



**REPUBLIC OF KENYA**

**THIRTEENTH PARLIAMENT**

**NATIONAL ASSEMBLY**

**THE HANSARD**

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## THE HANSARD

Wednesday, 27<sup>th</sup> September 2023

The House met at 2.30 p.m.

*[The Speaker (Hon. Moses Wetang'ula) in the Chair]*

### PRAYERS

### QUORUM

**Hon. Speaker:** Sergeants-at-Arms, you may ring the Bell.

*(The Quorum Bell was rung)*

Clerks-at-the-Table, we now have quorum to transact business.

### PAPERS

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Speaker, I beg to lay the following papers on the Table:

1. The Draft Sacco Societies (Specified on-Deposit Taking) (Levy) Order of 2023 from the Ministry for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) Development.
2. Reports of the Auditor-General and financial statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2022, and the certificates therein:
  - (a) Kiambu.
  - (b) Kikuyu.
  - (c) Nakuru Town East.
3. The Performance Audit Report on Response to Gender Based Violence from the State Department for Gender and Affirmative Action.
4. The Performance Audit Report on National School Meals and Nutrition Programme from the State Department for Early Learning and Basic Education.

Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you, Leader of the Majority Party. Chairperson of the Departmental Committee on Health, Dr Pukose. *Wapi* D.r Pukose *au* Vice-Chair *wake*? Who is the Vice-Chair of the Departmental Committee on Health? Leader of the Majority Party, bell the cat. Okay, we will stay it to tomorrow.

*(Tabling of the Paper deferred)*

But if he comes and he is ready before we go to the Committee of the whole House, we can be able to accommodate him.

Next Order.

## QUESTIONS AND STATEMENTS

**Hon. Speaker:** Leader of the Majority Party, we have the Cabinet Secretary for Finance and National Planning.

**Hon. Omboko Milemba** (Emuhaya, ANC): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Omboko Milemba? You had actually told me that you wanted to make a short Statement.

## STATEMENT

RECOMMENDATIONS OF PRESIDENTIAL WORKING  
PARTY ON EDUCATION REFORMS

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Speaker, I rise under Standing Order 83 to seek your direction regarding the recommendations of the Presidential Working Party on Education Reforms (PWPER).

Hon. Speaker, the PWPER made several recommendations on the education sector, consequently establishing conflict not only between the Ministry of Education and the Teachers Service Commission (TSC), but also with other players in the field.

The recommendations that the Ministry of Education reviews the grades for pre-service teachers jeopardises the mandate of the TSC as provided under Article 237(3) of the Constitution.

The PWPER has also recommended that the Ministry of Education establishes a comprehensive school system where all levels of learning are managed as one institution, contrary to Part 2(9) of the Fourth Schedule of the Constitution.

It has further recommended that the Ministry of Education recruit staff for Special Needs Education Institutions and hard-to-staff areas. This recommendation is contrary to the Constitution.

The Presidential Working Party now gives powers to the TSC to employ chaplains and *imams* in schools. This is in direct conflict of Article 9 of the Constitution which separates the State and religion and, therefore, removes the powers of sponsors in schools replacing it with the Teachers Service Commission.

Hon. Speaker, I could go on and on, but let me stop there and indicate that the business of law making is a reserve of Parliament under Article 109 of the Constitution. As it stands, there is a crisis in the education system with education organs and players existing before the Constitution of Kenya, 2010 intending to seize power within the education sector given these proposals.

Hon. Speaker, I want to seek your guidance that this matter be handled by the House so that people do not change the Constitution and the Acts of Parliament through the backdoor.

Thank you, Hon. Speaker.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): On a point of order.

**Hon. Speaker:** Yes, Hon. Chepkonga.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): Thank you very much, Hon. Speaker. I would like to agree with Hon. Milemba. He is raising a very pertinent issue to this country. First, the presidential working party's recommendations remain as such until they are reduced into a Bill and brought to the National Assembly, or until they are reduced into regulation – which will also be brought to this House and committed to the relevant departmental committee for consideration. There is a trend in this country where recommendations are made by committees that are appointed and they are implemented, by-passing this House and become a

force of law. We would like you to pronounce yourself on these matters that are being implemented on the basis of recommendations, and people are expected to obey them.

Hon. Speaker, one of the cardinal roles of a Member of Parliament is legislation. We do not expect any other person who has not been elected by anyone to make laws. That is in contravention of the Constitution.

*(Applause)*

Article 95 is very clear that there is no person who can make any law or pronounce themselves on anything that has a force of law, except this House. I see Hon. Milemba belabouring this point. This is a matter which should get a sweeping decision from this House and from your Chair that there is nobody in this country, however high and mighty they may think they are, who can make laws. This includes the cabinet secretaries; they cannot make regulations or recommendations. You cannot implement these recommendations of the Presidential Working Party before you bring them to the House. It has an implication. There are laws in this country which govern that particular area. One has to come and amend them. This is just like the other recommendation by the Kenya Roads Board. They purportedly...

**Hon. Speaker:** You are anticipating debate.

*(Laughter)*

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): I was just giving an example.

**Hon. Speaker:** You have made your point.

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): I was making a reference and giving an example. As a House, we do not want a scenario where people do not believe in the rule of law. I attended the United Kingdom (UK) Conference on the rule of law about eight years ago and they were celebrating their 800<sup>th</sup> year of the rule of law. We should also celebrate the rule of law in this country where everybody follows the law. In this country, there has been this principle of tax avoidance and evasion. In fact, we have seen law evasion in this country and people avoiding passing Bills through this House.

Therefore, in support of Hon. Omboko Milemba, I would like to request you to pronounce yourself on the matter. Recommendations must remain recommendations unless they have a different English dictionary which they are using. They should amend that dictionary to say that recommendations also include the law. However, at the moment, they remain recommendations and they can gather dust wherever they are until they bring them to this House.

I thank you, Hon. Speaker.

**Hon. Speaker:** Leader of the Majority Party, before you give us your undertaking, let me hear Senior Counsel, Otiende Amollo.

**Hon. (Dr) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I fully support the sentiments by my colleagues. While the PWPER may so far be a proposed policy document, it is obvious that on its face, it is expressly unconstitutional. It is also obvious on its case that it is presumptuous and in total assumption of the role of this House.

