (d), (e), (f), and (g) in the Gazette.”

Justification

- a. There was a need to include more people with technical expertise in the Board in line with the recommendations of the HEFREP report (the Report of the Health Financing Reforms Expert Panel for the Transformation and Repositioning of the National Hospital Insurance Fund as a strategic purchaser of Health Services for the attainment of Universal Health Coverage by 2022).
- b. There was need to include the main regulator of health profession in Kenya (KHPOA) rather than specific health professional societies and associations.
- c. Because the AG is the principal advisor to the Government of Kenya, it is recommended that his or her representative sits on the Board. However, it was not essential as the AG could be co-opted to give the Board advice as and when necessary.

Committee Observation

The Committee rejected the amendment as the Board of the National Hospital Insurance was reconstituted as passed in the National Hospital Insurance Fund (Amendment) Bill, 2021.

Section 22A of the Health Laws (Amendment) Bill, 2021

51. Deleting this provision and providing the following in the NHIF (Amendment) Bill, 2021

An Act of Parliament to provide for the establishment of the National Health Insurance Fund; to establish the National Health Insurance Fund Management Board; to provide for mechanisms of contributions to and the payment of benefits out of the Fund; and for connected purposes.

Amendment of the objects and functions of the Board:

Section 5(1) of the Principal Act is amended as follows—

“... ”

(g) to facilitate attainment of universal health coverage with respect to health insurance;

(ga) to administer employee benefits as provided under this Act on behalf of employees in respect of their employees; and....”

Amendment to the sources of funding for NHIF

“(a) (there shall be paid) into the Fund-

- i. Contributions under section 15;
- ii. Such monies as may be appropriated by the National Assembly, for indigent and vulnerable persons;
- iii. Gifts, grants or donations;
- iv. Funds from the national government, county governments and their respective entities, or employers for the administration of employee benefits; and

Funds from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so.

Justification

- a. Universal Health Coverage is a state to be attained when all Kenyans are able to access quality health services without suffering catastrophic loss.
- b. Therefore, the Health Laws (Amendment) Bill seeking to set up a “Universal Health Coverage Scheme” does not give an accurate picture of NHIF’s role in UHC.
- c. The preferred approach is to align the entire fund towards the attainment of UHC through changing the name to National Health Insurance Fund, amending the objects and functions of the Board, the operations of the Fund and the sources of funding accessible by the Board.

Committee Observation

The Committee rejected the proposal as all amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were carried in the National Hospital Insurance Fund (Amendment) Bill, 2021 as passed by the House on 21st December, 2021.

Section 37

~~52. The Principal Act is amended by deleting section 37 and inserting the following new section-~~

37. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund.

(2) The Accounts of the Board shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

Justification

Removal of obsolete references to repealed statutes and replacing these with references to the laws that are currently in force with respect to financial management and audit of public bodies.

Committee Observation

The Committee rejected the proposal as all amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were carried in the National Hospital Insurance Fund (Amendment) Bill, 2021 as passed by the House on 21st December, 2021.

New Clause

53. The Principal Act is amended by inserting the following new section immediately after section 45-

45A. The Insurance Act shall not apply to the Fund.

Justification

This is to recognise that NHIF is a specialised organised fund.

Committee Observation

The Committee rejected the proposal as all amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were carried in the National Hospital Insurance Fund (Amendment) Bill, 2021 as passed by the House on 21st December, 2021.

Second Schedule

54. The second schedule to the Principal Act is amended –

By deleting the word “nine” appearing in sub-paragraph (4) and substituting therefor the word “five”

Justification

A quorum of nine members was too high and left the Fund at constant risk of its Board operations being paralyzed by the absence of one or two members – especially if any Board seat was unfilled by the appointing authority.

The amendment was in line with the Mwongozo Code of Governance for state corporations.

Committee Observation

The Committee rejected the proposal as all amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were carried in the National Hospital Insurance Fund (Amendment) Bill, 2021 as passed by the House on 21st December, 2021.

2.8 KENYA MEDICAL ASSOCIATION

The Kenya Medical Association appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Pharmacy and Poisons Act (CAP. 244), Medical Practitioners and Dentists Act (CAP. 253), Nurses Act (CAP. 257), National Hospital Insurance Fund Act (No. 9 of 1998), Medical Laboratory Technicians And Technologists Act (No. 10 of 1999), Tobacco Control Act (No. 4 of 2007), Nutritionists And Dieticians Act No. 18 of 2007, Cancer Prevention And Control Act (No. 15 of 2012), Public Health Officers (Training, Registration And Licensing) Act (No. 12 of 2013) and Kenya Medical Supplies Authority Act (No. 20 of 2013) as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3

55. Insert new section 3(1)(g)-

“(g) one medical practitioner nominated by Kenya Medical Association to represent prescribers of medicines and handlers of poison”

Delete 3(1)(c, d, e)

Justification

- a. To provide technical expertise.
- b. The addition of a medical practitioner to the Board is indeed essential to the functioning of the Board as such a person can provide technical expertise. However, section 3(1)(g) is an unnecessary provision as section 3(1)(e) of the Amendment Bill already provided for three pharmacists to sit on the Board a provision which the Kenya Medical Association seeks to delete.
- c. The deletion of section 3(1) (e) is not in line with the Mwongozo Code of Governance of State Corporations. As per the Mwongozo guidelines, appointment of members of the Board shall be in line with Article 27 of the Constitution as well as competency which is already captured in section 3(1)(e).

- d. Also, the deletion of section 3(1)(c) is not in line with the Mwongozo Guidelines in that one member of the Board should be a financial expert.
 - e. Overall, with the proposed deletion of sections 3(1)(c)(d)(e) is not in line with the Mwongozo Guidelines as it will result in the reduction of composition of the Board to 4 members. According to the Mwongozo Guidelines, the Board membership shall be between 7 and 9 members.
-

Committee Observation

The Committee rejected the proposal but recommended to amend the Bill to ensure that the Board is comprised of persons with knowledge and expertise in matters relating to the pharmacy profession.

Medical Practitioners and Dentists Act (CAP. 253)

Section 3A

56. Amend 3A(1)(a)- chairman appointed by President who shall be a medical or dental practitioner

3A(1)(e)- two persons of opposite gender who shall be representatives of the Kenya Medical Association

Delete 3A(b, c, d, e)

Retain section 3(A)(1)(c) and (d) as is in the current 2018 Act

Justification

- a. To provide proper technical expertise and long experience
- b. The Kenya Medical Association is the professional representative of doctors and is best placed to provide oversight to its members
- c. The role of the Attorney General in the Council is unclear
- d. A medical practitioner should replace the person with finance knowledge.
- e. Section 3(a)(1)(c)(d) in the current Act should be retained as it covers the proposed amendments to section 3A.

Committee Observation

The Committee agreed to the proposal to set qualifications for the chairperson and to remove the Attorney-General from the Board, so as to include persons with knowledge and expertise in matters relating to the medical and dental profession.

Section 4D

57. Delete

Committee Observation

The Committee rejected the proposal since the appointment of a Corporation Secretary was necessary for the custody of the Council resolutions.

Nurses Act (CAP. 257)

Section 4

58. Retain National Nurses Association of Kenya and the Progressive Nurses Association.

Justification

NNAK is the professional representative of nurses providing peer and self-regulation and is best placed to oversight its members.

Committee Observation

The Committee agreed to the proposal to retain a representative of the National Nurses Association of Kenya in the Council.

National Hospital Insurance Fund Act (No. 9 of 1998)

Section 4

59. Retain 4(1)(k) as contained in the Act- one person nominated by the Kenya Medical Association.

Delete 4(1)(g)

Justification

- a. Kenya Medical Association represents health providers and thus best placed to participate in the Board.
- b. No rationale on role of Council of Governors in the Board.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Medical Laboratory Technicians and Technologists Act (No. 10 OF 1999)

Section 2

60. Retain representation of the relevant professional association.

Justification

Providing peer and self-regulation is best placed to contribute to oversight of members.

Committee Observation

The Committee agreed to the proposal since a representative of the Association of Kenya Medical Laboratory Scientific Officers is included in the composition of the Board.

Tobacco Control Act (No. 4 of 2007)

61. Add- person nominated by KMA and person nominated by LSK.

Justification

To provide technical expertise.

Committee Observation

The Committee rejected the proposal as there is no specific role to be performed only by persons nominated by the Kenya Medical Association or the Law Society of Kenya. The recommendation by the Committee of the composition of the Board includes persons having the relevant expertise as well as representatives of the relevant stakeholders.

Nutritionists and Dieticians Act No. 18 of 2007

Section 2

62. Insert Kenya Medical Association

Justification

Providers who see the effects of nutrition on health should be represented.

Committee Observation

The Committee rejected the proposal as it is not necessary to include a member of the Kenya Medical Association in the Council of Nutritionists and Dieticians Institute. Instead the Committee recommended to include in the Council, persons having the relevant knowledge and expertise in matters relating to nutrition and dietetics.

Cancer Prevention and Control Act (No. 15 of 2012)

Section 6

63. Insert one person nominated by the Kenya Medical Association.

No justification given.

Committee Observation

The Committee agreed to the proposal since a representative of the Kenya Medical Association would have the relevant knowledge and expertise required to fulfill the objects of the Board.

Public Health Officers (Training, Registration and Licensing) Act (No. 12 of 2013)

Section 3(3)

64. Insert one person nominated by Public Health Society of Kenya.

Justification

To provide peer and self-regulation.

Committee Observation

The Committee rejected the proposal since the Cabinet Secretary shall appoint three persons, being practitioners of public health, and who shall not be public officers.

Kenya Medical Supplies Authority Act (No. 20 of 2013)

Section 5

65. Insert one person nominated by Kenya Medical Association

Justification

The end users of KEMSA supplies are providers who provide feedback and quality control.

Committee Observation

The Committee rejected the proposal since it is not necessary to include a representative of the Kenya Medical Association in the Board of the Kenya Medical Supplies Authority. The Committee instead recommended the inclusion of the Director-General for health as well as persons having experience in drug and medical supplies.

Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)

Section 4

66. Insert one person nominated by Kenya Clinical Officers Association

Insert one person nominated by Kenya Medical Association

Delete 4(1)(c)- Delete Attorney General

Justification

- a. To provide peer and self-regulation
- b. To provide expertise in oversight

Committee Observation

The Committee agreed to the proposal to retain the nomination by the Kenya Clinical Officers Association into the Council, and retained the Attorney-General in the Council for purposes of rendering legal advice.

Health Act (No. 21 of 2017)

Section 33(2)

67. 33(2)(a)- amend to provide for a degree in health from a recognized university.

Justification

A manager with a health background.

Committee Observation

The Committee rejected the proposal as it is not necessary to have a person with a medical background to head the Health Human Resource Advisory Council.

Section 49

68. Level 3 –registered health practitioner

Justification

Define registered health practitioner

Committee Observation

The Committee rejected the proposal since a health practitioner is defined in the Health Act, No. 21 of 2017.

First Schedule

69. LEVEL 4, LEVEL 5, LEVEL 6- delete “law, business, physical science, social science or any other relevant field” and replace with “is a health practitioner and holds a master’s degree in health management, public health or its equivalent”

Justification

Quality health is a prerequisite for UHC. Facilities managed by clinically trained managers provide better quality of service compared to those run by business executive with no health background.

Committee Observation

The Committee agreed to the proposal since it is necessary to ensure that the leadership of health facilities is left to persons within the health profession, for purposes of efficient administration of the health facilities.

2.2 KENYA CLINICAL OFFICERS COUNCIL

Kenya Clinical Officers Council appeared before the Committee on Tuesday 16th November, 2021. In their submissions, they proposed amendments to the NHIF Amendment Bill, 2021 as follows-

Section 4(1)

70. Add subsection (j) to read-

“(j) two persons jointly nominated by the duly registered health professional associations.”

Delete section 4(1A) and substitute therefor with the following subsection:

“(1A) The persons to be appointed under subsection (1)(a) and (i) shall be selected through: Conventional board resourcing procedures including through applications, referrals, and the industry actors.”

Justification

To clarify the appointment for the Chief Executive Officer.

To provide for the representation of health service providers.

Committee Observation

The Committee agreed to provide for the nomination of clinical officers into the Council by the Clinical Officers Association, but rejected the requirement of conventional board resourcing and referrals as this may be subject to abuse.

Section 10

71. Delete subsection 10(1) and substitute therefor with-

“10(1) There shall be the Chief Executive Officer appointed by the Cabinet Secretary whose terms and conditions of service shall be determined by the Board in consultation with the Salaries and Remuneration Commission.”

Justification

To provide clarity on the appointing authority.

Committee Observation

The Committee noted that section 10 of the Act provides for the requirement for co-operation with other organisations.

Section 32

72. In section 32(a) by inserting the following immediately after inspector “from the relevant body.”

Committee Observation

The Committee rejected the proposal since under Standing Order 133(5), the proposed new amendment deals with a different subject matter.

2.9 KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS' UNION

The Kenya Medical Practitioners Pharmacists and Dentists' Union appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Pharmacy and Poisons Act (CAP. 244), Medical Practitioners and Dentists Act (CAP. 253), Nurses Act (CAP. 257), National Hospital Insurance Fund Act (No. 9 of 1998), Medical Laboratory Technicians and Technologists Act (No. 10 of 1999), Tobacco Control Act (No. 4 of 2007), Nutritionists and Dieticians Act No. 18 of 2007, Cancer Prevention and Control Act (No. 15 of 2012), Kenya Medical Supplies Authority Act (No. 20 of 2013), Counsellors and Psychologists Act (No. 14 of 2014), Physiotherapists Act (No. 20 of 2014), Health Records and Information Managers Act (No. 15 of 2016), Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017) and Health Act (No. 21 of 2017) as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3

73.

- a. Qualifications of Chairperson to be expressly stated as per relevant field.
- b. Remove AG and replace with nominations of persons qualified to ensure professional regulation.
- c. Remove PS Finance and replace with professionals nominations persons qualified to ensure professional regulation.

Justification

- a. Prescribe qualifications of Chairperson and not leave it to discretion of President.
- b. Reduce government over involvement and autocracy by overrepresentation by different agents.
- c. Have members of the profession provide technical advisory roles including the CEO position.

Committee Observation

The Committee agreed to the proposal to set the qualifications of the Chairperson, and to include more persons having knowledge and expertise in matters relating to the pharmacy profession.

Medical Practitioners and Dentists Act (CAP. 253)

Section 3A

74.

- a. Provide express selection and appointment criteria based on merit and competency relevant to the applicable field being regulated.
- b. There is need to have clarity on the appointing authority.
- c. Replace appointments of the:
 - i) AG

- ii) DG
- iii) One person nominated by KHPOA

With members of the profession being regulated (two medical practitioners and one dentist)

Provide clear process to guide nominations, selection or election and appointment of board members.

Justification

- a. Need for clarity.
- b. AG is the government advisor and can always be consulted.
- c. DG is represented by chairperson to the board.
- d. KHPOA has no role in direct appointment into a regulatory board.
- e. Need to minimize government dominance and invasion.
- f. Representative persons are unlikely to have qualifications to serve adequately.
- g. No clear description of roles of appointees.
- h. No clear appointment criteria and process.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons having knowledge and expertise in matters relating to the medical and dental profession.

Nurses Act (CAP. 257)

Section 4

75.

- a. Provide express selection and appointment criteria based on merit and competency relevant to the applicable field being regulated.
- b. Need to have clarity on the appointing authority
- c. Remove positions of AG, KHPOA and replace with professionals from cadre being professionally regulated.

Justification

- a. Prescribe qualifications of Chairperson without leaving discretion to the President
- b. Case law prohibits appointments by President or CS. Function to be undertaken by the Public Service Commission.
- c. Attorney General is government advisor and can always be consulted.
- d. KHPOA has no role in appointment into a regulatory board.
- e. Appointments demonstrate state capture.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons having knowledge and expertise in matters relating to the nursing profession.

National Hospital Insurance Fund Act (No. 9 of 1998)

Section 4

76.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. All stakeholders with qualifications relevant to the applicable filed to be nominated.
- c. Remove AG, KHPOA and replace with KMA and KDA nomination.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Proposal to include KMA and KDA to the board to provide technical advisory role.
- c. Reduce government involvement.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Medical Laboratory Technicians and Technologists Act (No. 10 of 1999)

Section 4

77.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. ~~All stakeholders with qualifications relevant to the applicable filed to be nominated.~~
- c. Remove AG, KHPOA and replace with professionals nominations of persons being regulated.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Have members of the profession provide technical advisory role.
- c. Reduce government involvement.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons having knowledge and expertise in matters relating to the medical laboratory profession.

Tobacco Control Act (No. 4 of 2007)

Section 5

78.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. All stakeholders with qualifications relevant to the applicable field to be nominated.
- c. Remove AG, KHPOA and replace with professionals nominations of persons being regulated to ensure tobacco control and regulation.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement.

Committee Observation

The Committee agreed to the proposal, to allow for setting qualification criteria and including more relevant stakeholders as members of the Board.

Nutritionists and Dieticians Act No. 18 of 2007

Section 1

79.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. All stakeholders with qualifications relevant to the applicable field to be nominated.
- c. Remove AG, KHPOA and replace with professionals nominations of persons being regulated to ensure tobacco control and regulation.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Have members of the profession provide technical advisory role.
- c. Reduce government involvement.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the nutritionists and dieticians profession.

Cancer Prevention and Control Act (No. 15 of 2012)

Section 6

80.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. Remove AG, DG, KHPOA and replace with professionals' nomination of persons being regulated to ensure cancer control and management.
- c. Appoint representatives from PSK, KDA and Nursing Association

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement
- c. Members of the professions provide technical advisory roles in management of cancer.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters pertinent to cancer prevention and control.

Kenya Medical Supplies Authority Act (No. 20 of 2013)

Section 6

81.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
 - b. Remove AG, KHPOA and replace with professionals' nomination of persons being regulated to ensure proper medical and dental supplies are delivered.
 - c. Appoint representatives from KMA and KDA.
-

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement
- c. Members of the professions provide technical advisory roles

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to drug and medical supplies.

Counsellors and Psychologists Act (No. 14 of 2014)

Section 4

82.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. Remove AG, KHPOA, PS Finance and replace with professionals' nomination of persons being regulated to ensure professional regulation.
- c. Replace qualifications of CEO from KMTC CEO.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement
- c. Members of the profession provide technical advisory roles

Committee Observation

The Committee agreed to the proposal allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the counselors and psychologists profession.

Physiotherapists Act (No. 20 of 2014)

Section 6

83.

- a. Qualifications of Chairperson to be expressly stated as per relevant filed.
- b. Remove AG, KHPOA, PS Finance and replace with professionals' nomination of persons being regulated to ensure professional regulation.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the physiotherapy profession.

Health Records and Information Managers Act (No. 15 of 2016)

Section 7

84.

- a. Qualifications of Chairperson to be expressly stated as per relevant field.
 - b. Remove AG, KHPOA, PS Finance and replace with professionals' nomination of persons being regulated to ensure professional regulation.
-

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement
- c. Members of the professions provide technical advisory roles including the CEO position.

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the health records and information management profession.

Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)

Section 4

85.

- a. Qualifications of Chairperson to be expressly stated as per relevant field.
- b. Remove AG, KHPOA, PS Finance and replace with professionals' nomination of persons being regulated to ensure professional regulation.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
 - b. Reduce government involvement
 - c. Members of the professions provide technical advisory roles including the CEO position.
-

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the clinical officers profession.

Health Act (No. 21 of 2017)

Section 46(1)

86.

- a. Qualifications of Chairperson to be expressly stated as per relevant field.
- b. Remove DG, AG and one representative from the COG and replace with union officials of major healthcare unions- KMPDU, KUCO and KNUN persons qualified to ensure proper professional oversight.

Justification

- a. Prescribe the qualifications of the Chairperson without leaving discretion to the President.
- b. Reduce government involvement
- c. Members of the professions provide technical advisory roles

Committee Observation

The Committee agreed to the proposal to allow for setting qualification criteria and including more persons, not being public officers, having knowledge and expertise in matters relating to the health profession.

2.10 MINISTRY OF HEALTH

The Ministry of Health appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Pharmacy and Poisons Act (CAP. 244), Medical Practitioners and Dentists Act (CAP. 253), Nurses Act (CAP. 257), National Hospital Insurance Fund Act (No. 9 of 1998), Medical Laboratory Technicians and Technologists Act (No. 10 of 1999), Tobacco Control Act (No. 4 of 2007), Nutritionists and Dieticians Act No. 18 of 2007, Cancer Prevention and Control Act (No. 15 of 2012), Public Health Officers (Training, Registration and Licensing) Act (No. 12 Of 2013), Kenya Medical Supplies Authority Act (No. 20 of 2013), Counsellors and Psychologists Act (No. 14 of 2014), Physiotherapists Act (No. 20 of 2014), Health Records and Information Managers Act (No. 15 of 2016), Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017) and Health Act (No. 21 of 2017) as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3

87.

Include the Chief Pharmacist in the Board composition.

Amend s.3(1)(e) to read-

“3.(1)(e). five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) Three shall be from the pharmacy profession nominated by the Pharmaceutical Society of Kenya and the Kenya Pharmaceutical Association of whom two shall be

- pharmacists with knowledge on regulatory affairs, quality assurance and pharmaceutical development and one shall be a pharmaceutical technologist;
- (ii) One pharmacist nominated by universities in Kenya which have the power to grant a qualification which is registrable under this Act;
 - (iii) One shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field;

Amend section 3(2) to read –

“The persons appointed under subsection (1)(f) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

- a. Qualifications of the Chairperson to be left to President’s discretion.
- b. Deletion of KMPDC and NCK representatives is unprocedural.
- c. The Chief Pharmacist is the technical lead in MoH.

Committee Observation

The Committee rejected the proposal to include the Chief Pharmacist in the Board, since the Director General for health has the technical expertise which is necessary in the Board. However, the Committee agreed to the proposal to include more pharmacists in the Board.

Medical Practitioners and Dentists Act (CAP. 253)

Section 3A

88.

Include the Director General for health or his or her representative designated in writing as part of the Council.

Amend s. 3(1)(e) to read:

“five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One person who shall be a representative of universities in Kenya which have the power to grant qualification which is registrable under this Act;
- (ii) One person who shall be a representative of the Kenya Medical Association;
- (iii) One person who shall be a representative of Kenya dental Association;
- (iv) One person who shall be a representative of oral health practitioners;

- (v) One person with knowledge and expertise in finance and audit, accounting, business management, economics, law or any other relevant field;

Amend section 3(2) to read –

“The persons appointed under subsection (1)(f) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

Qualifications for position of Chairperson to be left to President’s discretion.

Committee Observation

The Committee agreed to the proposal to include the Director General for health in the Board, and also included other persons, not being public officers, who have the relevant knowledge and experience in matters relating to the medical and dental profession.

Nurses Act (CAP. 257)

Section 4

89.

