

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 29th March, 2016

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015 and the certificates therein—

- (i) Pwani University;
- (ii) Coast Water Services Board;
- (iii) Railway Development Levy Fund;
- (iv) National Cohesion and Integration Commission (NCIC);
- (v) Micro and Small Enterprises Authority (MSEA);
- (vi) Medical Practitioners and Dentists Board;
- (vii) Machakos University College;
- (viii) National Crime Research Centre;
- (ix) State Department for Coordination of National Government Revenue Statement;
- and,
- (x) Kenya Medical Research Institute (KEMRI)

Thank you, Hon Speaker.

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF ANNUAL REPORTS SUBMITTED TO PARLIAMENT BY CONSTITUTIONAL COMMISSIONS/INDEPENDENT OFFICES

Hon. Speaker: Hon. Members, this Communication relates to the manner for consideration of annual reports submitted to Parliament by constitutional commissions and independent offices.

Hon. Members, you will recall that on Thursday 10th March, 2016 the Member for Rarieda, Hon. Gumbo, MP; while on a point of order, sought the Speaker's direction on how the House should address itself to annual reports submitted to Parliament by constitutional commissions and independent offices in accordance with Article 254(1) of the Constitution.

The commissions and independent offices contemplated above are the ones established

and listed under Article 248 (2) and (3) of the Constitution, respectively. In his submissions, Hon. Gumbo underscored that the reports contain matters that concern the people of Kenya and that in keeping with the mandate of the National Assembly, we deliberate and resolve such issues as envisaged under Article 95(2) of the Constitution and there is need for direction on how to deal with such reports.

Hon. Gumbo added that whereas the Constitution provides that such reports ought to be tabled, it is silent on how the House should express itself on the same reports and the manner in which such reports ought to be considered.

Hon. Members, the matter of accountability raised by Eng. Gumbo resonates well with the spirit of the Constitution of Kenya, which sets high benchmarks for financial probity, accountability and transparency. Indeed, Article 254(1) of the Constitution obligates constitutional commissions and independent offices to submit their annual reports to the President and Parliament.

As a matter of fact, the constitutional commissions and independent offices occupy a central role in architecture of governments. Indeed, Article 249(1) of the Constitution envisions the objects of those commissions and independent offices as being to protect the sovereignty of the people; secure the observance by all state organs of democratic values and principles, and promote constitutionalism.

On reflection on the weighty nature and the spirit and intent by which constitutional commissions and independent offices are anchored in the Constitution, I agree with Hon. Gumbo that reports generated and presented to Parliament by these bodies ought not to be wished away. There is, indeed, an urgent necessity to put in place a framework on how to consider such reports.

Hon. Members, the Constitution is alive to the fact that Parliament, as the representative institution in democratic governance is responsible for, and must at all times pronounce itself on any matter(s) as and whenever submitted to the House. Whereas Article 254(1) of the Constitution is silent on how Parliament should address itself to the reports submitted by constitutional commissions and independent offices, the manner of consideration and the timeline within which consideration of such reports should be concluded, a parallel can be drawn from the provisions relating to consideration of other forms of reports submitted to Parliament, particularly audit reports such as the ones that have been tabled by the Leader of the Majority Party. Article 229 of the Constitution states:

“Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.”

On the same thread, Hon. Members, it has been the practice of this House that whenever a report(s) is tabled before the House, the Speaker has either outright or on discretion referred the report to a relevant Committee of the House for consideration. Thereafter, the House has always considered the report of that Committee in light of the observations and/or recommendation(s) of the Committee to which the matter was delegated. It is on this backdrop that even though Article 229 of the Constitution does not expressly commit financial reports presented to Parliament by the Auditor-General to the Public Accounts Committee (PAC) for consideration, the Committee continues to dutifully scrutinize the said reports on behalf of the House as and when referred to the Committee.

In view of the foregoing, annual reports submitted by constitutional commissions and independent offices undoubtedly require thorough scrutiny by the House. If I were to invoke the

provisions of Standing Order No.1 and apply the provisions of Article 229 it would then follow that this House should consider the reports submitted by constitutional commissions and independent offices and take appropriate action, taking into account the observations and recommendations contained in the reports being tabled in the House by the relevant Committees of this House after scrutinising the reports submitted by the commissions and independent offices.

For avoidance of doubt, I wish to guide the House as follows:

That, the annual reports from constitutional commissions and independent offices, upon being tabled in the House, shall stand referred to the relevant Departmental Committee within whose purview the mandate of the constitutional commissions and/or independent offices falls. The Departmental Committees of the House will then consider the reports according to their respective mandates. Nothing shall preclude the Departmental Committees from setting up sub-committees of themselves for expedient disposal of such reports; and

That, for purposes of the future practice in respect to such reports, I direct in accordance with Standing Order No.1, that consideration of the said reports shall proceed in a manner similar to that accorded to consideration of audit reports by the PAC and within the timelines stipulated under Article 229(8) of the Constitution, which is three months. Thereafter, the House will debate and consider the reports of the Departmental Committees and take appropriate action as necessary.

I thank you.

The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker for that very elaborate ruling. Let me pick on the Report by the Controller of Budget (CoB) which is always sent to the Departmental Committee on Finance, Planning and Trade. As you said it, it is our business and even Members to appear before those Committees when those reports are being done and raise issues that concern their counties.

Sometimes if you read the report of the Controller of Budget on county governments, you will find that a lot of information is very general. That is where we can ask, through the Departmental Committee on Finance, Planning and Trade that Members appear before those Committees and ask for specific areas within the reports of the Controller of Budget, Attorney-General or the Ethics and Anti-Corruption Commission (EACC).

As you directed, the Clerk's Office should also publicise when the Controller of Budget, the leadership of EACC and the Attorney-General are to appear before the respective Committees so that as we give the House Business information on every Thursday, the Clerk's Office can also tell us when the Controller of Budget is coming so that Members can go and ask particular questions.

Hon. King'ola: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Patrick Makau, what is your intervention?

Hon. King'ola: Thank you, Hon. Speaker. Will I be in order, Hon. Speaker, if I request for your intervention? I was the first to walk in here. You can see some Members are walking out of this place. As a matter of security, there is a black bag which we found here. I do not know whether it belongs to anybody. Usually, it is only men who sit here. Please, this bag should be removed maybe by bomb experts. I do not know what it is. Please, intervene.

Thank you.

Hon. Speaker: You said you are sitting close to it. So, you are not even scared about it? Or you are scared about being black?

(Sergeant-at-Arms removed the bag)

Hon. Makau, that must belong to some Hon. Member or you do not think so? I believe the Chamber was being used earlier in the morning for Questions by Cabinet Secretaries (CSs). The Sergeant-at-Arms will decide whether it requires the services of bomb experts.

Hon. Murungi: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Murungi: Thank you, Hon. Speaker. During the last sitting we had here, you made a ruling when it was not clear whether the matter of the National Government Constituencies Development Fund (CDF) should be followed up by either the Chairman of the Delegated Legislation or the Chairman of Committee on CDF. You made a ruling that the Chairman of Committee on CDF should give a report this afternoon so that we can know the status of CDF. It is like they had information because I can see the Chairman and the Vice-Chairperson are here. I think they are ready to give this information only that they did not press the intervention.

Thank you.

Hon. Speaker: Hon. Lessonet, I hope nobody is baying for your blood.

Hon. Lessonet: Thank you, Hon. Speaker for this opportunity. I just want to clarify to Members that the matter of CDF regulations is work in progress.

Hon. Members: Why?

Hon. Lessonet: Yes. That is what I am saying. This House and specifically the Committee on Delegated Legislation has finalised them and has successfully approved and forwarded to the CDF Board who have now sent them to the Attorney-General for gazettelement. The process on the other side of Government is that all regulations for gazettelement must be processed through the Attorney-General. So, it is just on transit to the Government Printer for that gazettelement. I am very optimistic that the issue of gazettelement should happen this week.

Thank you.

Hon. Members: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Members, I know you will all want to claim that it is a point of order, but maybe you want to interrogate the Chairman of the Select Committee. I will allow a few of you to do so. I had seen Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Speaker. The Chairman of the Committee on CDF was casual when this law was initiated. He is reluctant to occasion this law. The CDF has employees in our constituencies who have not been paid salaries, forget about the Board. The Chairman of CDF Committee is said to be interested in becoming governor and wants this money to be devolved. This is casual. I want to request you to order this particular Committee, because they promised--- When we met in House Business Committee (HBC), we agreed that in order to fast-track these regulations, we let it go the other way round before it is tabled in Parliament. We agreed, and we are a Committee of Parliament. The only request I am making is, kindly order this Committee to sit even tonight and tomorrow morning and table the regulations here. Or let the copy be with the Attorney-General and let us use the power of Parliament tomorrow morning at 9:30 a.m. to pass the regulations so that we can pay our employees. These are Kenyans and they are suffering.

I thank you.

Hon. Speaker: I can see the Vice-Chairperson has not been in the Chamber for some time. That is why she is raising her hand. Let us hear from Hon. Gathogo.

Hon. (Ms.) Gathogo: Asante Mhe. Spika. Nimekuwa nje kwa muda kidogo kwa sababu ya shughuli. Ninataka kumwambia Mhe. Jakoyo kwamba tusiingize mambo ya siasa ya ugavana katika CDF. Sisi tumekuwa tukifanya kazi ya kutengeneza hiyo sheria na tunajua kwamba hatujalala. Tutaendelea kushikana vile umesema. Tafadhali, hiki ni kitu ambacho kinagusa kila mtu, hata mimi na Mwenyekiti. Kwa hivyo, tutaungana ndio tuweze kusaidia Wabunge waheshimiwa.

Asante sana.

Hon. Speaker: When are they going to be ready?

Hon. A.B. Duale: *(Inaudible)*

Hon. Speaker: You see, Leader of the Majority Party, since you do not sit with the Committee, you may not---Members had suggested that you go and talk to the Attorney-General. The Leader of the Majority Party will take some blame. You want to say you are going to talk to the Attorney-General, but nobody has prevented you from talking to the Attorney-General. It looks like Members are shooting themselves in the foot.

Hon. Angwenyi: I have a solution.

Hon. Speaker: It is not because Hon. Jimmy Angwenyi you will shout loudest. Can we look for a solution, please? Give suggestions.

Hon. Members: I have a suggestion.

Hon. Speaker: When you tell me you have suggestions, why do you not appear before that Committee and give those suggestions there? You cannot say that you want to give suggestions here.

Hon. Speaker: Hon. Kombe, Member for Magarini, what is your solution?

Hon. Kombe: Thank you, Hon. Speaker. I brought up this issue last week. At this point--

Hon. Speaker: No. What is your solution?

Hon. Kombe: I wish to request the Speaker to take up the matter and we have the regulations in the House tomorrow.

Thank you.

Hon. Speaker: I am sorry. It is not part of my mandate. Just look at the Constitution. I cannot take up that matter because I have a House Committee. It is not the Speaker's role to go and---Hon. Jimmy Angwenyi.

Hon. Angwenyi: The solution is this: Let all 29 Members of that Committee get out right now. Let them go to the Attorney-General's Chambers, sit there until the regulations are sent to the Government Press. That is the only solution we can have. We must have them by tomorrow gazetted so that I can take copies home over the weekend when we go for our recess and pay our employees and the projects that we have undertaken. Let them all move right now to Attorney-General's Chambers.

(Laughter)

Hon. Speaker: Hon. Jimmy Angwenyi, the five years you were not in the last Parliament spoiled you. You want to dictate that Members leave the Chamber right away! That is not the way

to treat your colleagues, is it? Even the Members of that Committee have constituencies. It is not fair to say "Let them leave now." That is not the way we would want to work. Let me hear your opposite number. Hon. Manson Nyamweya.

Hon. Nyamweya: Thank you, Hon. Speaker. This is a very serious matter. We are going on recess as Parliament. At the moment as we sit, this money is meant for bursary. There are projects which are pending. Normally, with the Attorney-General, Bills queue and ours is on the queue. For it to be fast-tracked, the House leadership on both sides of the House, can go today to the Attorney-General and the Government Printer so that we can get it out. That is the only way we can move forward. We need these things to be implemented immediately.

Thank you.

Hon. Speaker: Now that Hon. Midiwo has offered his suggestion, let us hear from the Leader of the Majority Party. Since you suggest that the House leadership goes to the Attorney-General, is that what the Leader of the Majority Party would want to talk to the Attorney-General about?

Hon. A.B. Duale: This is a very small matter. You do not need to send 29 Members if the regulations, as the Chairman has said--- In fact, CDF Members are 11, they are not 29, Hon. Jimmy Angwenyi. If the regulations as he is saying are with the Attorney-General, I want to undertake that by tomorrow midday, the published *Gazette Notice* will be in Parliament. That I can undertake.

The people who are giving solutions are people who have no serious role in Government. Some are in opposition. At least, I can speak for the Attorney-General. After the next business, I will talk to the Attorney-General if it is there and talk to the person in charge of the Government Printer. It is a small regulation. It will be printed. I am sure that the Chairman of the national CDF Board---I was part of last Parliament when we were dealing with the same matter. The Chair then was my Speaker in the Senate. Because he wanted to become a Senator, he gave us rough time in the 10th Parliament. Now that I am hearing you want to become a governor of Baringo, you cannot sacrifice those of us who want to come back as Members of Parliament. We wish you well in your gubernatorial position. There are many. There are people like Manson Nyamweya, Member for Chuka/Igambang'ombe and many others. You can go but those of us who want to come back as Members of Parliament, do not play around with the lives of our people.

I will do whatever it takes. Tomorrow afternoon, the gazetted national CDF regulations will be here.

Hon. Speaker: Well, Hon. Lessonet. To the extent that you may have been named in bad light---

Hon. Lessonet: Thank you, Hon. Speaker. Yes, I accept the offer by Hon. Duale, the Leader of the Majority Party, to take up the matter with the Attorney-General. For purpose of information and specifically to Hon. Jakoyo Midiwo, this House has already approved the regulations through the Committee on Delegated Legislation led by Hon. Cheptumo. For that matter, the regulations are not coming to this House. This House has already approved.

Hon. Speaker, on the other issue, I want to assure Members of Parliament that they will find me in the 12th Parliament. I will be here as the Leader of the Majority Party or the Chairman of the Budget and Appropriations Committee or the Chairman of the Constituencies Development Fund (CDF) Committee.

I sympathise with Hon. Jakoyo Midiwo. I know that he would have gone for the Governor's seat in Siaya County if he had a degree.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Next Order.

BILL

Second Reading

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Hon. Speaker: Order, Hon. Members! Debate on the business appearing as Order No. 8 was concluded. What remains is for the Question to be put, which I hereby do.

(Question put and agreed to)

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

For the convenience of the House, because the business appearing as Order No. 10 is fairly straightforward, we rearrange the Orders so that the House moves to the business appearing as Order No. 10, after which we will go to Order No. 9.

MOTION

ADOPTION OF REPORT ON MEDIATED VERSION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL, 2013

Hon. Chepkong'a: Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill, laid on the Table of the House on Thursday, 24th March 2016, and approves the mediated version of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 33 of 2013)

Hon. Speaker, we met as the Mediation Committee under the chairmanship of Hon. Amos Wako, who was elected unanimously by the Mediation Committee. I was elected the Vice Chairman of that Committee. Its membership was composed of:-

- (i) Hon. Tom Bosire, MP;
- (ii) Hon. Maanzo, MP;
- (iii) Hon. Njoroge Baiya, MP;

- (iv) Hon. (Sen.) Bonny Khalwale, MP;
- (v) Hon. (Sen.) Sang, MP; and,
- (vi) Hon. (Sen.) Kipchumba Murkomen, MP.