Hon. Speaker, I say that because I am aware that not only is it a policy document that has not crystallised into law under Article 95, but they have purported to appoint an implementation committee. They are already implementing the recommendations which means that it is not even considered that it is necessary to see whether Parliament will adopt them into law. In this case, Parliament becomes highly irrelevant under Article 95. It is true that the point of determining unconstitutionality may not have arisen. It could either be determined by a court if it comes into law or by the Speaker if it comes to the Floor of the House. The problem here

is that there is a clear effort to circumvent that provision so that the occasion of deciding by the court may not arise because there may be no law passed by Parliament, but the occasion of determination by the Speaker might not arise because it may not come to you. It is important for us to look at Article 95 critically. It is true that nothing should assume the force of law except as passed by this House. But additionally, this House is also required under that Article to deliberate and resolve issues of interest to Kenyans. This has become an issue of interest to Kenyans. This morning, I will report to you that the sitting chaired by the Deputy Speaker had the Chairperson of the Committee on Delegated Legislation presented two sets of regulations for annulment; one which actually emanated from this same departmental committee under Section 70. I see that trend continuing in this report. It is a trend that must be rejected, not just by you saying that you think they should consult. It is within your powers and jurisdiction, by way of communication, to pronounce yourself and say whatever is contained in that document that is purported to be implemented is void *ab initio*, and if anyone wants to remedy it, they know how to restart it.

Thank you, Hon. Speaker.

**Hon. Speaker:** I would like to close it there. I think the point has been made abundantly clear. Leader of the Majority Party, can I hear from you.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon Speaker. I do not have much to add because the law is the law. Articles 94, 95 and 96 of the Constitution have been clearly articulated by Hon. Chepkonga. As much as there is the Statutory Instruments Act, nobody, including cabinet secretaries, have the power to make laws. Not even a presidential working party. The best they can do is to make recommendations which, if adopted, then those that touch on the Constitution will have to go through a process of amending the Constitution, in line with Articles 252 to 255 from outside Parliament.

If they want a parliamentary initiative to change any bit of the Constitution, then it must begin from this House. Anything touching on statutes can only be changed in line with the Constitution, either by this House or the Senate, depending on what that particular recommendation would be. I will pick up the matter with the Cabinet Secretary for Education to ensure that no recommendation from the working party that touches on the statute law or the Constitution is implemented without requisite changes to the laws. Allow me to follow it up with the Cabinet Secretary to make sure that he gives a statement on what he is doing in line with all the recommendations. If there are recommendations that touch on changes in the law, then he must work together with the Departmental Committee on Education and Research to bring those changes. If there are any changes that touch on the Constitution, I am certain that the Departmental Committee on Justice and Legal Affairs is also more than willing to assist.

Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you, Leader of the Majority Party. You will do even better. You will have to engage the Cabinet Secretary. I will direct you to bring a comprehensive statement on that issue on Tuesday, a week from today. Not next Tuesday, but the other Tuesday. Bring a comprehensive statement. I repeat that nobody, not even a minister of the Government, can purport to make laws or do things that appear to be interpreted as laws. They have no capacity to make any law.

Next is Hon. Robert Mbui. If you want to raise an issue, I give you two minutes. I want us to proceed to Question Time. We have a lot of business.

**Hon. Robert Mbui** (Kathiani, WDM): Thank you, Hon. Speaker. I will be very brief. I rise under Standing Order 216 on the mandate of committees. I need your guidance on the following matters. First, we are all aware that the Kenya Police Service is set to deploy 1,000 officers to combat violent crimes in Haiti. At the same time, you are aware that the United States of America Secretary of Defence and our Cabinet Secretary for Defence, Hon Aden Duale, have signed a peace agreement that binds this country for a period of five years. My

concern is, is Parliament going to sit and watch while these things happen or will we also play a role in this? I believe Parliament is meant to participate in any decision-making process where Kenyans are affected. I seek your guidance on what role Parliament will play in those two issues.

Thank you, Hon. Speaker.

**Hon. Speaker:** Leader of the Majority Party, you do not have to answer that now. The Tuesday I had told you to bring the statement is actually a public holiday called Huduma Day. You will, therefore, bring your statement on Wednesday, which will be 11<sup>th</sup> of next month. You will be required to bring two statements. One on education and the other one on the matter raised by Hon. Robert Mbui.

## PAPER

**Hon. Speaker:** Hon. Pukose, I will step back and allow you to table your document.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Thank you, Hon. Speaker, for being magnanimous to allow me to table this statement.

I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Health on its consideration of the Assisted Reproductive Technology Bill (National Assembly Bill No.61 of 2022)

Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you. Hon Members, allow me to acknowledge the following schools in the Speaker's and Public Galleries: Kiriti Girls High School from Mathioya, Murang'a; Kivou Primary School from Mwingi Central, Kitui; Thome Secondary School from Laikipia West, Laikipia. We also have small business traders from Suna East, Migori. On your behalf and on my own behalf, we welcome all our visitors to the House of Parliament.

We will now proceed to Question Time. Hon Members, today I want us to take less than one hour on Questions. We will proceed as follows. The Cabinet Secretary for the National Treasury and Economic Planning will answer Questions as asked. Opportunity for supplementary questions will go to the Questioner and only one joyrider. Cabinet Secretary, you are now in the chamber. I will call out the first Question by Private Notice No.010 of 2023. You will combine that Question with Question 297 of 2023. I will invite the Member for Turkana South and the Member for Mathioya to ask the two Questions, which are related and will, therefore, be answered together.

## QUESTIONS TO THE CABINET SECRETARY FOR NATIONAL TREASURY AND ECONOMIC PLANNING

### QUESTION BY PRIVATE NOTICE

*QPN 010/2022*

#### UNFAIR DISMISSAL OF REVENUE SERVICE ASSISTANTS

**Hon. John Namoit** (Turkana South, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for the National Treasury and Economic Planning the following Question:

Could the Cabinet Secretary:

- (a) Explain the circumstances under which two Revenue Service Assistants recently recruited by the Kenya Revenue Authority were unfairly dismissed? That is Mr Moran Kenson Ekaran of ID No.34333532, dismissed on 22<sup>nd</sup> July 2023 after

three days of training; and Mr. Jacob Nakali Etiir of ID No. 40343341, dismissed on 15<sup>th</sup> August 2023 after eight weeks of training?

- (b) Clarify whether the necessary procedures of dismissal were followed, including adherence to Article 27 of the Constitution?
- (c) State when the two Revenue Service Assistants will be recalled to resume training or be deployed?

Thank you, Hon. Speaker.

**Hon. Speaker:** Cabinet Secretary, you will combine two Questions because they are related.

Hon. Edwin Mugo.

## ORDINARY QUESTIONS

### *Question 297/2023*

#### RECRUITMENT OF REVENUE SERVICE ASSISTANTS BY KRA

**Hon. Edwin Gichuki** (Mathioya, UDA): Could the Cabinet Secretary explain —

- (a) why the Kenya Revenue Authority (KRA) Assistants recruitment exercise has been interfered with? Why was the recruitment and training exercise handed over to the military, noting that the process ought to have been under the Kenya Revenue Authority? Why should the recruits for the revenue collection body undergo paramilitary training? Does it mean we should let the process for collecting taxes go to the military?
- (b) explain the criteria used by KRA during recruitment exercise. How did KRA ensure regional balancing in sub county levels or constituency levels? What was the gender composition? How come the qualified performance driven, highly motivated individuals who are supposed to fill this Revenue Assistant position were not considered despite successfully filling the aptitude test? For example, in Mathioya Constituency hundreds of individuals who applied for the position were not...