Include the Director Nursing Services as well as the CEO of KMTC to the Board composition.

Amend s. 4(1)(e) to read:

““four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One person shall be a person nominated by the National Nurses Association of Kenya;
- (ii) One shall be a nurse nominated by the Kenya Progressive Nurses Association;
- (iii) One shall be a registered nurse educator actively involved in the training of nurses nominated by recognized universities in Kenya; and
- (iv) One shall be a person with a professional background in human resource management.

Amend section 4(2) to read –

“The persons appointed under subsection (1)(e) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

- a. Qualifications for Board Chairperson to be left to President's discretion.
- b. Director of Nursing Services shall be technical lead from Ministry of Health.

Committee Observation

The Committee rejected the proposal to leave out the qualifications of the chairperson, as it is necessary to have a chairperson who has the relevant knowledge and expertise in the nursing profession.

The Committee agreed to the proposal to have four persons, not being public officers, nominated by the various professional organisations, so as to ensure inclusivity.

The Committee however rejected the proposal to set timelines within which the Cabinet Secretary would nominate the persons to be nominated by the various professional associations, as this would lead to implementation challenges.

National Hospital Insurance Fund Act (No. 9 of 1998)

Section 4 (1)

90. Include the Director General for Health or a representative appointed in writing as part of the Board.

Amend s. 4(1)(h) to read:

“Two other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in finance or audit, medicine, business management, public health, economics, insurance, law or any other relevant field.”

Justification

- a. Qualifications for Chairperson at President's discretion
- b. Director General for Health plays technical health advisory role.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Medical Laboratory Technicians and Technologists Act (No. 10 of 1999)

Section 6

91. Include the Director General of Health or a representative appointed in writing.

Amend s. 6(1)(e) to read:

““five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One shall be a pathologist nominated by the Kenya Medical Association;
- (ii) Two shall be from the medical laboratory profession nominated by the Association of Kenya Medical Laboratory Scientific Officers of whom one shall be a laboratory technologist and one shall be a laboratory technician;
- (iii) One registered laboratory technologist nominated by a university recognized in Kenya offering medical laboratory sciences.

Amend section 6(2) to read –

“The persons appointed under subsection (1)(e) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

- a. Director General to play technical health advisory role
- b. Proposes pathologist to be drawn from KMA and not KMPDC to avoid creation of super-boards/councils.

Committee Observation

The Committee agreed to include the Director General for health as well as a representative of the Kenya Medical Association, as they would be persons having the relevant knowledge and expertise in matters related to the medical laboratory profession.

The Committee however rejected the proposal to set timelines within which the Cabinet Secretary would nominate the persons to be nominated by the various professional associations, as this would lead to implementation challenges.

Tobacco Control Act (No. 4 of 2007)

Section 5(1)

92. Include the PS responsible for matters of Interior and Coordination of National government or his representative as well as the Director General for Health as part of the Board composition.

Amend subsection (1)(f) to read:

“four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

(i) shall be a representative of the business community in Kenya to be nominated by the Kenya National Chamber of Commerce and Industry;

~~(ii) One representative of Consumer Federation of Kenya;~~

(iii) One representative from the NGO Board;

(iv) One representative from NEMA

Justification

Director General for Health has the necessary technical expertise.

Committee Observation

The Committee agreed to the proposal to include the various representations into the Board, so as to ensure that the Board shall be comprised of persons having the relevant expertise as well as representatives of the relevant stakeholders.

Nutritionists and Dieticians Act No. 18 of 2007

Section 5

93. Include the Director General for health as part of the Board.

Amend s. 5(1)(e) to read:

““five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

(i) Two officers shall be from the nutrition and diabetics profession of good standing nominated from the Nutrition Association of Kenya;

(ii) One shall be a registered nutrition and dietetics educator actively involved in the training of nutrition and dietetics professionals nominated by recognized universities or colleges in Kenya;

~~(iii) one shall be a representative of the Consumer Federation of Kenya, who shall be a holder of at least a diploma in nutrition studies;~~

(iv) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, human resource, law or any other relevant field.

Amend subsection (2) to read:

“The persons appointed under subsection (1)(e) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

Include the Director General to provide technical expertise.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Council of the Nutritionists and Dieticians Institute, since the persons proposed would have the relevant knowledge and expertise in matters relating to the nutritionists and dieticians profession.

The Committee however rejected the proposal to set timelines within which the Cabinet Secretary would nominate the persons to be nominated by the various professional associations, as this would lead to implementation challenges.

Cancer Prevention and Control Act (No. 15 of 2012)**Section 6**

94. Include the Director General for health or his or her representative, appointed in writing as part of the Board.

Amend s.6(1)(f) to read:

“five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One shall be a person nominated by the Kenya Medical Association;
- (ii) One person not being a Governor, nominated by the Council of Governors;
- (iii) one shall be a person nominated by the registered cancer associations in such manner as may be prescribed;
- (iv) one shall be a person with knowledge and experience in matters relating to finance or audit, medicine, pharmacy, medical research, business management, public health, economics, law or any other relevant field.

Justification

No justification was provided.

Committee Observation

The Committee agreed to the proposal to include the various representatives in the Cancer Prevention and Control Board, since the persons proposed would have the relevant knowledge and expertise required in the prevention and control of cancer.

Public Health Officers (Training, Registration and Licensing) Act (No. 12 of 2013)**Section 3**

95. Include the Principal Secretary for the time being responsible for matters relating to Labour and Social Protection or his or her representative appointed in writing.

Include the Director General for Health or his representative

Include a nominee by the Council of Governors

Amend s.3(3)(e) to read-

~~“three other persons, not being public officers, of whom three shall be practitioners of~~
public health, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance and their knowledge and experience in matters relating to finance or audit, public health, business management, accounting, economics, law or any other relevant field.

Justification

Include the various representatives to provide technical expertise.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Council, since the persons proposed would have the relevant knowledge and expertise required in the public health profession.

Kenya Medical Supplies Authority Act (No. 20 of 2013)

Section 4

96. Include the Chief Pharmacist in the Board

Amend s. 5(1)(f) to read-

“five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

(i) One person not being a Governor, nominated by the Council of Governors;

(iii) two shall be pharmacists having experience in drug and medical supplies, nominated from the Pharmaceutical Society of Kenya;

(iv) one shall be a pharmaceutical technologist having experience in drug and medical supplies, ~~nominated from the Kenya Pharmaceutical Association; and~~

(v) one shall be a person with knowledge and experience in matters relating to finance or audit, supply management, business management, economics, law or any other relevant fields.

Justification

No justification was provided.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Board, since the persons proposed would have the relevant knowledge and expertise required in drug and medical supplies.

Counsellors and Psychologists Act (No. 14 of 2014)

Section 4

97. Include the Director General of Health as part of the Board

Amend s. 4(1)(e) to read as-

“four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One shall be a representative of universities in Kenya which have the power to grant a qualification which is registrable under this Act;
 - (ii) two shall be from the counselling and psychology profession of good standing nominated from their respective association or society, of whom one shall be a counsellor and one shall be a psychologist; and
 - (iii) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant fields.
- (v) the CEO of KMTC or his representative

Justification

The Ministry proposes the inclusion of a relevant representative from the universities to complement KMTC representation.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Board, since the persons proposed would have the relevant knowledge and expertise in matters relating to the counselors and psychologists profession.

Physiotherapists Act (No. 20 of 2014)

Section 6

98. Include the Director General of Health as part of the Board

Amend s. 6(1)(e) to read as-

“five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) One physiotherapist who shall be a representative of universities in Kenya which have the power to grant a qualification registerable under this Act;

- (ii) one shall be a person with disability nominated by the National Council of Persons with Disability;
 - (iii) two shall be from the physiotherapy profession of good standing nominated by their respective association or society;
 - (iv) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field.
-

Justification

Ministry proposes exclusion of Director of KMTC and the representative of Council of Governors due to the DG being present to provide technical expertise

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Council, since the persons proposed would have the relevant knowledge and expertise in matters relating to the physiotherapy profession.

Health Records and Information Managers Act (No. 15 of 2016)

Section 7

99.

Include the Director General of Health as part of the Board

Amend s. 7(1)(e) to read as-

“four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) Two shall be representatives of universities and colleges offering training in health records and information technology, health informatics and digital health;
 - (ii) Two shall be from the health records and information management profession of good standing nominated from the Association of Medical Records Officers;
 - (iii) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field.
-

Justification

Ministry proposes exclusion of Director of KMTC and the representative of Council of Governors due to the DG being present to provide technical expertise.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Board, since the persons proposed would have the relevant knowledge and expertise in matters relating to health records and information management.

Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)

Section 4

100.

Include the PS responsible for finance matters or his representative

Include the Chief Clinical Officer

Amend s. 4(1)(e) to read-

“four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom-

- (i) Two shall be clinical officers nominated by Kenya Clinical Officers Association;
- (ii) One shall be a clinical medicine educator actively involved in the training of clinical officers nominated by recognized universities in Kenya which have the power to grant a qualification which is registrable;
- (iii) Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.
- (iv) one shall be a person with a professional background in with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field.

Justification

The Ministry proposes exclusion of Director of KMTC and the representative of Council of Governors due to the DG being present to provide technical expertise.

Committee Observation

The Committee agreed to the proposal to include the various representatives into the Council, since the persons proposed would have the relevant knowledge and expertise in matters relating to the clinical officers profession.

Health Act (No. 21 of 2017)

Section 46

Add a new paragraph-

101. The persons appointed under subsection (1)(f) from Professional associations and institutions of higher learning shall have a period of 14 days to nominate 3 representatives for consideration by the Cabinet Secretary for appointment, failure to which the Cabinet

Secretary shall nominate the representatives as guided by the relevant law from the respective profession without further consultation.

Justification

No justification provided.

Committee Observation

The Committee rejected the proposal to set timelines within which the Cabinet Secretary would nominate the persons to be nominated by the various professional associations, as this would lead to implementation challenges.

2.11 KENYA HEALTHCARE FEDERATION

The Kenya Healthcare Federation appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Pharmacy and Poisons Act (CAP. 244), Medical Practitioners and Dentists Act (CAP. 253), Nurses Act (CAP. 257), Medical Laboratory Technicians and Technologists Act (No. 10 of 1999), Nutritionists and Dieticians Act No. 18 of 2007, Cancer Prevention and Control Act (No. 15 of 2012), Public Health Officers (Training, Registration and Licensing) Act (No. 12 Of 2013), Counsellors and Psychologists Act (No. 14 of 2014), Health Records and Information Managers Act (No. 15 of 2016) and Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017) as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3(1)

102. (e) four other persons, not being public officers from the pharmacy profession, two shall be pharmacists and two shall be pharmaceutical technologists whom shall demonstrate good standing from Pharmaceutical Society of Kenya and Kenya Pharmaceutical Association respectively, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to accounting, pharmacy, business management, public health, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the association/society and avoid conditional nominations.

Committee Observation

The committee agreed to the amendment since it seeks to ensure that the Board shall be comprised of persons with knowledge and expertise in matters related to the pharmacy profession.

**Medical Practitioners and Dentists Act (CAP. 253),
Section 3A (1)**

103.

(d) Delete Attorney-General

(e) five other persons, not being public officers from the medical and dental profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to, finance or audit, medicine, public health, business management, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee Observation

The committee allowed the amendment because the council should be comprised of persons with the relevant knowledge, experience and expertise in matters related to the medical and dental profession. This also ensures proper representation of all relevant stakeholders in the medical and dental profession.

**Nurses Act (CAP. 257)
Section 3A(1)**

104.

(d) Delete Attorney-General

(e) five other persons, not being public officers from the medical and dental profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to, finance or audit, medicine, public health, business management, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee Observation

The committee agreed to the amendments as it seeks to ensure that the council is comprised of persons with knowledge and expertise in matters relating to the nursing profession.

Medical Laboratory Technicians and Technologists Act (No. 10 Of 1999)

Section 6(1)

105.

(d) Delete Attorney General

(e) five other persons, not being public officers from the medical laboratory sciences' profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to medical laboratory sciences, finance or audit, medical research, business management, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee Observation

The committee agreed to the amendment to ensure that the Board is made up of persons with the relevant qualifications, knowledge and expertise related to the medical laboratory profession.

Nutritionists and Dieticians Act No. 18 of 2007

Section 5(2)

106.

(d) Delete Attorney General

(e) five other persons, not being public officers from the nutrition and dietetics profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating medical laboratory sciences, finance or audit, medical research, business management, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee observation

The committee agreed to the amendment as it seeks to ensure that the Council shall be comprised of persons having the relevant expertise and knowledge in matters relating to nutrition and dietetics.

Public Health Officers (Training, Registration and Licensing) Act (No. 12 of 2013)

Section 3(3)

107.

(d) Delete Attorney General

(e) five other persons, not being public officers from the Public Health Officers whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to finance or audit, public health, business management, accounting, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations

Committee Observation

The committee allowed the proposed amendment as it seeks to reconstitute the Council to ensure that the Council shall be comprised of members having the necessary expertise in public health. This in turn promotes the objects and functions of the Board.

Counsellors and Psychologists Act (No. 14 of 2014)

Section 4(1)

108. (d) Delete Attorney-General

(e) five other persons, not being public officers from the counseling and psychology profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to finance or audit, accounting, counseling and psychology, business management, economics, law or any other relevant field;

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee observation

The committee agreed to the amendment by removing the Attorney General and adding 4 other persons not been public officers to ensure that the Board is comprised with persons with the relevant expertise in counseling and psychology.

Health Records and Information Managers Act (No. 15 of 2016)

Section 7(1)

109.

(d) Delete Attorney-General

(e) five other persons, not being public officers from the health records and information profession whom shall demonstrate good standing from their respective association or society, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to finance or audit, accounting, health records and information technology, business management, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee Observation

The committee allowed the addition of the 5 other non-public officers to the Board to ensure expertise in health information management. However, they rejected the removal of the Attorney General since his inclusion is important for rendering legal advice in health management.

Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)

Section 2

110. Retain the definition of “Kenya Clinical Officers Association.

Justification

The chair of the Association is the chair of the disciplinary committee.

Committee Observation

The committee allowed the amendment since the Association nominates a member to the council and to ensure that the member nominated has the requisite qualifications to join the Council.

Section 4(1)

111.

(c) Delete Attorney General

Substitute the director of the Kenya Medical Training College with the following;

(d) A representative of the Training Institutions of clinical medicine;

(e) five other persons, not being public officers from the clinical medicine profession whom shall demonstrate good standing from their respective association or society, which shall consist of representative from Kenya Clinical Officers Association, Clinical

Officer representing the Public Sector, Clinical Officer representing the Private Sector, Clinical Officer representing Universities and Specialized Clinical Officer respectively, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to finance or audit, clinical medicine, public health, business management, accounting, economics, law or any other relevant field; and

Justification

To ensure that the persons to be appointed represent the interest of the associations/society and avoid conditional nominations.

Committee Observation

The committee rejected the proposal to remove the Attorney General as a member of the Council, as he ensures legal compliance of the board as a governmental body. The committee agreed to the inclusion of four non-public officers to ensure proper composition of the Board with persons having the relevant knowledge and expertise in clinical medicine.

2.12 NURSES ASSOCIATIONS, MIDWIVES, UNION

The Nurses Associations, Midwives, Union appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to Pharmacy and Poisons Act (CAP. 244), Mental Health Act (CAP. 248), Nurses Act (CAP. 257), National Hospital Insurance Fund Act (No. 9 Of 1998), Cancer Prevention and Control Act (No. 15 of 2012), Kenya Medical Supplies Authority Act (No. 20 of 2013), Counsellors and Psychologists Act (No. 14 of 2014) and Health Act (No. 21 of 2017) as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3

112. Include one nominee by the Nursing Associations

Justification

Nurses are key in the custody and administration of medicines at user points.

Committee Observation

The Committee rejected the proposal because the Board includes representatives from the Pharmacy profession who have the relevant knowledge and expertise in the Pharmaceuticals Profession.

Mental Health Act (CAP. 248)

113. Delete Chief Nursing Officer and replace with Director of Nursing Services or his/her representative.

Committee Observation

The committee rejected the proposal since in terms of *Standing Orders 133(5)*, the proposed amendment deals with a different subject matter.

Nurses Act (CAP. 257)

Section 4(1)

114. The Council shall consist of:

- (a) the Director General of Health or his representative, appointed in writing;
- (b) the Director of Nursing Services or his/her representative appointed in writing;
- (c) the Attorney General or his representative;
- (d) Principle Secretary Treasury or his or her representative appointed in writing;
- (e) the following persons stated below having been nominated as stated shall be appointed by the Cabinet Secretary:
 - (i) one registered nurse nominated by NNAK (chairperson) or their representative;
 - (ii) one registered nurse nominated by KPNA (chairperson) or their representative;
 - (iii) one registered midwife nominated by the MAK (chairperson or their representative);
- One registered nurse lecturer from mid-level colleges nominated by KMTC;
- (iv) one registered nurse lecturer university level nominated by the universities.

Justification

The organizations are professional bodies hence should be represented in the council.

Committee Observation

The committee agreed to the amendment except for the inclusion of the director general of nursing services and one registered midwife because the Board must be adequately composed of persons who possess greater expertise and knowledge in the nursing profession.

National Hospital Insurance Fund Act (No. 9 Of 1998)

Section 4(1)

115. Insert (j) to include at least three health professionals on board. One of whom shall be registered nurse practitioner with a relevant related degree nominated by nursing associations.

Justification

Nurses are the custodians of the patients.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Cancer Prevention and Control Act (No. 15 of 2012)

Section 6(2) (f)

116. Delete business management and economics and insert one nurse trained in ecology or palliative care nominated by nursing association.

Justification

Nurses are in the forefront promotion of health and prevention of disease at the primary level to the tertiary level.

Committee Observation

The committee rejected the proposal since nurses do not possess the required expertise to fulfill the objects of the board in cancer prevention and control.

Kenya Medical Supplies Authority Act (No. 20 of 2013)

Section 5(1) (f)

117. The board to include at least three healthcare professionals, one of whom shall be a registered nurse.

Delete one pharmacist in paragraph (f) and replace with one nurse.

Justification

Nurses form bulk of health profession therefore should be considered.

Committee Observation

The committee rejected the proposed amendment because pharmacists possess the expertise required in dealing in drugs and medical supplies.

Counsellors and Psychologists Act (No. 14 of 2014)

Section 4(1)

118. Insert (g) on registered nurse practitioner with a basic degree in nursing and trained in counseling and or psychology, nominated by nursing associations.

Justification

Nurses having taken up training in counseling and psychology play a vital role in management of persons with psychological related health issues.

Committee Observation

The committee rejected the proposal because nurses are not adequately trained as psychologists and counselors hence lacking the relevant expertise required.

Health Act (No. 21 of 2017)

Section 46F

119. To include at least three, two of whom shall be health professionals of various disciplines sitting on rotational basis of each board term.

Delete medicine and replace with health professionals.

Justification

Nurses for bulk of the health profession

Committee Observation

The committee rejected the proposal since health professionals are already represented in the board.

2.13KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

The Kenya Medical Practitioners and Dentists Council appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Medical Practitioners and Dentists Act (CAP. 253) as follows-

Medical Practitioners and Dentists Act (CAP. 253)

Long Title

120. A bill for AN ACT of Parliament to amend the Medical Practitioners and Dentists Act to make provision for the training, registration and licensing of medical and dental practitioners, community oral health officers and health institutions and for connected purposes.

Justification

To include regulation of community health officers

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 1

121. The word “Board” be substituted with the word “Council”

Justification

For clarity

Committee Observation

The committee agreed to the amendment because the term council provides better guidance and clarity in the subject matter.

Section 2

122. That section 2 of the Principal Act be amended-

- a By deleting the definition of “private practice” and “private practitioner”
- b By deleting the “(3)” appearing immediately after section 6.

Justification

Delete definitions that are no longer applicable and bring clarity.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 4

123.

Section 4(1)(b) of the Act be amended by inserting-

“community oral health officers” after the word “dental practitioners”

Section 4(1)(c) of the Act be amended by inserting-

“community oral health officers” after the word “dental practitioners”

Section 4(1)(d) of the Act be amended by inserting-

“community oral health” after the word “dental”

Section 4(1)(g) of the Act be amended by inserting-

“community oral health” after the word “dental”

Section 4(1)(h) of the Act be amended by inserting-

“community oral health officers” after the word “dental practitioners”

Section 4(1)(i) of the Act be amended by inserting-

“community oral health officers” after the word “dental practitioners”

Section 4(1)(j) of the Act be amended by inserting-

“community oral health officers” after the word “dental practitioners”

Justification

To clarify the mandate of the Council with regard to regulation of community oral health officers.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 6 (5)

124. Amend Section 6(5)(f) by deleting the word “temporary” appearing immediately after the word “for”

Justification

For clarity.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 6

125. Insert a new subsection immediately after subsection 6(7):

6(8) A person who-

- (a) Is a resident of Kenya;
 - (b) Is a holder of a degree or other qualification obtained from a university in Kenya or the EAC which is recognized by the Council as making him or her eligible for registration;
 - (c) Presents proof of completion of internship; and
- Satisfies the Council that he is a person of good moral standing; may apply to the Council for registration as a medical or dental practitioner under this Act.

Justification

To provide for registration of foreign practitioners who are resident in the country and have undertaken their training in Kenya and the EAC.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 11B(2)(a)

126. Insert the words “at least three years” immediately after the word “training”

Justification

To provide for the minimum duration of specialist training.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 12

127. Amend marginal note by deleting “specialist licences” and substituting therefor with “practice licence”

Justification

To align marginal note with the provision

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 13

128. Insert the following new subsection immediately after subsection (5) –

13(6) The Council may grant temporary licences to practice to eligible medical or dental practitioners to perform specific work or works in specific institutions in Kenya.

13(7) A temporary licence issued under subsection (6) shall be for a period not exceeding 3 months.

Justification

To provide for conditions for granting temporary licences

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 15A

129. Delete s.15A and substitute therefor the following new section 15A:

- (1) Every practitioner shall each year take a professional indemnity cover;
- (2) Every health institution shall each year ensure the health institution against professional liability of its staff;

Notwithstanding the provision of subsection (1), the Council may waive the requirement of professional indemnity where a practitioner proves that they are not engaged in clinical practice.

Justification

To clarify on the requirement of professional indemnity.

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

Section 20(6)

130. Amend s.20(6)(f) by deleting the word “permanently” appearing immediately before the word “remove”

Insert a new paragraph immediately after (g)-

- (i) direct parties to enter in mediation with a view of compensation.

Justification

- a. To provide an avenue for restoration to the register.
- b. To provide for restitution for complaints

Committee Observation

The committee rejected the proposal because in terms of *Standing Order 133(5)*, the proposal deals with a different subject matter.

2.14 NURSING COUNCIL OF KENYA

The Nursing Council of Kenya appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Nurses Act (CAP. 257) and Health Act (No. 21 of 2017) as follows-

Nurses Act (CAP. 257)

Section 4

131.