We were a total of eight Members. As you know, what we were mediating on was what was disagreed upon between the two Houses. It was passed by the National Assembly without amendment, but an amendment was introduced to Section 23 in the Senate. It was the Transition to Devolved Government Act, 2012 (Act No. 1 of 2012). It says that where the Authority determines that a county government meets the criteria for the transfer of a function under Section 24, it shall propose a programme to support and strengthen the capacity of that county government, which shall be implemented by the national Government in consultation with the county government to enable that county government to perform the transferred function.

Hon. Speaker, we had a total of three meetings. This was a fairly straightforward matter. The term of the Transition Authority (TA) came to an end at the beginning of this month and, therefore, seeking to vest powers to an organisation that no longer exists does not make sense.

As a Committee, we agreed that this clause be removed from the Statute Law (Miscellaneous Amendments) (No.2) Bill. The decision was unanimous. We adopted it and it was signed. The Report was tabled on Tuesday.

I am moving that the mediated version of the Bill, which excludes Section 23, which was Clause 5(a); be adopted without that clause because it is spent. The Act itself is spent.

I request Hon. Tom Bosire to second.

Hon. Bosire seconded.

Hon. Speaker: Hon. Members, as explained by the Mover and the Seconder, the Motion is really a straightforward one. The Mediation Committee agreed unanimously that there was no need of retaining Clause 5 because the term of the TA had come to an end.

(Question put and agreed to)

Hon. Namwamba, you wanted to contribute?

Hon. Ababu: Hon. Speaker, now that we are held in abeyance, it would do no harm to put on record a support for the Report. The spirit in Article 113 of the Constitution about mediation, which was intended to ensure harmony between the Senate and the National Assembly in the process of legislation, warrants that.

Previously, we have had challenges in ensuring that the two Houses operate the process of legislation harmoniously. It is good to acknowledge that we have largely overcome a lot of the teething challenges between the two Chambers. One hopes that moving forward, as we head towards the end of the term of this first bicameral House, we will see better relations between the two Chambers and this can only ease the process of legislation, if the Senate and the National Assembly are reading from the same script.

Hon. Speaker, I have said this before and let me reiterate it as I conclude, the National Assembly should be supportive of the Senate and especially as far as strengthening the oversight mandate of the Senate is concerned. We have a responsibility to ensure that the Senate is given both financial and legislative capacity to ensure that it assists the critical process of overseeing county governments and ensuring that they become more responsible in the manner in which they use resources and execute their mandate under the Constitution. So, this is commendable

that the Committee can sit together and find common ground between the two Chambers of the House.

I support this Report.

Hon. Speaker: Mover.

Hon. Chepkong'a: Hon. Speaker, I thank Hon. Namwamba for his support and Hon. Tom Bosire who was committed. He is unwell and has lost his voice. That is why he was unable to speak much. However, this was a straightforward matter and I move.

(Question put and agreed to)

Hon. Speaker: Hon. Maanzo appears a bit thirsty. There is nothing wrong with being thirsty. Hon. Members, at the request of the Mover, the business appearing as No.9 (iii) is to be adjourned to be considered tomorrow afternoon. That is The Private Security Regulation Bill, No. 4 of 2014. The Committee will deal with the rest of the business.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE DIVISION OF REVENUE BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We will proceed to Order No. 9 on the Division of Revenue Bill (National Assembly Bill No. 4 of 2016).

(Clauses 3, 4, 5 and 6 agreed to)

(Schedule agreed to)

(Title agreed to)

(Clause 2 agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are through with that particular one. So, I will ask the Mover to move reporting.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee

does report to the House its consideration of the Division of Revenue Bill, (National Assembly Bill No. 4 of 2016) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are through with that bit of the Division of Revenue Bill. We will be moving to the next one.

THE HEALTH BILL

(Resumption of consideration in Committee interrupted on 17.3.2016)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we were at Clause 55 and that is where we will begin the Committee.

Clause 55

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

THAT, clause 55 be deleted and replaced by the following new clause –

Bank account.	“55 (1) The National Treasury shall, facilitate the opening and maintenance of bank accounts by the county treasuries, for purposes of operationalizing disbursements of conditional grants, donations and any other monies designated for health as may be prescribed, in accordance with the provisions of the Constitution and the Public Finance Management Act.
Act No. 18 of 2012.	

(2) Funds identified and designated for health in sub-section (1) shall not be appropriated for any other purpose.”

The first amendment concerns the opening of the bank accounts. The purpose of this amendment in Clause 55(1) is that the clause was redrafted to introduce the sub-clause to ensure that there is a possibility of opening of accounts.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! The decibels are a bit loud particularly from Hon. Kajuju.

Hon. (Ms.) R.K. Nyamai: Thank you. The amendment on Sub-clause 55(2) is meant to ring-fence funds that are meant for health, so that they are not used for other activities within the budgeting system.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): As it is the norm, I will give two Members starting with Hon. Kajuju followed by Hon. Wamalwa, Member for Kiminini. Proceed.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. I support the amendment as presented by the Chair of the Committee and pray that all the other Members will support it.

The Temporary Deputy Chairman (Hon. Cheboi): Since I can see the Member for Kiminini is busy, I will give the chance to Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. The concept of ring-fencing funds for a specific sector is very important. It is important that funds which have been set aside for this sector are ring-fenced for purposes of that sector.

I support the amendment.

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

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

(Clause 55 as amended agreed to)

Clause 56

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

THAT, Clause 56 be amended by inserting the words “and regulation” immediately after the words “development” appearing in sub-clause (1).

The importance of this amendment is to ensure that there is regulation especially as regards to private health services.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to Hon. Makenga, Member for Kaiti.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. I support the amendment as proposed by the Chair of the Committee. There should be regulation to this effect.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Sunjeev Kour Birdi. Is that the pronunciation of your name? I am doing better today.

Hon. (Ms.) Sunjeev: Thank you very much, Hon. Temporary Deputy Chairman. You have actually surprised me. Thank you very much for getting it right this time. However, I wanted to contribute to the next clause.

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

(Clause 56 as amended agreed to)

(Clauses 57 and 58 agreed to)

Clause 59

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

THAT, Clause 59 of the Bill be deleted and replaced by the following new clause -

“Duty of licences. 59. (1) Institutions licensed under section 57 and private health workers licensed under section 58 shall irrespective of any specific conditions attached to such a licence be bound –

- (a) to permit and facilitate inspection at any time by the Authority and regulatory bodies;
- (b) to provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.

(2) Institutions and private health workers shall nevertheless be entitled to compensation under similar terms as contemplated under section 7 of this Act.”

This is the clause that concerns duties of the licensees of private health facilities. The purpose of the amendment is to ensure that they are open to inspection for quality. The second amendment concerns compensation through some financial mechanism to ensure that provision of emergency care is enacted so that it works.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Gichigi.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairman. I also rise to support this amendment. It brings in two very important provisions. First, private health providers cannot lock out regulators from finding out what is happening in their institutions. Second, it requires the providers to give emergency treatment to people, who require it, without first of all asking for payment and follow up under the regulations later.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. (Dr.) Musyoka, Member for Machakos.

Hon. (Ms.) Musyoka: Thank you very much, Hon. Temporary Deputy Chairman. I support that amendment. It is important that the authority and regulatory bodies supervise and also see what is happening in the private hospitals and institutions. These institutions will be offering emergency services even before they are paid.

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

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

(Clause 59 as amended agreed to)

(Clause 60 agreed to)

Clause 61

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

THAT, Clause 61 be amended—

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

“(1) There shall be established by the Cabinet Secretary, a National Health Research Committee which shall be a technical committee”.

(b) by deleting the marginal note and substituting therefor the following new marginal note—

“Establishment of the National Health Research Committee”.

This is an amendment which is meant to correct the name of the National Health Research Committee.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I could give an opportunity to two Members although the clause is fairly straightforward. Let me put the Question.

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

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

(Clause 61 as amended agreed to)

(Clauses 62 and 63 agreed to)

Clause 64

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

THAT, Clause 64 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (f)—

“(fa) set up a national research database”

This clause concerns the functions of the National Health Research Committee. It should establish a national database for research such that someone who wants to do research will be able to know what other research has been done in this country.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first shot to a very renowned gynaecologist, the Member for Likuyani, Hon. Kibunguchy. He is also a seasoned Member of this House.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Chairman. Thank you for recognising me and my profession. It is very important to have a database for purposes of research.

I support the amendment strongly.

The Temporary Deputy Chairman (Hon. Cheboi): I will also give an opportunity to Hon. M'eruaki.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. Having a database is important. One will be able to know what has been done and what is there. This may even guide further research in the area of health.

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

(Clause 64 as amended agreed to)

(Clause 65 agreed to)

Clause 66

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

THAT, Clause 66 of the Bill be amended by deleting the words "Third Schedule" and substituting therefor the words "Fourth Schedule"

This is because we would like to provide for a new schedule to accommodate for the conduct of business of the committee.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Member for Laikipia West, Hon. Karani.

Hon. Karani: Thank you, Hon. Temporary Deputy Chairman. I support the proposed amendment by the Chairlady.

The Temporary Deputy Chairman (Hon. Cheboi): This is fairly straightforward. Hon. Oyoo.

Hon. Oyoo: Hon. Temporary Deputy Chairman, I support the proposed amendment because it is in tandem with the financial policy; we are moving upwards from the Third to the Fourth Schedule.

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

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

(Clause 66 as amended agreed to)

(Clauses 67, 68, 69, 70 and 71 agreed to)

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

Hon. Oyugi: Hon. Temporary Deputy Chairman, I am getting ready to give my voice on Clauses 73 and 74.

The Temporary Deputy Chairman (Hon. Cheboi): Please press request button because you have pressed the intervention button.

Clause 72

Hon. (Ms.) R. K. Nyamai: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Cheboi): Member for Kitui South, please take us slowly. We are dealing with Clause 72 not 82.

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

THAT, Clause 72 be amended by deleting the opening statement and substituting therefor the following new opening statement —

“The Cabinet Secretary shall, within three years of the operation of this Act, ensure the enactment of legislation that provides for among other things”

This amendment concerns e-health. The purpose of this amendment is to provide for timelines so that it is not open for the Cabinet Secretary (CS) to introduce legislation for e-health.

(Question of the amendment proposed)

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

Hon. Oyugi: Hon. Temporary Deputy Chairman, this is an interesting provision that the Chairlady is bringing in and I support.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Baringo South, Hon. (Ms.) Kipchoim, do you want to speak to this one?

Hon. (Ms.) Kipchoim: Hon. Temporary Deputy Chairman, I support the proposed amendment by the Chairlady.

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

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

(Clause 72 as amended agreed to)

Clause 73

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

THAT, Clause 73 be amended—

(a) in Sub-clause (1), by inserting the word ‘integrated’ immediately after the word “comprehensive”;

(b) in Sub-clause (2), by inserting the words “ in consultation with the Director General,” immediately after the word “ Cabinet Secretary” .

(c) by inserting the following new sub-clause immediately after Sub-clause (2) —
“(2A) The Cabinet Secretary shall, in consultation with the Director General, prescribe policy guidelines for the establishment of an integrated comprehensive health information management system, which shall include—

(a) an integrated comprehensive health information system relating to the national government health functions;

(b) an integrated comprehensive health information system relating to every county and in respect of county functions; and

(c) the consolidation and harmonization of health information obtained under subsection (a) and subsection (b) ;

(a) the minimum standards applicable for establishment and maintenance of health information systems;

(b) a guide on the minimum indices to be captured by each county health information system;

(c) the mechanism for ensuring inter-connectivity between each county information system and the national system;

(d) the guiding principles for management and administration of health information banks; and

(e) any other information on health services, including sources of health financing, human resources available in the health sector.”

We are inserting the word “integrated”. The purpose of this amendment is to ensure that we have a health information system that is part of an effective countrywide system that is fully integrated.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Member for Baringo County, Hon. (Ms.) Kiptui.

Hon. (Ms.) Kiptui: Hon. Temporary Deputy Chairman, I support the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) Eusilah Ngeny, do you want to speak to this one?

Hon. (Ms.) Ngeny: Hon. Temporary Deputy Chairman, I support.

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

(Clause 73 as amended agreed to)

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) R.K. Nyamai, you should be hardworking in terms of controlling decibels. I can see Hon. (Ms.) Kour Birdi is really assisting you. Hon. Members, we should concentrate so that the Chair can make a decision based on what you have decided.

Clause 74

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

THAT, Clause 74 be deleted and replaced with the following new clause
Collaboration. “74.(1) While the Cabinet Secretary responsible for health shall bear primary responsibility for the implementation of this Act, the respective levels of government and other agencies of government shall collaborate, consult and enter into agreements for the better carrying out of the provisions of this Act.

(2) Without prejudice to sub section (1), the respective levels of government shall collaborate in the implementation of this Act, development of regulations and where necessary in the adaptation of legislation.

The purpose of the proposed amendment is to ensure that the CS for Health works in consultation with other Government agencies because health is a devolved function especially through the intergovernmental forums where we will have agreements on various matters.

On (2), the word “interpretation” has been deleted and replaced with the word “implementation” for syntax purposes.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first chance to Hon. Neto.

Hon. Oyugi: My interest in this is because of the wording and what she proposes to do. I appreciate that health is a devolved function and that someone needs to carry responsibility but Sub-clause (2) is worded in a way that responsibility ought to lie somewhere. Whereas there are devolved issues that are supposed to be inherent in the county government, there are functions of the CS that are express. To word it this way will bring conflict with people passing the buck back and forth. We should make clear and distinct roles for the CS. Whereas collaboration is necessarily important, let there also be devolved clear and distinct roles so that even if you are making regulations you know that there ought to be collaboration and consultation. This phraseology is untidy and might take us back and forth. I hope she can reconsider it. I support the

clause.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Imenti South.

Hon. Murungi: Thank you, Hon. Temporary Deputy Chairman. I want to support the proposed amendment because it will bring coordination between the national Government and the counties. For the last two years, the national Government has been giving land and facilities to the counties but the coordination between the two levels has not been very clear and that is why the Governor of Bomet County has not signed up the grant from the national Government. Therefore, I think this clause will heal some of the problems and issues that are coming up.

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

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

(Clause 74 as amended agreed to)

(Clause 75 agreed to)

Clause 76

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

THAT, Clause 76 be amended by deleting paragraph (a) and substituting therefor the following new paragraph -

“(a) health workers welfare”;

The purpose of this amendment is to correct a syntax error.

(Question of the amendment proposed)

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

Hon. Onyura: Hon. Temporary Deputy Chairman, the proposed amendment is fairly straightforward because it is a correction of an omission. The words “health workers welfare” were missing. It was an omission of words that make the clause complete and better sounding.

I support the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let me give an opportunity to another physician, Hon. (Dr.) James Murgor, Member for Keiyo North.

Hon. Murgor: Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendment as proposed by the Committee Chair. Basically, it is cleaning up. The welfare of workers is highlighted in this amendment.

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

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

(Clause 76 as amended agreed to)

(Clauses 77 and 78 agreed to)

Clause 79

Hon. (Ms.) Sunjeev: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Birdi?

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I seek your guidance. Did we just skip Clause 78A, which deals with general penalty?

The Temporary Deputy Chairman (Hon. Cheboi): We will come to it because that is a new Clause. If you look at your Order Paper, it is somewhere at the bottom of the new clauses.