**Hon. Speaker:** Hon. Mugo, that is not the Question on the Order Paper. You are reading your own things. The Question is on the Order Paper and I want you to read it as it is printed. You seem to be debating the Question instead of asking it. Do you not have the Order Paper?

**Hon. Edwin Gichuki** (Mathioya, UDA): No. Hon. Speaker, I had printed the Question.

**Hon. Speaker:** What you framed is not necessarily what is on the Order Paper. They are edited by the Clerks to make sense.

**Hon. Edwin Gichuki** (Mathioya, UDA): Thank you, Hon. Speaker. I am well guided.

**Hon. Speaker:** Do you have the Order Paper now?

**Hon. Edwin Gichuki** (Mathioya, UDA): Yes.

**Hon. Speaker:** Okay. Go ahead and ask the Question. Do you have a problem? I can come back to you later.

**Hon. Edwin Gichuki** (Mathioya, UDA): Hon. Speaker, I have it now.

**Hon. Speaker:** Go ahead.

**Hon. Edwin Gichuki** (Mathioya, UDA): Could the Cabinet Secretary —

- (a) clarify whether the KRA officers recruited in their Domestic Taxes Department in June 2023 will undergo paramilitary training in Eldoret before their deployment?

- (b) while explaining the criteria used by KRA to arrive at the final list, provide a list showing the distribution of individuals recruited in terms of age and gender per constituency?
- (c) clarify whether some individuals were turned away from the training in Eldoret based on drug abuse history, HIV/AIDS status, having given birth within six months preceding the date of reporting for training and having physical scars on their bodies?

Thank you very much, Hon. Speaker.

**Hon Speaker:** Cabinet Secretary, you can answer those two Questions. Avoid making lofty statements. Just answer the questions.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. In my response to the Questions and the detailed answers that are provided, I am going to answer Question one, which is on page one and the rest of the questions are combined in question 11 from my detailed responses.

My response to the first Question is that the Kenya Revenue Authority recruited 1,406 Revenue Service Assistants who have been undergoing training at the Recruits Training School in Eldoret since 20<sup>th</sup> June 2023. They graduated on 25<sup>th</sup> August 2023. The role of the Revenue Assistant Officers is purely intelligence gathering and management to detect, deter and stem tax evasion. So, it is work that is related to field work and it requires physical fitness and alertness, and for swift and tactical skills hence the reason the Revenue Service Assistants (RSA) Programme had a dimension of paramilitary training for effective policing interventions against VAT and Excise Tax leakages.

This is the first time the Authority has undertaken such a programme, hence it collaborated with the National Defence Forces to successfully roll out the programme. In this regard, the Authority complied with the requirements set out by the paramilitary trainers. For health and safety of the recruits themselves, part of the requirement was medical assessment to ascertain if the trainees were fit for the rigorous paramilitary training. Upon medical assessment, any candidate found not fit for the training was, therefore, not enrolled for the training. In this regard, only the two persons that have been referred to were found unfit. One was for health reasons, and the second one was for providing a falsified police clearance certificate. I have provided the details of what happened. They were not trained for the three days. They were not even trained because they did not undergo the process.

The next Question is found on number 11 from my list. Let me get it.

**Hon. Speaker:** Why were they undergoing paramilitary training?

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Yes, I have it.

In response, the Revenue Service Assistants were being trained on technical skills, VAT and Excise Duty as well as undergoing paramilitary training for fitness and alertness. A total of 1,406 recruits were sent to the Kenya Defence Forces Recruits Training School in Eldoret for the two months training before their deployment. While they were there, the targets for the citizens was in the age category of 18 and 35 years with a minimum of grade D+ (plus) in the Kenya Certificate of Secondary Education (KCSE) or even International General Certificate of Secondary Education (IGCSE).

The selection was guided by inclusive recruitment framework in line with 2019 Kenya National Bureau of Statistics (KNBS) census and in consideration of gender balance, ethnic representation, disability status in accordance with the nature of disability in view of the job requirements, minority and marginalised communities, constituency representation and the distribution of recruited personnel — RSA as we call them — in terms of constituency and gender and even representation. This information is attached in an annex.



In summary, on Page 30, Table 1, on age representation, we have the following: Between 18 and 20 years is about 7.8 per cent or 110 recruits; age 21 to 25 years, we have 500 recruits, which is about 39.12 per cent of the total sample; age 26 to 30 years, there are 542, which is equivalent to 38.35 per cent of the sample; and age 31 to 35 years is 204, which is equivalent to 14.5 per cent of the sample.

Hon. Speaker, the Revenue Service Assistants Programme had a military training element and this was the first time the Kenya Revenue Authority undertook such a programme, hence the need to collaborate with the National Defence Forces to successfully roll out the programme. The rationale for the prescribed paramilitary training was as follows. We needed to help those recruits maintain training readiness and reduce potential risks, protect health and safety of the recruits and mitigate the uncertainty on managing complications and even special cases. The following categories of diseases were registered, as has been said in the Question. The most important thing is that KRA complied with the training requirements set by the KDF and the paramilitary trainers. The outcome of the medical assessment was clearly observed.

The distribution per constituency is found in the annex of the details that I have provided. I found it quite lengthy to go through, but I wanted to show the age cohorts. The gender distribution is also provided in the annex of the details that I have provided.

**Hon. Speaker:** Hon. Ariko, are you satisfied with the answer?

**Hon. John Namoit** (Turkana South, ODM): I am not satisfied, Hon. Speaker.

**Hon. Speaker:** Okay. Ask your supplementary question.

**Hon. John Namoit** (Turkana South, ODM): I request the Cabinet Secretary to disclose what he refers to as ‘medical assessment.’ A moran is physically fit for this position.

Turkana County has suffered a lot in terms of multi-dimensional poverty as a result of this kind of segregation. Turkana South Constituency, specifically Lokichar Ward, was very lucky to secure two positions under this recruitment. Both recruits were dismissed. When these boys were recruited, the people of Lokichar Ward were very happy and they recognised and appreciated the presence of KRA. It was very disheartening when the community heard that the two boys, who were physically fit for any position, were dismissed by the KRA.

It is false to say that the second boy called Etiir did not finish the training. The training ended before 15<sup>th</sup> August and the trainees graduated on 22<sup>nd</sup> or 25<sup>th</sup> of August.