Section 4(1)(a): The non-executive chairman shall hold a degree in nursing or midwifery from a university recognized in Kenya and have at least 10 years' experience in leadership and management.

Section 4(1)(d): The Director of Nursing Services or his or her represented in place of the Attorney General

Section 4(1)(e): To be deleted and be replaced with the appointment of four persons, two representatives of training institutions involved in the training of nurses and midwives in Kenya, one representing universities and one representing midlevel colleges;

Two representatives of associations, one representing the nurses association and one representing midwives associations in clinical practice.

Addition of section 4(1)(g): One person representing public interest

Justification

- a. To be in compliance with the Mwongozo Code which provides that Chairpersons of Boards be appointed by the President or as otherwise provided under any other written law, and that they hold a degree in the relevant field from a university recognized in Kenya.
- b. To include a representative from the Directorate of Nursing in the Ministry in place of the AG, as the Council has a Corporation Secretary established under section 4A who advises the Council on legal and governance matters.
- c. For self-regulation and oversight
- d. To have inclusive representation

Committee Observation

The committee agreed to the amendment as it seeks to ensure that the council shall be comprised of persons with knowledge and expertise in matters related to the nursing profession. However, it rejected the proposal to include one person representing public interest as the four members who are not public officers are a representation of the public interest.

Health Act (No. 21 of 2017)**First Schedule**

132. Level 5, 6 – To be replaced by “registered health practitioner with a relevant degree and work experience.

Justification

To include all cadres of health care professionals.

Committee Observation

The committee rejected the proposal and maintained the First Schedule as it is since the classification of health care facilities is adequate as it is.

2.15 KENYA ASSOCIATION OF PRIVATE HOSPITALS

The Kenya Association of Private Hospitals of Kenya appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Medical Practitioners and Dentists Act (CAP. 253) and National Hospital Insurance Fund Act (NO. 9 OF 1998) as follows-

Medical Practitioners and Dentists Act (CAP. 253)**Section 3A**

- 133.

To change 3A (1) (a) to read chairman appointed by President who shall be a medical or dental practitioner.

Delete s.3A (b,c,d,e) introducing the PS-Health, PS Finance, Attorney General and Cabinet Secretary appointments

Insert Representation of hospital association

Justification

- a. Technical expertise.
- b. The role of the AG is unclear.
- c. In the KMPDC Act, there is provisions for a person in finance and thus not necessary for PS finance to sit on the Board.
- d. Technical expertise.

Committee Observation

The committee agreed to the amendment to ensure that the Council shall be comprised of persons with knowledge and expertise in matters related to the medical and dental profession. It rejected the inclusion of the Attorney General to the Council as the council is more geared more towards expertise in dental and medical health than to the legal profession.

National Hospital Insurance Fund Act (NO. 9 OF 1998)

Section 4

134. Retain s.4(1)(k) as in previous Act one person nominated by Kenya Association of Private Hospitals.

Justification

KAPH represents a large stakeholder.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

2.16 KENYA HEALTH HUMAN RESOURCE ADVISORY COUNCIL

The Kenya Health Human Resource Advisory Council appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Health Act 2017 as follows-

Clause 33

135. Delete clause 33 and replace with:

33(a) possesses at least a basic degree in a recognized health field from a university recognized in Kenya.

Justification

To ensure provision of technical expertise.

Committee Observation

The committee rejected this proposal because the Chief Executive Officer of the Council need not be a health professional as he or she is more involved in the administrative tasks of the Council.

Section 30(l)(i)

136. Retain the section as it is in the Health Act 2017

Justification

To ensure provision of technical expertise.

The issue of gender balance, disability and regional balance can be sorted by requiring two or three nominations considering this constitutional requirement from which the Cabinet Secretary can appoint one from each.

Committee Observation

The committee agreed to the amendment and will retain the Director General for health in the Council since the Director General for health is the technical advisor to the Government on all matters relating to health within the health sector.

Section 30(1)

137. Amend to read:

s.30(1) There is established a Kenya Health Workforce Advisory Council which shall consist of-

Justification

To distinguish the role of the Council from the role played by human resource management and development experts.

Committee Observation

The committee rejected the proposal as there already exists a council which among its functions include advisory services.

Section 31(f)

138. Amend to read:

The maintenance of a master register for all health practitioners in the “Country”

Justification

The Register is important to enable the Council to advise on education, demand, supply and any gaps in the health workforce.

Committee Observation

The committee rejected the proposal as there already exists a register of all health practitioners in each county.

Section 33(1)

139. Amend to read:

The Board of the Kenya Health Human Resource Advisory Council shall, through an open and transparent process, recruit and appoint a Chief Executive Officer

Justification

The proposal is in line with the Mwongozo guidelines

Committee Observation

The committee rejected the amendment as the recruiting process is the mandate of the Public Service Commission which is responsible for recruitments on behalf of public entities.

2.17 KENYA UNION OF CLINICAL OFFICER’S

The Kenya Union of Clinical Officer’s appeared before the Committee on Tuesday 16th November, 2021. In their submission, they proposed amendments to the Kenya Medical Training College Act (Cap. 261), National Hospital Insurance Fund Act (No. 9 Of 1998), Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017) and Heath Act 2017, as follows-

Kenya Medical Training College Act (Cap. 261),

Section 9(1)

140. Retain (e) the Chief Nursing Officer.

Insert (l) after (k);

(l) a Clinical Officer serving in the position of Director Clinical Services or its equivalent;

Justification

Clinical medicine and nursing are the key signature programs at the KMTC

Committee Observation

The committee allowed the amendment as the Chief Nursing Officer is an important expert in the training of nurses. However, they rejected the addition of the clinical serving officer as clinical experts are adequately provided for in the composition of the board.

National Hospital Insurance Fund Act (No. 9 Of 1998)**Section 4(1)**

141. Add subsection (j) to read;

(j) two persons jointly nominated by the duly registered health professional association.

Justification

To provide for the representation of the health service providers.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 10(1)

142. There shall be Chief Executive Officer appointed by the Cabinet Secretary whose terms and conditions of service shall be determined by the board in consultation with the Salaries and Remuneration Commission.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 32(1) (a)

143. Insert the following immediately after inspector “from the relevant body”

Committee Observation

10(2) (a) and (b), 27(1), (2), (4), (5), (6) and (7) and 47(2), 209(3), (4) and (5), 210(1) and 234(2) (a) (i) of the Constitution.

Justification

- a. The provisions are discriminative as they only allow the doctors to manage hospital to ~~the exclusion of other health workers.~~
- b. The court adopted the argument and issued a judgment in favour of the union.

2.21 COUNCIL OF GOVERNORS

The Council of Governors (COG) appeared before the Committee on Tuesday 16th November, 2021. COG proposed amendments to the following Acts as follows-

Pharmacy and Poisons Act (CAP. 244)

Section 3

157. Insert new section 3(1)

S 3(1) (a) a non-executive chairperson who shall be a pharmacy practitioner and shall be appointed by the President

S 3 (1)(b)- the Principal Secretary in the ministry for the time being responsible for health, or his or her representative, appointed in writing.

S 3 (1)(c)- the Principal Secretary in the Ministry for time being responsible for finance, or his or her representative, appointed in writing.

S(3)(1)(d)- the Attorney General or his representative designated in writing

S3(1)(e)- four other persons, not being public officers of whom three must be from the pharmacy profession, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters relating to accounting, pharmacy, business , management, public health, economics, law or any other relevant field and

S 3(1)(f)- the Registrar who shall be the Chief Executive Officer and an ex official member of the Board.

S 3(2)- the persons to be appointed under subsection (1)(a) and (e) shall be selected through conventional board resourcing procedures including through applications, referrals and knowledge of the market and industry actors.

S 3(3)- a person appointed as a member of the Board under subsection (1)(a) and (e), shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be member of the Board if-

(a)- at any time the member resigns from office by giving notice, in writing, to the Presidency or

Cabinet Secretary, respectively,

- (b)- has been absent from three consecutive meetings of the Board without permission of the chairperson.
- (c)- is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings or
- (d)- is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board.

Justification

- a. To determine whether the Board should be an entity of National Government only or a joint entity of National and county governments
- b. If the Board is a joint entity, then establish and structure it in a manner that gives equal representation to the National and county governments
- c. Ensure removal of National Government officials to ensure separation of roles and responsibilities and avoid conflict of interest
- a. Determine whether the Act should establish two separate Boards; a government regulatory board and a professional self-regulatory board for regulation of the profession of pharmacists.

Committee Observation

The committee accepted the proposed amendment as it will ensure that the Board shall be comprised of persons with knowledge and expertise in matters related to the pharmacy profession.

Section 4

158. Delete S4 and substitute the for the following

S 4 (4)- the quorum of the Board shall be two thirds of the members of the Board

Justification

Quorum should include appointees of both levels of government.

Committee Observation

The committee rejected the proposal because it sought to retain the quorum for meetings of the Board at five members.

Section 5A Secretary to the Board

159. Delete S5 and substitute for the following

5A. (1) The Board shall competitively recruit a person qualified, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Secretary to the Board.

(2) the Secretary to the Board shall-

(a) In consultation with the chairperson of the

Board, issue notices for meetings of the Board.

(b) Keeping custody, the records of the deliberations, decisions and resolutions of the Board

(c) Transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation and other relevant action

(d) Provide guidance to the Board on their duties and responsibilities on matters relating to governance and

(e) Perform such other duties as the Board may direct.

Justification

The Board is not a state corporation to which Mwongozo Code of Governance for state corporations apply, therefore there is no Justification for having a full time corporation secretary in addition to a full time Executive Officer.

Committee Observation

The committee rejected the proposal as the Chief Executive Officer will not be performing the same roles as those proposed to be carried out by the corporation secretary.

Section 35C

160. Delete the provision

Justification

There is need for intense intergovernmental consultations during negotiations in the manner suggested in the Justification in respect of section 3 before the provisions are deleted from the Act.

Committee Observation

The committee rejected the amendment as the section as it provides clarity as to who the director is and what a laboratory is as referred to in the Act.

Section 35D

161. Delete the provision

Justification

There is need for intense intergovernmental consultations during negotiations in the manner suggested in the Justification in respect of section 3 before the provisions are deleted from the Act.

Committee Observation

The committee agreed to the proposal so as to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35E & 35F

162. Delete the provision

Justification

There is need for intense intergovernmental consultations during negotiations in the manner suggested in the Justification in respect of section 3 before the provisions are deleted from the Act.

Committee Observation

The committee agreed to the proposal so as to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35G

163. Delete the provision

Justification

There is need for intense intergovernmental consultations during negotiations in the manner suggested in the Justification in respect of section 3 before the provisions are deleted from the Act.

Committee Observation

The committee agreed to the proposal so as to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

Section 35H

164. Delete the provision

Justification

Delete the word "Minister" wherever it occurs and substitute therefor the word "cabinet secretary"

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 4(3)

170. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary.

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 4(5)

171. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary.

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 4(5)

172. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary.

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 7(3)

173. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

- i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 8(2)

174. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary.

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

- i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 9(1)

175. Delete the word "Director" wherever it occurs and substitute therefor the expression "Director General"

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 9(5)

176. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary.

Justification

There are two Amendment bills seeking to amend the Mental Health Act pending before parliament;

i) The Health Laws Amendment Bill, 2021 and ii) The Mental Health Amendment Bill, 2020

The reasons and object of the above Amendment Bills is to harmonise the Act with the constitution by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

To align the Act with the devolved system put in place by the 2010 Constitution, considering it governs matters that fall within the functional areas of both the national and county governments.

Committee Observation

The committee agreed to the amendment and it noted that the stakeholder proposed what is already contained in the Bill.

Section 20(1)

j) 3. A person appointed as a member of the council under this Act, other than ex-officio member, shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the

k) Board if-

- a. At any time, the member resigns from office by giving notice in writing to the President or Cabinet Secretary respectively.
 - b. Has been absent from three consecutive meetings of the Council without permission of the chairperson.
 - c. Is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings or
 - d. Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.
4. The quorum for the conduct of business at a meeting of the Council shall be two thirds of the members of the Board.
 5. The Chairperson shall preside at all meetings of the Council but in the absence of the chairperson the members present shall appoint one of their number to preside the meeting
 6. The Council shall meet at least once in every three months
 7. The Council may appoint suitable persons to assist in carrying out particular decisions of the Council or particular duties or investigations for the Council
 8. The powers of the Council shall not be affected by any vacancy in the membership thereof.
 9. Subject to the provisions of this Act, the Council may regulate its own procedure

Committee Observation

The committee accepted the proposed amendments with the necessary modifications to ensure that the Council shall be comprised of persons with knowledge and expertise in matters related to the medical and dental profession.

Section 4D-Corporation Secretary

184. Delete the entire provision

Justification

There is no justification for having a full-time Corporation Secretary in addition to a full-time Executive Officer of the Board.

Committee Observation

The committee accepted the proposal so as to avoid the duplication of roles in the Council between the corporation secretary and the chief executive officer.

Section 4E - Staff of the Council

185. COG supports the provision as it is.

Justification

No justification was provided.

Committee Observation

The committee agreed to the amendment as it seeks to make express reference to the Salaries and Remuneration Commission as the body constitutionally mandated to review and determine the salaries of public officers.

Section 4E

186. Insert the following new subsection immediately after subsection 10-

(10A.) The Council shall accredit all health facilities or institutions registered under the Act.

Justification

This provision fills a gap that currently exists in law.

Committee Observation

The committee accepted the proposal since it seeks to ensure that services are only offered by accredited facilities which ensure quality.

Nurses Act (CAP 257)

187. Section 4 - Membership of the Council

Delete the provision and substitute therefor the following-

4.(1) The Council shall consist of

- a) A non-executive chairperson who shall be appointed by the president
- b) The Director General of Health or his representative
- c) The Director of Education or his representative
- d) The Chief Nursing Officer or his representative
- e) The Attorney General or his representative
- f) Four persons nominated by the Council of Governors
- g) The following persons appointed by the Minister
 - i. one registered midwife, nominated by registered midwives
 - ii. one registered community health nurse nominated by registered community health nurses
 - iii. one registered psychiatric health nurse, nominated by registered psychiatric health nurses
 - iv. one registered general nurse, nominated by registered general nurses
 - v. one nurse nominated by the National Nurses Association of Kenya

- vi. one nurse nominated by the Kenya Progressive Nurses Association
- vii. one registered nurse educator actively involved in the training of nurses nominated by recognized universities in Kenya
- viii. two registered nurses nominated by registered religious organisations providing health services in Kenya
- ix. one person with a professional background in human resource management
- x. the chief executive officer of the Kenya Medical Training College or his representative.
 - h) The Registrar who shall be the Chief Executive Officer and an ex-officio member of the Council

Committee Observation

The Committee rejected the proposal because the composition as provided for in the Bill adequately ensures that only the relevant persons with the required expertise make up the Council. This ensures that only persons with relevant knowledge are nominated to the council.

Medical Training College Act (CAP 261)

Section 9(1) (e)

188. Delete the entire provision.

Justification

- a. Amendments are unnecessary as they fail to properly align the Act with the Constitution especially provisions on the devolved system. This is because although tertiary educational institutions are assigned to the national government, county governments have the greater part of health services delivery and therefore have an interest in training of health workers especially the lower cadre such as; nurses, clinical officers and technicians. Counties are the major employers of these lower cadre health workers and should be more involved.
- b. The Medical Training Colleges are often located in County health facilities and they use these facilities for practical training purposes. It is thus recommended that Parliament abandons the Bill and directs national and county governments to commence a joint process of comprehensive amendments to the Act.

Committee Observation

The committee accepted the proposal since the provision as provided for in the act promotes the objects of the Act.

National Hospital Insurance Fund Act (No. 9 Of 1998)

Section 2

189. Delete entire provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 4(1)

190. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

New section

191. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

-
- a. ~~The Health Laws (Amendment) Bill 2021~~
 - b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 5(c)

192. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

~~The Committee rejected the amendment since all proposed amendments to the~~ National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 5(f)

193. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 6(a)

194. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 9

195. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021

b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 15(1)(c)

196. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 15(3)

197. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 15(4)

198. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 15(5)

199. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

~~New section on Universal Health Coverage Scheme~~

200. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Membership to the scheme

201. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Identification of beneficiaries

202. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Administration of the Scheme

203. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 26

204. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
 - b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.
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Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 27

205. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 29(1)

206. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021

- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 30(1)

207. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 30(3)

208. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 31(1)

209. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 34(1)

210. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 36

211. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 37

212. Delete the provision.

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Section 38

213. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

New section on supersession

214. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

First schedule paragraph 6

215. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021

- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Second schedule paragraph 2(a)

216. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Second schedule paragraph 2(b)

217. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Second schedule paragraph 3 (4)

218. Delete the provision

Justification

All amendments which the Bill proposes are unnecessary and should be deleted since there are two Amendment Bills seeking to amend the National Hospital Insurance Fund Act which are:

- a. The Health Laws (Amendment) Bill 2021
- b. The National Health Insurance (Amendment) Bill, 2021 which was passed by the National Assembly with amendments on September 29th 2021 now pending before the Senate.

Committee Observation

The Committee rejected the amendment since all proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 were considered in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

Medical Laboratory Technicians and Technologists Act No. 10 of 1999

Section 2

219. Delete the definitions “Minister”

~~Insert the following new alphabetical sequence-~~

“Cabinet Secretary” means the time being responsible health of “Associations” and definition in its proper the Cabinet Secretary for matters relating to

Justification

The amendment seeks to use terminology used in the constitution

Committee Observation

The Committee rejected the proposal because the amendment in the bill deletes the term ‘minister’ and substitute with the term ‘Cabinet Secretary’.

Section 6 - Membership of the Board

220. Delete the provision and substitute therefor the following provision-

6.(1) The Board shall consist of-

- a) A non-executive chairperson who shall be appointed by the President from among the members of the Board.
 - b) Two persons nominated from the ministry of health who shall have knowledge and experience in matters of medical laboratory
 - c) Three persons with knowledge in matters of medical laboratory nominated by the Council of Governors
 - d) Three registered laboratory technicians, two of whom shall be in private practice, nominated by the Association of Laboratory Technicians
 - e) Three registered laboratory technologists, two of whom shall be in private practice, nominated by the Association of Laboratory Technologists
 - f) The Registrar who shall be the Chief Executive Officer and an ex-officio member of the Board.
2. The persons to be appointed under subsection (1) (a) and (d) shall be selected through conventional board resourcing procedures including through applications, referrals and knowledge of the market and industry actors.
 3. The Cabinet Secretary responsible for health shall appoint the members of the Council nominated and/or elected under subsection (1)(b), (c) and (d), by notice in the gazette.
 4. A person appointed as a member of the council under subsection (1)(a) and (d), shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Board if-
 - a. At any time the member resigns from office by giving notice in writing to the President or Cabinet Secretary respectively
 - b. Has been absent from three consecutive meetings of the Council without permission of the chairperson
 - c. Is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings or
 - d. Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.

Committee Observation

The committee adopted the proposals so as to include persons with knowledge and expertise in related matters.

New on Secretary to the Board

221. Delete the entire section

Justification

There is no justification for having a full-time Corporation Secretary in addition to a full-time Executive Officer of the Board.

Committee Observation

The Committee rejected the proposal because there is already in existence a Chief Executive Officer of the Board.

Section 23(2)

222. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary.

Justification

COG supports as it seeks to use terminologies used in the constitution.

Committee Observation

The word 'Minister' is deleted because it is no longer used in the Constitution.

Section 24(4)

223. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary.

Justification

COG supports the provision as it seeks to use terminologies used in the Constitution.

Committee Observation

The word to be adopted is a terminology contained in the Constitution.

Section 25(2)

224. Insert a new paragraph immediately after paragraph (b)- (ba) the validation of all in-vitro diagnostics by the Board

Justification

COG supports the provision as it seeks to fill an existing gap in the law.

Committee Observation

The committee rejected the proposal since in terms of Standing Order 133(5) the proposed amendment deals with a different subject matter.

Section 25(3)

225. Delete and substitute therefor the following new subsection-

- (3) A person who breaches any term or condition prescribed by the Board under this section commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years or both.

Justification

COG supports the provision as it seeks to enhance the criminal penalties that otherwise have been low.

Committee Observation

The Committee rejected the amendment as the general penalty would apply in cases where an express penalty is not prescribed.

Section 26(1) (a)

226. Insert a chairperson elected from amongst members who shall be a laboratory technician or technologist in private practice.

Justification

To avoid conflict of interest in instances where the Chair of Association is chair to disciplinary proceedings which he/she may be a party to those same proceedings.

Committee Observation

The committee rejected the proposal of electing the chairperson of the Disciplinary Committee from amongst persons appointed to the Board because of the issue of conflict of interest.

Section 26(1)(b)

227. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary

Justification

COG supports the provision as it seeks to use terminologies used in the Constitution.

Committee Observation

The committee deleted the word ‘Minister’ because it is no longer a terminology used in the Constitution.

Section 35(3)

228. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary.

Justification

COG supports the provision as it seeks to use terminologies used in the Constitution.

Committee Observation

The committee deleted the word ‘Minister’ because it is no longer a terminology used in the Constitution.

Section 37 Accounts and audit

229. Accounts to be kept and audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act,2015

Justification

Eliminate unnecessary details

Committee Observation

The Committee rejected the amendment as the provisions are already contained in the Bill.

Section 39

230. Raise penalty to “three hundred thousand shillings” Increase criminal penalties which have been too low

Justification

Increase criminal penalties which have been too low.

Committee Observation

The committee rejected the amendment as the provisions are already contained in the Bill.

Section 40

231. Delete the word "Minister" wherever it occurs and substitute therefor the expression Cabinet Secretary.

Justification

COG supports the provision as it seeks to use terminologies used in the Constitution.

Committee Observation

The Committee accepted the proposal because the word 'Minister' is no longer a term used in the Constitution.

Paragraph (f)

232. Delete

Justification

It is unnecessary

Committee Observation

The committee rejected the proposal since it is necessary to delete paragraph (f) which provides for the election of the members of the Board. Members of the Board shall now be appointed by the Cabinet Secretary.

Schedule paragraph 1

233. Delete unnecessary words "or re-election, as the case may be"

Justification

The words are unnecessary

Committee Observation

The committee rejected the proposals since the words are necessary.

Paragraph 2

234. Delete the word "Minister" wherever it occurs and substitute therfor the expression Cabinet Secretary

Justification

COG supports the provision as it seeks to use terminologies used in the Constitution.

Committee Observation

The committee rejected the proposal because the word ‘Minister’ is no longer a term used in the Constitution.

Paragraph 3(4)

235. Quorum set at two thirds of members

Justification

Harmonious with all other new provisions.

Committee Observation

The Committee accepted the amendment because quorum will be achieved by two thirds of the members.