Hon. (Ms.) Sunjeev: Thank you.

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

THAT, Clause 79 of the Bill, be amended in the opening statement, by inserting the words “in consultation with the Director General” immediately after the words “Cabinet Secretary”.

The purpose of this amendment is to empower the Cabinet Secretary (CS) to create regulations, the bulk of which touch on technical aspects. Before he does that, he must seek for support and advice from the Director-General, who is the technical expert.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first chance to Hon. Korei ole Lemein, Member for Narok South.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Chairman. I rise to support. I believe this is very good for this particular sector.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Nakuru Town East. Hon. Mpuru Aburi, you will get an opportunity later. The Members of Meru are today suffering from some instinct called “flocking instinct.” They are all together in one particular area. Hon. Kajuju, would you want an explanation about what a flocking instinct is? I would do that. Proceed, Hon. Member for Nakuru Town East.

Hon. Gikaria: I support.

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

(Clause 79 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are moving to the new clauses so be keen.

New Part IIIA

New Clauses 26A, 26B, 26C, 26D

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

THAT, the Bill be amended by inserting the following new parts immediately after clause 26—

“PART IIIA – KENYA HEALTH SECTOR INTER-GOVERNMENTAL CONSULTATIVE FORUM

Establishment of Forum. No.2 of 2012	26A. (1) There is established a Health Sector Inter-Governmental Consultative Forum, in line with the provisions of the Inter-Governmental Relations Act, and any applicable law. (2) The Forum shall comprise of –
Composition of the Forum.	(a) the Director-General for health or a designated representative; and (b) each County Director of Health or a designated representative.
Purpose of the Forum.	26B. (1) The Forum shall – (a) develop criteria and framework for determining matters requiring intergovernmental consultation; and (b) develop inter-governmental agreements for joint implementation of any activities for health service delivery.
Meetings of the Forum.	26C. (1) The Forum shall meet at least twice a year. (2) The Forum shall regulate the procedures of its meetings.
Conduct of business.	26D. (1) The Forum shall regulate the conduct and regulation of the business and affairs of the Forum.

The purpose of this Part is to establish the Forum and the purpose of the Forum is to ensure that there is an opportunity for consultation. Clauses 26B and 26C concern the purpose and meetings of the Forum while Clause 26D concerns the conduct of business.

(Question of the New Part proposed)

(New Part read the First Time)

(Question, that the New Part be read a Second Time, proposed)

(Question, that the New Part be read a Second Time, put and agreed to)

(The New Part was read a Second Time)

(Question, that the New Part be added to the Bill, put and agreed to)

New PART IIIB

New Clauses 26E, 26F, 26G, 26H, 26J, 26K, 26L, 26M

“PART 111B – ESTABLISHMENT OF THE KENYA HEALTH

HUMAN RESOURCE ADVISORY COUNCIL

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

THAT, the Bill be amended by inserting the following new parts immediately after clause 26D—

Establishment of the Council. 26E. (1) There is established a Kenya Health Human Resource Advisory Council which shall consist of –

- (a) chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters relating to health or a representative designated by the Principal Secretary;
- (c) one person who holds a master's degree in public health nominated by the Council of Governors;
- (d) the Attorney General or a representative designated by the Attorney General;
- (e) the Director-General for health or a representative designated by the Director-General;
- (f) one representative nominated by the Public Service Commission;
- (g) one person nominated by the Intergovernmental Consultative Council;
- (h) one person nominated by the County Public Service Boards;
- (i) three persons nominated by public universities, private universities and mid-level institutions; and
- (j) the Chief Executive Officer.

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

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

26F. (1) The Council shall review policy and establish uniform norms and standards for –

- Functions of the Council.
- (i) posting of interns to National Government and County Government facilities;
 - (ii) inter county transfer of healthcare professionals;
 - (iii) transfer of healthcare professionals from one level of Government to another;
 - (iv) the scheme of service for health professionals;
 - (v) management and rotation of specialists; and
 - (vi) the maintenance of a master register for all health practitioners in the counties.

Powers of the
Council.

26G. The Council shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) control, supervise and administer the assets of the Council in such manner and for such purpose as best promotes the purpose for which the Council is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Council is established;
- (e) open a banking account or banking accounts for the funds of the Council; and
- (f) invest any funds of the Council not immediately required for its purposes as may be permitted by law for the time being in force.

26H. (1) The Public Service Commission shall, through an open, transparent process, recruit a Chief Executive Officer who shall be appointed by the Council.

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

Chief Executive
Officer.

- (a) holds at least a degree in medicine from a university recognized in Kenya, and is registered by the Kenya Medical Practitioners and Dentist Board;
- (b) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and
- (c) meets the requirements of Chapter Six of the Constitution;

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

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

(6) The Chief Executive Officer may be removed from

office for gross misconduct, violation of the Constitution or any other law or on any other ground as may be provided for in the contract of employment.

(7) The Chief Executive Officer shall be responsible for the day to day operations of the Council.

26J. (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the Second Schedule.

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

26K. The Council may, by resolution generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or an agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

26L. (1) The chairperson and the members of the Council, other than ex-officio members, shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(2) The members of the Council shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.

26M. (1) The Council may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Council.

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

- (a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;
- (b) exercise transparency in the recruitment process; and
- (c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Conduct of business and affairs of the Council.

Delegation by the Council.

Tenure of office.

Staff of the Council.

The purpose of these clauses is to establish the Kenya Health Human Resource Advisory Council, which is also an opportunity for collaborations and discussions on health matters. The clauses give the Council powers, a Chief Executive Officer (CEO) and also an opportunity to delegate.

(Question of the New Part proposed)

(New Part read the First Time)

- written law; and
- (c) all moneys from any other source provided for, donated or lent to the Council.
- Financial year. 26Q. The financial year of the Council shall be the period of twelve months ending on the thirtieth day of June in every year.
- Annual estimates. 26R.(1) The Council shall, at least, three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Council for that financial year.
- (2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year concerned and in particular shall provide for the—
- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Council;
 - (b) payment of pensions, gratuities and other charges in respect of members and other staff of the Council;
 - (c) proper maintenance of buildings and grounds of the Council;
 - (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Council; and,
 - (e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.
- (3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Council shall not increase annual estimates without the consent of the Cabinet Secretary.
- (4) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary. .
- Accounts and audit. 26S. (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Council.
- No. 12 of 2003 (2) The accounts of the Council shall be audited and reported upon in accordance with the provisions of the Public Audit Act.
- (3) The Council shall, within three months from the end of the financial year to which the accounts relate, submit to the

Auditor-General the accounts of the Council together with—

- (a) a statement of income and expenditure during the year;
- (b) a statement of the assets and liabilities of the Council as of the last day of that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Council.

Investment of funds.

26T. The Council may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance invest any of the funds of the Council in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

The purpose of this is to ensure that we give protection from liability and ensure that we have a way of considering funds and sources of funding to the Council, matters of financial year, accounts and audit including investment of funds.

(Question of the New Part proposed)

(New Part read the First Time)

(Question, that the New Part be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I see Hon. Mpuru Aburi, Member for Tigania East wants to speak on this one.

Hon. Aburi: Asante, Naibu Mwenyekiti wa Muda. Yangu ni machache sana ambayo ni kusema ya kwamba afya ya binadamu ni ya maana sana duniani. Serikali yetu ambayo inaongozwa na Mhe. Uhuru Muigai Kenyatta na Mhe. Ruto imefanya kazi nzuri kwa Wakenya. Wamefanya kazi ya kutoa pesa katika Serikali Kuu na kupeleka mashinani. Ikipeleka pale mashinani unakuta wengine hawana heshima na hawana mipango yoyote kwa hizo pesa. Zikifika kwao, zinaingia mifukoni ya mabibi.

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Mpuru Aburi! You had started very well, but you have deviated and gone into the local politics of this particular one. You were doing very well. Let us leave the issue of money going into pockets. You were actually going to support.

Hon. Aburi: Mhe. Naibu Mwenyekiti wa Muda, wakati tunaongea mambo haya, ni lazima tukumbuke nyumbani kwa sababu ndio imetuleta hapa. Kama sio wale watu wa Meru ama watu wa Tigania Mashariki ambao walinipigia kura, singeweza kuja katika Bunge hili. Wakati ninaongea, akili yangu hainionyeshi Kenya nzima, bali inanionyesha Watigania na jamii ya Wameru. Ndivyo ninasema Wakenya wajue ya kwamba pesa zote ambazo zinaenda kwa afya, zinapitia katika Bunge letu ambapo Mhe. Kajuju yuko na wewe ukiwa Naibu Mwenyekiti wa Muda. Sikumaanisha ya kwamba ni gavana analeta pesa. Tunazipitisha zinapeleka Kericho,

Kilifi, Mombasa na Meru. Zikifika kule Meru, zinakuwa za mtu mmoja. Naiunga mkono Serikali lakini imekuwa na ukora mwingi ambao haufai.

Naunga mkono.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have a second Member here. Let us have Hon. Beatrice Nyaga, Member for Tharaka Nithi, or did I go to the same region? But, well, that is okay.

Hon. (Ms.) B.N. Nyaga: This is Tharaka Nithi, Hon. Temporary Deputy Chairman. I stand to support the amendment by the Chair of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): It is a region still.

*(Question, that the New Part be read a Second Time,
put and agreed to)*

(The New Part was read a Second Time)

*(Question, that the New Part be added to the Bill,
put and agreed to)*

The Temporary Deputy Chairman (Hon. Cheboi): We are still in New Part IIIB.

New Clauses 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30I, 30J, 30K, 30L

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

THAT, clause 30 of the Bill -

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

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

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

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

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

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

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

(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Authority if such person

has any direct or indirect interest in the health sector.

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

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

Conduct of business and affairs of the Authority.

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

Delegation by the authority.

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

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

Staff of the Authority.

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

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

- (a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;
- (b) exercise transparency in the recruitment process; and
- (c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Terms and conditions of service.

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

Protection from liability.

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

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

Funds of the Authority.

30G. The funds of the Authority shall comprise—

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

Secretary for the time being responsible for matters relating to finance invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

Accounts and audit.

No.12 of 2003

30K. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act

(3) The Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of income and expenditure during the year;
- (b) a statement of the assets and liabilities of the Authority as of the last day of that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.

Relationship with other regulatory bodies.

30L. (1) The obligation to inspect, monitor and evaluate the standard of performance in all the services regulated and professionals engaged in the health sector, both public and private shall be undertaken by the respective regulatory bodies provided that they are not in conflict with the functions of the Authority as stipulated in this Act or under any other written law.

(2) For the avoidance of doubt the regulatory bodies referred to in subsection (1) shall include—

Cap.260

(a) the Clinical officers Authority established under the Clinical Officers Act;

Cap.257

(b) the Nursing Council of Kenya established under the Nurses Act;

Cap.243A.

(d) the Kenya Medical Laboratory Technicians and Technologists Board established under the Medical Laboratory Technicians and Technologists Act;

Cap. 253.

(e) the Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentists Act;

Cap. 243.

(f) the Radiation Protection Board established under the Radiation Protection Act;

Cap. 244.

(g) the Pharmacy and Poisons Board established under

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

The purpose of this is to ensure that we get the roles of the CEO and have a way of conducting business affairs of this Authority. We are also considering issues to do with delegation of authority, staff of the Authority, terms and conditions of service, protection from liability, funds of the Authority, financial year of the Authority, annual estimates, investment funds for the Authority, account audits of the Authority and relationship with other regulatory bodies that may exist within the health sector.

(Question of the new clauses proposed)

(New clauses read the First Time)

(Question, that the new clauses be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two Members starting with the Member for Igembe Central.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. I have really been waiting for long. I did not see how my colleague or neighbour Mpuru Aburi got a chance twice while I was still waiting. But, all in all, I thank you for the chance. But if there are other underlying factors, re-decide your list.

The Temporary Deputy Chairman (Hon. Cheboi): Obviously, there are underlying factors. The major underlying factor, of course, is the Chair's discretion. Proceed.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendments. These amendments as proposed by the Chair are meant to strengthen the Bill. They put more flesh to the Bill and strength it. As I speak, we have a devolved system of Government where there are many conflicts and friction between the national Government, the Ministry of Health on one hand and counties on the other. These additions will add more flesh and strengthen the same for the purpose of improving the health sector in our country.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member who is the son of a person who put the flag very high in this Republic, Hon. Kisoi Munyao.

Hon. Kisoi: Thank you, Hon. Temporary Deputy Chairman for recognising that hero. I support. The amendment gives the terms of reference on how some duties will be executed. It also creates an orderly way on how the Council will be governed. More specifically, it highlights the relationship between the Council and other bodies because it is a fact that it will not work in isolation. Therefore, there must be an understanding on how these institutions will relate with each other.

I fully support.

*(Question, that the new clauses be read a Second Time,
put and agreed to)*

(The new clauses were read a Second Time)

*(Question, that the new clauses be added to the Bill,
put and agreed to)*

The Temporary Deputy Chairman (Hon. Cheboi): We are still on Part IIIB.

New Clauses 41A, 41B

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

THAT, the Bill be amended in Part VI by inserting the following new clause immediately after clause 40—

Lactation stations in the workplace. “41A.(1) All employers shall in the workplace establish lactation stations, which shall be adequately provided with necessary equipment and facilities including handwashing equipment, refrigerators or appropriate cooling facilities, electrical outlets for breast pumps, a small table, comfortable seats the standard of which shall be defined by the Ministry responsible for matters relating to health.

(2) The lactation station shall not be located in the rest rooms.

(3) All employers shall take strict measures to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

Provision of break intervals for nursing employees. 41B. (1) An employer shall grant all nursing employees break intervals in addition to the regular times off for meals to breastfeed or express milk.

(2) The time intervals referred to in sub section (1) shall include the time it takes an employee to get to and from the lactation station and shall be counted as compensable hours worked provided that such intervals shall not be more than a total of one hour for every eight hour working period.

The purpose of these clauses is to include lactation stations for the purpose of providing for the welfare of nursing mothers at workplaces.

(Question of the new clauses proposed)

(The new clauses read the First Time)

(Question, that the new clauses be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear the Member for Elgeyo-Marakwet, Dr. Susan Chebet.

Hon. (Ms.) Chebet: Thank you, Hon. Temporary Deputy Chairman for this opportunity. I support this amendment, specifically because it will provide an opportunity for nursing mothers to care for their babies and have babies breastfed for as long as they still need the mother's milk.

I support. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Since these are matters of nursing, let us see what we can get from the Member for Kakamega, Hon. Rachel Amolo.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendment because it will support mothers. Usually we have a rough time leaving our children home. If we could have these facilities, it would really be of help to mothers.

*(Question, that the new clauses be read a Second Time,
put and agreed to)*

(The new clauses were read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 78A

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyamai.

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

THAT, Clause 78 be amended, by inserting the following new clause immediately after Clause 78—

General penalty 78A. (1) A person convicted of an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not three months, or to both.

(2) An act or omission which is an offence under this Act or any regulations made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance of the director, secretary or manager and that he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(3) If an offence under this Act or any regulations made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a

partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence, unless there is proof that the offence was committed without the consent or connivance of the partner and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case”.

This amendment is for the purpose of providing general penalty for any other offences that may be committed. Two, it is to ensure that offences committed by corporate bodies are punishable. Three, it is to ensure that offences committed by partners in a firm, or those found to be culpable, can be punished.

(Question of the new clause proposed)

(The new clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two Members, starting with Hon. Ogalo. Do you want to speak to this amendment?