There is evidence that the boy applied for the Police Clearance Certificate at the Huduma Centre in Lodwar. I forwarded the payment receipt showing the Ksh1,050 that the boy paid to the Government of Kenya for this application. He also filled Form C24, which has the same information. If you look at the two certificates, the reference number is the same. The first certificate that was issued by a Huduma Centre officer has the same reference number as the current valid Police Clearance Certificate. It is the same document. The only difference between the two documents are the dates.

**Hon. Speaker:** *Uliza swali lako, Mheshimiwa.*

**Hon. John Namoit** (Turkana South, ODM): The boy did not forge the document. The document was sent by a staff of the Huduma Centre. We requested the Directorate of Criminal Investigations (DCI) to investigate the matter. How far has the investigation gone? I have information, but the Cabinet Secretary has not revealed how far investigations into the forgery allegation has gone.

**Hon. Speaker:** Hon. Mugo.

**Hon. Edwin Gichuki** (Mathioya, UDA): Thank you very much, Hon. Speaker. I am partly satisfied by the response from the Cabinet Secretary because he said that this was the first recruitment of its kind where the military and KRA were working together.

Article 27(4) of the Constitution states that no one should be discriminated against directly or indirectly on grounds of race, sex, pregnancy, language, marital status, and many other grounds. Other grounds would also include medical reasons. When KRA advertises for a

job in future, they should clearly state that if somebody knows that they are sick, they should not apply for some of those jobs.

This was the first training of its kind, but I hope that it can be improved in future.

**Hon. Speaker:** Cabinet Secretary, Hon. Mugo has just complimented you. So, you do not need to respond to that complement. Respond to the allegations by Hon. Ariko that the Police Clearance Certificate was not a forgery.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. Let me start with the first question. I will go to the detailed response. Mr. Moran Kenson Ekanan, holder of ID No.34333532, was invited for the on-boarding assessment at the Recruits Training School, Eldoret. He presented himself for the assessment on 20<sup>th</sup> June 2023. Upon conclusion of the assessment, Mr. Ekanan was not cleared to undertake the training as he was found unfit to undergo the Revenue Service Assistant Training Programme.

Mr. Ekanan returned on 22<sup>nd</sup> June 2023 where he was again not on-boarded on the basis of the 20<sup>th</sup> June 2023 medical assessment by the KDF medical doctor. Mr. Ekanan was, therefore, not offered a chance to train as a Revenue Service Assistant (RSA) as he did not succeed in the medical assessment. The allegation that he was dismissed after three days of training is, therefore, not true. We relied on the expert's opinion, but we will do a further follow-up.

Mr. Jacob Nakali Etiir of ID No.40343341 was dismissed on 15<sup>th</sup> August 2023 after eight weeks of training. The offer to train as a Revenue Service Assistant given to the recruits was subject to a successful on-boarding assessment and subsequent background checks, among other conditions. Mr. Jacob Etiir, who had been successfully on-boarded for the training, was found to have provided false information upon conclusion of the background checks regarding the Police Clearance Certificate which was submitted as part of the required documents.

Following a report dated 26<sup>th</sup> July 2023 of Reference No. DCI/CRO/SEC/6/7/2/A/Vol. XIII/33 by the DCI that the Police Clearance Certificate submitted by Mr. Etiir was not genuine, the Authority invoked the provision of Clause 5 of the Offer Letter on the requirement for satisfactory background checks to terminate the offer for Mr. Etiir to train as a Revenue Service Assistant. The termination was in line with Clause 6.1.2.1.4 of the KRA Code of Conduct, which classifies giving false information as gross misconduct.

I will follow up with further investigations following what the Member has said, but the information may be related to the report that the DCI provided.

**Hon. Speaker:** Next is Question 215/2023 by Hon. Opiyo Wandayi. The Leader of the Minority Party is not here. Yes, Hon. Wamboka.

**Hon. Wanami Wamboka** (Bumula, DAP-K): Hon. Wandayi is engaged. He requested that the Cabinet Secretary goes ahead to answer the Question.

**Hon. Speaker:** The Cabinet Secretary cannot answer a Question that has not been asked.

**Hon. Wanami Wamboka** (Bumula, DAP-K): Can I ask on his behalf?

**Hon. Speaker:** You cannot because there is no written designation to me that you ask on his behalf.

**Hon. Wanami Wamboka** (Bumula, DAP-K): Hon. Speaker, you may use your discretion.

**Hon. Speaker:** I have no discretion on this. The rules are very clear. Hon. Wandayi's Question will be stayed for any other time that the Cabinet Secretary maybe coming here.

Next is Question 150/2023.

*(Question 251/2023 deferred)*

*Question 150/2023*

## RELEASE OF FUNDS TOWARDS RESTRUCTURING OF NZOIA SUGAR COMPANY

**Hon. John Makali** (Kanduyi, FORD-K): Thank you, Hon. Speaker, for the opportunity. I rise to ask Question 150/2023 to the Cabinet Secretary.

Could the Cabinet Secretary-

- (a) clarify whether the Government has ever released the sum of Ksh21,782,366,530 and a further Ksh908,878,470 towards restructuring of Nzoia Sugar Company Limited as per the recommendations of Sessional Paper No.12 of 2012 adopted by the National Assembly on 9<sup>th</sup> January 2013?
- (b) if in the affirmative, provide any evidence indicating when the funds were released and any annual write-offs?
- (c) provide details of the current annual status of the balance sheet of Nzoia Sugar Company Limited

Thank you, Hon. Speaker.

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you Hon. Speaker. In response to these questions, the National Treasury has not released Ksh21,782,366,530 million.

**Hon. Speaker:** Is it million or billion? What I see here is billion.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u) Thank you, Hon. Speaker. The National Treasury has not released Ksh21,782,366,530 and further Ksh908,888,000 towards restructuring of the balance sheet of Nzoia Sugar Company as per Sessional Paper No.12 of 2012. The funds were never appropriated after the change of Government administration in March 2013.

For the second question, no funds were released and no rights were made. In response, what appears to have happened is provided for in a table that shows the financial statement as of June 2023. We see that the assets are Ksh9.18 billion, the current assets are Ksh1.49 billion and the total assets are Ksh10.6 billion. These are financed by the capital reserves, which is negative to the tune of Ksh55.73 billion. The liabilities are Ksh4.38 billion, current liabilities Ksh62.02 billion and the total liabilities are Ksh66.41 billion. The liabilities and capital are Ksh10.67 billion.

I have attached the latest audited financial statements from 30<sup>th</sup> June 2022 in appendix one and the fourth quarter 2022/2023 financial statement report in appendix two.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. John Makali, do you have any supplementary question?

**Hon. John Makali** (Kanduyi, FORD-K): Yes, Hon. Speaker.

**Hon Speaker:** Go ahead.

**Hon. John Makali** (Kanduyi, FORD-K): Hon. Speaker, I am not satisfied with the response by the Cabinet Secretary for three reasons. One, it was a resolution of the National Assembly to write-off those debts, but they were not written off. Every time we go to the villages, we keep being asked why those debts were never written-off. The Cabinet Secretary has not explained the circumstances under which those debts were not written-off.