Tobacco Control Act (NO.4 of 2007)

Section 5 - Establishment of Board

236. Re-number subsection (1)(e) as (1)(b) and introduce new section (1)(c) that provides-Four persons, not being public officers, nominated by COG, and appointed by the Cabinet Secretary by virtue of gender, disability, regional balance et cetera.

Justification

Ensure equal representation of professionals

Committee Observation

The committee rejected the proposal and re-numbered the subsections and introduced a new section so as to make the Attorney General the Cabinet secretary’s representative in the Board.

~~New section on Chief Executive Officer~~

237. Appointment of Chief Executive Officer, competitively recruited as well as their qualification.

Justification

COG supports the proposed new Section 5A

Committee Observation

The Committee agreed to the requirement to include merit on the appointment of the Chief Executive Officer.

Cancer Prevention and Control Act (No. 15 of 2012)

Section 6

238. Delete the entire section

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Cancer Prevention and Control Act was enacted after the adoption of the 2010 constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that there was no specific amendment proposed.

Section 6(3)

239. Delete entire section

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Cancer prevention and Control Act was enacted after the adoption of the 2010 constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that there was no specific amendment proposed.

New clause –on Corporation Secretary

240. Delete entire section

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Cancer prevention and Control Act was enacted after the adoption of the 2010 constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that there was no specific amendment proposed.

Kenya Medical Supplies Authority Act (No. 20 of 2013)

Long title Act

241. Insert a more detailed description including: legal and institutional governance on procurement, warehouse, distribution and establishing it as a joint entity of national and county governments.

Justification

The purpose being for complete transparency, clarity, accountability and to leave no room for ambiguity.

Committee Observation

The committee rejected the proposal since in terms of Standing Order 133(5) the proposed amendment deals with a different subject matter.

Section 2 Interpretation section

242. Strategic reserve stock means at least six months of a list of prescribes medical supplies to be identified and updated as when required by Cabinet Secretary in consultation with the COG.

Justification

It is imperative to ensure collaboration of county and national government.

Committee Observation

The committee rejected the proposal since in terms of Standing Order 133(5) the proposed amendment deals with a different subject matter.

Section 3(1) Establishment of Authority

243. An Authority that is a joint corporation of national and county governments known as Kenya Medical Supplies Authority.

Justification

This is in accordance with Article 189(2) of the constitution.

Committee Observation

The Committee rejected the proposal but reconstituted the Board membership to include persons nominated by the Council of Governors.

Section 4(1) Functions of Authority

244. Functions to be delegated by both national and county government.

Justification

The authority's mandate is delegated as a joint entity.

Committee Observation

The Committee rejected the proposals as the Board is under the constitutional obligation to perform its duties on the basis of consultation and cooperation.

Section 5(1) Board of Directors

245. The Board should be staffed by competent, qualified professionals in pharmacy appointed by the Cabinet Secretary. Additional competent professionals nominated by the COG and further appointed by the Cabinet Secretary.

Justification

Equal representation of both levels of government. National and county officials excluded to ensure separation of functions and responsibilities.

Committee Observation

The Committee agreed to the proposal by setting qualifications for the chairperson and by including more persons in the Board with knowledge and expertise in matters relating to drug and medical supplies.

New Section 5A

246. Create a KEMSA National and County Governments Joint Oversight Committee.

Justification

For oversight and inclusion.

Committee Observation

The Committee rejected the proposal since in terms of Standing Order No. 133(5), the proposal deals with a new subject matter.

Section 14(1) (a) Funds of Authority

247. Such monies as may be appropriated by both national assembly and county assembly.

Justification

Both levels of government will collaboratively disburse funds to KEMSA for procurement purposes.

Committee Observation

The Committee rejected the proposal as both levels of government are bound by the Constitution and the Public Finance Management Act in relation to expenditure of public funds.

Section 14(1)(c)

248. All monies received as gifts, donations, grants, endowments etc. to go directly to the Authority or through the national government first.

Justification

For accountability and transparency.

Committee Observation

The Committee rejected the proposal as both levels of government are bound by the Constitution and the Public Finance Management Act in relation to expenditure of public funds

Section 16(3)

249. Annual estimates

Justification

For proper budgeting.

Committee Observation

The Committee noted that the Bill already makes provision for annual estimates, accounts and audit.

Section 17(1)

250. Proper book keeping and records of accounts, income and expenditure

Justification

For transparency and accountability.

Committee Observation

The Committee noted that the Bill already makes provision for annual estimates, accounts and audit.

Section 17(2)

251. Stipulated period of four months from the end of each financial year, the Board shall submit to the Auditor General the accounts of the Authority.

Justification

Detailed requirements necessary to be submitted to the auditor.

Committee Observation

The Committee noted that the Bill already makes provision for annual estimates, accounts and audit.

New section 19(3)

252. Annual performance compliance report submitted to national government and COG.

Justification

For compliance.

Committee Observation

The Committee noted that the Bill already makes provision for annual estimates, accounts and audit.

New section 19(4)

253. Value for money performance compliance audit

Justification

Accountability mechanisms, seal loopholes and prudence.

Committee Observation

The Committee noted that the Bill already makes provision for annual estimates, accounts and audit.

Section 21(1)

254. Additional regulations must be on consultation with the COG and the Cabinet Secretary and on recommendation by the Authority.

Justification

Joint entity collaboration.

Committee Observation

The Committee rejected the proposal because the regulation-making power under the Act is given to the Cabinet Secretary who shall consult all relevant stakeholders.

Section 2(4) of the first schedule on meetings

255. Quorum for Board meetings will be half of the total members including the chairperson or the person presiding.

Justification

Ensure appointees of both levels of government are present/represented at meetings.

Committee Observation

The Committee rejected the proposal and set the quorum at five.

Counsellors and Psychologists Act (NO. 14 OF 2014)

Section 2

256. Delete all proposed amendments.

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Counsellors and Psychologists Act was enacted after the adoption of the 2010 constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that no specific amendments were proposed.

Section 6

257. Delete all the proposed amendments

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Counsellors and Psychologists Act was enacted after the adoption of the 2010 Constitution,

the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that no specific amendments were proposed.

Health Records and Information Managers Act (No. 15 of 2016)

258. Delete all proposed amendments

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the Health records and information managers Act was enacted after the adoption of the 2010 constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that no specific amendments were proposed.

Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)

Section 2

259. Delete all proposed amendments.

Justification

Parliament should reject all proposed amendments and direct both national and county governments to form an intergovernmental committee to undertake comprehensive review of the entire Act reason wherefore: despite the fact the Act was enacted after the adoption of the 2010 Constitution, the Act is not aligned with the devolved system therefore unconstitutional in many aspects.

Committee Observation

The Committee noted that no specific amendments were proposed.

Health Act (No. 21 of 2017)

Section 30(1) (e)

260. Delete

Justification

COG supports the amendment.

Committee Observation

The Committee agreed to the amendment as it seeks to retain the Director General for health in the membership of the Kenya Health Human Resource Advisory Council.

Section 30(1)(i)

261. Appointment of additional competent personnel on basis of gender, disability regional balance, to be appointed jointly by the Cabinet Secretary in consultation with COG.

Justification

For inclusivity and affirmative action.

Committee Observation

The Committee agreed to the amendment which caters for the inclusivity aspect.

Section 33(2)

262. Appointment of a competent, qualified Chief Executive Officer to the Authority.

Justification

The COG approved the qualifications.

Committee Observation

The Committee agreed to the amendments because the qualifications of the Chief Executive Officer are provided for.

New section on corporation secretary

263. Delete

Justification

No justification for having a full-time corporation secretary and a full-time Executive officer of the Board.

Committee Observation

The Committee rejected the proposal because the Corporation Secretary will be appointed to perform specific roles relating to the day-to-day functions of the Board.

2.22 KENYA NATIONAL UNION OF MEDICAL LABORATORY OFFICERS

The Kenya National Union of Medical Laboratory Officers appeared before the Committee on Tuesday 16th November, 2021. They submitted as follows on the Medical Laboratory

Technicians and Technologists' Act No 10 of 1999 and Health Laws Amendment Bill (2021) as follows-

Medical Laboratory Technicians and Technologists' Act No 10 of 1999

PART I-preliminary, Section 1(short title)

264. Substitute the name "Medical Laboratory Technicians and Technologists' Act with "Medical Laboratory Act"

Justification

Since the enactment of the Act in 1999 more than two decades ago, practice of medical laboratory science in Kenya has greatly improved incorporating the dynamics within Kenyan society. Technically in the current world, the dynamics define technicians as certificate holders, technologists are diploma holders while medical laboratory officers are degree holders in medical laboratory science practice.

Further, the scheme of service 2015 currently used by Kenyan counties and National government of Kenya to recruit medical laboratory professionals into the public service in Kenya categorizes these professionals into three - laboratory technicians being certificate holders job group G, laboratory technologists being diploma holders job group H and laboratory officers being degree holders job group K and above. Medical Laboratory Board is therefore a robust name that shall incorporate these available changes.

Committee Observation

The Committee rejected the amendments on account of standing order no. 133(5) because it is a new subject matter.

265. Section 2 – Interpretation

- a. Substitute the definition of approved training institution with the below definition/statement:
"Means an institution of higher learning approved by the board for the purpose of this act"

Justification

Kenya Medical Training College is not the only institution of higher learning in Kenya today that is approved to offer training in Medical Laboratory Science. Many institutions both middle level colleges, technical training Institutions and universities offer such trainings.

- b. After the definition of the term "Association", Insert terms "Blood products" and "Blood transfusion committee" and define them as;

"Blood products" means components derived from human blood after successful bleeding of a willing and qualified blood donor and includes whole blood, packed red blood cells, plasma, platelets concentrate, leukocytes concentrate, or any preparation processed by a medical laboratory intended for transfusion purposes.

"Blood transfusion Committee" means such a committee that may be constituted by the board under this act to perform such tasks relating to blood transfusion or any other tasks as prescribed by the board.

Justification

Blood transfusion being a significant component of healthcare, medical laboratory professionals perform more than 80% of the task involved in blood transfusion services in this manner; 1. blood donation campaign, 2. Recruitment and qualification of donors, 3. Education of donors 4. Bleeding of donors, 5. Storage of donated blood and its timely transportation to the lab, 6. Screening of donated blood in the lab, 7. Processing of blood components depending on hospitals' demand 8. Setting quality standards for a blood bank 9. Cross-matching of blood component prior to transfusion to a patient, 10. Dispatch of safe and patient compatible blood component, 11. Carrying out any post transfusion interventions Therefore under this act, medical laboratory professionals' role in this vital task must be spelt out to guide the involved work.

- c. Delete the definition of the term "college" and replace it with this definition...means Kenya Medical Training College or its equivalent approved by the board.

Justification

More than 50 middle level institutions of higher learning have been approved to offer trainings in medical laboratory science including technical training institutions.

- d. After definition of "hospital laboratory", insert new terms;

"intern", "internship" and "in vitro diagnostic products" and define them as:
"interns" means a person holding an undergraduate degree in medical.

Justification

Supervised certified and payable post – graduate internship is a requirement for graduation of medical laboratory science. The training curriculum for the cadre is incomplete without this component.

- e. “ invitro diagnostic products” means any device manufactured purposely for medical laboratory testing other than laboratory machines and includes testing kits, laboratory reagents and chemical and any consumables required to conduct medical laboratory test.

Justification

To guarantee quality and protect Kenyans from substandard, contraband and/or fake testing kits, laboratory reagents/chemical. The board under the act must be empowered to set standards for these items.

- f. Replace definition of laboratory technician and laboratory technologist and insert the terms laboratory officer and laboratory consultant to mean medical laboratory officer and medical laboratory consultant respectively.

Justification

Medical laboratory science profession has developed and as it stands, it is a robust multi-disciplined profession with specialties at Master's degree and PhD degree used in specialized lab diagnosis. Currently Medical laboratory Officers are undergraduate degree holders of medical laboratory profession.

Section 2

- g. Substitute the word "minister" with the word "cabinet secretary" and define appropriately.

Justification

Realign to constitution of Kenya 2010.

Committee Observation

The Committee rejected the proposals since matters of blood and blood products were provided for in the Kenya National Blood Transfusion Service Bill as passed by the House.

PART II (The Kenya Medical laboratory Technicians and Technologists Board)

266. Delete the name "The Kenya Medical laboratory Technicians and Technologists Board" and replace it with "The Kenya Medical laboratory Board"

Justification

Medical laboratory Board is a robust and inclusive name incorporating all officers i.e. (certificate holders), (diploma holders), (Bachelor's degree holders) and laboratory consultants (MSc and PhD holders).

Committee Observation

The proposed amendment is rejected in accordance with Standing Order 133(5) as it deals with a different subject matter.

Section 3(1)

267. Delete the existing statement and replace it with the following statement;

There is established a board to be known as the Kenya Medical Laboratory Board.

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya. To capture advancements in the practice of medical laboratory science.

Committee Observation

The proposed amendment is rejected in accordance with Standing Order 133(5) as it deals with a different subject matter.

Section 5 (1)

268. Maintain the statement but add the word officer and consultants after the word technologists.

Justification

The Medical laboratory science profession has developed. It is a robust multi-disciplined profession with specialties at Master's degree and PhD degree used in specialized lab diagnosis.

Committee Observation

The Committee rejected the proposal as the classification is not necessary.

Section 5(2a, 2b, 2c, 2d and 2e)

269. Maintain each statement but replace technicians and technologists with officers.

Justification

The Medical laboratory science profession has developed. It is a robust multi-disciplined profession with specialties at Master's degree and PhD degree used in specialized lab diagnosis.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 5(2f)

270. Insert three new sub sections namely 5(2f),5(2g) and 5(2h), after subsection 5(2e) as other functions of the board in this respect; "Coordinate internship, approve health facilities for Internship, organize internship register, place interns for internship and prescribe any requirements relating to Internship and advise the government of Kenya on relating issues thereof "Conduct validation of all in vitro diagnostic products imported into and used in Kenya".

Justification

It is the board's mandate to ensure standards are maintained and this does not leave out internship. Validation is key to guarantee quality of laboratory services. Quality of test results is dependent on quality of test kits and reagents/chemicals used in analyzing patients' specimen which is as at its best upon professional competent validation exercise.

Committee Observation

The Committee rejected the proposal because matters of internship can be arranged internally within the organization.

Section 6(1,eJ)

271. Replace the term "laboratory technologist" with the term "Laboratory Officer"

Justification

Division of vector borne diseases is managed by a laboratory specialist with expertise and also offers consultancy in this area.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

272. Section 6

- i. Insert after roman 'g': Two laboratory officers elected by Kenya National Union of Medical Laboratory Officers. g & i replace technician and technologist with what "officer.

Justification

Kenya National Union of Medical Laboratory Officers is mandated to represent the interests and welfare of all medical laboratory officers.

- ii. Insert after roman h the CEO/Secretary General of the Union.

Justification

Kenya National Union of Medical Laboratory Officers has a fundamental right have fundamental right to have a representation in the regulatory body of that profession. Comprising of members who are licensed and regulated under this act.

Committee Observation

The Committee rejected the proposal since the Council as proposed to be reconstituted by the Committee includes more persons having knowledge and expertise relevant to the medical laboratory profession.

PART III Section 14

273. Delete the statement "Registration of Laboratory Technicians" and replace it with the statement "Registration of Laboratory technicians, technologists, officers and consultants"

Justification

- i. To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.
- ii. To capture advancements in the practice of medical laboratory science.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 14

274. Delete the term "Chief Medical Laboratory Technologist" and replace it with "Director of Medical Laboratory Services".

Justification

To capture the updated advancements in the organogram of management of Medical Laboratory Services in the ministry of health Kenya.

Committee Observation

The Committee noted that section 14 is not proposed to be amended in the Act.

Section 15 (la, b,)

275. Delete the statement; "for laboratory technicians and technologists"

Justification

To maintain inclusivity of all qualifications' in the medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 16 (1)

276. Insert a new sub section e;e. The registrar shall maintain a register of medical laboratory officers and medical laboratory consultants In such a form as the board may prescribe.

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 16 (2)

277. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 19 (1,3)

278. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 20 (d,2, 2biii,3)

279. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 21

280. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 22(1,3)

281. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications' in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 23 (2)

282. Delete the word "minister" and replace with the word "cabinet secretary"

Justification

Realign to constitution of Kenya 2010

Committee Observation

The Committee rejected the proposal as this is already provided for in the Bill.

Section 23 (3)Section 24 (1,2,3,4)Section 25 (1,2b, 2c)

283. Replace the word "technologists" and "Technicians" with "laboratory officers" and "laboratory consultants".

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as as this is already provided for in the Bill.

284. PART V (DISCIPLINE) - Section 26

- i. Add to the composition of disciplinary committee, as subsection 1f; the CEO of Kenya National Union of Medical Laboratory Officers Medical Officers.

Justification

KNUMLO is a legally registered union that represents the interests and welfare of all registered lab officers.

- ii. Delete sub section 2 and replace it with the statement; the quorum of the committee shall be all six members.

Justification

KNUMLO is a legally registered union that represents the interests and welfare of all registered lab officers.

Committee Observation

The Committee rejected the proposal as the chairman of the Disciplinary Committee is the Chairperson of the Association.

Section 29(1)

285. Replace “Technicians” and “technologists” with “laboratory officers and laboratory consultants”.

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 30(1)

286. Replace “Technicians” and “technologists” with “laboratory officers and laboratory consultants”.

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 30(1a, b,le, e)

287. Replace “Technicians” and “technologists” with “laboratory officers and laboratory consultants”.

Justification

~~To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.~~

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 30(2, 3, 4,5)

288. Replace “Technicians” and “technologists” with “laboratory officers and laboratory consultants”.

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 31(1,2) and Section 32(1)

289. Replace "Technicians" and "technologists" with "laboratory officers and laboratory consultants". To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Section 35(3), Section 36(6) Section 40

290. Delete the word "minister" and replace it with the word "cabinet secretary"

Justification

Realign the section to constitution of Kenya 2010.

Committee Observation

The Committee noted that the proposal was already contained in the Bill.

Section 40(c, d)

291. After the word "technologists" insert the statement "laboratory officers and laboratory consultants".

Justification

To maintain inclusivity of all qualifications in medical laboratory practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

Health Act (2021)

Section 2

292. Retain representative of relevant professional association.

Justification

Providing peer and self- regulation, and this is best placed to oversight of its members.

Committee Observation

The amendment is rejected since there shall be a representative of the Association to be included in the composition of the Board.

Part II 6,II

293. President of the board to be nominated by members of the Board and forwarded to President through a competitive process.

Justification

The leadership of the board need to have a respected medical officer to provide proper technical expertise.

Committee Observation

The Committee rejected the proposal as the recommendation of the Committee is that a chairperson shall have specific qualifications to be eligible for appointment.

Section 26 (I ,A)

294. Substitute technologists & and technician with officer and consultant.

Justification

To maintain inclusivity of all qualifications in medical practice in Kenya.

Committee Observation

The Committee rejected the proposal as the medical laboratory profession consists of technicians and technologists.

1st Schedule Level II

295. Delete; The incharge is a nurse or clinical officer and replace with the incharge is a registered Health Practitioner

Justification

Quality health is a pre-requisite for universal health care. Facilities managed by managers with medical backgrounds provide better quality service compared to those ran by non-medical professionals.

Committee Observation

The Committee rejected the proposal and recommended to retain the in-charge as a nurse or clinical officer.

Level III

296. Delete; incharge is the clinical officer with at least two years managerial experience and replace with incharge should be a qualified health practitioner with at least two years managerial experience.

Justification

Quality health is a pre-requisite for universal health care. Facilities managed by managers with medical backgrounds provide better quality service compared to those ran by non-medical professionals

Committee Observation

The Committee rejected the proposal and recommended to retain the in-charge as a clinical officer or medical officer with at least two years managerial experience.

Level IV

297. Delete; incharge is a registered medical practitioner with a Master's Degree in a health related field and replace with, an incharge is a qualified Health practitioner with a health related post.

Justification

Quality health is a pre requisite for universal health care. Facilities managed by managers with medical backgrounds provide better quality service compared to those ran by non-medical professionals.

Committee Observation

The Committee rejected the proposal and recommended to retain the in-charge as a registered medical practitioner with a Masters' degree in a health related field.

2.23 SOCIETY OF RADIOGRAPHY IN KENYA

The Society of Radiography in Kenya appeared before the Committee on Tuesday 16th November, 2021. They submitted as follows on the Membership and composition of the Board in

the Veterinary Surgeons and Veterinary Para- Professionals Act and the Supplies Practitioners Management Act No 17 of 2007-

Veterinary Surgeons and Veterinary Para- Professionals Act

298. Amend the membership and composition of the Board

Justification

18 members, 8 nominated by professional bodies, overall only four are non-professionals

Supplies Practitioners Management Act No 17 of 2007

299. Amend the membership and composition of the Board

Justification

9 members, only two appointed by government.

Committee Observations

The Committee noted that the proposals were in relation to Acts not included to be amended in the Bill.

2.24 KENYA MEDICAL SOCIAL WORKERS ASSOCIATION

300. The Kenya Medical Social Workers submitted their memoranda later after the Committee had met all the other stakeholders. The Committee resolved to consider their views fully.

- i. Kenya Medical Social Workers Association should not be discriminated against professionally
- ii. The Kenya Medical Social Workers Association members should progress professionally to higher levels, just as other cadres in the health sector.
- iii. The Kenya Medical Social Workers Association members should be allowed and facilitated to be chairpersons in the various councils and boards in the health sector since they equally have an oversight role in the medical field.

Committee Observation

The Committee noted that there were no specific amendments proposed to the Bill.

3.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:

SCHEDULE

THAT the Schedule to the Bill be amended —

1. in the proposed amendments to the **Pharmacy and Poisons Act, Cap. 244**—

a. by deleting the proposed amendments to section 3 and substituting therefor the following new amendments—

s. Delete and substitute therefor the following new section—

Establishment of 3. (1) There is established a Board which shall consist of—

Pharmacy
and Poisons
Board.

(a) a non-executive chairperson appointed by the President and who shall—

(i) be a registered pharmacist of good standing with a degree in pharmacy; and

(ii) have at least ten years' experience in the pharmaceutical sector;

(b) the Principal Secretary in the ministry for the time being responsible for health, or a representative appointed in writing;

(c) the Attorney General or a representative appointed in writing;

(d) the Director General for health or a representative appointed in writing;

(e) five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom—

(i) three shall be from the pharmacy profession nominated by the Pharmaceutical Society of Kenya and the Kenya Pharmaceutical Association, of whom two shall be pharmacists with knowledge on regulatory affairs, quality assurance and pharmaceutical development and one shall be a pharmaceutical technologist;

(ii) one pharmacist nominated by universities in Kenya which have the power to grant a qualification which is registerable under this Act;

(iii) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field; and

(f) the Registrar who shall be the Chief Executive Officer and an *ex officio* member of the Board.