Hon. Ogalo: No.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Sunjeev Kour Birdi.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, thank you very much. I support this clause fully. I am a firm believer in prescribing penalties for petty thieves as much as those who steal billions. Our citizens are struggling very much. The health sector requires people who care and it is about time people who are slacking off are penalised accordingly.

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

Hon. Tonui: Thank you, Hon. Temporary Deputy Chairman. I wish to also support this amendment although I thought the period of imprisonment of three months may be too short when we are dealing with human life. It could have been so important to extend the period, but I believe the Kshs2 million fine is adequate.

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

First Schedule

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyamai.

Hon. (Ms.) R.K. Nyamai: Hon. Temporary Deputy Chairman. I beg to move:-
THAT, the First Schedule of the Bill be amended—

- (a) in LEVEL 3 by inserting the words ‘or medical officer with at least two years managerial experience’ immediately after the word “officer.”
- (b) in LEVEL 5-
- (i) by deleting the words “nursing staff and clinical officers” appearing at the end of paragraph (b) and substituting therefor the words “paramedical staff”;
 - (ii) by deleting paragraph (d);
- (c) in LEVEL 6-
- (i) by inserting the words “Research centre, provides” immediately before the word “training” appearing in paragraph (b);
 - (ii) by deleting note 2 and substituting therefor the following note-
“2. Level 6 shall be National Referral Hospitals and established in every County.”
 - (iii) by inserting the words “or downgraded” immediately after the word “upgraded” appearing in note (3).

The purpose of this amendment is to provide that an in charge of the facility should be a qualified registered health professional. Also, by way of delicate compromise, Level 5 hospitals shall remain under the management of county governments and shall operate as centres of training for paramedical staff. We would like training of higher cadre officers to be at the national level, but training for paramedics, who are highly needed at the county level and who do not require much specialised training, can be done at the county level.

The purpose of the deletion of paragraph (d) is that it deals with research, which is a national Government function. It is not a county government function. The amendment to Level 6 hospitals caters for the deletion of the same under Level 5 hospitals. Level 6 hospitals are national referral facilities whose management is placed under the national Government courtesy of provisions of Article 181 of the Constitution. The deletion of note 2 and substituting it with a new provision is for the purpose of equity. Our counties require equal attention.

The Temporary Deputy Speaker (Hon. Cheboi): I hope, Hon. Nyamai, we are dealing with only the First Schedule. You are moving well, proceed.

Hon. (Ms.) R.K. Nyamai: Yes, Hon. Temporary Deputy Chairman. Thank you for that correction. The third part of the amendment is to ensure that we are not focusing only on upgrading, but if a facility does not perform properly it can also be downgraded.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Let us hear two Members starting with Hon. Kibunguchy.

Hon. (Dr.) Kibunguchy: Hon. Temporary Deputy Chairman, I would like to comment on two areas of this amendment. First, where we are talking about a Level 3 hospital which, in common language is a health centre, the amendment is okay but the Bill says the person in charge is a clinical officer. We are saying “or a medical officer with two years’ experience”. The clinical officer has not been given any experience. I do not know why.

I would like to urge the Chairperson of the Departmental Committee on Health to relook at this amendment in terms of re-committal. You cannot give two years managerial experience to a medical officer, yet a clinical officer has not been given any level of experience in the Bill.

The Bill talks of a health centre and right at the bottom it says that the one in charge is a clinical officer. I would like us to relook at that.

The second area that I would like to comment about is the whole concept of Level 6 hospitals. This has been a huge controversial subject, but I like it because every county should have a Level 6 hospital. At the moment, Level 5 hospitals that keep getting grants are all upgraded to Level 6 hospitals, so that they are all under the national Government and a board that runs them. This will ensure that they are run properly and they will be used for research and teaching. I support and maybe we can start off when we start implementing this Act and upgrade current Level 5 hospitals to Level 6 hospitals.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us hear your counterpart, the gynaecologist in the animal world, Hon. (Dr.) Karani.

Hon. Karani: Thank you, Hon. Temporary Deputy Chairman. I rise to support the Chair of the Departmental Committee on Health, Hon. Nyamai, especially on the bit of Level 5 hospitals. In training of nurses and clinical officers, you will understand that these are relatively senior people in the hierarchy of the medical profession. It is, therefore, good to draw the boundaries between what county governments can do and what the national Government can do. You cannot allow county governments to only train the paramedics and leave the senior ones who include nurses and clinical officers.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Since this was fairly a lengthy one, let us hear two more Members, Hon. Aghostinho Neto.

Hon. Oyugi: Hon. Temporary Deputy Chairman. Thank you for using your discretion. I appreciate.

I would like to support this provision, but I have a couple of things to raise. First, you are talking about replacing nurses and paramedical staff. I have looked at the entire Bill and there is no definition of “paramedical staff”. Maybe the Chair of the Committee would consider a definition of what paramedics would be in this Bill.

Secondly, I would like to thank the Committee Chair for agreeing to include this amendment because we had pleaded with her to ensure that every county has a referral hospital. She has used a good discretion. That is how lawmaking should be and I appreciate that of her.

Lastly, she has said that there would be upgrading or downgrading in the criteria that the Cabinet Secretary will recommend. It will be nice to expressly put the provisions under which these criteria can be set, so that they are not just set arbitrarily. That way, we will ensure that a downgrade or upgrade will not just happen at the whims of a Cabinet Secretary.

I, therefore, think the criterion should be set. Otherwise, I support.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the rest of the Members in the next amendment.

I can see Hon. J.B. Serut, Member for Mt. Elgon. You will have an opportunity, but please, be brief.

Hon. Serut: Hon. Temporary Deputy Chairman, I would like to support the Chair of the Committee. I also want to support Hon. Kibunguchy on the issue of experience. The first point of reference in any health facility is normally the person who is in charge. Therefore, let us attach a certain experience. I would request the Chair of the Committee to attach a certain experience. Perhaps three or four years of practice for those who will be in charge of health facilities at the county.

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

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

(First Schedule as amended agreed to)

Second Schedule

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

THAT, the Bill be amended by deleting the proposed Second Schedule and substituting therefore, the following new schedule---

The Temporary Deputy Chairman (Hon. Cheboi): Well, let us be clear on that one. We are dealing with the Second Schedule, not the New Second Schedule. Let us finalize with the Second Schedule as it is. Look at the Order Paper and proceed in that manner because we will still have a retinue of new schedules. Actually, one new schedule will be the Second Schedule. Let us deal with the Second Schedule as it is first. You seem to have an amendment to that particular one. Look at page 353 of the Order paper. I will give you about a minute to look at it.

Proceed if you are ready.

Hon. (Ms.) R.K. Nyamai: I propose that the Second Schedule of the Bill be amended as per the Order Paper, by deleting the proposed Second Schedule and substituting therefore with---

The Temporary Deputy Chairman (Hon. Cheboi): You are doing well on that one. Just proceed.

Hon. (Ms.) R. K. Nyamai: I propose that the Second Schedule of the Bill be deleted.

The Temporary Deputy Chairman (Hon. Cheboi): No. You have again taken us back. You can probably approach the Chair to have a conversation on that amendment.

You decided to sit very far from the consultation Table. You will be tired at the end of the day.

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

THAT, the Bill be amended by deleting the proposed Second Schedule and substituting therefor the following new Schedule-

THIRD SCHEDULE (s. 32)

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE AUTHORITY

Meetings.

1. (1) The Authority shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
- (2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.

- (3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.
- (4) A meeting shall be presided over by the Chairperson, or in his absence, by the vice-chairperson or in their absences, by a person elected by the Board at the meeting for that purpose.
- (5) A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
- (6) The first order of business of the Board shall be to elect a vice-chairperson.
- Quorum.
Minutes.
2. The quorum for meeting shall be five members.
3. Minutes of all meetings shall be kept and entered in books kept for that purpose.
- Conflict of interest.
4. A member of the Authority who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.
- Disclosure of interest by members of the Board.
5. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Board and the member shall not be present while that matter is being dealt with by the Board and shall not take part in any deliberations or vote relating to the matter.
- Remuneration of the members of the Board.
6. The Authority shall pay the members of the Board such allowances and expenses as shall be determined by the Cabinet Secretary.

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members starting with Hon. Gumbo, Member for Rarieda. Do you want to speak to this amendment? Hon. Savula, Member for Lugari, do you want to speak to this one?

Hon. Angatia: Not this one.

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

Hon. Ogallo: Thank you, Hon. Temporary Deputy Chairman. Today I do not know whether my card is working. Every time I put it on, I do not see any service.

The Temporary Deputy Speaker (Hon. Cheboi): I thought you were actually assisting the Chair where you were seated. I saw a lot of consultation and thought you were sharing information which could be relayed through the Chair. Anyway, proceed.

Hon. Ogallo: Hon. Temporary Deputy Chairman, I think this amendment is in order because we have all along in the Bill changed “the authority to the council”. So, it is in order to provide a new schedule that deals with the council.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Marakwet West.

Hon. Kisang: Hon. Temporary Deputy Chairman, I also rise to support the amendment by the Chairperson of the Departmental Committee to replace the word “Authority” with “Council”.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I now put the Question, which is that the Second Schedule be amended as proposed by Hon. Rachael Nyamai.

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

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

(Second Schedule as amended agreed to)

Third Schedule

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

THAT, the Bill be amended by deleting the proposed Third Schedule and substituting therefor the following new Schedule –

FOURTH SCHEDULE (s. 66)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings.

1. (1) The Committee shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
- (2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.
- (3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.
- (4) The Chairperson shall preside over all the meetings of the Committee or in his absence, the meetings shall be presided over by the vice-chairperson or in both their absences, by a person elected by the Committee at the meeting for that purpose.
- (5) A decision of the Committee shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
- (6) The first order of business of the Committee shall be to elect a vice-chairperson.

Quorum.

7. The quorum for meeting shall be five members.

- Minutes. 8. Minutes of all meetings shall be kept and entered in books kept for that purpose.
- Conflict of interest. 9. A member of the Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the Committee shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Committee.
- Disclosure of interest by members of the Committee. 10. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Committee and the member shall not be present while that matter is being dealt with by the Committee and shall not take part in any deliberations or vote relating to the matter.
- Remuneration of Committee members. 11. The Committee shall pay the members of the Committee such allowances and expenses as shall be determined by the Cabinet Secretary.

The Temporary Deputy Chairman (Hon. Cheboi): Departmental Committee Chair, you would have done well with a little more explanation, but we will proceed anyway.

(Question of the amendment proposed)

Hon. (Ms.) Ngeny: Hon. Temporary Deputy Chairman, I support the amendment as moved by the Departmental Committee Chair.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear the Member for Meru, Hon. Kajuju.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairman, I rise to support the amendment moved by the Departmental Committee Chair. These are just procedural matters as far as the conduct of business is concerned.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I put the Question, which is that the Third Schedule be amended as proposed by Hon. Rachael Nyamai.

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

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

(The Third Schedule as amended agreed to)

New Schedule

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

THAT, the Bill be amended by inserting the following Schedule immediately after the First Schedule:-

SECOND SCHEDULE (s.26 J)

PROVISIONS RELATING TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE COUNCIL

Vacation of office.

1. A member other than an ex-officio member may—
 - (a) at any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
 - (b) be removed from office by the President or the Cabinet Secretary, as the case may be, if the member—
 - (i) has been absent from three consecutive meetings of the Council without the permission of the Council;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (v) is incapacitated by prolonged physical or mental illness;
 - (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
 - (vii) fails to comply with the provisions of this Act relating to disclosure; or
 - (viii) is otherwise unable or unfit to discharge his or her functions as member of the Council.

Meetings.

2. (1) The Council shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
 - (2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.
 - (3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.
 - (4) The Chairperson shall preside over all the meetings of the Council or in his absence, the meetings shall be presided over by the vice-chairperson or in both their absences, by a person elected by the Council at the meeting for that purpose.
 - (5) A decision of the Council shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second

or casting vote.

(6) The first order of business of the Council shall be to elect a vice-chairperson.

Quorum. 3. The quorum for the conduct of business of the Council shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

Minutes. 4. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Disclosure of interest. 5. (1) If a member is directly or indirectly interested in any matter before the Council and is present at the meeting of the Council at which the matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded at the meeting at which the matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Allowances of the Council. 6. The Chairperson and members of the Council shall be paid such allowances as the Cabinet Secretary in consultation with the Salaries and Remuneration Commission shall determine.

Powers of the Cabinet Secretary. 7. (1) The Council shall operate under the supervision of the Cabinet Secretary.

(2) Where the Council fails to maintain any prescribed standard in the fulfilment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Council describing the extent of the failure and stating the steps required to remedy the situation.

(Question of the new schedule proposed)

(New schedule read the First Time)

(Question, that the new schedule be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will have two Members, starting with the Member for Mwingi West, Hon. Kitungi.

Hon. Kitungi: Hon. Temporary Deputy Chairman, I support the amendment as proposed by the Chair.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Makali Mulu, do you want to speak to this one?

Hon. Mulu: Hon. Temporary Deputy Chairman, I want to support my colleague, Hon. Kitungi, in supporting the new Second Schedule. As the Departmental Committee Chair said, this amendment is intended to operationalise the Council, which is important.

With those remarks, I support.

*(Question, that the new schedule be read a Second Time,
put and agreed to)*

(The new schedule was read a Second Time)

*(Question, that the new schedule be added to the Bill,
put and agreed to)*

Clause 2

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

THAT, clause 2 of the Bill be amended-

(a) by deleting the definition of “abortion” and substituting therefor the following new definition—

“abortion” means termination of a pregnancy before the foetus is viable as an independent life outside the womb;

(b) by deleting the definition of “alternative medicine” and substituting therefor the following new definition—

“alternative medicine” means complementary medicine and includes a broad set of health care practices that are not part of Kenya’s tradition and are not integrated into the dominant health care system”;

(c) by deleting the definition of “e-health” and substituting therefor the following new definition—

“e-Health” means the combined use of electronic communication and information technology in the health sector including telemedicine”;

(d) by deleting the definition of “therapeutic manipulation” and substituting therefor the following new definition—

“therapeutic manipulation” means handling of genetic material of zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues”;

(e) by inserting the following new definitions in proper alphabetical sequence—

“breastfeeding” means the method of feeding an infant directly from the female breast;

“expressing milk” means the act of extracting human milk from the breast by hand or by pump into a container;

“health care provider” means a person who provides health care services and includes a health care professional”;

“health extension worker” means a health care professional working in health centres in rural and medically underserved areas, where they provide emergency treatment and a range of other health services to patients;

“health system” means an organization of people, institutions and resources, that deliver health care services to meet the health needs of the population, in accordance with established policies”.

“lactation stations” means private, clean, sanitary and well-ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;

“public good” means a good or service whose benefits may be provided to a group at no more cost than that required to provide for one person”;

“specialist” means a health professional who is specially trained in a certain branch of his or her profession related to specific services or procedures”;

Hon. Temporary Deputy Chairman, the purpose of this amendment is to ensure that we have the several definitions as indicate in the Order Paper. We envisage to provide for clear and acceptable technical definitions within the health sector. On the amendment relating to alternative medicine, we have included provisions for recognition of Kenya indigenous health practices. The purpose is to ensure that the definitions that are mentioned in the Bill are clear. We are also widening the description of telemedicine as it relates to e-health. We are also clarifying the meanings of the terms used in the Bill to make sure that those descriptions fit the definitions that are acceptable to health and the World Health Organisations, bearing in mind that health is an international matter. So, we just wanted to ensure that the definitions that we have in this Bill are in line with the definitions within the health sector.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give chance to two Members, starting with the Member for Marakwet West.