Two, on 14<sup>th</sup> of this month, this House sat and passed another resolution that those debts were to be written-off. We want to be given an assurance by the Cabinet Secretary that this time round all those debts are going to be written-off and farmers and workers are paid. Three, the Cabinet Secretary has not given a clear-cut response that the current balance sheet of Nzoia Sugar Company after writing-off those debts will have a clear balance sheet.

We want to have a clear balance sheet so that the sugar company can begin to operate to profitability. The difficulty we have is that out of a small loan that was given of Kshs9.9 million, we have a debt of Ksh27 billion out of accrued interest, precisely arising from non-compliances with a resolution of this House. Can the Cabinet Secretary assure this House and the people of Bungoma that whatever resolutions given by this House will be honoured, implemented and executed to the letter?

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. There is a supplementary question No.8 from my records that tries to explain the statement I have made. I would want to take those two questions because they are complementing each other. Can I do that?

*(Loud consultations)*

**Hon. Speaker:** Cabinet Secretary, are you finished.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, I had raised another issue related to bailout as well as the current thinking in terms of rescuing the sugar sector. I was hoping to answer this when dealing with it because it combines the process.

**Hon. Speaker:** In the course of this afternoon? If you do not have full information, write to the Member through the Clerk.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): That is in order because we have a supplementary answer to the bailout section, which we will provide this afternoon.

**Hon. Speaker:** Okay. When we get there, you can deal with it. Next is Question151/2023 by the Member for Mathare, Hon. Anthony Oluoch.

*Question 151/2023*

DELAY IN DISBURSEMENT OF FUNDS TO POLITICAL PARTIES  
IN 2016/2017 AND 2022/2023

**Hon. Anthony Oluoch** (Mathare ODM): Hon. Speaker, could the Cabinet Secretary—

- (a) state the reasons why funds to political parties have not been paid out in accordance with the provisions of the Political Parties Act since its enactment, and in particular, the circumstances under which the Political Parties Fund meant to ensure parties operate and function as institutions of governance are yet to be fully disbursed four months to the end of the 2022/2023 financial year?
- (b) outline the steps that the Ministry has taken to implement the High Court decision (Judicial Review No.483 of 2016) that directed the Cabinet Secretary to among other things, ensure that the National Treasury makes budgetary proposals and estimates that reflect allocation of not less than 0.3% of national revenue to political parties, including the steps the ministry is taking to comply with provisions of the Political Parties Act?
- (c) indicate the arrears due and owing to each of the political parties for the financial years 2016/17 and 2022/23, the steps being taken to ensure that the arrears are cleared, and further, explain the measures the Ministry is taking to ensure that political parties are able to pay their staff in time and carry out their calendar of activities uninterrupted as required by the Constitution and the Political Parties Act?

**Hon. Speaker:** Minister.

**The Cabinet Secretary for National Treasury and Economic Planning:** (Prof. Njuguna Ndung'u): Hon. Speaker, in response to this Question in totality, the constraints are purely the Exchequer revenues. The allocation of Government revenue is guided by the Constitution, the Public Finance Management Act, 2012, the Contingencies Fund and the Commission on Revenue Allocation Act. The Constitution provides the structure and the priority in which revenue collected by the national Government shall be shared between the national and county governments as provided for under the Constitution. There are also non-discretionary expenditures that take the first charge in the budget. These include allocations towards debt service, pensions, Contingency Fund, salary requirements across government and provision to constitutional commissions and independent offices, including Parliament and the Judiciary. Once resources are shared according to the list that I have provided, we look at what is left and then it can be shared out. The constraints have been with us for a long time.

In respect of the second part of the Question, the prevailing fiscal environment such as considerable debt repayments, the current expenditure allocations and given the need to respond to emergencies have placed the National Treasury in very peculiar circumstances. With that in mind, I have provided a table on Page 11 that shows the allocations and the arrears which answer the third part of the Question. I have showed the arrears. For example, I have started with actual allocation in the 2016/2017 Financial Year and ended up with allocations of 2022/2023 Financial Year. I have shown the budgetary allocations and on the last row, I have shown the arrears. The arrears are Kshs30.056 billion.

On the last part of the Question, I have shown the amount that has been allocated to the Political Parties Fund. This is also provided in Table 12. It starts from 2018, where an amount of Kshs671 million was allocated to the fund all the way to 2023 where Kshs1.47 billion was allocated to the fund. The problem here is that even though money is allocated, the fiscal constraints are giving us a major problem. However, the National Treasury has been progressively enhancing the allocation to the Political Parties Fund to limit growth of these arrears. As I have shown on the table in Page 11, we want to make sure that we minimise this.

Additionally, the Political Parties Fund is administered by the Registrar of Political Parties as provided under Section 23 of the Political Parties Act, 2011. Further, Section 68 of the Public Finance Management Act (PFMA), 2012 gives responsibilities of an accounting officer, which include preparing estimates of expenditure and revenues of the entity in conformity with the strategic plan. Any further details on this can be adequately provided by the Registrar of Political Parties.

Let me summarise by stating that it is the fiscal constraints that have pushed us this far. We believe that the future will likely be bright so that we can clear these arrears.

Thank you.

**Hon. Speaker:** Hon. Antony Oluoch, are you satisfied with the explanation?

**Hon. Anthony Oluoch** (Mathare, ODM): No.

**Hon. Speaker:** Give Hon. Antony Oluoch the microphone. Ask a supplementary question if you have any.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker and the Cabinet Secretary. I wish to ask a supplementary question, specifically on the question of the court award which we adverted to the Judicial Review No.483 of 2016. To my mind and the printed copies that they have shared, the Cabinet Secretary has not answered what steps they are taking in response to meet the court award that was issued which is still in arrears even if he takes into account the fiscal constraints that are there currently.

In addition to that, Article 201 of the Constitution states that tax burden and benefits are supposed to be shared equally. Even if he acknowledges that there are challenges with the Exchequer, after taking out what has been prioritised, can he demonstrate that even when the

Exchequer falls short the constitutional commissions and all the other organs including Parliament are denied allocations to the extent of the Exchequer short fall?

Lastly, employees of political parties are required to pay statutory deductions like the National Health Insurance Fund (NHIF), National Social Security Fund (NSSF) and the Housing Levy. How is the Ministry taking into account the penalties that will accrue as a result of these defaults? What measures will be put in place to cushion political parties which are institutions of governance *in pari materia* with all other institutions so that they are equally safeguarded even as we talk of Exchequer shortfalls?