(2) The persons appointed under subsection (1)(f) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(f) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Board under subsection (1)(a) and (f) shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Board if—

- (a) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;
- (b) has been absent from three consecutive meetings of the Board without permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, charging and disposing of movable and immovable property;
- (c) ~~borrowing money; entering into contracts; and~~
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act.

Justification

The amendment seeks to ensure that the Board shall be comprised of persons with knowledge and expertise in matters related to the pharmacy profession.

The amendment also introduces the provision providing for the corporate nature of the Board.

- b. by inserting the following new amendment immediately after the proposed amendment to section 3—
 - s.3B Insert the following new subsection immediately after subsection (3)–

“(4) The Board shall perform its functions under subsection (2) in consultation with the Board of Management of the National Quality Control Laboratory.”

Justification

The amendment seeks to ensure that the Pharmacy and Poisons Board shall perform its functions related to the regulation of medicinal substances in consultation with the Board of Management of the National Quality Control Laboratory.

- c. by deleting the proposed amendments to section 4;

Justification

The deletion of the amendment seeks to retain the quorum for meetings of the Board at five members.

- d. by deleting the proposed amendment to section 35C;
- e. by deleting the proposed amendment to section 35D;
- f. by deleting the proposed amendment to section 35E;
- g. by deleting the proposed amendment to section 35F and inserting the following new amendment—

s.35F Delete subsection (1) and insert the following new subsection—

“(1) There shall be a Board of Management for the Laboratory, which shall consist of nine members, to be appointed by the Cabinet Secretary, as follows—

- (a) a non-executive chairperson who shall—
 - (i) be a registered pharmacist of good standing with a degree in pharmacy; and
 - (ii) have at least ten years’ experience in the pharmaceutical sector;
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health, or a representative appointed in writing;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance, or a representative appointed in writing;
- (d) the Director General for health or a representative appointed in writing;
- (e) the Attorney-General or a representative appointed in writing;
- (f) one person having knowledge and experience in supply chain management, nominated by the Council of County Governors;
- (g) one pharmacist, not being a public officer, with knowledge and experience in drug analysis, pharmaceutical manufacturing and regulatory affairs of health products and technologies;
- (h) one person from the healthcare profession having knowledge and experience in quality management systems; and
- (i) the Director who shall be the Chief Executive Officer and an *ex officio* member of the Board.

- h. by deleting the proposed amendment to section 35G;
- i. by deleting the proposed amendment to section 35H;
- j. by deleting the proposed amendment to section 35I;
- k. by deleting the proposed amendment to section 35J;
- l. by deleting the proposed amendment to section 35K;

.Justification

The amendment seeks to retain the National Quality Control Laboratory as a body corporate, since it plays a vital role in the examination, testing and analysis of drugs.

The amendment further seeks to provide that the members of the Board of the National Quality Control Laboratory shall be appointed by the Cabinet Secretary from a set criteria, so as to avoid any ambiguity that may arise.

- 2. in the proposed amendments to the **Medical Practitioners and Dentists Act, Cap. 253**—
 - a. by deleting the proposed amendments to section 3A and substituting therefor the following new amendments—
 - s. 3A Delete and substitute therefor the following new section—

Composition of the Council. **3A.** (1) The Council shall consist of—

- (a) a non-executive chairperson appointed by the President and who shall—
 - (i) be a specialist medical or dental practitioner of good standing; and
 - (ii) have at least ten years' experience, five of which shall be in a managerial position;
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health, or a representative appointed in writing;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to health, or a representative appointed in writing;
- (d) the Director General for health or a representative appointed in writing;
- (e) six other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in management of whom—
 - (i) one person shall be a representative of universities in Kenya which have the power to grant a qualification which is registerable under this Act;
 - (ii) one person who shall be a

- representative of the Kenya Medical Association;
- (iii) one person who shall be a representative of Kenya Dental Association;
- (iv) one person who shall be a representative of oral health practitioners;
- (v) one person who shall be a representative of the Consumer Federation of Kenya;
- (vi) one person with knowledge and expertise in finance and audit, accounting, business management, economics, law or any other relevant field; and

(f) the Registrar who shall be the Chief Executive Officer and an *ex officio* member of the Board.

(2) The persons appointed under subsection (1)(e) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(e) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Council under subsection (1)(a) and (e) shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Council if—

- (a) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;
- (b) has been absent from three consecutive meetings of the Council without permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.

(5) The quorum for the conduct of business at a meeting of the Council shall be five members.

(6) The chairperson shall preside at all meetings of the Council but in the absence of the chairperson the members present shall appoint one of their number to preside at the meeting.

(7) The Council shall meet at least once in every three months.

(8) The Council may appoint suitable persons to assist in carrying out particular decisions of the Council or particular duties or investigations for the Council.

(9) The powers of the Council shall not be affected by any vacancy in the membership thereof.

(10) Subject to the provisions of this Act, the Council may regulate its own procedure.

Justification

The amendment seeks to ensure that the Council shall be comprised of persons with knowledge and expertise in matters related to the medical and dental profession.

- b. in the proposed new section 4E, by deleting the words “relevant Government agencies” and substituting therefor the words “Salaries and Remuneration Commission”.

Justification

The amendment seeks to make express reference to the Salaries and Remuneration Commission as the body constitutionally mandated to review and determine the salaries of public officers.

3. in the proposed amendments to the **Nurses Act, Cap. 257**—

~~a. by deleting the proposed amendments to section 4 and inserting the following new amendment—~~

s.4 Delete and substitute therefor the following new section—

Membership
of the
Council.

4. (1) The Council shall consist of—

(a) a non-executive chairperson appointed by the President and who shall—

(i) be a registered nurse of good standing; and

(ii) have at least ten years' experience, five of which shall be in a managerial position;

(b) the Principal Secretary in the Ministry for the time being responsible for health, or a representative appointed in

- writing;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance, or a representative appointed in writing;
 - (d) the Attorney-General or a representative appointed in writing;
 - (e) the Director of Nursing Services;
 - (f) four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with managerial experience of whom—
 - (i) one shall be a nurse nominated by the National Nurses Association of Kenya;
 - (ii) one shall be a nurse nominated by the Kenya Progressive Nurses Association;
 - (iii) one shall be a registered nurse educator actively involved in the training of nurses nominated by recognized universities in Kenya;
 - (iv) one shall be a person with a professional background in human resource management;
 - (e) the Chief Executive Officer of the Kenya Medical Training College or a representative appointed in writing; and
 - (g) the Registrar who shall be the Chief Executive Officer and an *ex officio member* of the Board.

(2) The persons appointed under subsection (1)(f) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(f) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Council under subsection (1)(a) and (f) shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Council if—

- (h) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;

- (i) has been absent from three consecutive meetings of the Council without permission of the chairperson;
- (j) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (k) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.

Justification

The amendment seeks to ensure that the Council shall be comprised of persons with knowledge and expertise in matters related to the nursing profession.

b. by inserting the following new amendment immediately after the proposed amendment to section 6—

- New. Insert the following new section immediately after section 9—
- Corporation **9A.** (1) The Council shall competitively recruit a person
Secretary. qualified, in terms of the law governing the practice of public
 secretaries in Kenya, to serve as the Corporation Secretary.
- (2) The Corporation Secretary shall—
- (a) in consultation with the chairperson of the Council, issue notices for meetings of the Council;
 - (b) keep, in custody, the records of the deliberations, decisions and resolutions of the Council;
 - (c) transmit decisions and resolutions of the Council to the Chief Executive Officer for execution, implementation and other relevant action;
 - (d) provide guidance to the Council on their duties and responsibilities on matters relating to governance; and
 - (e) perform such other duties as the Council may direct.

Justification

The amendment seeks to introduce the appointment of the Corporation Secretary by the Council, who shall be responsible for the custody of the resolutions of the Council.

4. by deleting the proposed amendments to the **Kenya Medical Training College Act, Cap. 261—**

Justification

The deletion of the proposed amendment seeks to ensure that the Director General for health is retained in the membership of the Board of Directors of the Kenya Medical Training College.

5. by deleting the proposed amendments to the **National Hospital Insurance Fund Act, No. 9 of 1998**—

Justification

The deletion of the proposed amendments to the National Hospital Insurance Fund Act, No. 9 of 1998 is necessary since the matters proposed to be amended were already contained in the National Hospital Insurance Fund (Amendment) Bill, 2021 which was passed by the House on 21st December, 2021.

6. in the proposed amendments to the **Kenya Medical Laboratory Technicians and Technologists Act, No. 10 of 1999**—

- a. by deleting the proposed amendment to section 2;

Justification

The deletion of the amendment seeks to ensure that the Association of Kenya Medical Laboratory Scientific Officers is retained as defined in the Act, since there shall be a representative of the Association to be included in the composition of the Board.

- b. by deleting the proposed amendment to section 6 and inserting the following new amendment—

- s. 6 Delete and substitute therefor the following new section—

- Membership of the Board.
6. (1) The Board shall consist of—
- (a) a non-executive chairperson appointed by the President and who shall—
 - (i) be a registered medical laboratory technician of good standing; and
 - (ii) have at least ten years' experience, five of which shall be in a managerial position;
 - (b) the Principal Secretary for the time being responsible for matters relating to health or a representative appointed in writing;
 - (c) the Director General for health or a representative appointed in writing;
 - (d) five other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with managerial experience of whom—
 - (i) one shall be a pathologist nominated by the Kenya Medical Association;

- (ii) two shall be from the medical laboratory profession nominated by the Association of Kenya Medical Laboratory Scientific Officers of whom one shall be a laboratory technologist and one shall be a laboratory technician;
- (iii) one shall be a registered laboratory technologist nominated by a university recognized in Kenya offering medical laboratory sciences;
- (iv) one shall be a registered laboratory technician nominated by a university recognized in Kenya offering medical laboratory sciences; and
- (e) the Registrar who shall be the Chief Executive Officer and an *ex officio* member of the Board.

(2) The persons appointed under subsection (1)(f) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(f) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Council under subsection (1)(a) and (f) shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Council if—

- (a) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;
- (b) has been absent from three consecutive meetings of the Board without permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board.

Justification

The amendment seeks to ensure that the Board shall be comprised of persons with knowledge and expertise in matters related to the medical laboratory profession.

- c. in the proposed amendment to section 26(1)(a), by deleting the proposed new paragraph (a) and inserting the following new paragraph—
 “(a) a chairperson elected from amongst the members of the Board appointed under paragraphs (d) of section 6(1).”

Justification

The amendment seeks to ensure that the chairperson of the Disciplinary Committee shall be one of the persons appointed to serve in the Board.

- d. in the proposed amendment to the Schedule—
 - i. by deleting the proposed amendment to paragraph 1 and inserting the following new amendment—
 “Delete the words “or re-election, as the case may be” and substitute therefor the words “for one further term of three years.”
 - ii. by deleting the proposed amendment to paragraph 3(4) and inserting the following new amendment—
 “Delete the word “eleven” and substitute therefor the word “five”.

Justification

The amendment seeks to provide with certainty that the re-appointment of the Board members shall only be for a period of one further term of three years.

The amendment also seeks to ensure that the quorum for the conduct of meetings of the Board shall be five members, since the Board will comprise of nine members.

- 7. in the proposed amendments to the **Tobacco Control Act, No. 4 of 2007**—
 - a. by deleting the proposed amendment to section 5 and inserting the following new amendment—
 - s. 5 Delete and substitute therefor the following new section—

Membership of the Board. **5.** (1) There is established a Board to be known as the Tobacco Control Board which shall consist of—

- (a) a non-executive chairperson appointed by the President and who shall—
 - (i) have a degree in public health; and
 - (ii) have at least ten years’ experience, five of which shall be in a managerial position;
- (b) the Principal Secretary for the time being responsible for matters relating to health or a representative appointed in writing;
- (c) the Principal Secretary for the time being responsible for matters relating to finance, or a representative appointed in writing;
- (d) the Principal Secretary for the time being responsible for matters relating to interior and coordination of National Government or a

- representative appointed in writing;
- (e) the Attorney-General or a representative appointed in writing;
 - (f) the Director General for health or a representative appointed in writing;
 - (g) four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with managerial experience of whom—
 - (i) one shall be a representative of the business community in Kenya, nominated by the Kenya National Chamber of Commerce and Industry;
 - (ii) one representative of Consumer Federation of Kenya;
 - (iii) one representative from the Non-Governmental Organizations Co-ordination Board;
 - (iv) one representative from the National Environment Management Authority; and
 - (h) the Chief Executive Officer who shall be an *ex officio* member and secretary to the Board.

(2) The persons appointed under subsection (1)(g) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations or institutions, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(g) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) No member of the Board shall directly or indirectly be affiliated to the tobacco industry or its subsidiaries.

(5) A member who fails to disclose his or her affiliation to the tobacco industry or its subsidiary commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or imprisonment for a period not exceeding five years or both.

(6) A person appointed as a member of the Board under subsection (1)(a) and (g), shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Board if—

- (a) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;
- (b) has been absent from three consecutive meetings of the Board without permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board.

(7) The chairperson shall preside at all meetings of the Board and, in the absence for any reason of the chairperson, the other members of the Board who are present at that meeting shall choose one among their number to act as the chairperson at the meeting.

(8) Five members of the Board shall constitute a quorum at any meeting.

(9) The Board shall meet at least once in every three months.

(10) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(11) The expenses of the Board shall be defrayed out of the monies provided by Parliament for that purpose.

(12) Subject to the provisions of this Act, the Board may regulate its own procedure.

Justification

The amendment seeks to ensure that the Board shall be comprised of persons having the relevant expertise as well as representatives of the relevant stakeholders.

- 8. in the proposed amendments to the **Nutritionists and Dieticians Act, No. 18 of 2007**—
- a. by deleting the proposed amendment to section 5 and inserting the following new amendment—
- s. Delete and substitute therefor the following new section—

The Council of the Institute.

5. (1) There is established the Council of the Institute which shall consist of—

- (a) a non-executive chairperson appointed by the President and who shall—

- (i) be a holder of a bachelors' degree in nutrition or dietetics; and
- (ii) have at least ten years' experience, five of which shall be at managerial level;

(b) the Principal Secretary in the Ministry for the time being responsible for health or a representative appointed in writing;

(c) the Attorney-General or a representative appointed in writing;

(d) the Director General for health or a representative appointed in writing;

(e) four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with managerial experience of whom—

(i) one shall be from the nutrition and dietetics profession of good standing nominated by the Nutrition Association of Kenya;

(ii) one shall be a registered nutrition and dietetics educator actively involved in the training of nutrition and dietetics professionals nominated by recognized universities or colleges in Kenya;

(iii) one shall be a representative of the Consumers Federation of Kenya, who shall be a holder of at least a diploma in nutrition studies;

(iv) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, human resource, law or any other relevant field; and

(g) the Chief Executive Officer who shall be an *ex-officio* member of the Board.

(2) The persons appointed under subsection (1)(e) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations or institutions, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(e) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Council under subsection (1)(a) and (e), shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years but may cease to be a member of the Council if—

(f) at any time the member resigns from office by giving notice, in

- writing, to the President or Cabinet Secretary, respectively;
 - (g) has been absent from three consecutive meetings of the Council without permission of the chairperson;
 - (h) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
 - (i) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.
- (5) The Council may establish committees consisting of members of the Council to deal with such matters as the Council may specify.
- (6) Subject to the First Schedule, the Council shall regulate its own procedures.

Justification

The amendment seeks to ensure that the Council shall be comprised of persons having the relevant expertise and knowledge in matters relating to nutrition and dietetics.

The amendment also seeks to provide the grounds upon which a person may cease to be a member of the Council.

- b. in the proposed amendment to section 9, by deleting the words “relevant Government agencies” appearing in the proposed new section 9 and substituting therefor the words “Salaries and Remuneration Commission”;

Justification

The amendment seeks to expressly make reference to the Salaries and Remuneration Commission as the body constitutionally mandated to review and determine salaries and remunerations of public officers.

- c. in the proposed amendment to the First Schedule, by deleting the expression “two-thirds” and substituting therefor the word “seven”.

Justification

The amendment seeks to set the quorum for a meeting of the Council at seven members, since the Council will be composed of eleven members.

- 9. in the proposed amendments to the **Cancer Prevention and Control Act, No. 15 of 2012**–
- a. by deleting the proposed amendment to section 6(2) and inserting the following new amendment–
- s. 6(2) Delete and substitute therefor the following new section–

“(2) The Board shall consist of–

- (a) a non-executive chairperson appointed by the President and who shall–

information management profession of good standing nominated from the Association for Medical Records Officers;

- (iii) one shall be a person with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field; and

(g) the Registrar who shall be the Chief Executive Officer and an *ex officio* member of the Board.

(2) The persons appointed under subsection (1)(f) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations or institutions, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(f) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(2) A person appointed as a member of the Board under subsection (1)(a) and (f), shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years.

Justification

The amendment seeks to ensure that the Board is comprised of members having the relevant knowledge and expertise in health records and information management.

15. in the proposed amendments to the **Clinical Officers (Training, Registration and Licensing) Act, No. 20 of 2017**—

- a. by deleting the proposed amendment to section 2;

Justification

The amendment seeks to retain the Kenya Clinical Officers Association as defined in the Act, since the Association nominates a member to the Council.

- b. by deleting the proposed amendment to section 4 and inserting the following new amendment—
s. Delete and substitute therefor the following new section—

Composition
of the
Council.

4. (1) The Council shall consist of—

- (a) a non-executive chairperson appointed by the President and who shall—

(i) be a registered clinical officer of good standing; and

- (ii) have at least ten years' experience, five of which shall be at managerial level;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to health, or a representative appointed in writing;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance, or a representative appointed in writing;
- (d) the Attorney-General or his or a representative appointed in writing;
- (e) the Director General for health or a representative appointed in writing;
- (f) four other persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with managerial experience of whom—
 - (i) two shall be clinical officers nominated by the Kenya Clinical Officers Association;
 - (ii) one shall be a clinical medicine educator actively involved in the training of clinical officers nominated by recognized universities in Kenya which have the power to grant a qualification which is registerable;
 - (iii) one shall be a person with a professional background in with knowledge and experience in matters relating to accounting, business management, public health, economics, law or any other relevant field;
- (a) the Chief Executive Officer of the Kenya Medical Training College or a representative appointed in writing; and
- (b) the Registrar who shall be the Chief Executive Officer and an *ex officio* member of the Board.

(2) The persons appointed under subsection (1)(f) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations or institutions, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(3) The nominations under subsection (1)(f) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.

(4) A person appointed as a member of the Council under subsections (1)(a) and (e) of this section, shall serve for a term of three years and shall be eligible for reappointment for a further and final term of three years.

(5) A person appointed as a member of the Council under subsection (1)(a) and (f) may cease to be a member of the Council if—

- (a) at any time the member resigns from office by giving notice, in writing, to the President or Cabinet Secretary, respectively;
- (b) has been absent from three consecutive meetings of the Council without permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
- (d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council.

Justification

The amendment seeks to ensure that the Board is comprised of members having the relevant knowledge and expertise in clinical medicine.

- c. in the proposed amendment to the First Schedule, by deleting the words “two-thirds” and substituting therefor the word “five”.

Justification

The amendment seeks to set the quorum for the conduct of meetings of the Council at five members, since the Council will be comprised of nine members.

- 16. in the proposed amendments to the **Health Act, No. 21 of 2017**–
- a. by deleting the proposed amendment to section 30(1)(e);

Justification

The deletion of the proposed amendment will retain the Director General for health in the membership of the Kenya Health Human Resource Advisory Council.

This is necessary since the Director General for health is the technical advisor to the Government on all matters relating to health within the health sector.

- b. in the proposed amendment to section 33(2), by deleting the word “Authority” and substituting therefor the word “Council”.

Justification

The amendment is necessary for purposes of making correct reference to the Kenya Health Human Resource Advisory Council which is not an Authority.

c. in the proposed amendments to section 46(1)—

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

“(a) a chairperson appointed by the Cabinet Secretary who shall be a health professional with ten years’ experience and who meets the requirements of Chapter Six of the Constitution and has knowledge and experience in matters related to human resource management;”

Justification

The amendment seeks to retain the qualifications of the chairperson of the Kenya Health Professions Oversight Authority.

(ii) by deleting paragraph (d) of the proposed new section 46(1) and inserting the following new paragraph—

“(d) one representative nominated by the Council of County Governors;”

(iii) by deleting the proposed new subsection (1A) and inserting the following new subsections—

“(1A) The persons appointed under subsections (1)(e), (f) and (g) shall be appointed by the Cabinet Secretary from among members nominated by their relevant professional associations or institutions, each of which shall nominate two candidates in each category taking into consideration gender, ethnicity and regional balance.

(1B) The nominations under subsection (1)(e), (f) and (g) shall be done within a period of thirty days from the date of occurrence of the vacancy, and where the relevant association or institution fails to provide the nomination, the Cabinet Secretary shall nominate representatives from such associations or institutions.”

Justification

The amendment seeks to remove the Attorney-General from the membership of the Kenya Health Professions Oversight Authority, and instead retain a representative nominated by the Council of County Governors. This is necessary owing to the fact that health is a concurrent function between the national and county governments.

The amendment also seeks to provide for the manner of nomination of representatives to the Authority by the various institutions.

d. by deleting the proposed amendments to the First Schedule.

Justification

The deletion of the proposed amendments to the First Schedule seeks to ensure that the persons in charge of the various levels of health facilities shall be only those within the medical profession, so as to ensure efficient management and administration of public health services.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 2—

Transition. 3. (1) In this section, “Board” includes any Council proposed to be reconstituted under this Act.

(2) At the commencement of this Act, any person who, immediately before the commencement of this Act was a member or staff of any of the Boards proposed to be reconstituted under this Act shall be deemed to be a member or staff of the reconstituted Board for the unexpired period of his or her term of service.

(3) At the commencement of this Act, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in any of the Boards shall by virtue of this sub-section, vest in the new Board under this Act.

(4) At the commencement of this Act, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such date were vested in, imposed on or enforceable against any Board shall, by virtue of this sub-section, be deemed to be vested in, imposed on or enforceable against the respective new Board.

(5) Any reference in any written law or in any document or instrument to any of the Boards shall on and after the appointed day, be construed to be a reference to the respective new Board

Justification

The amendment seeks to ensure the introduction of transitional provisions to ensure the seamless transition from the former Boards and Councils to the new Boards and Councils as reconstituted in the Bill.

Signed..........Date.....11/2/2022.....2022

Hon. Sabina Chege, M.P.