Hon. Kisang: Hon. Temporary Deputy Chairman, these particular amendments are clarifying the meaning of the terms used in the Bill. The Act that we are amending does not contain provisions for e-medicine. The Departmental Committee Chair is trying to include e-health and e-medicine in the definitions as well as alternative medicine. As we all know, there is alternative medicine from China, Africa and elsewhere, in the form of herbal medicine.

The Temporary Deputy Chairman (Hon. Cheboi): I do not know if the rest of the membership wants to speak on this amendment. Let us hear Hon. Savula.

Hon. Angatia: Hon. Temporary Deputy Chairlady, I stand to support the amendments because they are in tandem with the ICT world. If you go to a country like India, medical institutions are described as “E-medical Centre”. In India, the medical sector operates like our tourism sector, where tourists visit the Maasai Mara National Reserve to watch wildlife. Description of and invitations for medical attention is done through an e-system. If we adopt these changes, we will be ICT compliant in the medical world.

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

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

((Clause 2 as amended agreed to))

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Can we have the Mover to move reporting?

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Temporary Deputy Chairman. I beg to move that the Committee does report to the House its consideration of the Health Bill, (National Assembly Bill No. 14 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. Cheboi): Order, Members! We will proceed and start with the Division of Revenue Bill. I ask the Chairperson to report.

THE DIVISION OF REVENUE BILL

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Division of Revenue Bill, (National Assembly Bill No.4 of 2016) and approved the same without amendments.

The Temporary Deputy Speaker (Hon. Cheboi): Mover.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I also request Hon. Makali Mulu to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. Cheboi): That looks fairly untidy. Do you have somebody else to second you?

Hon. (Ms.) Kajuju: I request Hon. Cyprian Kubai Iringo to second.

Hon. Kubai Iringo: Hon. Temporary Deputy Speaker, there is nothing wrong with my seconding because I am from Meru and she is from Meru. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I will give two Members. I will start with the Hon. Member for Rarieda.

Hon. (Eng.) Gumbo: I wish to agree with the Committee in the said Report. However,

even as I agree with it, the architecture of our Constitution advocates for openness and accountability in the use of public funds. It is time that allocations such as National Social Safety Net which we are giving about Kshs14 billion, will be able to show a formula about how each of the counties and sub-counties are benefitting. More importantly, if you look at the Division of Revenue Bill, every year we have allocated a sum of about Kshs5 billion. It was the case last year for contingencies. In the interest of openness, accountability and prudence in the use of public funds, we have a duty as a House to demand from the Executive to be telling us yearly how the allocations of the contingency funds are being utilised. This goes across to all the votes that we are passing here, whether it is in the itemised Budget estimates or in the Division of Revenue Bill because if we continue this way Chair, we are still sticking to the old opaque ways of doing things when the architecture of our Constitution, especially with regard to the use of public finance calls for openness and accountability in how every shilling is spent.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Let us have the Hon. Member for Mbooni.

Hon. Kisoi: Thank you. As we support the Division of the Revenue Bill, we have to realise as a nation that devolution has gone a long way and every Kenyan is waiting to see its fruits. Issues to do with public finance management need to be properly emphasised in this country. We need to see the results of devolution. There is too much wastage of public resources at the county level. Too much corruption is bringing down our counties. Every Kenyan is up in arms asking what is happening. They want to see services being delivered to them. It is high time as a country we stood firm and fought this dragon known as corruption so that we do not create a system whereby we are devolving corruption from the top level to the county level. This is quite significant and as Hon. Gumbo has said, as Kenyans we must stand firm and demand to see the results of devolution.

There are a number of sectors such as health sector which is in a total mess and many other sectors which are struggling to survive. Even the little money going to our counties is not being felt. So, I call upon the Executive and the national Government to ensure that it devolves this money on time so that we avoid a situation whereby year in, year out, we are trying to recap the budgets that have not been properly utilised. So, this is a matter that requires a lot of attention. We must see the fruits of devolution. Management of our resources and accountability is something that we are not going to negotiate as a nation.

Therefore, I support the Bill.

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Mover move the Third Reading.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, I beg to move that the Division of Revenue Bill, (National Assembly Bill No.4 of 2016) be now read the Third Time. I also request that Hon. Mwiru do second the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): I think you have a major issue with your neighbourhood. Hon. Mwiru proceed.

Hon. Mwiru: Hon. Temporary Deputy Speaker, I do not belong to their county. I belong to Tharaka Nithi County. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I see some interest from Hon. Neto.

Hon. Oyugi: Thank you. It is commendable that we have been able to pass this important piece of legislation, however several things have come to the fore. First, we are giving money to the county governments, which is a good thing. The percentages we have given them is not what the law anticipates but it is an increment from what we gave them last year. We must demand for efficiency at the county level because, apart from the money that we give the counties, there is also money that they ought to ordinarily generate from amongst themselves. You will find that when we were under the local governments, various local governments used to generate much more money than the counties are generating right now. Whereas we are going to push the national Government constantly to increase the amount of money that is allocated to the county governments, we also need to see an increase in the revenues collected by the various county governments.

The second thing which is very important to me is that shortly, we might be passing the Health Bill, which is a key devolved function. I look forward to a moment when counties will prioritise health functions so that buying drugs and paying healthcare personnel are not functions that are pushed to the periphery. Medical facilities ought to be given the due concern that they should so that people do not suffer due to lack of drugs and lack of payment of personnel. It is good that we have passed the Division of Revenue Bill---

The Temporary Deputy Speaker (Hon. Cheboi): Do not concentrate on it too much. We will not take a lot of time on it.

Hon. Oyugi: Thank you so much, Hon. Temporary Deputy Speaker. I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Lastly on this, we will have the Member for Kapenguria.

Hon. Chumel: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to thank the Members for their participation. For the first time, you will find that districts that were marginalised are now benefitting. My request is that those who are in charge of monitoring and evaluating the happenings at the county level should put in more effort. We should not allow people to cry every year that this governor has done this and no action has been taken. This should be a lesson. This House should be the right watchdog to ensure that things are moving well.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I will not put the Question because we do not have the requisite numbers. We will proceed to the next Bill.

REPORT AND THIRD READING

THE HEALTH BILL

Hon. Mulu: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Health Bill (National Assembly Bill No.14 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Mover of the Bill, Hon. Nyamai.

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

Hon. Karani: Thank you, Hon. Temporary Deputy Speaker. I wish to take this opportunity to second the Report. Before I do so, I want to say that this Bill is very important. It has drawn a line between what the county governments and the national Government can do. The levels of different---

The Temporary Deputy Speaker (Hon. Cheboi): Just second. You do not have to contribute.

The Temporary Deputy Speaker (Hon. Cheboi): What is it Hon. Ogalo?

Hon. Ogalo: Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended as follows:-

By inserting the words "subject to re-committal of Clauses 7, 28, 49 and 54".

Clause 7 is about emergency health care. Even as we put the Question, Members had divergent opinions. Clause 28 is on the composition of the Kenya Health Professions Oversight Authority, where Members felt that too many Government officers were part of the Authority. Clause 49 is about making of wills and donation of organs for medical research. Clause 54 is about the financing of health care, especially sub-clause (e), which relates to the provision of healthcare financing for emergency health care, which is a constitutional right.

I would like to ask Hon. Neto to second.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. I would like to second that the Bill be recommitted in the clauses that the Hon. Member for Rangwe has said. One thing that comes to the fore is the issue of emergency health care, which like we have agreed, is a constitutional provision. The manner in which Clause 7 was canvassed needed a little bit more interest because it was taking away fundamental rights. Second, is Clause 28 which gives the provisions of the Authority. We really need to look at the Authority afresh so that we trim it. With those comments, it is in order. I request the House to agree with us in recommitting those various clauses.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I see that there is no major interest in this. I will give a chance to Hon. Onyura, Member for Butula.

Hon. Onyura: Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill. If there are areas that Hon. Members feel that we need to look at a little more, I would not have any problem with that. This will ensure that we pass a Bill that we have all looked at and are all happy and satisfied with.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Temporary Deputy Speaker

(Hon. Cheboi) left the Chair]

IN THE COMMITTEE

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

THE HEALTH BILL

(Recommittal of Clauses 7, 28, 49 and 54)

Clause 7

The Temporary Deputy Chairman (Hon. Cheboi): For Members to understand, the proposed amendment to that clause was negated. Let us hear what Hon. Oner has to say on this.

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

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

Hon. Ogallo: Hon. Temporary Deputy Chairman, as you are aware, emergency health care is a constitutional right. Deferring emergency health care provision to the setting up of a future fund cannot be part of the duties of this House. This House has no responsibility to postpone the provisions of the Constitution. When the Constitution has already provided that emergency healthcare is a constitutional right, you cannot pass a law that postpones provision of emergency healthcare.

Clause 7(2) provides that no person shall be denied emergency treatment by the health service provider of first contact provided the provisions of section 54 (1)(e) have been implemented. That section requires that the county government and national Government both come up with a financing model for financing health care providers to give emergency care. If somebody has been licensed to provide health care, he must be able to at least offer emergency health care. Under Clause 7(3) of the Bill, emergency health care is defined as pre-hospital care and anything to stabilise the health status of the patient and arranging for referral. Transferring a patient from your facility to another one is sufficient as emergency care. How can you say a facility licensed to provide health care in this country cannot achieve any of those? We recommitted it so that we can delete Clause 7(2)

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first opportunity to the Chairlady of the Departmental Committee on Health, Hon. (Ms.) R.K. Nyamai.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Temporary Deputy Chairman. At the outset, I would like to make the Members understand why we are saying that a health care provider should be not liable under this clause until provisions of Clause 2 have been implemented. The feeling of the House was that this amendment overprotects the medical worker while providing

emergency health care. We can go ahead and say that emergency care is free, but is this practical? Will the health workers provide emergency health care without the Government providing for a fund? The position of the Committee is that we need to ensure that the Government establishes a fund such that when a health care institution or a health care worker provides emergency health care, then there is compensation.

The Temporary Deputy Chairman (Hon. Cheboi): I will allow two Members to contribute on this. I will start with the Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. I wish to support the proposed amendment by Hon. Oner. The Constitution is very clear that when you are dealing with issues of the Bill of Rights, there is a specific way of limiting and that is between Articles 24 and 27 of the Constitution. The Constitution is clear on the way you can limit a right and that is not what the Committee is doing. If we go the Chairlady's way, we will be going unconstitutionally and we cannot make for future provisions for emergency care. We have just passed the Division of Revenue Bill and those are things that counties must prioritise. If we cannot prioritise emergency, what else are we prioritising? The right to life is a fundamental right. I support Hon. Oner's proposed amendment.

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

Hon. Baiya: Hon. Temporary Deputy Chairman, I want to support what the Chairlady is proposing. Under the Constitution, the right to provide health care is bestowed on the State. When we impose this obligation on the health care workers, we will be shifting it to them and making their experiences unbearable. We should make the environment for health care providers bearable and seek to enforce the emergency provisions from allocation by the State or the county governments. I do not support that amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I want to be clear because some Members are saying that they are supporting the position of the Chairlady of the Departmental Committee on Health and others are supporting the position of Hon. Oner. Is the position of the Chairlady and Hon. Oner different? Are they the same?

An Hon. Member: They are different.

The Temporary Deputy Chairman (Hon. Cheboi): Some Members are supporting the Chairlady and others are supporting Hon. Oner. This is critical and for as long as the Members are not clear, it will be pointless for us to put the Question on it. I will give the opportunity to the Member for Luanda.

Hon. Omulele: Thank you, Hon. Temporary Deputy Chairman. It is important for us to look at this issue from the Constitution itself.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Luanda, who are you supporting?

Hon. Omulele: I support Hon. Oner.

The Temporary Deputy Chairman (Hon. Cheboi): Which is deletion of Sub-clause (2)?

Hon. Omulele: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): Proceed.

Hon. Omulele: This is a right that cannot be limited in any way that the Committee has proposed to do in the Act. Article 42 of the Constitution provides that a person shall not be denied emergency medical treatment. There is nothing more there. It is straightforward. We cannot go by what my able Chairman of the Constitutional Implementation Oversight Committee (CIOC) is proposing that the duty is placed upon the State. The State does not provide medical

services in State offices. They are provided for in hospitals where these emergencies occur. We cannot take this away but the State must pull up its socks and provide these services as per the Constitution. If anybody wants to do something else, then they must propose to amend the Constitution.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Muranga, are you prepared?

Hon. (Ms.) S.W. Chege: Hon. Temporary Deputy Chairman, I am prepared. Unfortunately Hon. (Ms.) R. K. Nyamai is asking me to support her but I will not. As I listened to Hon. Oner and Hon. Millie giving their submissions, when we say that “A health care provider shall not be liable under this section, until the provisions of subsection (2) have been implemented”, even if we tell the Government to provide necessary the funds, we have seen careless mistakes within our health facilities. We have seen patients going to our referral hospitals and experience carelessness from these health care providers.

I support Hon. Oner’s proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): The two positions are now clear. We will not take too much time on this. If I were to go beyond the number which I intended earlier, I would give Hon. (Dr.) Kibunguchy a chance to contribute.

Hon. (Dr.) Kibunguchy: Hon. Temporary Deputy Speaker, I want to support Hon. Oner for two reasons. One, the Constitution is very clear like everybody has alluded to. Two, most of the emergencies we deal with are not expensive that we must have a law in place. Just like the Act has said there are times you only need to stabilise a person and refer him to the next hospital. It is not an expensive procedure. We would like to ask private hospitals to provide emergency services as a way of giving back to the community. That is the least we can expect of them.

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

(Clause 7 as amended agreed to)

Clause 28

The Temporary Deputy Chairman (Hon. Cheboi): Who is moving the amendment on this Clause? It is the Committee Chair.

Hon. Ogallo: For tidy re-committal of these clauses, we agreed on one re-committal but Clauses 28, 49 and 54 are to be moved by the Committee Chair.

The Temporary Deputy Chairman (Hon. Cheboi): I thought so.

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

THAT, Clause 28 of the Bill be amended—

- (a) by inserting the following paragraph immediately after paragraph (e)—
 - (da) two representatives nominated by the Council of Governors;
- (b) by deleting the word ‘two’ and substituting therefor the word ‘three’ immediately after paragraph (e)
- (c) by inserting the words “appointed by the Authority, through a competitive process and shall be the secretary of the Authority.” immediately after the words “officer”

Owing to the fact that health is a fully devolved function, the purpose was to include representatives from the Council of Governors. The Committee has agreed to the proposed amendment to include a further amendment as follows:

- (i) Introduction of two representatives nominated from the Council of Governors.
- (ii) Introduction of one more representative from health regulatory bodies to bring the total number of representatives in the health regulatory bodies to three.
- (iii) To provide for the Chief Executive Officer (CEO) who will be recruited competitively. He shall be the secretary to the Board.

The purpose of the amendment is to clarify that the CEO is not a member the Board of the Authority.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to only two members. Member for West Pokot, Hon. Nyeris.

Hon. (Ms.) Changorok: Thank you, Hon. Temporary Deputy Chairman. This is a straight forward amendment which the Committee Chair has explained clearly. I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Pkosing.