**Hon. Speaker:** Minister.

**The Cabinet Secretary for National Treasury and Economic Planning:** (Prof. Njuguna Ndung'u, CBS): Thank you, Hon. Speaker for that question. I believe we will abide by the directions provided by this House. It is this House that determines the allocation of resources and allows us to disburse them on the basis of availability. It is also this House that gives us direction and we will continue to follow them. However, the scarcity of resources permits us to show that we can look for flexibility when it is available. Sometimes, we find ourselves negotiating for the penalties that the Member has talked about just because we are facing serious constraints on Exchequer requests given the Exchequer revenues that are available. In fact, we believe that the future will be bright and we will resolve some of the historical legacy issues on time.

Thank you.

**Hon. Speaker:** Hon. Members, Questions 153 and 216 are related. I will invite Hon. Machua Waithaka, Member for Kiambu and Hon. Kamket should get ready after him. Minister, you will answer the Questions together.

#### *Question 153/2023*

##### DECLINE IN US DOLLAR RESERVES AND VARIATIONS IN EXCHANGE RATES IN KENYA

**Hon. John Waithaka** (Kiambu, UDA): Hon. Speaker, could the Cabinet Secretary –

- (a) state the volume of United States Dollar (USD) reserve held by the Central Bank of Kenya and each of the commercial banks in the country and confirm whether the high volume of USD believably being hoarded by commercial banks accounts for the spiralling exchange rate that has hit an all-time high?
- (b) explain why the rate of exchange for purchasing the USD from forex bureaus and commercial banks is as high as Kshs141 and Kshs146 per unit respectively, yet the indicative exchange rate set by the Central Bank of Kenya is Kshs129.52 per unit, translating to a difference of almost Kshs15 per unit against the CBK rate?
- (c) explain what measures the Ministry has put in place to resolve the shortage in Dollar supply, lower the exchange rate, cushion importers from loss of money due to the high Dollar exchange rate and to avoid the proliferation of black money exchange markets?

**Hon. Speaker:** Thank you. Hon. William Kamket.

#### *Question 216/2023*

##### IMPACT OF DE-DOLLARISATION ON KENYA'S ECONOMY

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, could the Cabinet Secretary:

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- (a) explain the impact that de-dollarization by countries such as China, Brazil, Russia, India, Malaysia and Saudi Arabia may have on Kenya's Economy, in light of the fact that these countries are key markets and trade partners in Kenya's international trade?
- (b) clarify whether Kenya will follow the same trend of de-dollarization that has been adopted recently by various developing market economies?

Thank you.

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, as of 22<sup>nd</sup> September 2023, the usable foreign exchange reserves held by the Central Bank of Kenya (CBK) was US\$6.96 billion. This represents about 3.76 months of import cover. Commercial banks keep deposits in dollars and other currencies, in accordance with statutory ratios set by the CBK. Foreign currency deposits held by commercial banks have remained constant with trade growth currently standing at US\$1.15 billion as of June 2023 from about US\$921 billion as of December. These are customers' accounts and deposits. In a sense, it is not hoarding, but it is the customers' accounts that they are holding.

In response to the second part of the Question, the exchange rate details are released by the CBK. It is an indicative rate meant to help those exchanging currencies to gauge the value of the shilling at any given day. The CBK does not set the exchange rate. It is determined by the market. The CBK receives actual exchange rates transactions from commercial banks and forex bureaus every day and computes the mean rates from these numbers. The mean rate is quoted as the exchange rate of the day.

If you look at any newspaper in the morning, you will see a table that provides all these details. The mean rate that is quoted gives us an idea of the value of the currency. Individual forex bureaus and commercial banks set their own rates which are held to reasonable levels of variance and even margins due to competition in the market. Essentially, customers are free to move from one bank or forex bureau to the other. Typically, consumers looking to exchange smaller amounts and focusing on the nominate exchange rate available will find more favourable rates at forex bureaus, while those looking to exchange larger amounts through their foreign accounts will find better rates in commercial banks. That variability can be seen in the table.

Hon. Speaker, in response to the third Question, Kenya pursues a flexible exchange rate policy which allows the price of the Kenya Shilling to be determined by the market. As of March 2023, the CBK issued a forex code that is intended to promote a robust, fair, liquid, open and appropriately transparent market which in a diverse way sets the market rate. The market participants participating in that market will get their confidential bids. This is supported by a resilient infrastructure, including inter-bank trading infrastructure which we can confidently and effectively say it has transacted competitively in the market, since it was re-established. We believe that this is an area we are going to look into. We will show that as we improve the infrastructure and more trading is done at the inter-bank market, it will be competitive. What we see in the analysis even in the newspapers most of the time is the variability; the variance between trading partners. It is important to note that the key factors responsible for the depreciation of the currency include the adjustment process and global dollar shortage that ignited this shortage.

I will now go to Question 216/2023. Globally, countries are setting up alternative currencies for trade. The de-dollarisation debate which aims at reducing the dominance of the USA dollar is the force behind that. In actual fact, what will happen in the payment system because this is the effect of the payment system, countries will adopt a payment system that is currency-neutral. It means that they will not be de-dollarised but they will make sure that the

payment system is currency-neutral. The trend is attributed to the crisis in Ukraine and the sanctions in Russia that elevated inflation in USA, reduced the new returns on the dollars and created the global dollar shortage. The USA dollar accounts for about 59 per cent of the global foreign currency trading, which is different from what it was before. It was around 62 per cent, as shown in the pie chart figure summarising that.

We will continue showing that, especially in the African Continental Free Trade Area (AfCFTA). Countries in Africa are looking for payment system that is currency-neutral. That means that the trading will take the weight of the currency in question, but it will not affect the trading. That is where de-dollarisation is taking us. In effect, the fear of dominance of the USA dollar is leading us to payment systems that are currency-neutral which are equivalent to de-dollarisation. Countries like China and India are popularising their currencies to provide an alternative liquidity channel through which trading will take place. In the end, what we are going to see is a payment system globally that is currency-neutral.

Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you, Cabinet Secretary. Hon. Machua.

**Hon. John Waithaka** (Kiambu, UDA): Thank you, Hon. Speaker. I am happy with the two Questions that I had asked. However, on the third one, I thought of other measures. For example, we know that gold can be used as a hedge against inflation and declining of the value of the currency. I am wondering whether the Cabinet Secretary has thought about buying gold from our neighbours, Democratic Republic of the Congo (DRC), who have plenty of it. We can use it as an insurance policy.

There is another question that I would like to ask. Most of the money we get in dollars is from the diaspora. Most people there experience many problems when they transfer their money because of the high transfer cost and many hidden charges. What measures has the Government put in place to remove these challenges and ensure that the diaspora remittances remain high?

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Kamket.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I want to thank the Cabinet Secretary for that comprehensive answer, but I just want a small clarification. He has spoken about a payment system called the Pan African payment and settlement system. When will that system become effective? If the East African Community (EAC), which is the most cohesive integration unit we have in the region, cannot or has not been able to come up even with a single currency, how confident is he that the payment system he is talking about will be the panacea to de-dollarisation?