Chairperson, Departmental Committee on Health



THE NATIONAL ASSEMBLY

12TH PARLIAMENT - FIFTH SESSION (2021)

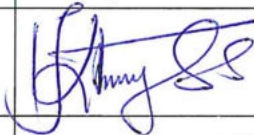



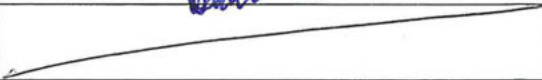
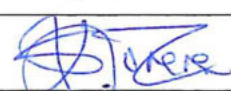

HEALTH COMMITTEE

ATTENDANCE REGISTER

Date: 1/2/2022

Venue: CPA Room, Main Parliament Buildings

Adoption of the Report on the Health Laws (Amendment) Bill No. 2 of 2021

No.	HON MEMBER	SIGNATURE
1.	HON. SABINA CHEGE, MP – CHAIRPERSON	Virtual
2.	HON. JOSHUA KUTUNY, MP – VICE/CHAIRPERSON	
3.	HON. DR. ESELI SIMIYU, MP	
4.	HON. DR. JAMES NYIKAL, MP	
5.	HON. DR. JAMES KIPKOSGEI MURGOR, MP	
6.	HON. DR. MOHAMED DAHIR DUALE, MP	
7.	HON. ALFRED AGOI MASAIDA, MP	
8.	HON. MURIUKI NJAGAGUA, MP	Virtual
9.	HON. JOYCE AKAI EMANIKOR, MP	Virtual
10.	HON. DR. GEDION OCHANDA, MP	Virtual
11.	HON. SARAH PAULATA KORERE, MP	
12.	HON. PROF. MOHAMUD SHEIKH	

No.	HON MEMBER	SIGNATURE
	MOHAMED, MP	
13.	HON. MARTIN PETERS OWINO, MP	
14.	HON. KIPSENGERET KOROS, MP	Virtual
15.	HON. TONGOYO GABRIEL KOSHAL, MP	
16.	HON. BEATRICE ADAGALA, MP	Virtual
17.	HON. SAID HIRIBAE, MP	
18.	HON. (CAPT.) RUWEIDA MOHAMMED, MP	
19.	HON. JAMES GITHUA KAMAU WAMACUKURU, MP	

2011

2012

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – FIFTH SESSION

DEPARTMENTAL COMMITTEE ON HEALTH

In the Matter of Article 118(1) (b) of the Constitution and National Assembly Standing Order 127(3)

And

In the Matter of Consideration by the National Assembly of:-

1. The Community Health Services (Senate Bill No. 34 of 2020)
2. The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28)
3. The Health Laws (Amendment) Bill, (National Assembly Bill No. 2 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1) (1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly's Standing Order 127(3) provides that "the Departmental Committee to which a Bill has been committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the following Bills:

The Community Health Services (Senate Bill No. 34 of 2020) sponsored by Sen. (Dr.) Agnes Zani, M.P., seeks to provide for a framework for the delivery of community health services; to promote access to primary health care services at the community level and reduce health disparities between counties; to provide for the training and capacity building of the community health workforce; and for connected purposes.

The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28) sponsored by Sen. Sylvia Kasanga, M.P., seeks to amend the Mental Health Act; The Bill seeks to provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness.

The Health Laws (Amendment) Bill, (National Assembly No. 2 of 2021), sponsored by the Leader of Majority Party, Hon. (Dr.) Amos Kimunya, EGH, M.P., seeks to make various wide ranging amendments to various health-related statutes on matters relating to health policy to improve efficiency, service delivery, realization of the Universal Health Coverage and the Big 4 Agenda, in line with the Constitution, the Health Act, 2017, the Mwongozo Code of Governance for State Corporation and other applicable laws.

Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bills were committed to Departmental Committee on Health for consideration and Report to the House, having undergone the First Reading as set out in the schedule hereunder:

SCHEDULE

No.	Bill	First Reading
1.	The Community Health Services (Senate Bill No. 34 of 2020) sponsored by Sen. (Dr.) Agnes Zani, M.P.,	30 th September, 2021
2.	The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28) sponsored by Sen. Sylvia Kasanga, M.P.,	13 th October, 2021
3.	The Health Laws (Amendment) Bill, (National Assembly No. 2 of 2021), sponsored by the Leader of Majority Party, Hon. (Dr.) Amos Kimunya, EGH, M.P.,	30 th March, 2021 21 st October, 2021 (referred back to Committee for regularization)

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 19th November, 2021 at 5.00 p.m.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
5th November, 2021.

MINUTES OF THE 3RD SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 1ST FEBRUARY, 2022 IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) ROOM, MAIN PARLIAMENT BUILDING AT 10.00AM

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Sabina Chege, MP | - Chairperson |
| 2. The Hon. Joshua Kutuny, MP | - Vice-Chairperson |
| 3. The Hon. Dr James Nyikal, MP | |
| 4. The Hon. Dr Mohamed Dahir Duale, MP | |
| 5. The Hon. Dr James Kipkosgei Murgor, MP | |
| 6. The Hon. Muriuki Njagagua, MP | |
| 7. The Hon. Dr Gideon Ochanda, MP | |
| 8. The Hon. Martin Peters Owino, MP | |
| 9. The Hon. Prof Mohamud Sheikh Mohamed, MP | |
| 10. The Hon. Kipsengeret Koros, MP | |
| 11. The Hon. Tongoyo Gabriel Koshal, MP | |
| 12. The Hon. Said Hiribae, MP | |
| 13. The Hon James Githua Kamau Wamacukuru, MP | |
| 14. The Hon. Sarah Paulata Korere, MP | |
| 15. The Hon. Joyce Akai Emanikor, MP | |
| 16. The Hon. Beatrice Adagala, MP | |
| 17. The Hon. (Capt) Ruweida Mohammed, MP | |

ABSENT WITH APOLOGY

1. The Hon. Dr Eseli Simiyu, MP
2. The Hon. Alfred Agoi Masadia, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|--------------------|
| 1. Douglas Katho | - | Clerk Assistant II |
| 2. Muyodi Emmanuel | - | Clerk Assistant II |
| 3. Christine Odhiambo | - | Legal Counsel I |
| 4. Nimrod Ochieng | - | Audio Officer |

MIN. NO.NA/DC.H/2022/09: PRELIMINARIES

The Chairperson, called the meeting to order at 10.07 am.

MIN. NO. NA/DC.H/2022/10: ADOPTION OF AGENDA

The Members unanimously adopted the meeting agenda as presented.

Agenda:

1. Call to Order and Prayers

Substantive Agenda: Consideration and Adoption of the addendum on public participation to the report on the Health Laws (Amendment) Bill, National Assembly, Bill No. 2 of 2021

2. Any Other Business

3. Adjournment

MIN.NO.NA/DC.H/2022/11:

CONSIDERATION OF THE DRAFT ADDENDUM
ON PUBLIC PARTICIPATION TO THE REPORT
ON THE HEALTH LAWS (AMENDMENT) BILL,
NATIONAL ASSEMBLY, BILL NO. 2 OF 2021

The Committee considered the draft addendum on public participation to the report on the Health Laws (Amendment) Bill, National Assembly, Bill No. 2 of 2021 and proposed amendments to be considered by the House in the Committee stage.

MIN.NO.NA/DC.H/2022/12:

ADOPTION OF THE ADDENDUM ON PUBLIC
PARTICIPATION TO THE REPORT ON THE
HEALTH LAWS (AMENDMENT) BILL,
NATIONAL ASSEMBLY, BILL NO. 2 OF 2021

The Committee adopted the addendum on public participation to the report on the Health Laws (Amendment) Bill, National Assembly, Bill No. 2 of 2021 after being proposed by the Hon. (Capt) Ruweida Mohammed, MP and seconded by the Hon. Sarah Paulata Korere, MP.

(Details of the Committee's proposed amendments are contained in the addendum on public participation to the report on the Health Laws (Amendment) Bill, NA, Bill No. 2 of 2021)

MIN. NO.NA/DC.H/2022/13:

ADJOURNMENT

There being no other business, the meeting adjourned at 11.35 am.

Sign.....



Date.....

11/2/2022

(Chairperson)

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 27TH JANUARY, 2022 IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) ROOM, MAIN PARLIAMENT BUILDING AT 10.00AM

PRESENT

- | | |
|---|------------------------------|
| 1. The Hon. Sarah Paulata Korere, MP | – Chairing |
| 2. The Hon. Joshua Kutuny, MP | – Vice-Chairperson – Virtual |
| 3. The Hon. Dr James Kipkosgei Murgor, MP | |
| 4. The Hon. Muriuki Njagagua, MP | – Virtual |
| 5. The Hon. Joyce Akai Emanikor, MP | |
| 6. The Hon. Beatrice Adagala, MP | |
| 7. The Hon. (Capt) Ruweida Mohammed, MP | |

ABSENT WITH APOLOGY

- | | |
|---|---------------|
| 1. The Hon. Sabina Chege, MP | - Chairperson |
| 2. The Hon. Dr Eseli Simiyu, MP | |
| 3. The Hon. Dr James Nyikal, MP | |
| 4. The Hon. Dr Mohamed Dahir Duale, MP | |
| 5. The Hon. Dr Gideon Ochanda, MP | |
| 6. The Hon. Alfred Agoi Masadia, MP | |
| 7. The Hon. Martin Peters Owino, MP | |
| 8. The Hon. Prof Mohamud Sheikh Mohamed, MP | |
| 9. The Hon. Kipsengeret Koros, MP | |
| 10. The Hon. Tongoyo Gabriel Koshal, MP | |
| 11. The Hon. Said Hiribae, MP | |
| 12. The Hon James Githua Kamau Wamacukuru, MP | |

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|--------------------|
| 1. Douglas Katho | – | Clerk Assistant II |
| 2. Muyodi Emmanuel | – | Clerk Assistant II |
| 3. Christine Odhiambo | – | Legal Counsel I |
| 4. Nimrod Ochieng | – | Audio Officer |

MIN. NO.NA/DC.H/2022/05: PRELIMINARIES

In the absence of the Chairperson and Vice-chairperson, Members present elected Hon. Sarah Paulata Korere, MP to chair the meeting as per Standing Order No. 188. She then called the meeting to order at 10.10 am.

MIN. NO. NA/DC.H/2022/06: ADOPTION OF AGENDA

The Members unanimously adopted the meeting agenda as presented.

Agenda:

1. Call to Order and Prayers

Substantive Agenda:

- i. Consideration of the contentious issues in the Health Laws (Amendment) Bill No. 2 of 2021 and the agreed points regarding

the composition of the various Boards and Councils proposed in the Health Laws (Amendment) Bill, 2021.

ii. **Consideration of the proposed amendments to the Kenya Medical Supplies Authority Act, No. 20 of 2013.**

2. Any Other Business

3. Adjournment

MIN.NO.NA/DC.H/2022/07:

**CONTENTIOUS ISSUES IN THE HEALTH LAWS
(AMENDMENT) BILL NO. 2 OF 2021 AND THE
AGREED POINTS IN THE COMPOSITION OF
THE BOARDS**

Consideration of the contentious issues in the Health Laws (Amendment) Bill No. 2 of 2021 and the agreed points regarding the composition of the various Boards and Councils proposed in the Health Laws (Amendment) Bill, 2021.

The Legal Counsel reminded Members that on Tuesday 16th November 2021, in a meeting held at Ole Sereni Hotel, the Committee had reached a consensus with the stakeholders on the contentious issues in the Health Laws (Amendment) Bill No. 2 of 2021.

Subsequently, the Legal Counsel took the Committee through the agreed points regarding the composition of the various Boards and Councils proposed in the Health Laws (Amendment) Bill, 2021 as follows:

- 1) The Chairperson must be a member of the specific professional regulatory body and must have a minimum of ten years' experience in the specific profession
- 2) The Attorney-General and the Principal Secretary for Treasury to be removed from the Boards/ Councils, and should be replaced with the sector-specific professionals
- 3) Remove the representative of the Kenya Health Professionals Oversight Authority from the Boards/ Councils, and instead only include the Director General for health
- 4) The management of the various levels of health facilities should be only for health professionals. Levels 4, 5 and 6 to be headed by a registered health professional and not a registered medical practitioner
- 5) There should be 2 representatives of health professions regulatory bodies to represent health service providers in the Board of the NHIF, and include 2 representatives of service providers in the Board
- 6) Retain the representative of clinical officers in the Council of Clinical Officers as contained in the Act
- 7) Replace the Attorney-General with a representative of the Kenya National Commission on Human Rights in the Kenya Medical Practitioners and Dentists Council
- 8) In the Tobacco Control Act–
 - a) retain health, agriculture and finance expertise in the Board;

Committee resolution

The Committee agreed to all the proposals, except for the one touching on the NHIF Board. The Committee dropped the proposal since it had already been factored in the NHIF (Amendment) Bill 2021 (NA Bill No. 21), which was passed by the House on 21st December 2021.

Consideration of the proposed amendments to the Kenya Medical Supplies Authority Act, No. 20 of 2013—

The Committee considered the Speakers guidance issued on 23rd November, 2021 on the decision by the Court of Appeal on the constitutionality and validity of the twenty-one Acts of Parliament, among them the Health Laws (Amendment) Act No 5 of 2019, which made various amendments to the health-related matters.

The Speaker directed that in respect of the amendments made to section 3 and 4 of the Kenya Medical Supplies Authority Act as contained in the Health Laws (Amendment) Act, No 5 of 2019, the Committee considers proposing the amendments to the Health Laws (Amendment) Bill, 2021 at the Committee stage for consideration by the House.

The Committee considered and agreed to the new amendment to the Kenya Medical Supplies Authority Act, No. 20 of 2013 as follows—

11. in the proposed amendments to the Kenya Medical Supplies Authority Act, No. 20 of 2013—

a. by inserting the following amendment immediately before the proposed amendment to section 5—

s.4 Insert the following new subsections immediately after subsection (2)—

“(3) A national or county public health facility shall, in the procurement and distribution of drugs and medical supplies, obtain all such drugs and medical supplies from the Authority subject to—

- (a) the drug being duly registered by the Board; and
- (b) the drugs and medical supplies meet the standards of quality and efficacy as authorized by the Board.

(4) A person responsible for the procurement and distribution of drugs and medical supplies in a national or county public health facility and who contravenes provisions of this section, commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.”

Justification

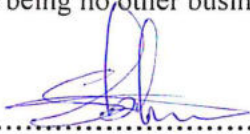
The amendment seeks to ensure that all national and county public health facilities shall procure drugs and medical supplies from the Kenya Medical Supplies Authority, so as to ensure that the quality of such drugs and medical supplies are of the highest standards and not compromised.

MIN. NO.NA/DC.H/2022/08:

ADJOURNMENT

There being no other business, the meeting adjourned at 11.16 am.

Sign.....



Date.....

1/2/2022

(Chairperson)

**MINUTES OF THE 75TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
HEALTH HELD AT OLE-SERENI HOTEL ON TUESDAY 16TH NOVEMBER, 2021
AT 2.30 PM**

PRESENT

1. The Hon. Sabina Chege, MP - Chairperson
2. The Hon. Joshua Kutuny, MP – Vice-Chairperson – Virtual
3. The Hon. Dr Eseli Simiyu, MP Virtual
4. The Hon. Dr James Nyikal, MP
5. The Hon. Dr James Kipkosgei Murgor, MP
6. The Hon. Dr Mohamed Dahir Duale, MP Virtual
7. The Hon. Muriuki Njagagua, MP
8. The Hon. Joyce Akai Emanikor, MP Virtual
9. The Hon. Dr Gideon Ochanda, MP
10. The Hon. Prof Mohamud Sheikh Mohamed, MP
11. The Hon. Martin Peters Owino, MP
12. The Hon. Kipsengeret Koros, MP Virtual
13. The Hon. Tongoyo Gabriel Koshal, MP
14. The Hon. Beatrice Adagala, MP
15. The Hon. (Cpt.) Ruweida Mohammed, MP
16. The Hon James Githua Kamau Wamacukuru, MP

ABSENT WITH APOLOGY

1. The Hon. Alfred Agoi Masadia, MP
2. The Hon. Sarah Paulata Korere, MP
3. The Hon. Said Hiribae, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|--------------------|
| 1. Douglas Katho | – | Clerk Assistant II |
| 2. Muyodi Emmanuel | – | Clerk Assistant II |
| 3. Christine Odhiambo | – | Legal Counsel I |
| 4. Nimrod Ochieng | – | Audio Officer |

STAKEHOLDERS

1. Ministry of Health
2. Council of Governors
3. Moi Teaching and Referral Hospital
4. Kenya Clinical Officers Association
5. Kenya Clinical Officers Council
6. The Association of Public Health Officers (Kenya)
7. The Pharmacy and Poisons Board
8. The Public Health Officers And Technicians' Council
9. The Kenya Health Professions Oversight Authority
10. The National Health Insurance Fund
11. Kenya Medical Association

12. Kenya Medical Practitioners Pharmacists And Dentists' Union
13. Kenya Healthcare Federation
14. Nurses Associations, Midwives, Union
15. Kenya Medical Practitioners And Dentists Council
16. Nursing Council of Kenya
17. Kenya Association of Private Hospitals
18. Kenya Health Human Resource Advisory Council
19. Kenya Union of Clinical Officer's
20. Kenya National Union of Nurses
21. Kenya National Union of Medical Laboratory Officers
22. Society of Radiography In Kenya
23. Kenya Medical Social Workers Association
24. Oral Health Association
25. Kenya Medical Laboratory Technicians And Technologists Board
26. Kenya Association of Health Administrators
27. Association of Kenya Medical Laboratory Scientific Officers
28. Kenya Medical Research Institute
29. Pharmaceutical Society of Kenya
30. Kenya Society of Physiotherapists
31. Kenya Nutritionists & Dieticians Institute
32. Association of Kenya Medical Laboratory Assessors
33. Clinical Officers Council
34. National Spinal Injury Referral Hospital
35. Association of Medical Record officers-Kenya
36. Kenya Dental Association
37. Lab Medicine Society Of Kenya

MIN. NO.NA/DC.H/2021/255: PRELIMINARIES

The Chairperson called the meeting to order at 2.41 pm and welcomed the stakeholders.

MIN.NO.NA/DC.H/2021/256: PUBLIC PARTICIPATION ON THE HEALTH LAWS (AMENDMENT) BILL NO 2 OF 2021

The stakeholders took the Committee through their memoranda and explained the import of each proposed amendments.

(Details of the specific clauses and amendments are contained in the addendum on public participation to the report on the Health Laws (Amendment) Bill, NA, Bill No. 2 of 2021 tabled on 28th September, 2021)

MIN. NO.NA/DC.H/2021/257: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 5:30 pm.

HON. SABINA CHEGE, MP

(CHAIRPERSON)

Sign..... Date..... 1/2/2022

**MINUTES OF THE 74TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
HEALTH HELD AT OLE-SERENI HOTEL ON TUESDAY 16TH NOVEMBER, 2021
AT 10.00 AM**

PRESENT

1. **The Hon. Sabina Chege, MP - Chairperson**
2. **The Hon. Joshua Kutuny, MP – Vice-Chairperson – Virtual**
3. The Hon. Dr Eseli Simiyu, MP Virtual
4. The Hon. Dr James Nyikal, MP
5. The Hon. Dr James Kipkosgei Murgor, MP
6. The Hon. Dr Mohamed Dahir Duale, MP
7. The Hon. Muriuki Njagagua, MP
8. The Hon. Joyce Akai Emanikor, MP Virtual
9. The Hon. Dr Gideon Ochanda, MP
10. The Hon. Prof Mohamud Sheikh Mohamed, MP
11. The Hon. Martin Peters Owino, MP
12. The Hon. Kipsengeret Koros, MP Virtual
13. The Hon. Tongoyo Gabriel Koshal, MP
14. The Hon. Beatrice Adagala, MP
15. The Hon. (Cpt.) Ruweida Mohammed, MP
16. The Hon James Githua Kamau Wamacukuru, MP

ABSENT WITH APOLOGY

1. The Hon. Alfred Agoi Masadia, MP
2. The Hon. Sarah Paulata Korere, MP
3. The Hon. Said Hiribae, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|--------------------|
| 1. Douglas Katho | – | Clerk Assistant II |
| 2. Muyodi Emmanuel | – | Clerk Assistant II |
| 3. Christine Odhiambo | – | Legal Counsel I |
| 4. Nimrod Ochieng | – | Audio Officer |

STAKEHOLDERS

1. Ministry of Health
2. Council of Governors
3. Moi Teaching and Referral Hospital
4. Kenya Clinical Officers Association
5. Kenya Clinical Officers Council
6. The Association of Public Health Officers (Kenya)
7. The Pharmacy and Poisons Board
8. The Public Health Officers And Technicians' Council
9. The Kenya Health Professions Oversight Authority
10. The National Health Insurance Fund
11. Kenya Medical Association

12. Kenya Medical Practitioners Pharmacists And Dentists' Union
13. Kenya Healthcare Federation
14. Nurses Associations, Midwives, Union
15. Kenya Medical Practitioners And Dentists Council
16. Nursing Council of Kenya
17. Kenya Association of Private Hospitals
18. Kenya Health Human Resource Advisory Council
19. Kenya Union of Clinical Officer's
20. Kenya National Union of Nurses
21. Kenya National Union of Medical Laboratory Officers

22. ~~Society of Radiography In Kenya~~
23. Kenya Medical Social Workers Association
24. Oral Health Association
25. Kenya Medical Laboratory Technicians And Technologists Board
26. Kenya Association of Health Administrators
27. Association of Kenya Medical Laboratory Scientific Officers
28. Kenya Medical Research Institute
29. Pharmaceutical Society of Kenya
30. Kenya Society of Physiotherapists
31. Kenya Nutritionists & Dieticians Institute
32. Association of Kenya Medical Laboratory Assessors
33. Clinical Officers Council
34. National Spinal Injury Referral Hospital
35. Association of Medical Record officers-Kenya
36. Kenya Dental Association
37. Lab Medicine Society Of Kenya

MIN. NO.NA/DC.H/2021/252: PRELIMINARIES

The Chairperson called the meeting to order at 10.21 am and welcomed the stakeholders.

MIN.NO.NA/DC.H/2021/253: PUBLIC PARTICIPATION ON THE HEALTH LAWS (AMENDMENT) BILL NO 2 OF 2021

The Chairperson informed the stakeholders that the Speaker of the National Assembly had directed the Committee to conduct a second round of public participation to afford the public and critical stakeholders more time to resubmit their opinions and recommendations on the said Bill.

~~After lengthy deliberations, the Committee and the stakeholders come into a consensus on the contentious issues in the Bill and come up with the following agreed points in regards to the composition of the various Boards and Councils proposed to be amended in the Health Laws (Amendment) Bill, 2021–~~

- 1) The Chairperson must be a member of the specific professional regulatory body and must have a minimum of ten years of experience in the particular profession
- 2) The Attorney-General and the Principal Secretary for Treasury to be removed from the Boards/ Councils and should be replaced with the sector-specific professionals
- 3) Remove the representative of the Kenya Health Professionals Oversight Authority from the Boards/ Councils, and instead only include the Director-General for health

- 4) The management of the various levels of health facilities should be only for health professionals. Levels 4, 5 and 6 to be headed by a registered health professional and not a registered medical practitioner
- 5) There should be 2 representatives of health professions regulatory bodies to represent health service providers in the Board of the NHIF, and include 2 representatives of service providers in the Board
- 6) Retain the representative of clinical officers in the Council of Clinical Officers as contained in the Act
- 7) Replace the Attorney-General with a representative of the Kenya National Commission on Human Rights in the Kenya Medical Practitioners and Dentists Council
- 8) In the Tobacco Control Act—
 - a) retain health, agriculture and finance expertise in the Board;
 - b) include representation from the Association of Public Health Officers of Kenya;

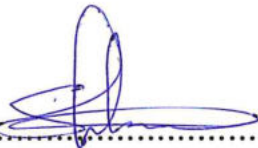
MIN. NO.NA/DC.H/2021/254: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 12:45 pm.