Hon. Losiakou: Thank you, Hon. Temporary Deputy Chairman. I support. The reason why I support is that, earlier, there were neither governors nor county representation. We cannot do anything without the county governments because health is a completely devolved function. I thank the Committee Chair for bringing the counties into the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Even as we proceed in that manner, I notice that the Committee Chair did not speak to sub-clause (c). Look at sub-clause (c) in the Order Paper. Briefly speak to sub-clause (c) so that when Members make their decisions, they will make it wholesome. Sub-clause (c) talks about the appointment by the Authority through a competitive process and shall be the secretary of the Authority.

Hon. (Ms.) R.K. Nyamai: Hon. Temporary Deputy Chairman, this concerns the CEO who has to be appointed by the Authority through a competitive process. He shall be a secretary to the Authority. The purpose of this amendment is to clarify that the CEO is not a member of the Board of the Authority.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, I will give a chance to Hon. (Dr.) Susan Chebet.

Hon. (Ms.) Chebet: Thank you, Hon. Temporary Deputy Chairman. I support that proposed amendment by the Committee Chair because if we do not have a qualified CEO to run the affairs of the health facilities and also if we do not involve the governor's office, then it means we are going to be out of touch in terms of health provision in the county.

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

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

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

(Clause 28 as amended agreed to)

Clause 49

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

THAT, Clause 49 of the Bill be amended in sub-clause (2) by deleting the word “partner” and substituting therefor the word “spouses”

The purpose of doing this is to Africanise it so that we are able to own it more. This is because in our situation, it is more of the spouse or spouses as opposed to partners. The House may recall that there was a lot of debate on this matter. This is the matter that concerns donation. It is a technical matter and I would like to stand by the amendment by the Committee and say that we only want to change the word “partner” to “spouses.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): For members to be up to speed, this is the clause that was deleted. By the fact that this has been re-committed, it means we are discussing the original proposal by the Committee. It had been deleted before. It is coming back now. Therefore, we will proceed to discuss and make a decision on the basis of what is in the Bill. I will give the chance to two members. We will start with Member for Siaya, Hon. Ombaka.

Hon. (Ms.) Ombaka: Thank you, Hon. Temporary Deputy Chairman. It is a matter of semantics. The word “partner” is foreign to us. The word “spouse” has more meaning to African people because it has implications for real time marriage where one is a husband and the other a wife. Therefore, you are spouses. However, partnership looks like come-we-stay. It is not very much African.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. My point of order is that whereas I have no issue with the word “spouse,” I want the Committee Chair to indicate whether that word is defined. I know Hon. (Dr.) Christine says it is a matter of semantics. However, law is about semantics. If that word is not defined, then it will be about semantics. That is where we earn our salaries from. Can we know whether it is defined because if it is not, I would want to ask the Committee Chair to move a further amendment and define the word “spouse.” Otherwise, it will be hanging.

The Temporary Deputy Chairman (Hon. Cheboi): Looking at it from where I sit, there does not seem to be any definition. As we make that decision, let us hear Hon. Baiya.

Hon. Baiya: Thank you, Hon. Temporary Deputy Chairman. To say that the word “partner” is foreign is not true. The concept of spouse is very restrictive. The word “partner” is broader and will cover the situation we witness in the country more frequently. In fact, there are

many young people today who find themselves in relationships which the word “spouse” cannot fit. The process of making the law ought to be inclusive of all situations that may be captured. The word “partner” is broader. It includes spouses and others. I, therefore, support.

(Laughter)

The Temporary Deputy Chairman (Hon. Cheboi): You have excited the membership peace at that particular one. Let us hear a Member, who probably, has not spoken on this one. Let us hear Hon. Abass, Member for Wajir East.

Hon. Mohamed Abass: Thank you, Hon. Temporary Deputy Chairman. The word “partner” is too broad. We need to define who is a partner. A “spouse,” “child” and “parent” are okay. When you say “partner”, he can be anybody. Therefore, that will not be fair for anybody. The other thing is that it is customary that life has sanctity.

The Temporary Deputy Chairman (Hon. Cheboi): Let me give two more Members a chance since this is a very health one. Let us have the Member for Kibwezi East, Hon. Mbalu.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Chairman. I do not support Hon. Baiya’s inclusion of the word “partner”. I may be his partner, of course, but this is for the purpose of donation of the body. When I am a partner, I do not want my body to be donated.

A spouse is more defined under the clause. For the purpose of the amendment, it is donation of unclaimed body. “Partner” is too broad. It could be a girlfriend or a *mpango wa kando*. So, a spouse really fits.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): I would like to put the Question, but let me first hear what Hon. Birdi has to say.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairman. I fear that if we do what the Chair has just stipulated that we remove the word “partner” and replace it with “spouse”, there are going to be people out there who are going to get themselves into marriages that mean absolutely nothing. They will just get a paper but basically the relationship will mean nothing. I feel strongly that the difference between “spouse” and “partner” is a piece of paper. If we are talking about inability to donate an organ to a partner, it is entirely short-sighted. Because of that, I do not support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear the Member for Kesses.

Hon. J.K. Bett: Thank you, Hon. Temporary Deputy Chairman. I want to concur with the amendments proposed by the Chair that the word “spouse” is more relevant and it relates more to family ties than the word “partner”. The word “partner” is more of business partnerships and investments. Here we are talking about family ties and family relations.

I concur with the Chair that we must move with the word “spouse”.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Njomo the last chance and then you will make your decision.

Hon. Njomo: Thank you, Hon. Temporary Deputy Chairman. I would like to agree with the Committee and disagree with my good neighbour, Hon. Baiya about this business of partners and spouses. The word “spouse” is well defined in the Marriage Act. It is more permanent than the word “partner”. We are talking about health matters here and not matters of--- Partner can be a business partner. Partners are temporary. This includes---

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Very quickly Hon. Serut and then Hon. Nicholas Gumbo.

Hon. (Ms.) S.W. Chege: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Sabina Chege, are you on a point of order? Let us hear the point of order first. What is your point of order? We will finalise it now. Let us have Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Chairman. I wanted some direction. If we are amending Section 2 in the Bill which I am holding, it says under the sub-clause that in the absence of donation of a contrary direction given by a person while alive, the spouse, partner, elder child, parent--- It goes on to say; “ in the specific order mentioned.” I do not know why we are changing “spouse” and “partner” and yet they have said in that specific order. It is important for the Chair to explain to us.

Secondly, why do we have “spouse”, “partner” and---

The Temporary Deputy Chairman (Hon. Cheboi): As she makes the decision on how she wants to respond to that, let us have Hon. Serut and Hon. Nicholas Gumbo. Those will be the last contributions before you make your decision. Be brief.

Hon. Serut. Hon. Temporary Deputy Chairman, I agree with the Chair’s position on this. The issue of spouse is definite and limits conflicts. The moment we introduce the word “partner”, I know we will have very many partners coming to fight for a body.

The Temporary Deputy Chairman (Hon. Cheboi): Yes, Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I wish to support the Committee Chair. With all due respect, the word “partner” is too general. Even people in homosexual relationships refer to each other as partners. Really, what are we talking about here? Even business associates refer to each other as partners. So, to be specific, let us use the word “spouse”.

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

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

(Clause 49 as amended agreed to)

(Hon. Kang’ata responded loudly)

The Temporary Deputy Chairman (Hon. Cheboi): That is very disorderly Hon. Member for Kiharu. The voice can be heard without having to put your mouth very high up. Let us proceed to the next clause. Hon. Chair, be brief on this and then we dispose of.

Clause 54

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

THAT, Clause 54 of the Bill be amended in sub-clause (1) by deleting the words “cabinet secretary” and substituting therefore the word “department”

This is the clause that talks about health financing. We propose to disregard all the amendments that were raised in the House.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Lets us have two Members and then we put the Question. Let us have Hon. (Dr.) Murgor.

Hon. Murgor: That was before that but since I have the Floor I support the amendment by the Chair.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. George Ogallo, Member for Rangwe, take the Floor.

Hon. Ogallo: Thank you, Hon. Temporary Deputy Chairman. I have no problem with Clause 54. Whatever she wants to put there, she can as long as it is not in Clause 7.

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

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

(Clause 54 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Now, I will request the Mover, Hon. Nyamai to move reporting.

Hon. (Ms.) R. K. Nyamai: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House it consideration of the Health Bill (National Assembly Bill No.14 of 2015) and its approval thereof with amendments.

Thank you, Hon. Temporary Deputy Chairman.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let the Chairperson report to the House.

Hon. Cheboi: Thank you, Hon. Temporary Deputy Speaker.

I beg to report to the House that a Committee of the whole House has considered the Health Bill (National Assembly Bill No.14 of 2015) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Mover of the Bill to move the Motion for agreement with the report.

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

Thank you, Hon. Temporary Deputy Speaker.

Hon. Ogalo: I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us the Mover to move the Third Reading.

Hon. (Ms.) R.K. Nyamai: Hon. Temporary Deputy Speaker, I beg to move that the Health Bill (National Assembly Bill No. 14 of 2015) be now read the Third Time. I request Hon. (Dr.) Wachira Karani to second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Dr. Wachira Karani.

Hon. Karani: I second, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I will give an opportunity to two or three Members to make some comments. I will start with the Chair of the Public Accounts Committee (PAC), Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, first of all, I thank the Departmental Committee on Health, which is headed by its able Chair, the Member for Kitui South, Hon. (Dr.) Rachel Nyamai. This is one of the landmark Bills that this House has passed. It is commendable that at long last we have come to the tail end of the passage of this Bill.

Even as we pass the Health Bill, the question of healthcare provision within the counties is still a matter of great concern. As we move forward, when the Constitution was promulgated about six years ago, there was the understanding and agreement that 20 per cent of the Constitution would, at some point, require to be reviewed. The issue of health services in the counties is a matter that we need to relook at. Most county governments have failed miserably to provide healthcare services to our people. But it becomes more depressing every day when you read stories in newspapers. In fact, it borders on criminality to find a governor reallocating money meant for buying medicine to travel services to pamper his ego.

At some point, as a country, we have to relook at the Fourth Schedule to the Constitution and agree whether, to the extent provided now, we really want to have health services devolved. What is happening in many county referral hospitals is that morgues have become banquet halls for rats because county governments cannot even preserve dead bodies or provide basic medicare services. So, we owe it to the people of this Republic, as the law-making organ of this country, to relook at the Fourth Schedule to the Constitution so that we rethink this whole idea of transferring almost *en masse* healthcare services to county governments. I think it has failed miserably and our people are suffering. We cannot sit here merely because some of us, in our privileged positions, can afford superior healthcare services while we are not looking back to see what the people we represent go through.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us hear a comment from the Member for Likuyani.

Hon. (Dr.) Kibunguchy: Hon. Temporary Deputy Speaker, it is a happy day because we have come a long way in passing this Bill. It is a good thing. I want to comment on three areas. One of the positive things in this Bill is that now all the conditional grants going to hospitals have been ring-fenced so that governors cannot use the money the way they like.

The second thing is that we have given the Director-General powers to upgrade facilities from a lower level to upper level. As soon as this Bill is assented to and becomes an Act of Parliament, I would like him to move with speed and upgrade all the current Level 5 hospitals to Level 6 status so that they are looked after by the national Government-constituted boards. We do not want to see some of the things that are happening now.

The other thing I like about this Bill is that for a long time our health workers have been clamouring for a health commission. This Bill has created something close to a health commission because a health commission would require amendments to the Constitution. We have established an Authority as a compromise to look after the welfare of our health workers.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You were just making a comment on the Bill and not debating.

Hon. (Dr.) Kibunguchy: I am just making a comment. Like Eng. Gumbo has said, eventually we will have to relook at the Constitution in terms of health matters in this country.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us listen to a comment from the Chair of the Committee.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Temporary Deputy Speaker. I would like to take this opportunity to thank Members for their input and the serious deliberations that have taken place today and the other days, including during the Second Reading and when we started the Committee of the whole House.

This is a very important Bill for the health sector in this country. We currently have a situation, as per the Constitution, where health services have been devolved to county governments. I would like to thank the House and the Departmental Committee on Health for exercising patience, reading through this Bill word for word, accepting to sit with the Council of Governors (CoG) and the Ministry of Health because the Bill is highly technical and we required a lot of support. I would like to thank the Members who proposed various amendments that have made this Bill better than it was. The amendments have also enabled us to think beyond the initial thinking of the Committee. For instance, the amendments that were proposed by Hon. Oner focus on emergency healthcare. It is important that Kenyans are given emergency healthcare. We have seen a lot happen in our hospitals. This is a Bill that we are proud of as a Committee.

I would like to point out that this Bill will go to the Senate. I would like to call upon the Senators that when this Bill gets to them, they should give it the justice that it deserves because it has gone through wide consultations.

Today is a happy day for the Departmental Committee on Health because we have pushed the Health Bill to finalization and incorporating our amendments that we worked so hard on.

Let me take this opportunity to thank the House, the Ministry of Health, the CoG, all stakeholders in the health sector and my colleagues who have decided to sit here today to ensure that they see the creation of this law coming to an end.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The last comment will be from the Member for Kapenguria. Hon. Samuel Moroto, do you want to make a comment on this Bill?

Hon. Chumel: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I congratulate and thank the Departmental Committee on Health for coming up with this Bill. It will support the lives of Kenyans. It was just this morning when all the media houses were talking about one school in Taita where there are no pupils in classes one, two and three. This is because of the fear of the cost of healthcare.

With this support and the empowerment given to the Ministry, people will not fear anymore. Instead they will now increase the population and teachers will get more students to teach. I was worried that I will be losing my job, since I am a teacher by profession.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I am not in a position to put the Question to the Bill. I order that the Question to the Bill be put at the most appropriate time in the next sitting.

BILL

Second Reading

THE LAND LAWS (AMENDMENT) BILL

(Hon. A. B. Duale on 9.3.2016)

(Resumption of Debate interrupted on 24.3.2016)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, there was no one on the Floor who was contributing on this Bill. I hope that the requests I have are on the Land Laws Bill.

We are on resumption of Debate on the Land Laws (Amendment) Bill, National Assembly Bill No.55 of 2015. I have confirmed that Hon. Alice Wahome had two minutes. Therefore, she gets the first priority. If Hon. Alice Wahome is not in the House, then the Member for Luanda can have the Floor.

Hon. Omulele: Hon. Temporary Deputy Speaker, I would like to oppose the proposed amendments to the land laws in this country. Land is one of the most emotive subjects that you can ever deal with in this country. At the outset, I would like to posit that, looking at the way the proposed amendments have been set out in this Bill, the Committee and probably the State have taken a cavalier attitude towards this very important and essential matter in this country.

I would also like to say that as a country, we must sit back, contemplate and think about where we want to take our country. This territory known as Kenya is the land that we own. We have a situation in this country where a few Kenyans own huge land. I do not know whether the

Committee in coming up with its amendments and looking at the number of titles that are owned by Kenyans who can say that they own part of this country and feel they belong to this country.

I do not feel I would be remiss if I said that we have less than 500,000 titled documents of ownership in this country. It is amazing because we have a monumental problem which we keep hiding from. Until we sit down, as a country, and address the question of land ownership in this country, we will never go anywhere. These laws propose to negate the principles that we, the people of Kenya that are superior to this House, have set out in the Constitution of 2010, which says that all matters that concern land shall be dealt with under the National Land Commission (NLC). These amendments are proposing that the membership of that commission shall be constituted in the employment commission in this country. This cannot be the case. We cannot amend the Constitution of this country through such casual amendments to general statutes of this country. If we want to deal with the issue of land, we must go back to the Constitution and ask Kenyans how they want to live in their country. At that time, if Kenyans will be asked that question, I will posit a revolutionary way of thinking about these issues. We must do away with title deeds as it is in this country. The title deed in this country is the biggest problem; the biggest reason why Kenyans fight in this country every time.