**Hon. Speaker:** Thank you. Hon. Raso

**Hon. Ali Raso** (Saku, UDA): Thank you, very much Hon. Speaker. I think the questioners have said they are happy with the answers from the Cabinet Secretary, but I am far from it. The Kenya Shilling is on a free fall. The dollar is the foreign exchange of trade in this country. For the Cabinet Secretary to say that we should let the market decide, I think it is very dangerous for this economy. For the dollar to be de-dollarised (a very interesting word), those countries can do that because their economies are very strong. These are the countries we trade with largely in importation. What is the National Treasury or the CBK doing so that the shilling is not on the freefall? What is it doing so that importers and exporters are going to get value for money and that the Government has not just folded its hands, but is doing something about it?

**Hon. Speaker:** Yes, Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Speaker, if you have listened carefully to the Cabinet Secretary, one of the things that has come out clearly is that a lot of theory is



killing our economy. He said that the interbank rate is working. I do not think there is any interbank rate that is working at the moment. People are buying the dollar at any rate they find anywhere in the market.

Secondly, the answer we got from the Cabinet Secretary is that let the will of God happen. We cannot do anything about it, let God decide for us as we watch as human beings.

Finally, the question I want to ask him is that the Government to Government petroleum procurement system was supposed to help bring down the dollar to a rate that is low. However, from the time we engaged in the G2G petroleum project the shilling has depreciated by 25 per cent leave alone strengthening. Yesterday, the Cabinet Secretary issued a long statement saying that if we did not do that, the shilling would have been worse. Can he share with us how worse it would have been? Would it have been at Ksh300, Ksh200 or Ksh400? Otherwise, if the Cabinet Secretary is saying he is helpless as we are, then let us agree together we watch as things fall apart and the centre is no longer holding. Equally, I have a supplementary question and I am coming back.

**Hon. Speaker:** Cabinet Secretary, you can answer those. Hold on, Cabinet Secretary. Let me take one last one from Hon. Ruku.

**Hon. Ruku GK** (Mbeere North, DP): Thank you.

**Hon. Speaker:** Give him the microphone.

**Hon. Ruku GK** (Mbeere North, DP): Thank you, Hon. Speaker for the opportunity. As my colleagues have said, as an economy, we are in a problem because of the dollar rate. It is true that we have commercial banks which have huge deposits of dollar they are not releasing to the market. It is the responsibility of the CBK to ensure there is proper regulation of money supply within the economy. Within April this year, the National Treasury issued an expression of interest for sovereign bond so that probably the economy can get more dollars within the economy and stabilise the issue of Kenya shilling versus the dollar.

The question which I have is: How is this getting structured? There is a way it can be structured to make it more efficient, sustainable and even the economy be in a position to reap more benefit from issuance of sovereign bond. Can the Cabinet Secretary explain to us whether looking into establishing a company which can purposely be for getting sovereign bond issued within the international markets and probably the same company can be in a position to enter into joint ventures with other companies in the international markets for the purposes of issuance of sovereign bonds?

**Hon. Speaker:** Cabinet Secretary, you can answer those.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. I have a list of six questions that have come up. Let me start with hedging. Using gold to hedge, I think this is a fantastic question. You do remember that the gold standard ended in 1981. It is because it is not a currency, it is a hedging instrument, but you still have to go to a point of sale and that is the problem because you may not determine which way the hedging would go. Unfortunately, the flexibility of currencies outside hedging instruments is becoming very important as it has been appreciated. I am familiar with and even two days ago I saw newspaper reports showing that Tanzanians were buying gold to hedge against currency depreciation. However, they will still face the issue of moving into a point of sale to convert it into a convertible currency.

The whole issue is that what you do with your portfolio choice is very important. What we can do here is to provide information on how you can deal with your portfolio choice in given circumstances.

The second point is about diaspora dollars in terms of flow. We do brief and we have recognised this for many years. That diaspora remittances are problematic because you are charged the cost of transfer and they are also fixed in terms of the exchange rate. In a sense, you lose double. That is why in the beginning of the decade of 2000, there were many pseudo

currencies or crypto currencies and they were to try and defeat the process. They were established just because of the frustrations of cross border payment system. In a sense, what we are saying is that we have to improve our cross-border payment system just along the lines I said about Pan Africa Payment or a payment system that is currency neutral for us to beat this problem especially from the diaspora.

I do agree that the payments system that is currency neutral is very important. I do understand there is a feeling that we should go into the single currency, but we were there looking at the Euro and obviously there are lessons to be learnt. Single currency is a political decision and I am here with you and that would be saying that this is where we need to go, but coordinating too many countries to take one single currency takes a bit of time. In fact, our advice is that we go into a payment system and then create a numeric that can be exchanged across those countries. I am sorry, this is not theory. It is practice. It is extremely very practical. Markets are segmented in our region. It depends which segment of the market you operate in. That is why when you go into a particular market, you get a different rate, but there is a unifying rate. Let me say that the most important thing is to accept that there have been policy mistakes and we are paying for them very hard. I would not go through it because some of it, I am already accused of being theoretical. It can be extremely theoretical. However, let me put it this way that the moment you change the relative price structure, whether it is coming from heavy investment in non-tradeable sector that is like infrastructure, road sector, housing sector and you are holding your currencies constant, what you are doing is to change the relative price structure and the value of the currencies. Therefore, it becomes misaligned. We are paying the price of misalignment that happened within five to seven years ago. That is what we are paying. In a separate moment, maybe I can explain that in a less technical way.

However, we are paying the price of those historical mistakes that happened over the last five to seven years. That is why, as soon as you allow the nominal exchange rate to move, it could not fluctuate between 20 cents on either way because there was a requirement. Then we restarted the inter-bank market and there was a steep depreciation that was also being pushed by the scarcity value of the dollar. The dollars were retreating. Therefore, we have a combination of forces that have hit us. You cannot disentangle some of those processes. I want to summarise and say that there was a policy mistake. By the time we were correcting the mistake, there was a scarcity value of the dollars. The global shortage of dollars hit us.

I believe the interbank market will work. The Central Bank of Kenya has provided appropriate forex codes of trading. Once we ride over the shocks hitting us, what we really need is to come to very reasonable or normal trading positions and then we will predict. The most important thing is that the CBK provides information of how currency is trading every morning. In fact, even when you go to Google, you still find that you can get information every minute. That is for purposes of coordinating information search. It is important. We would be happy if the market was working properly.