HON. SABINA CHEGE, MP

(CHAIRPERSON)

Sign.....



Date.....

1/2/2022

MINUTES OF THE 61st SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE COMMITTEE ROOM 5, CONTINENTAL HOUSE ON TUESDAY 26TH OCTOBER, 2021 AT 10.00 AM

PRESENT

1. **The Hon. Sabina Chege, MP - Chairperson**
2. The Hon. Dr James Kipkosgei Murgor, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Joyce Akai Emanikor, MP
5. The Hon. Prof Mohamud Sheikh Mohamed, MP
6. The Hon. Kipsengeret Koros, MP
7. The Hon. Beatrice Adagala, MP
8. The Hon. Sarah Paulata Korere, MP

ABSENT WITH APOLOGY

1. **The Hon. Joshua Kutuny, MP – Vice-Chairperson**
2. The Hon. Dr James Nyikal, MP
3. The Hon. Dr Eseli Simiyu, MP
4. The Hon. Dr Mohamed Dahir Duale, MP
5. The Hon. Alfred Agoi Masadia, MP
6. The Hon. Dr Gideon Ochanda, MP
7. The Hon. Martin Peters Owino, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. (Cpt.) Ruweida Mohammed, MP
10. The Hon James Githua Kamau Wamacukuru, MP
11. The Hon. Said Hiribae, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|--------------------|
| 1. Douglas Katho | – | Clerk Assistant II |
| 2. Muyodi Emmanuel | – | Clerk Assistant II |
| 3. Christine Odhiambo | – | Legal Counsel I |
| 4. Nimrod Ochieng | – | Audio Officer |

MIN. NO.NA/DC.H/2021/216: PRELIMINARIES

The Chairperson called the meeting to order at 10.14 am.

MIN.NO.NA/DC.H/2021/217: STATUS OF THE HEALTH LAWS (AMENDMENT) BILL NO 2 OF 2021

The Committee was informed that the report of the consideration of the Health Laws (Amendment) Bill, No.2 of 2021, was tabled before the National Assembly on 29th September 2021.

However, during the deliberations on the Floor of the House it was noted that the Committee did not expressly indicate how it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions and the conduct of public publication on the Bill did not meet the threshold required by Article 118 of the Constitution and Standing Order No. 127.

Therefore on 21st October, 2021, the Honorable Speaker directed the Committee to conduct a second round of public participation with a view of affording members of the public and other stakeholders more time to submit their opinions and recommendations, if any, on the said Bill. The Speaker further directed that an addendum to the report be tabled upon the conclusion of that process.

Committee resolution

The Secretariat was tasked to ensure that the advert for resubmission of memoranda appeared in the dailies on 5th November, 2021. Further, the Committee resolved to invite the members of the public and other key stakeholders to resubmit their memoranda on the Bill on Tuesday 16th November, 2021.

MIN. NO.NA/DC.H/2021/218: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 11:59 am.

HON. SABINA CHEGE, MP

(CHAIRPERSON)

Sign  Date 11/2/2022



REPUBLIC OF KENYA

**TWELFTH PARLIAMENT - (FIFTH SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATIONS FROM THE CHAIR**

(No. 41 of 2021)

**ON THE CONSTITUTIONALITY OF AND SUFFICIENCY OF PUBLIC
PARTICIPATION DURING CONSIDERATION OF THE HEALTH LAWS
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 2 OF 2021) BY THE
DEPARTMENTAL COMMITTEE ON HEALTH**

Honourable Members,

You will recall that, during the afternoon Sitting of the House on Tuesday, 5th October, 2021, the Member for Garissa Township, the Hon. Aden Duale, EGH, MP, rose on a Point of Order seeking deferment of the Second Reading of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021), which intends to amend various health sector related statutes so as to improve efficiency and for better service delivery. The Hon. Duale indulged the Speaker to defer Second Reading of the Bill until the matter of the adequacy of public participation undertaken by the relevant Departmental Committee on the Bill; and the constitutionality of certain provisions contained in the Bill are determined. He claimed that, barring the determination by the Speaker of the two cited fundamental issues concerning the Bill in question, would make the House to proceed with a legislative exercise that was likely to be successfully challenged in court for being unconstitutional especially for want of adequate public participation.

Honourable Members, the concerns by the Hon. Duale elicited a lot of interest. The Members who weighed in on the matter raised by the Member for Garissa Township were the Leader of the Majority Party, the Majority Whip, the Hon. (Dr.) Eseli Simiyu, the Hon. T.J. Kajwang, the Hon. John Mose, the Hon. (Dr.) Otiende Amollo, the Hon. Peter Kaluma, the Hon. (Dr.) Robert Pukose, the Hon. Stephen Mule, the Hon. (Dr.) James Nyikal, the Hon. John Kiaria, the Hon. Jared Okello, and the Hon. Gideon Koske, among others. In their arguments, the members claimed that the proposed amendments, if carried, would substantially alter the composition of various statutory and regulatory boards and councils in the health sector and should therefore have been contained in separate Bills seeking to amend the relevant Statutes, rather than being brought through an *omnibus* Bill as is the case now. It was further claimed that the Bill was ill-intended, particularly because it sought to domicile control of the regulatory or statutory boards and councils in the Executive by excluding stakeholders and professional bodies from membership. This, it was claimed, is contrary to the provisions of Article 10 of the Constitution which places public participation at the core of our national values and principles of governance.

Honourable Members, you will agree with me that the matters raised by the Hon. Duale and other Members are weighty and would have merited the direction of the Speaker before any further action is taken on the Bill. However, I did guide, in the interim, that debate on Second Reading of the Bill proceeds in the event that the Order under which the Bill was listed in the Order Paper for that day was to be reached. My decision was based on the principle that, as your Speaker, my role is largely facilitative and not obstructive. Hence, I should, as much as possible, allow the House to proceed to transact its business unimpeded, even when reservations have been raised, as long as a decision is not taken until a determination of any substantive question raised by a Member is made.

Honourable Members, so as to guide the House appropriately, I have keenly reviewed the issues canvassed and isolated the following three (3) key questions as requiring my guidance –

- (1) Whether the proposed amendments contained in the Bill, either in part or in its entirety, are unconstitutional;**
- (2) Whether the proposed amendments contained in the Health Laws (Amendment) Bill transfigures the said Bill from an ordinary Bill to a Statute Law (Miscellaneous Amendment) Bill, or not; and,**
- (3) Whether the Departmental Committee on Health undertook the requisite and adequate public participation within the meaning and threshold of Article 118 of the Constitution and Standing Order 127(3) and whether there is a proper record of the exercise in the Report of the Committee.**

Honourable Members, so as to put the questions raised into perspective and for the benefit of those who are yet to interact with the Bill, permit me to first note that the Health Laws (Amendment) Bill, 2021 seeks to amend seventeen (17) statutes, namely—

- (1) The Pharmacy and Poisons Act (Cap. 244);**
- (2) The Mental Health Act (Cap. 248);**
- (3) The Medical Practitioners and Dentists Act (Cap. 253);**
- (4) The Nurses Act (Cap. 257);**
- (5) The Kenya Medical Training College Act (Cap. 261);**
- (6) The National Hospital Insurance Fund Act No. 9 of 1998;**
- (7) The Medical Laboratory Technicians and Technologists Act No. 10 of 1999;**

- (8) The Tobacco Control Act No 4 of 2007;
- (9) The Nutritionists and Dieticians Act No. 18 of 2007;
- (10) The Cancer Prevention and Control Act No. 15 of 2012;
- (11) The Public Health Officers (Training, Registration and Licensing) Act No. 12 of 2013;
- ~~(12) The Kenya Medical Supplies Authority Act No. 20 of 2013;~~
- (13) The Counsellors and Psychologists Act No. 14 of 2014;
- (14) The Physiotherapists Act No. 20 of 2014;
- (15) The Health Records and Information Managers Act No. 15 of 2016;
- (16) The Clinical Officers (Training, registration and Licensing) Act No. 20 of 2017; and
- (17) The Health Act No. 1 of 2017.

Honourable Members, from a cursory reading of the *Memorandum of Objects and Reasons* of the Bill, the overarching import of the proposed amendments in the Bill is to alter the composition and the process of appointing chairpersons and/or members of various statutory or regulatory boards and councils in the health sector generally. I am inclined to believe that the Member for Garissa Township was moved by the worry that the proposed amendments had drastic ramifications on the architecture of the affected regulatory boards and councils in the health sector.

Honourable Members, allow me therefore now to address myself to the three issues that I distilled as requiring my determination, and I will commence with the issue of constitutionality whose determination may have a terminal effect on the consideration of the Bill.

From my understanding of the issues raised by the Member for Garissa Township, I am being invited to find that, to the extent that the Health Laws (Amendment) Bill, 2021 proposes to limit involvement of professional bodies and various sector stakeholders in statutory and regulatory boards in the health sector and domicile their appointment within the ambit of the Executive, the amendments are unconstitutional and therefore untenable as they negate the realization of the national values and principles of governance espoused by Article 10 of the Constitution.

Honourable Members, there is no contestation that Article 3 of the Constitution obligates me to respect, uphold and defend the Constitution. I would ordinarily therefore be required to forestall any affront to the Constitution by whichever manner, including legislation before this House if indeed the concerns raised by the Member for Garissa Township are valid. Having said that, let me emphasize that **the path of determining constitutionality or otherwise of matters under consideration by this House ought to be navigated with caution, lest the House be unnecessarily gagged from exercising its constitutional mandate.** As you are aware, I have previously hesitated to determine questions of constitutionality raised in this House. Even when I ruled on 19th September, 2019 that Clauses 50 and 51 be severed from the Finance Bill, 2019 for failure by the Cabinet Secretary to disclose in the accompanying memoranda that the two clauses would limit the right to privacy as required in Article 24 of the Constitution, I was categorical that the determination was **only related to the procedural defects in the manner in which the proposed amendments had been presented.** I also clarified that, at that stage, the question as to whether the two clauses would offend the Constitution if they were to comply with the standard of disclosure set in the Constitution and introduced as a separate Bill did not arise.

Honourable Members, I do not wish to deviate from my previous decisions on questions of constitutionality. As a matter of fact, the Speaker's respect for, upholding and defence of the Constitution is subject to the express provisions of Article 165 of the Constitution. For clarity, the said Article provides as follows, and I quote –

165(3) Subject to clause (5), the High Court shall have –

(d) Jurisdiction to hear any question respecting the interpretation of this Constitution, including determination of

–

(i) The question whether any law is inconsistent with or in contravention of this constitution;

Clearly, **Honourable Members,** the question of construing and interpreting the Constitution, including the authority to make a definitive determination as to the constitutionality or otherwise of any law rests within the exclusive province of the High Court. I am inclined to believe that the framers of our Constitution had good reasons for couching Article 165 of the Constitution to only make reference to law and not Bills. We all appreciate that a Bill in itself is not law until it successfully goes through the stages of law making, including the Committee of the Whole House, where it may be amended. It is my view that declaring a Bill unconstitutional while still undergoing consideration in the House is premature, given that the House still has room to correct any potentially unconstitutional provisions- perceived or real, by way of amendments at the Committee of the Whole House stage.

Honourable Members, I note that the Constitution grants the Members of this House an expansive legislative mandate, which should be jealously safeguarded. In this regard, I ought not to make decisions that would hinder or inhibit the House from executing its mandate.

Instead, I am duty-bound to facilitate the continuity of legislative business of this House even in the face of concerns like the one expressed by the Member for Garissa Township, provided that the matter is still within the province of the House and the House still has legislative power to rectify the concerns through amendment and voting. My views are buttressed by the provisions of section 72 of *Mason's Manual of Legislative Procedure*, (2010 Edition), which states as follows, and I quote-

1. *"The propriety and wisdom of a statute are questions exclusively for the legislature. The wisdom, justice and expediency of an act of the legislature is not subject to review by the Courts.*
2. *Before a statute can be declared unconstitutional, it must clearly and unavoidably appear to be beyond the power of the legislature. It is for the courts to decide whether there has been compliance with constitutional provisions and whether a bill of the legislature has become law."*

Honourable Members, I am persuaded that the House still has power to apply itself on the matters canvassed by the Hon. Duale by amending the Bill appropriately during the Committee of the Whole House or making a conscientious decision on the Bill in one way or the other. Further, it is not enough to simply claim that "a Bill is unconstitutional" without particularizing with specificity the basis of the claim. **No Member stated with specificity any provision in the Bill which offends a particular provision of the Constitution.** I am therefore hesitant to forestall consideration of the Health Laws (Amendment) Bill, 2021 on grounds of general unconstitutionality, as that may be construed on one hand as an attempt by the Speaker to unduly fetter the authority of the House and usurping the constitutional mandate of the High Court on the other hand. I believe, Honourable Members that this settles the second question.

Honourable Members, the **Second issue** also relates to whether the amendments proposed in the Health Laws (Amendment) Bill, 2021 are of a substantive nature requiring the publication of separate Bills for each affected statute instead of their publication in an omnibus format as presented to the House. The Courts and indeed myself have had previous occasion to address the question of the nature and scope of *omnibus* Bills. What is clear is that the courts have left the determination of the form of Bill to the province of Parliament. The courts are also on record as having found difficulties in establishing provisions of a Bill that would constitute miscellaneous *vis-à-vis* substantive provisions so as to make a determination as to whether such provisions sit well in a stand alone Bill or an omnibus Bill.

Honourable Members, this is not the first time that the House is considering a a Bill presented in an omnibus format. As you may be aware, it is the practice of this House to publish and consider bills making amendments to various statutes in an omnibus format. Miscellaneous or various amendments to several disparate statutes have been published on an annual basis in a Statute Law (Miscellaneous Amendment) Bill. Where the amendments proposed relate to a defined sector or theme such as finance or health, omnibus Bills such as the Finance Bill or the Tax Laws (Amendment) Bill have been presented to this House. Indeed, and for the record, this House has considered and passed Bills similar in form to the Health Laws (Amendment) Bill, 2021. They include, the Finance Bills, the Tax Laws (Amendment) Bills, 2020, the Land Laws (Amendment) Bill, 2020, the Business Laws (Amendment) Bill, 2019, the Land Value Index Laws (Amendment) Bill, 2018, the Health Laws (Amendment) Bill, 2018, just to mention but a few.

As a matter of fact, **Honourable Members,** the Bill under contestation was published in accordance with the practice and procedures of this House and processed in accordance with Standing Orders 114 and 114A.

You may also recall that I have previously ruled on questions as to whether proposed amendments contained in an *omnibus* Bill ought to be published as separate Bills. I remain of the considered view that any concerns over the substance of a Bill can only be addressed through the conduct of adequate public participation and exhaustive consideration of the proposals by the House. I have previously committed affected statutes in an omnibus Bill to their relevant Departmental Committees to facilitate public participation for this very reason. The test for the House is not the form of the Bill, but the manner in which it considers and interrogates the substance of the Bill before making any resolution. **It is my finding that the Health Laws (Amendment) Bill, 2021 is in order as to the format and style of the House and may be proceeded with. This settles the second question.**

Honourable Members, the **Third and final issue** is the question as to whether the Departmental Committee on Health did conduct adequate public participation within the meaning and threshold envisaged under Article 118 of the Constitution and Standing Order 127(3). From the outset, **Honourable Members**, you are aware that I have previously guided this House that, since the promulgation of the Constitution of Kenya 2010, public participation in legislative business is no longer optional. Article 118 of the Constitution is couched in mandatory terms and obligates Parliament, in this case the National Assembly, to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. In my previous Rulings on questions of public participation, I have repeatedly underscored that public participation ought to be undertaken in a qualitative manner and not a quantitative or cosmetic ritual of ***ticking the box*** to satisfy the requirements of Article 118 of the Constitution and Standing Order 127.

Honourable Members, as you may recall, I have previously referred a Bill back to the relevant Committee and ordered fresh public participation where I was not satisfied that the threshold of public participation within the meaning of Article 118 was met. This was the case when I directed the Departmental Committee on Transport, Public Works and Housing to undertake fresh public participation on the National Aviation Management Bill, 2020, (National Assembly Bill No.18 of 2020).

Indeed, the courts have also affirmed the mandatory nature of public participation and emphasized on its qualitative aspects to distinguish it from a *mere consultation or a public relations exercise without a meaningful purpose*. In this regard, I need not revisit and belabour the meaning, scope and threshold of public participation.

Honourable Members, in arguing that the Departmental Committee on Health did not conduct adequate public participation within the meaning and threshold envisaged in Article 118 of the Constitution and Standing Order 127(3), the Hon. Aden Duale claimed that, and I quote –

“... despite several bodies in the health sector, including the Kenya Union of Clinical Officers (KUCO) and the Kenya Clinical Officers Association (KCOA) - the bodies that regulate medical doctors, pharmacists and nurses, among others, in this country - submitting memoranda to be considered by the Committee, they can confirm to this House that the Committee in its Report completely disregarded their submissions. In disregard of Article 118 of the Constitution, the Committee never considered one single memorandum, neither did it give some of those institutions and bodies an opportunity to appear before it to prosecute.” [Emphasis]

Honourable Members, I have perused the Report of the Committee on its consideration of the Health Laws (Amendment) Bill, 2021 and noted that, pursuant to Article 118 of the Constitution and Standing Order 127(3), the Committee rolled out the process of public participation by placing an advertisement in the print media on 11th March 2021, requesting for comments and memoranda from the public on the Bill within a period of seven (7) days.

Honourable Members, page 25 the Report of the Committee indicates that the Committee received a *Joint Memorandum* and individual memoranda from the following parties—

(a) Parties to the Joint Memorandum

- (1) Ministry of Health
- (2) Pharmaceutical Society of Kenya
- (3) Kenya Medical Association
- (4) The National Nurses Association of Kenya
- (5) Kenya Dental Association
- (6) Kenya Pharmaceutical Association
- (7) **Kenya Clinical Officers Association**
- (8) The Association of Kenya Medical Laboratory Scientific Officers
- (9) The Association of Medical Engineering of Kenya
- (10) The Kenya Association of Radiologists
- (11) The Public Health Society of Kenya
- (12) Environmental Public Health Association of Kenya

(b) Individual Memoranda

- (1) The Peoples Health Movement- Kenya
- (2) Christian Medical & Dental Association of Kenya
- (3) Kenya Progressive Nurses Association
- (4) Kenya Medical Association

-
- (5) Kenya Nutritionists and Dieticians Institute
 - (6) Association of Medical Records Officers- Kenya
 - (7) Health Records and Information Management Society
 - (8) Health Systems Management Association
 - (9) Society of Radiography in Kenya
 - (10) Dr. Kahura Mundia
-

- (11) Dr. Magare Gikenyi
 - (12) Ikacho Lokwee
 - (13) Willis Okoth
 - (14) Abraham Kimeli Kiplagat
 - (15) William Komen
 - (16) Rodgers Kwalera
 - (17) Henry Cheruiyot
 - (18) Faith Adhiambo
 - (19) Japheth Ngeno
 - (20) Milcah Koech
 - (21) Rose Jepchirchir Bargoiet
 - (22) Nelly Jepngetich Tarus
 - (23) Alice Jeruto Kimutai
 - (24) Faith Cheruiyot
 - (25) Mark Kiplimo Chepsiror
 - (26) Kenneth Kibet Koech
-
- (27) Jane Mochache
 - (28) Thomas Orwenyo.

Honourable Members, it is worth noting that in the letter dated 20th May 2021 submitting the Joint Memorandum to the Clerk, the Cabinet Secretary for Health is on record that that the Ministry had reviewed the Health Laws (Amendment) Bill, 2021 in consultations with stakeholders in the Health Sector.

He added that the Ministry had reached a consensus with a majority of the stakeholders on regulatory councils/boards as contained in the Joint Memorandum.

Honourable Members, over and above the public advertisement placed in the print media inviting submission of memoranda, the Committee, by way of a letter dated 20th April, 2021, invited key stakeholders in the health sector for a virtual stakeholder engagement on 22nd April, 2021. Having perused both the Report and the Minutes annexed to the Report, I can confirm that, far from the claims made by the Hon. Duale, the *Kenya Clinical Officers Association* was party to the *Joint Memoranda* submitted by the Ministry of Health on behalf of the parties to it. Further, Minutes of the meeting of the Committee held on 22nd April 2021 also confirm that the said association was present and did participate in the proceedings. With regard to the *Kenya Union of Clinical Officers*, Minutes of the foregoing meeting show that the Union was present at the meeting. While the Union is not listed in the Report as having submitted a separate memorandum, I am inclined to believe that by virtue of having been on record to have attended the hearings on 22nd April, 2021, it had the opportunity to canvas its views on the Bill.

I am also reliably informed that the Ministry of Health wrote to the Clerk of the National Assembly seeking to '*clarify and articulate the proposed amendments*'. The Committee and the Ministry held consultative meetings, physically on 17th August, 2021 and virtually on 31st August, 2021 before adopting the Report. From the foregoing, it is apparent that the Committee engaged most stakeholders in the health sector and afforded them the opportunity to make their submissions on the Bill. **What weight, if any, they gave to the submissions they received from the stakeholders, is what remains to be seen.**

Honourable Members, the qualitative aspect of public participation as espoused in Article 118 of the Constitution requires the House to receive views from the public, to consider such views and also to demonstrate such consideration in its final output. Indeed, the High Court recently observed in **Constitutional Petition No. E001 OF 2021 eKLR**, that, and I quote—

"All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful manner. The objective is both symbolical and practical. The persons concerned must be manifestly shown the respect due to their concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws."

Members are specifically enjoined by Article 10 of the Constitution to ensure the participation of the people when enacting any legislation. This obligates a Committee of the House to which a Bill is committed to undertake and demonstrate the discharge of two distinct tasks in its report to the House on a Bill. The Committee must first **INVITE** the public to participate in its consideration of the Bill. Such invitation introduces the public to the general content of the Bill and directs them on where to obtain a copy to allow them to review and comment on the Bill either in person or through written memoranda. The substance of the Bill under consideration and the urgency at hand shall guide the Committee in prescribing the period within which submissions are to be made. Second, the Committee must **CONSIDER** any representations it receives from the public on a Bill. The Committee must deliberate on the submissions received, record its view(s) on the submissions and indicate its decision or reasons (where possible) for either agreeing or disagreeing with the representations. This, ideally, is what would inform the recommendations it makes to the House.