Hon. Ogalo: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Christopher Omulele, there is an intervention by Hon. George Ogalo. What is your intervention? Is it a point of information or something is out of order?

Hon. Ogalo: Hon. Temporary Deputy Speaker, is it in order for the Hon. Omulele---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You are on a point of order?

Hon. Ogalo: Yes. Is it in order for Hon. Omulele to mislead this House that the Constitution of Kenya is being casually amended by an amendment before this House? If so, can he state which Article of the Constitution is being amendment by which amendment on the Floor of the House?

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us hear from the lawyer. I am sure he can respond.

Hon. Omulele: Hon. Temporary Deputy Speaker, I have a lot of respect for my friend, Hon. Oner, the Member for Rangwe. He has been a debater in this House. This is a House of Debate. What I am saying is my opinion on what the amendment to the land laws before this House proposes to do. They are proposing to deal with the powers that are being set out to be enjoyed by the NLC. The NLC is a constitutional commission. I would like to inform my brother, Hon. Oner that land is one of the core reasons why Kenyans said they need to come up with a new Constitution in this country. When we talk about governance, property or anything in this country, we are talking about ownership of land. The NLC is the vehicle that Kenyans have chosen to entrench the Constitution to deal with matters that deal with our land issues. The NLC under the Constitution is the one that is mandated to deal with renewal, consideration of leases, award of titles and giving out titles. So, when these proposals come up and say casually that leases and other matters shall be considered by other bodies other than the NLC, I posit that we are proposing to amend the Constitution through this rudimentary and basic amendments to the law.

Going back to the train of argument that I was proposing, when we, as Kenyans, come back and say that we want to change the way we manage our resources, when the “*Okoa Kenya*” and “*punda amechoka*” initiatives come before this House and other rights forums, I will be proposing that we, as Kenyans, must do away with title deeds. A title deed is one of the documents that has messed up this country. A few clever Kenyans have taken advantage of this country and owned most part of this resource and yet more than 30 million Kenyans do not have this document called “land title.” This is the case and yet they are asked on a daily basis to be proud to be called Kenyans. How can one be proud if the very land that he or she stands on daily is owned by other people? We must rethink where we want to take this country. I do not think this is the way we want to deal with such an emotive, important and essential resource in this country. It cannot be by the kind of amendments we propose. If we pass these amendments today, we shall only be making a bad situation worse. Kenyans will become disenfranchised even more. They will have no hope of owning a piece of this country. We must defeat this amendment. I posit that the Chairman of this Committee must take away these amendments and we re-think about how we want to take our country.

Thank you for giving me an opportunity to speak, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, the Member for Luanda. Of course, this is a House of debate. Please allow me to give this chance to the Chairman of the Departmental Committee on Lands.

Yes, Hon. Alex Mwiru, the Member for Tharaka.

Hon. Mwiru: Thank you, Hon. Temporary Deputy Speaker.

It is good that we debate this Bill from a very informative stance and knowledge of what the Constitution says and envisages to do with the functions of the two agencies, namely; the Ministry of Land, Housing and Urban Development and the NLC. These are the only agencies that are mandated to deal with land administration in this country.

It is important to realise that the NLC and its functions are enshrined under Article 67 of our Constitution. A number of them are listed there.

I happen to have been in the 10th Parliament when we were passing these land laws. At that time, we were all looking towards going to the constituencies to campaign. Therefore, we could not properly interrogate some of these things at that time. After the promulgation of the Constitution and the passage of these land laws, the then Minister for Lands, Hon. (Sen.) Orengo, realised that there was a problem with these land laws and, therefore, embarked on trying to see which areas required to be amended for purposes of streamlining the functions of the two agencies.

As the Chairman of the Departmental Committee on Lands, both agencies are my “children”. Therefore, I have to accord them functions according to the way the Constitution mandates them. Secondly, some Members may not realise that this omnibus law has some constitutional deadlines, which we have to beat. The issue of minimum and maximum land holdings is already in our Constitution. As Parliament, we are supposed to prescribe on the minimum and maximum land one can hold.

Thirdly, on matters to do with historical land injustices, the Constitution says it is a matter which is supposed to be looked at, with constitutional deadlines. That also appears in this Bill.

Be that as it may, some Members could be debating from the fact of whatever it is on the face value of the Bill but I know that we considered many of these things as a Committee. Those issues will come out clearly during the Committee of the whole House.

Let us look at some of the things that have been making these two entities not to function properly. There has been hue and cry on who should issue leases or titles and who is supposed to administer a lease if it expires. From the Committee level and where I stand, once a lease expires the land reverts back to public ownership. Therefore, that can only be managed by the NLC. That is why we removed the mandate of alienating land from the Presidency to the NLC. The mandate of administering that land, including its alienation, belongs to the NLC. In terms of issuance of title deeds, however, it is the national Government that issues them.

What we are saying is that this is a matter of checking and counterchecking these two entities. Each entity must play its role to make sure that it counters the other. This is because if we allow the NLC to manage public land, including alienation, issuance of allotment letters and title deeds, we will be getting back to the same system we were trying to avoid. Even the mandate of issuing title deeds, which people may think is a function of the NLC, in the prescription of the functions in Article 67(2)(c) of the Constitution, the NLC is only supposed to advise the national Government on matters to do with registration.

Paragraph (c) of Sub-Article (2), Article 67 says that the functions of the NLC are to advise the national Government on a comprehensive programme for the registration of titles in land throughout Kenya. The role of the NLC is to make sure that titles are not issued by the national Government left, right and centre because they would have advised in a very comprehensive way how registration is supposed to be carried out.

If we look at the way things are in our Constitution, and how it has directed us, we will see that we used to have very many laws, Acts and statutes governing the administration of land in this country. At the time of the formation of the Constitution, Article 68(a) of the Constitution envisaged controlling a situation where those land laws were very many for ordinary Kenyans to comprehend and understand which law to apply, where and when.

Article 68, which is on matters of legislation, says that Parliament shall revise, consolidate and rationalise existing land laws. We are calling this an omnibus law because we are trying to put the administration of land into one or fewer laws like the three laws we are using, namely; the Land Registration Act, the Land Act and the National Land Commission Act. That is to make sure that Kenyans exactly understand the regime of land administration in terms of where they can go and at what time other than referring to very many statutes. It is important to realise that we cannot afford to be skewed in any direction as a Committee, Parliament or nation. At the end of the day, we must be magnanimous enough to move forward in terms of land reforms.

One thing that is very critical is historical land injustices. It is a very crucial matter especially in the Coast, Rift Valley and Nairobi regions as well as in some parts of the country. The Committee looked at the idea of the time we should base our land injustices, for instance, with regard to the Coast region. Do we base it to the time of the Chinese, Portuguese, Zanzibaris, Oman or British colonisation of that region? Look at that history? It is important for us to come up with a prudent legislation that looks at exactly what bedevils each region so that we can move together as a country. I can assure you that these are matters we have very much looked into. You will find them coming up during the Committee of the whole House stage.

If you look at it from the minimum and maximum land holdings, you will find that the Constitution, under Article 68(c)(i) says something which I will read to Hon. Members.

I know there are a number of doctors around who can help me in terms of semantics of the word “prescribe.” Article 68 states:-

“Parliament shall—

(c) enact legislation—

(i) to prescribe minimum and maximum land holding acreages in respect of private land.”

As a Parliament, we cannot avoid but swim in it. Somehow we have to prescribe wisely and solomonically because at the end of the day this is a matter--- The Hon. Member for Luanda has said it. If we prescribe in Luanda to have half an acre and a quarter an acre in Nairobi, there will be a lot of discrepancies and fights. If one has 100 acres in Luanda and we want to prescribe 10 acres in Luanda, where will the 90 acres go? This is because it was private land. Even if we were to convert the 90 acres to public land, what will the public use it for?

So, we are looking at a situation where we can cause chaos through this. This Committee has attempted to do it under Articles 40 and 60 of the Constitution. Article 40 talks about the right to property. It has not prescribed the size and nature of how much property you must hold and yet you have a right to ownership of property. If you were to prescribe one acre to each individual in this country, would we not say that whoever does not have one acre in this country is on the wrong and we are supposed to put him in jail? Those are questions that we have to ask ourselves.

Secondly, if you are a partner in a company that owns land in this country and I do not want to use the word “partner” in the context of the Health Bill, and you own 10 per cent of the shares, you are also a partner in company “B” where you own 90 per cent of shares of the land and as an individual you also have some acres of land in this country, would you say that whatever you own in partnership, as a company, should also be counted? This is because a company is also an entity by itself. It can sue and be sued. At the end of the day do we say your directorship in that company is a problem?

Hon. Omulele: On a point of information, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Member for Tharaka, there is an intervention. Let me get the intervention by the Member for Luanda, Hon. Omulele. Is it a point of order or a point of information?

Hon. Omulele: I am afraid because he is the Chairman of the Departmental Committee on Lands.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do you want to inform him or you are on a point of order?

Hon. Omulele: Hon. Temporary Deputy Speaker, he is reading the Constitution in a selective way. He is telling us the role of the NLC is only to advise the Government on how to deal with and register land. The substantive provision of Article 67 which prescribes the NLC, its main function is to manage public land on behalf of the national and county governments. That is the main role in (a) as provided under this. He has read Article 40 which is on the protection of property that is owned in this country. This is a constitutional provision. So, we need to approach the issue of land law amendments in this country in a more careful way. We might need a convention.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Just say what is out of order.

Hon. Omulele: The point of order is about the Member reading the Constitution selectively.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Okay. I will go back to the Hon. Chair. As you debate, it is important---

Hon. Mwiru: Thank you. Indeed, I would not wish to respond to the Hon. Member for Luanda because I was only reading what is relevant to what I am debating. In any case, there are very many articles in this Constitution that I may not be able to go through. However, the Hon. Member is at liberty at any given time because this is the time of Second Reading. He is at liberty even to bring amendments that he feels were not carried out.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You are right. You are now informing him. The Member for Luanda, yours was a point of information and nothing was out of order. It should have been a point of information. Of course, you cannot quote the whole Constitution.

Carry on, Hon. Mwiru.

Hon. Mwiru: Thank you very much, Hon. Temporary Deputy Speaker and the indulgence by my brother, the Member for Luanda. We should not balkanise ourselves in one way or another in this country, because we have to move as the Republic of Kenya. Where there could be a problem and shortcoming, it is necessary for the membership here and the country to walk together and ensure that whatever law we pass here is not going to be passed for an individual, region or any area of interest.

So, from where I stand as the Chair of the Departmental Committee on Lands, the amendments being carried out in these three land laws or statutes are before the House for purposes of this House to look at them carefully. This includes what is contained in the Bill together with what may come at the Third Reading. This is for us to come up with a Bill that is suitable for all of us.

I would not like to I speak from wherever I come from. Unfortunately, I never made an application to be born where I was born but I am happy and proud to be a Kenyan. Where we find shortcomings in these laws, for example, where the NLC tries to be the one spearheading the phase of physical planning, but it is supposed to advise on the process of physical planning including land use planning--- They are supposed to guide and come up with a land policy for this country so that we are able to move in that direction. I want them to move with speed and prescribe a land policy. That can only be done by the NLC. This includes an inventory of public land for public schools and all those institutions.

The NLC is supposed to man that on behalf of the national Government and county governments. In other words, it is the Ombudsman at the end of the day but it is not supposed to be the judge, the jury and the prosecutor at the same time. So, let it take the role that the President used to take at that time which he misused and that is why we have the NLC. We do not wish that you give the red pen and proceed to give titles. We shall be creating the same problem that we had in this country. With that notion, I want to ask my colleagues to understand that from where I am, I cannot afford to be biased. It is now three years down the line and we have not made any progress on land reforms other than wrangling between the two agencies.

It is high time we separated those functions so that we prescribe to each what it is supposed to do so that we hold them accountable for what they have not done or congratulate them for what they have done. It is important that we move in that direction.

There is an issue which has been raised on whether the Commissioners are supposed to be subjected to the Public Service Commission (PSC) and I say “Yes”. Even the Ethics and Anti-Corruption Commission (EACC) should be subjected to the PSC for purposes of the President to nominate and for Parliament to approve. Therefore, I do not find a problem with that. The PSC has the capacity to look at those credentials, pass them over to the President and then to this House for the purpose of approval. At the end of the day, Parliament is the ultimate employer.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Member for Rabai, Hon. Kamoti Mwamkale.

Hon. Mwamkale: Thank you, Hon. Temporary Deputy Speaker.

From the outset, I rise to oppose this amendment Bill, if it sails through as it is. Unless it is amended, I oppose it. We need to look at the situation we were in before the promulgation of the Constitution, 2010. Article 67 of our Constitution was born out of the need of Kenyans. It was born out of the anger of Kenyans after seeing how land was being managed in this country. In the coastal strip of Kenya where I come from, 70 per cent of land grabbing in Kenya has been effected.

The Constitution, 2010 got a lot of support because of the land amendments and Article 67. Article 67 was put in by Kenyans to cure a disease that had been ongoing in Kenya. In this country, we used to see letters of allotment being given by the Commissioner of Lands or by the President himself. People would be deprived of their ancestral land, particularly in Coast Province. People were fed up with that. That is why Kenyans came up with the provision of Article 67 of the Constitution.

Kenyans did not want the Executive to manage land anymore. They wanted an independent body to manage land in Kenya. That is why Kenyans said that there should be the NLC. That Commission should be vetted by Parliament and not the PSC, which is a body of the Executive. Article 67 of the Constitution is clear that the NLC is supposed to manage land on behalf of the national Government and county governments.

I have looked at this Bill, particularly Clause 4, which seeks to amend the Land Registration Act by inserting New Section 6A immediately after Section 6. It even gives the role of publishing programmes for registration of titles in land to the Cabinet Secretary. We are going back to where we were because a Cabinet Secretary is an appointee of the President. We are bringing back the Executive to manage land. The Executive’s wishes are going to be done by the Cabinet Secretary. The Chairman and the Commissioners of the NLC, being people who would be vetted by this House, would be people whom Kenyans would have faith in. Being vetted by this House means being vetted by the representatives of the people. This is unlike being vetted by the PSC. Article 67 is very clear. The NLC was given functions which should not be removed from it.

Hon. Temporary Deputy Speaker, this Bill seeks to give the CS all the powers. He cannot allot land and yet we are told that management is the role of the NLC. It will be very wrong for this country to allow the CS to allot pieces of land and give title deeds. We are going back to where we came from where Kenyans were fed up. Other than what we are now seeing on graft, very soon it will shift to our land. Unless this Bill is amended, it is a bad law. We cannot allow the CS to be in charge of our policy and yet Article 67 of the Constitution is very clear that policy matters should be handled by the NLC.

Recently, we saw that the Supreme Court is not beyond reproach. Most of these amendments were done after the Supreme Court had given its ruling on the opinion that was sought by the NLC. We now even have a member of the Supreme Court whose reputation is being queried and is facing a tribunal. We cannot make laws based on what the Supreme Court said. They are not beyond reproach. As legislators, we should read what is in the Constitution and see if it has been reflected in this Bill.

I want to tell the Chairman that if he wants us to support this Bill, then he should call all the stakeholders to make sure that we do not dent our Constitution by passing these omnibus laws. In essence, we could be stabbing ourselves in the back and there might be no time to undo that.