Hon. Members, From a perusal of the Report tabled before the House, it is evident that though the Committee laudably applied itself to the tasks it was given by the House, it fell slightly short of the standards required. The Committee did **invite** the public to participate in its consideration of the Bill. The Committee gave **notice** for the public to submit memoranda and thereafter invited the key stakeholders it had identified to a virtual meeting and other meetings. The Committee did receive submissions from key stakeholders affected by the proposals in the Bill as well as other interested members of the public. Reading through the Part III of the Report, Members will note that the Committee took great lengths to record the submissions received from the public and concluded its Report by recommending amendments to various provisions of the Bill. **The only major gap that is apparent from the body of the Report is a commentary or a record noting how the Committee considered the submissions it received, its views on those submissions and reasons for either agreeing or disagreeing with the submissions.** Unless this omission is remedied, the assumption by members of the public and non-Members of the Committee shall remain **that the public participation conducted by the Committee was a mere perfunctory exercise without any bearing on the final outcome of the Bill.**

Hon. Members, the obligation to facilitate public participation in legislative processes can only be fully discharged if the public who take their time to either submit memoranda or make oral submissions receive adequate feedback from this House on such submissions. I do agree that not all submissions may be relevant. A submission may be outlandish. It may even not relate to the subject matter under consideration. It may propose expansion of a Bill in a manner that is prohibited under our Standing Orders. It may be untenable for the fact that it impacts current or future budgets in a manner that cannot be supported in the short or medium term.

Nevertheless, Parliament, as a House of record, must ensure that all such submissions are received, recorded and afforded clear and proper feedback. The feedback must address the question of whether the submissions will affect the legislative process and give reasons on the position taken by a Committee. It is the duty of each Committee to meticulously sieve the cocktail of submissions it receives and note the manner in which that exercise informs the recommendations that it makes to the House.

Hon. Members, this House makes laws that directly affect the people, hence the participatory approach to law-making required by the Constitution. We cannot expect the public to look favourably at laws made by the House when their input is disregarded without them being given the courtesy of a proper reason. **The Report of the Departmental Committee on Health on its Consideration of the Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions. Consequently, it is my view that the conduct of public participation on the Bill is incomplete and wanting to that extent.**

Hon. Members, Before I conclude, you will recall that during debate on the matter that gave rise to this guidance, there arose the issue of whether a Minority report may be appended to a Committee Report on a Bill. This was alluded to by the Hon. Simiyu Esseli. I would not expect the Member for Tongaren, who is serving his third term in this House, to be misled on this matter. For the avoidance of doubt, Standing Order 199(5) provides, and I quote—

"A report having been adopted by a majority of Members, a minority or dissenting report may be appended to the report by any Member(s) of the Committee."

The Hon. Member therefore remains squarely within his rights as a Member of the Departmental Committee on Health to propose, cause drafting and have a Minority report included in the Report of the Committee for attention of the House.

Honourable Members, in summary, my considered *guidance* is as follows –

- (1) **THAT,** The role of the Speaker in respecting, defending and upholding the Constitution is limited to the procedural aspects of the exercise of the mandate granted to the House by Article 95 the Constitution. The form, substance and manner in which the Health Laws (Amendment) Bill, 2021 was introduced in the House accord with the provisions of the Constitution and the Standing Orders of the House. The House remains at liberty to effect any changes it deems fit to the Bill in the exercise of its legislative mandate. The Constitution, however, reserves the powers to determine the constitutionality or otherwise of a resolution made by the House to the High Court;
- (2) **THAT,** The Health Laws (Amendment) Bill, 2021 which seeks to amend various health related statutes and is presented in an *omnibus* format **is in order as to the form and style of the House;**
- (3) **THAT,** In order to discharge the requirement to facilitate public participation under Article 118 of the Constitution and Standing Order No. 127, a Committee of the House to which a Bill is committed **MUST undertake and demonstrate** the discharge of two distinct tasks in its report to the House as follows—

(a) The Committee must **INVITE** the public to participate in its consideration of the Bill and prescribe an adequate period of time within which submissions are to be made. The period may be determined with reference to the substance of the Bill and the urgency of the matter under consideration; and

(b) The Committee must **CONSIDER** any representations it receives from the public on a Bill by deliberating on each submission received, recording its view(s) on the submissions and providing reasons for either agreeing or disagreeing with the representations in its Report.

(4) **THAT**, To the extent that the Report of the Departmental Committee on Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions, the conduct of public participation on the Bill does not meet the threshold required by Article 118 of the Constitution and Standing Order No. 127;


~~(5) **THAT**, The Report by the Departmental Committee on Health on its~~
Consideration of the Health Laws (Amendment) Bill, 2021 is hereby referred back to the Committee for regularization along the terms of this guidance. The Committee is at liberty to seek further engagement with the public on the Bill if need be; and,

- (6) **THAT**, The Committee should also address and attempt to resolve the concerns raised by part of its membership in the House with respect to the approach, value and **actualization** of the output of the stakeholder engagement exercise.

Having given this *guidance* and conscious that this Bill is one that concerns County Governments in terms of Articles 110 and 112 of the Constitution, the House will now await the Committee to resubmit its report to the House after complying with this *guidance* before resuming with its consideration at Second Reading. However, the final decision on the Bill and the form in which it will be passed ultimately lies with the House.

The House is accordingly guided.

I thank you!



THE HON. JUSTIN B.N. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 21st October 2021



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

_____ (No. 46 of 2021) _____

***THE IMPORT OF THE JUDGEMENT OF THE COURT OF APPEAL IN CIVIL
APPEAL NO. E084 OF 2021 ON THE LEGISLATIVE FUNCTION OF THE
NATIONAL ASSEMBLY***

Honourable Members,

You will recall that last year, on 29th October, 2020, the High Court delivered a judgment that, among other things nullified twenty-three (23) Acts of Parliament that had been passed by this House. You will also recall that following the High Court Judgement, I did issue a Communication to this House to the effect that the National Assembly would appeal the High Court Judgment.

Honourable Members, to this end, I wish to inform you that last week on Friday, 19th November, 2021, the Court of Appeal in Civil of Appeal No. E084 of 2021 delivered its judgment on our appeal and set aside the judgment of the High Court. In particular, the Court of Appeal made several Orders. Allow me to highlight part of the Orders of the Appellate Court, point by point.

Honourable Members, firstly, in its decision, the Court of Appeal declared twenty-one (21) Acts of Parliament out of the twenty-three (23) which the High had declared as being unconstitutional for want of Senate Participation to be **constitutional and valid.**

It will be recalled that this House passed the said laws without Senate's participation on the strength that they did not concern county governments as they were dealing with functions of the national government under the Part I of the Fourth Schedule to the Constitution and/or were Money Bill that did not contain provisions affecting the county governments. The Court of Appeal in its judgment agreed with this interpretation of the National Assembly and consequently upheld the constitutionality and validity of the twenty-one Acts of Parliament.

In brief, the Laws that were declared to be constitutional are as follows -

- (1) The Public Trustee (Amendment) Act, No. 6 of 2018:** The Act amends the Public Trustee Act to provide for among other things a manager, an administrator, an executor or trustee, trustee and executor services to the public and the establishment of the Public Trustee Investment Board for purposes of investment.
- (2) The Building Surveyors Act, No. 19 of 2018:** The principal object of the Act is to provide for the registration and licensing of building surveyors, to regulate their practice and for connected purposes.
- (3) The Computer Misuse and Cybercrime Act, No. 5 of 2018:** The Act provides for offences relating to computer systems, to enable timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes, to facilitate international co-operation in dealing with computer and cybercrime matters and for connected purposes.

- (4) The Statute Law (Miscellaneous Amendment Act), No. 4 of 2018:** The Act makes amendments to various Acts of Parliament including the Pharmacy and Poisons Act, Cap. 244, the Clinical Officers (Training, Registration and Licensing) Act, No. 9 of 1998, the Occupational Therapists Training, Registration and Licensing Act, No. 31 of 2017, the Salaries and Remuneration Commission Act, No. 10 of 2011 and the Environmental Management and Co-ordination Act, No. 8 of 1999, among others.
- (5) The Kenya Coast Guard Service Act, No. 11 of 2018 :** The principal object of the Kenya Coast Guard Act, 2018 is the establishment of the Kenya Coast Guard Service and to provide for its functions, discipline organization and administration in the exercise of the exclusive function of the national government over the use of international waters and water resources, national defence and the use of national defence services, police services, marine navigation, fishing and water protection as outlined in the Fourth Schedule to the Constitution.
- (6) The Tax Laws (Amendments) Act, No. 9 of 2018:** The Tax Laws (Amendment) Act, 2019 amends the Income Tax Act, Cap 470, the Stamp Duty Act, Cap. 480 and the Value Added Tax Act, 2013 pursuant to the exclusive power granted to the national government to impose income tax, value added tax, customs duties and other duties on import and export of goods and excise tax under Article 209(1) of the Constitution.

(7) The Statute Law (Miscellaneous Amendments) Act, No. 18 of 2018: The Act makes amendments to various Acts of Parliament including the Land Act, No. 6 of 2012, the Wildlife Conservation and Management Act, No. 47 of 2013, the Registration of Persons Act, Cap. 107 and the Forest Conservation and Management Act No. 34 of 2016

(8) The Supplementary Appropriation Act, No. 2 of 2018: The Act sought to authorize the issue of certain sums of money out of the Consolidated Fund and their application towards the service for the Financial Year 2018/2019 for the National Government.

(9) The Finance Act, No. 10 of 2018 : The Act introduced various tax measures for purposes of financing the annual budget for the Financial Year 2018/2019.

(10) The Appropriations Act, No. 7 of 2018 : The Act was enacted to authorize withdrawal of funds by the national government from the Consolidated Fund for the Financial Year 2018/2019 for the National Government.

(11) The Capital Markets (Amendments) Act, No. 15 of 2018: The principal object of the Act is to create offences and further provides that every issuer of securities, licensed and approved person must devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with the International Financial Reporting Standards.

- (12) The National Youth Service Act, No. 17 of 2018:** The Act establishes the National Youth Service and provides for its functions, discipline, organization and administration.
- (13) The Supplementary Appropriations Act, No. 13 of 2018 :** The Act sought to authorize the issue of certain sums of money out of the consolidated Fund and their application towards the service for the Financial Year 2018/2019 for the National Government.
- (14) The Health Laws (Amendment) Act, No. of 5 of 2019, save for the amendments made to sections 3 and 4 of the Kenya Medical Supplies Authority Act:** The Act made various amendments to health-related statutes on matters relating to health policy including the Pharmacy and Poisons Act, Cap. 244, the Medical Practitioners and Dentists Act, Cap. 253, the Nurses Act, Cap. 257, the Kenya Medical Training College Act, Cap. 261 and the Nutritionists and Dieticians Act, No. 18 of 2007, among others.
- (15) The Sports (Amendment) Act, No. 7 of 2019:** The principal object of the Act is to repeal provisions and references to the National Sports Fund and the National Sports Fund Board of Trustees in the Sports Act, 2013 on account of the Cabinet Secretary for the National Treasury having established a Sports, Arts and Social Development Fund under regulations made pursuant to the Public Finance Management Act, 2012.
- (16) The National Government Constituency Development Fund Act, 2015:** The Act establishes the National Government Constituency Development Fund and provides for its administration and for connected purposes.

(17) The National Cohesion and Integration (Amendment) Act,

2019: The Act seeks to among other things, provide for the membership of the National Cohesion and Integration Commission which now excludes the chairpersons of the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administrative Justice.

(18) The Statute Law (Miscellaneous Amendment) Act, 2019:

The Act makes various amendments to various Acts of Parliament including the Districts and Provinces Act No. 5 of 1992, the Tourism Act No. 28 of 2011, the Public Finance Management Act No. 18 of 2012 and the Prevention of Terrorism Act, No. 30 of 2012.

(19) The Supplementary Appropriation Act, No. 9 of 2019:

The Act sought to authorize the issue of certain sums of money out of the Consolidated Fund and their application towards the service for the Financial Year 2018/2019 with respect to the National Government.

(20) The Appropriations Act, 2019: The Act was enacted to authorize withdrawal of funds by the national government from the Consolidated Fund for the Financial Year 2018-2019 with respect to the National Government.

(21) The Insurance (Amendment) Act, 2019:

The Act amends the Insurance Act (Cap 487) to provide for among other things index-based insurance, powers of the Commissioner of Insurance on group-wide supervision and alternative means of delivery of a policy to a policy-holder to include "email or other electronic or telecommunication modes" besides "post".

Honourable Members, as stated earlier, the Court of Appeal declared twenty-one (21) Acts out of the twenty-three (23) Acts **constitutional** and only two Acts, these being the Equalization Fund Appropriation Act, No. 3 of 2018 and the Sacco Societies (Amendment) Act, 2018 No. 16 of 2018 were declared unconstitutional. In terms of the objects of the two Acts, the Equalization Fund Appropriation Act, No. 3 of 2018 appropriated funds for expenditure by the national government for the direct use of monies from the Equalization Fund. It is therefore a "spent" law.

The Sacco Societies (Amendment) Act, No. 16 of 2018 on the other hand sought to provide that the Sacco Societies Regulatory Authority may establish and operate an electronic filing system for purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority.

Honourable Members, the Court of Appeal further declared the amendments made to sections 3 and 4 of the Kenya Medical Supplies Authority Act as contained in the Health Laws (Amendment) Act, No. of 5 of 2019 unconstitutional.

To this end, **Honourable Members**, in light of the Court of Appeal judgment, a pertinent question that arises **is how the House should proceed to re-enact the laws that have been nullified?** With respect to the Equalization Fund Appropriation Act No. 3 of 2018, the objectives of the long title of the law reads as follows-

"An ACT of Parliament to authorize the issue of a sum of money out of the Equalization Fund and its application towards the service of the year ending 30th June, 2018 and to appropriate that sum for certain public basic services and for connected purposes"

Honourable Members, You will agree with me that this particular Act, being an annual appropriations law cannot be resuscitated as it is a “spent” Law. However, the decision of the Court of Appeal will have to be adhered to by future Houses when enacting the annual Equalization Fund Laws. It is however worth observing that, under Article 204 of the Constitution, the Equalization Fund was meant to be a twenty-year measure to assist the marginalized areas cater for basic services such as water, roads, health services and electricity connectivity. The sad fact is that, whereas more than half of the statutory period has now lapsed, the Fund has been largely moribund since every step to actualize it has been met with endless litigation.

Honourable Members, With respect to the Sacco Societies (Amendment) Act, 2018 No. 16 of 2018, I direct that the Clerk moves with speed to facilitate the re-introduction of the Bill in the House, in the exact text as it was originally passed by this House in 2018 for reconsideration in an expeditious manner and forwarding to the Senate. However, with respect to the amendments made to sections 3 and 4 of the Kenya Medical Supplies Authority Act touching on the functions of the Authority as contained in the Health Laws (Amendment) Act, No. of 5 of 2019, I note that there is presently a Health Laws (Amendment) Bill, 2021 at Second Reading. Consequently, the amendments may be proposed to the Health Laws (Amendment) Bill, 2021 for consideration by the House at the Committee Stage. Subsequently, upon passage, the Bill shall be forwarded to the Senate for consideration also. **That way, this House will have discharged its legislative role on the two impugned laws in compliance with the findings and decision of the Appellate Court.**

Honourable Members, moving on to the other Orders of the Court of Appeal, the Court also made a declaration that the concurrence process envisaged in Article 110(3) **only** applies to all **Bills concerning counties** within the meaning of Articles 109 to 114 of the Constitution. Indeed as you are aware, Article 110(3) of the Constitution provides that *before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve a question as to whether the Bill is a Bill concerning counties, and if it is, whether it is a special or ordinary Bill*. This has been a major point of departure between the two Houses and as you are indeed aware, the High Court had made a declaration that **all** Bills must be subjected to the concurrence process, notwithstanding the distinct legislative mandates of both Houses and the **asymmetrical nature of our bicameral Parliament in which each House has distinct mandate with the Senate having limited legislative mandate** as indeed observed by the Court of Appeal in paragraphs 72 and 73 of its judgment. In their judgment, the distinguished judges held as follows, in paragraph 98-

"Therefore, it was an error by the High Court to find that it is a condition precedent that any Bill published by either House be subjected to the concurrence process".

Honourable Members, the finding of the Court of Appeal on this matter is that only Bills concerning county governments as espoused in Article 110(1) of the Constitution would be subject to the concurrence process. The Court rightly held that Article 110(3) can only be interpreted in the context of the law making roles and procedures of the Senate and National Assembly as specified in Articles 109 to 116 of the Constitution.

In this regard, the Court of Appeal has now settled that Article 110(3) of the Constitution **SHALL NOT** be applicable on any or every Bill that originates from the National Assembly but **ONLY** on Bills that concern county governments within the meaning of Article 110(1) of the Constitution. We applaud the Court for upholding the provisions of Article 110(3) of the Constitution and the distinct roles of the Houses of Parliament.

Honourable Members, with respect to the constant insistence by part of the Senate that the Speakers of the Houses of Parliament should form a mediation Committee akin to the one under Article 113 of the Constitution to offer advisory on the question of Bills concerning County governments, the distinguished judges held as follows, in paragraph 102 of the Judgment-

"We however need to point out and clarify that our interpretation of Article 110(3) leads to a conclusion that the mediation process under Article 113 of the Constitution is not applicable to the concurrence process in Article 110(3). The provisions of Article 113 are clear that they only apply when there is deadlock in the consideration and passing of ordinary Bills concerning counties by the National Assembly and Senate. The mediation process therefore applies during the enactment process of a Bill, and not before consideration of a Bill, which is when the concurrence process in Article 110(3) is relevant. In our opinion, the concurrence process under Article 110(3) is one that is solely and exclusively within the mandate, powers and control of the Speakers of the two Houses of Parliament, who must resolve any question arising as to whether a Bill is one concerning Counties or not, before its consideration".

Honourable Members, further the Court of Appeal also made Orders touching on the legislative procedures and rules of this House. Firstly, the Court ordered that any Bill or delegated legislation that provides for, or touches on the mandate or powers of the Parliamentary Service Commission must be considered by the Senate as it directly affects the Senate's ability to undertake its constitutional mandate including its ability to consider Bills that affect counties. In this regard, moving forward in terms of the legislative procedures, any Bill that provides for, or touches on the mandate or powers of Parliamentary Service Commission shall be forwarded to the Senate after passage for consideration.

Honourable Members, secondly, the Court also did make orders in regard to our legislative procedures relating to the rules of this House and I quote-

"where the Speakers of the House concur that a Bill is one that concerns Counties, pursuant to Article 109(4), the Bill must be passed in accordance with Articles 110 to 113, 122 and 123 of the Constitution and the Standing Orders of both Houses and is not subject to Article 114 of the Constitution. "

Honourable Members, Article 114 of the Constitution is the provision on money Bills and the finding of the Court is that where the Speakers of the Houses agree that a Bill is one that concerns county governments, then such a Bill shall not be subject to Article 114 of the Constitution. The Court of Appeal however observed the following in paragraph 127 of the judgment with respect to money Bills, and I wish quote the distinguished judges-

"...It is instructive that, unlike Article 109 (4) of the Constitution where application of Article 110(3) of the Constitution is expressly required, in the case of enactment of money Bills, the Constitution is silent on the involvement of the Senate. As such, it is safe to conclude that all money Bills pass through the Speaker of the National Assembly whether commenced by the Senate or in the National Assembly for him or her ^{to} ascertain whether or not it is a money Bill, and all money Bills subjected to the Budgetary Committee, dependent upon their outcome, are passed by the National Assembly without reference to the Senate"

Honourable Members, I also note that the High Court in its judgment had also declared the National Assembly Standing Order 143 which requires Bills originating from the Senate to be subjected to the money Bill determination as offending the Constitution. The Court of Appeal did not however make any determination on Standing Order 143 as it was not part of the items that were set for determination at the Appeal. Indeed, the Court of Appeal also observed in paragraph 260 of its judgment as follows, and allow me to quote-

260. We note that there was no appeal in respect of Standing Order No. 143 (2) to (6) which was also declared unconstitutional by the High Court. This being the case, there was nothing for us to determine in this regard.

Honourable Members, in light of the going, the High Court judgment which declared the National Assembly Standing Order 143 unconstitutional still stands. Additionally, I also note that the Court of Appeal in its orders also declared that the provisions of Standing Order 121(2) of the National Assembly Standing Orders which provide for the procedure for consideration of Bills concerning county government is inconsistent with Articles 109(4) and 110 to 113 of the Constitution and is therefore null and void.

Honourable Members, to this end, it may be prudent that the Procedure and House Rules Committees which is currently undertaking a review of the Standing Orders does also undertake a review of Standing Order 121 and 143 with a view of aligning the Standing Orders with the Constitution as guided by the court decisions.

Honourable Members, finally, the Court of Appeal also did make a determination on our Cross-Petition which we had filed in the High Court. You will indeed recall that the National Assembly had also filed a Cross-Petition in the High Court seeking among other things the following declarations on a number constitutional questions which are of concern to the Members of this House:

- (1) A declaration that the Senate had a limited role of oversight of State and State organs under Article 145 of the Constitution limited to considering and determining any resolution to remove the President and the Deputy President;***
- (2) A declaration that, to the extent that the Senate has established committees duplicating the mandate of the committees of this House and purported to exercise oversight over matters that fall in the exclusive domain of this House, the Senate of Kenya is in violation of the Constitution;***
- (3) A declaration that the Senate purported action of establishing and facilitating and/or causing to be facilitated committees duplicating the mandate of the committees of the National Assembly and County Assemblies amounts to imprudent and irresponsible spending of public money contrary to Article 201 of the Constitution;***

- (3) THAT, the Bills which, after passage by this House and referral to the Senate, were stopped from proceeding at the Senate be resent to the Senate for its consideration and decision in light of the interim orders given by the Appellate Court on 2nd**
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February, 2021 and the final orders given on 19th November, 2021. This includes the Kenya National Library Service Bill, 2020, the Parliamentary Pensions (Amendment) (No.3) Bill, 2019, the Public Service (Values and Principles) (Amendment) Bill, 2019, the Cancer Prevention and Control (Amendment) Bill, 2020, and the National Youth Council (Amendment) Bill, 2019 ;

- (4) THAT, as part of the ongoing end-term review of the Standing Orders, the Procedure and House Rules Committees undertakes a review of Standing Order 121 and 143 with a view of aligning the provisions with the Constitution as guided by the Appellate Court. In the meantime, we will be guided by the text of the judgment of the Appellate Court; and,**

- (5) THAT, with respect to the Orders of the Court of Appeal regarding the Cross Petition (No. 284 of 2019) by the National Assembly, in which the National Assembly sought about sixteen Declaratory Orders against the Senate, I will be giving directions to the Clerk of the National Assembly and our Counsel on how to proceed to implement the Order of the Court of Appeal.**

The House is accordingly informed and guided.

I thank you.



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

Tuesday, November 23rd, 2021