Thank you, Hon. Temporary Deputy Speaker. I oppose.

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

Hon. (Ms.) Khamisi: Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi ya kuzungumzia Mswada huu kuhusu sheria ya ardhi. Hili ni suala ambalo ni nyeti na limeleta maafa mengi hapa Kenya. Jamii nyingi zimepigana kwa sababu ya mambo ya mashamba. Sheria hii imekiuka matakwa ambayo Wakenya walizungumzia katika Katiba.

Sheria hii inasema kwamba kila pahali ambapo kuna majina “Tume ya Ardhi” yabadilishwe na majina “Waziri wa Ardhi”. Wakenya wengi walipata matatizo kwa miaka mingi waliyofanyiwa na Waziri wa Ardhi ndiposa wakasema kuwe na tume huru ambayo itaweza kutathmini suala la ardhi.

Mhe. Naibu Spika wa Muda, katika Kifungu cha 42 cha Mswada huu, wameondoa jopo ambalo liliwekwa katika kaunti zetu kutathmini masuala ya mashamba ilhali bodi hii iliwekewa watu ambao wametoka sehemu zile na wanajua masuala ya ardhi.

Kifungu cha 44 cha Mswada huu kinazungumzia mambo ya dhuluma za kihistoria na kulikuwa na Mswada kamili ambao ulizungumzia mambo hayo. Sasa hivi, tumepewa maneno machache kuonyesha kwamba hizo dhuluma hazina umuhimu wowote ilhali hilo ni suala nyeti ambalo limeleta madhara.

Kifungu cha 46 cha Mswada huu kinazungumzia kuwa Tume ya Ardhi itachaguliwa na Tume ya Kuajiri Wahudumu wa Umma. Itakuwaje tume ichague tume nyingine? Hilo ni suala la kikatiba; kisheria ni kosa. Tume ilikuwa inateuliwa na Rais, majina yanaletwa Bungeni, Wabunge wanayajadili na wanawachagua makamishna ambao watakuwa katika tume hiyo.

Katika Kifungu cha 43, aya ambayo ilizungumzia jinsi tutakavyotatua utata wa mambo ya mashamba katika kaunti zetu imetolewa. Hawakuweka njia mbadala ambayo tunaweza kufuatilia suala hili. Vile vile, jambo la ugatuzi limezungumzia suala la ardhi lifike kule chini mashinani katika kaunti. Hivyo basi lazima kuwe na jopo ambalo litashughulikia masuala ya kaunti lakini katika vifungu vya 42 na 43, mambo hayo yametolewa.

Kifungu cha 96 cha Mswada huu kimezungumzia *settlement schemes*, yaani watu waliokosa makazi wanaweza kupewa makazi mahali fulani. Hilo lilikuwa ni jukumu la Tume ya Ardhi lakini sasa jukumu hilo limepewa jopo linaloitwa kwa Kiingereza *Land Settlement Board of Trustees*. Mambo kama haya yamekuwa yakitumiwa tangu jadi kuwanyanyasa wananchi wengi hususan kule Pwani na sehemu za Bonde la Ufa.

Hatuwezi kutengeneza sheria mama ambayo ni Katiba kisha tutafute sheria nyingine za kuua Katiba kupitia njia ambazo si sawa ili watu warejeshe sheria ile ile yao ama dhuluma zile zile ambazo watu wengi wamefanyiwa katika suala la ardhi. Kama kweli tunataka kuleta

mabadiliko katika Kenya yetu, tunapaswa kuangalia matakwa ya Wakenya katika Katiba yetu na tujue yalizungumzia nini. Matakwa ya Wakenya yamezungumziwa katika aya tofauti za Katiba yetu. Katiba inasisitiza kwamba suala la ardhi liachwe katika mikono ya tume huru lakini Mswada wote umebadilishwa na kila mahali penye tume huru pamewekwa Waziri wa Ardhi.

Kwa takriban miaka 53, Waziri wa Ardhi aliachiwa suala la kutatua matatizo ya ardhi. Wakenya wamepata dhiki na madhila. Sasa hivi mambo ya kugawanya ardhi au kwa Kiingereza *land adjudication and demarcation* ambayo yalikuwa katika Tume ya Ardhi yanasemekana yatapatiwa Waziri wa Ardhi. Yatarudi yale yale ya Waziri kukaa katika afisi yake Nairobi agawanye vipande vya ardhi awapatie awatako na watu ambao wako mashinani katika makazi yale wakose ardhi. Hatutakubali katu. Ikiwa kweli tunataka kuambatisha sheria kwa mujibu wa Katiba, lazima tuwe wangwana na wakweli kama Wakenya kwamba hatutataka tena umwagikaji wa damu na kuona Wakenya wakifurushwa ovyo ovyo.

Mswada wa *Eviction Bill* ulikuwa umetengezwa kupitia *Land Act* ambayo iko lakini hata Mswada huo pia umefanyiwa marekebisho na kuwekwa katika sheria hii kwa pamoja. Sheria hii imechanganya sheria nyingi na kuziweka pamoja. Mkenya ambaye hana elimu ya juu ya kujua masuala haya hawezi kuelewa sheria hii. Hii yote ni kwa sababu kulikuwa na ukora wa kuweka vipengele vya kurejesha nguvu kule zilikutoka. Sisi kama Wakenya tunaamini kwamba Serikali iliyo sasa inataka kuwapatia Wakenya makazi na kuondoa mzozo wa ardhi. Kama kweli inataka kuondoa mzozo wa ardhi, Mswada huu hautatufaa na utazidisha vita katika Jamuhuri yetu ya Kenya. Tunajua kuna ugatuzi na katiba ambayo sisi wenyewe kama Wakenya tumeipitisha ili iwe na nguvu na kusiwe na mtu ambaye atatumiwa kwa njia moja au nyingine kuwanyang'anya watu mashamba.

Mswada huu pia umemuwezesha waziri awe na nguvu za kutathmini mashamba ambayo yamekuwa na utata. Jambo hili ni hatari kwa sababu wale walioibiwa mashamba hawataregeshewa. Mambo yatakuwa yale yale na mkondo utakuwa ni ule ule. Wakenya bado watapata shida.

Naibu Spika wa Muda, ninawaomba Wabunge wenzangu tusiangalie chama na tusiangalie tofauti zozote ila tuangalie kule mashinani tunakotoka. Tuangalie nchi yetu kule inakotoka kwa suala la mashamba. Suala la mashamba ni nyeti. Tuachie zile taasisi ambazo sisi kama wakenya tumezibuni, tumezipendekeza kupitia Katiba yetu na kupitia zile sheria nyingine ambazo ziko sasa za kusaidia masuala ya ardhi.

Kwa hayo mengi ama machache, Wabunge wenzangu toeni macho hususan wale wanajua dhuluma za ardhi zimefanya nini Mkenya na dhuluma za ardhi zimesababisha maafa mangapi katika nchi yetu ya Kenya.

Asante sana.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Waunga mkono au wapinga?

Hon. (Ms.) Khamisi: Kutoka mwanzo, ninapinga.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Unapinga. Let us have the Member for Nyeri County, Priscilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. Let me start by noting that I support the Land Laws (Amendment) Bill. Every law that comes to the Floor of this House comes in a certain form. It is our duty and task to make that law in the best form that we would like to see it leave this Chamber. In fact, a story is told that the making of law is similar to the making of sausages. You do not want to see what happens when sausages are being prepared; the only thing you want to do is to have those sausages served at the table. So, as we make the

law, of course, some of us oppose or do not support, but at the end of the day, as a House, we have to do our duty for this country. The duty that we have had on matters of land law demands that every House has to put its best foot forward.

If you look at our Constitution and the chapter on Land, you will see a chapter that was postponed. It is a chapter for which we continue not to have all the answers. This is a chapter for which no single House is going to have all the answers. But the 11th Parliament will make a contribution on moving the country forward on matters of land law. It is a difficult debate. Some people have land while some do not have. That is the nature we find ourselves in. But each House of the 11th Parliament with no exception has got to play its role in moving the country forward in matters of land law.

We have come from a situation in which the country had over 150 pieces of legislation touching on matters of land. As we continue moving forward, it is important for the country to continue consolidating the laws that relate to land.

It was not fun. I can tell you that, for those of us who went to Law School, most students used to fail examinations on the area of land law. It used to be the biggest nightmare for any law student out there; the reason being the 150 pieces of legislation with different provisions and different matters. So, an attempt to consolidate land laws is an attempt that we have to continue with to make sure that as we revise our land laws, we reduce the number of legislations that relate to this question.

In supporting the Committee and the drafting, let us, as much as possible, put matters under the land law in one set of legislation or in a one stop shop sort of method. That will be the best because questions are already complex. It is already difficult to understand the various aspects of land law. So, putting these things in various pieces of legislation has not been very helpful.

I have in the past, when I worked as Director at Kituo Cha Sheria, supported very much the Evictions Law. The country needs an evictions law. But whether it comes as a standalone or the eviction matters are dealt with in a law like the one we are dealing with is not the bigger question. The question will be that the country conducts its evictions in a humane manner. That it is, indeed, true that there are people who are going to be in the wrong piece of land and when as a last resort, as a result of a court order, there needs to be an eviction, it would be conducted in accordance with the law. So, if those provisions are in the Land Laws (Amendment) Bill, I am happy to support it because it deals with the question of eviction. It is not too much having legislation titled “Evictions”, but it is better to conduct evictions humanely in a manner supported by law. If this law supports that I support it. I also support the chapter on PSC appointments. This matter has come under intense deliberations since the advent of the Grand Coalition Government. The selection panels we had during the regime of the Grand Coalition Government were phenomena that arose out of the Post-Election Violence (PEV). We had the President and the Prime Minister. Because the levels of trust in the institutions were very low, it was felt that having a selection panel at every point of the journey was the better way to go. The new Constitution came to cure that.

As a country, we are now required to continue investing in our public institutions. It is not in our interest to mistrust the PSC. There would be nothing wrong in the land commissioners, the Independent Electoral and Boundaries Commission (IEBC) commissioners, the Ethics and Anti-Corruption Commission (EACC) commissioners and every other person who wants to serve in the Republic of Kenya going through the PSC. The PSC would then grow the expertise, have

the data on regional balance, data on gender, data on young people and data on who we need to appoint in the next set of public jobs. It is not helpful to go back to the selection panel. The PSC will serve this country well.

Thank you, Hon. Temporary Deputy Speaker.

Hon. Mwamkale: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Member for Nyeri County, there is an intervention by the Member for Rabai.

Hon. Mwamkale: Is the Member, who is my Vice Chairlady in the Departmental Committee on Justice and Legal Affairs, in order to make insinuations to the effect that Parliament is not well equipped, and that PSC is superior and has more qualification to vet these people? We were in the right place.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Priscilla Nyokabi, you can substantiate that.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. I want to thank the Member for that concern and correction. It is true that Parliament has the capacity to do its work, but I do not think Parliament can sit to receive applications and advertise for applications. The PSC will need to do that work and bring to us names that they would have identified. We would then be required to vet those names. That is the process we are anchoring in our laws. The Member sits in the Departmental Committee on Justice and Legal Affairs and he knows that is the process we used for EACC commissioners. We think it served us well. We still need the checks and balances.

The process will start this way: The PSC will advertise and any citizen who feels qualified enough to serve in that capacity will have to apply. The reason I support that process is because one will do self-vetting. If you have been a land grabber you will, of course, never apply to be a commissioner in the NLC. If you have issues with the land that you have acquired, there is no chance that you will put forward your application to serve in the NLC.

What we found out is that self-vetting is many times more powerful than public vetting. You vet yourself in your bedroom before you put in your application. Once you do that, you will be telling Kenyans: "I can serve as a commissioner of NLC." The PSC will conduct the interviews and look at all documentation, history and intelligence reports. It will then generate a short list of the people who have qualified after that interview. That list will be given to the President to nominate the number of commissioners required to sit on the NLC and those names will be brought to this National Assembly for vetting. After such a rigorous process, it will be a shocker if, as a land grabber, you survive in a process that has gone to all the institutions of governance.

Hon. Temporary Deputy Speaker, in supporting the inclusion of the PSC, I will also be urging the Chairman of the Departmental Committee on Lands to look at the process we have included or used in the EACC and adopt aspects of it as relates to the NLC. It is the same process we will be recommending for the Registrar of Political Parties so that we get people who want to serve the nation.

Hon. Deputy Speaker, it is not a secret now that the NLC feels like a CORD Coalition Commission. I do not know where that perception has come from. Maybe it is the manner in which they have presented themselves to the public. The feeling is that these commissioners are not Kenyan commissioners. Supporting that way of appointing persons brings into office somebody who wants to serve the county and not a coalition or any other interest.

Hon. Temporary Deputy Speaker, I will also be introducing an amendment on declaration of sources of funding before the transfer of title is done. Time has come for anybody who wants to get land and wants to transfer land to declare the sources of money, to be able to acquire that land. It has been wrong for people to be corrupting public office and become real estate owners who spoil the market and mess up our rates so that we are buying land in Nairobi as expensive as in New York.

Hon. Shimbwa: On a point of order, Hon. Temporary Deputy Speaker

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Well spoken. She has already finished her debate. Hon. Member, when you are rising on a point of order, you are not allowed to speak without a microphone

Hon. Shimbwa: *(Inaudible)*

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Then you should have consulted. Is the microphone yours?

Hon. Shimbwa: Yes, Hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Then move to another one. Let me listen to you. Maybe it is important. Get to the Dispatch Box. It should just be a point of information because she has already finished her contribution.

Hon. Shimbwa: Hon. Temporary Deputy Speaker, I would like to direct this to my learned friend, Hon. Priscilla Nyokabi.

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Hon. Member, I thought something was out of order in the proceedings of the House. She has already finished her contribution. Do not be out of order. Maybe, put your card so that you can put your point across as soon as you get a chance. I know it is a clarification, but you can tell her what you wanted to put across. This is a House of debate.

Hon. Shimbwa: This is something that we would all like to share because it is causing a lot of concern to the whole nation.

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Please, I will give you the opportunity to make your contribution, but it cannot be on a point of order.

Hon. Shimbwa: Thank you.

The Temporary Deputy Chairman (Hon. (Ms.) Mbalu): Let me give this opportunity to the Member for Kesses.

Hon. J.K. Bett: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to debate on the Land Bill. This Bill generates more questions than answers. Land in Kenya is a very emotive issue. Considering the historical injustice relating to land, we need to come up with a Bill that will also address the historical land injustices, so that many Kenyans can be satisfied with the Bill.

All of us know that land is one of the factors of production just like labour and capital. The Bill contradicts itself when it tries to limit the size of land one can own. This is because, since land is a factor of production, we cannot set minimum or maximum land acreage for private owners.

This country is a capitalistic state. Somebody will own as much land as he or she is able. If we were in a socialist state, we would have said that all land belongs to the state and each person needs to own a huge piece of land. Like capital, the people who invest in capital assets such as real estates, cannot be told that they cannot do a certain number of storey buildings. I will

not support the provision that is going to set maximum and minimum land acreage for private owners.

This Bill also tends to give more power to the CS and yet under Article 67, we have created the NLC. The Commission is supposed to give guidelines and policies relating to land in Kenya. If you do away with the county land board, which mostly comprises of the residents of a county and vest more power---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Member for Kesses! You will have eight minutes in the next sitting to debate the same Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The time being 6.30 p.m., this House stands adjourned until Wednesday, 30th March, 2016, at 9.30 a.m.

The House rose at 6.30 p.m.