I am very happy about the question of G2G. I had to come up with a statement to show where we are. I appreciate that we have safeguarded supply and protected ourselves against extreme volatility. It is going to be difficult for me to develop a counter-factual to show what would have happened. It is extremely difficult. At least, you can see the amount of dollars we removed from spot trading. That is a good example. I saw the newspapers report how much have been paid and how much is being stored by banks holding the Letters of Credit (LCs). Just imagine. Those amounts of dollars would have been procured in spot trading. We have prevented ourselves from that kind of expectation.

Let me come to the question of free fall. It is not a free fall. It is a process of adjustment from previous mistakes. To accept or own mistakes when they happen. Let us own them and leave down that bad history so that we forestall future mistakes. At the same time, if you want to see a good example, look at the indicator of current account deficit in those years. You will

find that it was running high. It means we were taking foreign savings. We were consuming what we did not have. In a sense, something has to give way. What gives in or gives away is the price.

Every time foreign exchange depreciates or even appreciates, it changes the relative price structure of any economy. That is where we are. I am happy about money supply and even the connection being made. I think the most important thing we are doing is relate that to sovereign bonds. However, sovereign bonds are debts. Essentially, we are trying to see what we can solve for our development needs. More importantly, what we really need to know is that it cannot build our foreign exchange reserves because it is a debt to pay in future. We can rely on that in the short-term. The solution to all these problems is to look at our trading patterns—the balance of payment. Current account deficit is the one that measures the net import minus exports and shows that we are consuming more from foreign borrowers. That is the problem.

Thank you very much, Hon. Speaker.

**Hon. TJ Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Kajwang', what is your point of order?

**Hon. TJ Kajwang'** (Ruaraka, ODM): Hon. Speaker, I have heard the Cabinet Secretary discuss with a lot of professionalism. I think it is merited that many of the issues he is advancing have historical issues over the last five to seven years. However, I am wondering if he could be misleading the House. This is because, if I remember well, he served as the Governor of CBK within the years he is talking about. In other words, he was part of the team that made the policy that he is talking about. Would he come clear to us and the country to exculpate himself from blame that he is not part of those who made the policy he is talking about?

**Hon. Speaker:** Cabinet Secretary, are you part of the problem?

*(Laughter)*

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u, CBS): Hon. Speaker, I am not part of the problem. I am trained well. I was part of the solution for many years. I left CBK on 3<sup>rd</sup> March 2015. This is close to 10 years now. I clearly showed how we managed the exchange rate during that period, including with statistics. There are times we were hit by shocks. We recovered. I was giving a clear example of what has happened during five to seven years ago, which is the period I was away.

Thank you very much.

**Hon. Speaker:** Next is Question 217/2023 by Hon. Adan Daudi. Yes, Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Speaker, I seek your indulgence on a matter that is before the House.

**Hon. Speaker:** Which one?

**Hon. Junet Mohamed** (Suna East, ODM): It is the recruitment of KRA revenue service assistants raised by Hon. Mugo, the Member for Mathioya. That matter is very important to the nation.

**Hon. Speaker:** Hold your horses. You have talked to me. First, let me finish the Questions that I have called out. Cabinet Secretary, there are many Members creeping, wanting to revisit the Question on KRA recruitment. I am not inviting any Member to that matter. I am going to Question 217/2023. Hon. Adan Daudi, I will come back to that. We have burst the one-hour allocation. I will combine the Question by Hon. Adan Daudi, Question 217/2023, and that by Hon. Abdi Shurie, Question 295/2023. They are related. I want quick short answers.

Hon. Daudi, proceed.

**Hon. Aden Mohammed** (Wajir East, JP): Thank you, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Wamboka, what is the problem?

**Hon. Wanami Wamboka** (Bumula, DAP-K): I seek your guidance, Hon. Speaker. Maybe, the Cabinet Secretary should be short to the point. He is taking too long just to say nothing.

**Hon. Speaker:** I have just told him to be precise.

*(Laughter)*

Hon. Daudi, ask your Question.

*Question 217/2023*

NON-DISCLOSURE OF MERCHANT FEES AND PENALTIES  
ON CREDIT/DEBIT CARDS

**Hon. Aden Mohammed** (Wajir East, JP): Hon. Speaker, could the Cabinet Secretary:

- (a) explain why card schemes, in particular Visa, are charging merchant fees and penalties that are not publicly published in the course of their business operations?
- (b) provide evidence of regulatory approvals on the undisclosed Visa and other card merchants calculations of their charges and penalties on card holders that earn millions of US Dollars to card issuance companies and whether the same is declared to the Kenya Revenue Authority as a revenue earner to the economy?
- (c) clarify whether these charges are regulated by the CBK in line with prudential guidelines for institutions licensed under the Banking Act and whether these cards are in breach of any relevant provisions of the guidelines?

Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you. Hon. Abdi Shurie

*Question 295/2023*

REFUSAL OF CASH PAYMENT BY CERTAIN BUSINESS ESTABLISHMENTS

**Hon. Abdi Shurie** (Balambala, JP): Hon. Speaker, could the Cabinet Secretary—

- (a) clarify whether it is appropriate for businesses to refuse cash payments, which is still recognised as a legal tender?
- (b) state the measures in place to accommodate citizens who do not have access to digital payment systems such as M-Pesa, online payment platforms or credit/debit cards such as Visa or MasterCard?

I thank you, Hon. Speaker.

**Hon. Speaker:** Cabinet Secretary, those are very clear Questions. Can you give quick short answers?

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, on Question 217/2023, my response is that the CBK does not regulate international card schemes domestically, from a payment's perspective. This is because parties involved in such scheme arrangements enter into exclusive bilateral agreements and are bound by card-scheme rules, and terms and conditions that invariably define the nature and scope of contractual engagements.

On Question 295/2023, cash is a form of payment amongst other payment instruments that are recognised by law. The Central Bank of Kenya recognises the recent developments in terms of electronic payment system, especially at the retail level, but does not deter any form

of payments legally. At the end of the day, those who use cash will recognise the cost of paying in cash because you have to travel to the point of sale.

Cash remains the most frequently used means of payment within different points of sale. The most important thing is that the CBK has not declared which means of payment is feasible. Everybody is free to use any payment mode.

**Hon. Speaker:** Cabinet Secretary, the question is very simple. Is it appropriate for businesses to refuse cash payments? That is what he is asking.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. It is not appropriate to refuse cash payments. It is legal and binding. That is what I wanted to say.

**Hon. Speaker:** Yes, Hon. Dawood.

**Hon. Rahim Dawood** (North Imenti, Independent): Hon. Speaker, I am not satisfied with the answer given by the Cabinet Secretary. I am surprised that the Cabinet Secretary would say they do not regulate merchants who use cards like this and Mastercard. Why then do we regulate banks? Why do we regulate digital payments like M-Pesa? If this country will not be in a position to regulate Visa, how are we able to go into contractual agreements with any of the merchants that we deal with? What we are asking is: If there are charges that are hidden and are charged to Kenyans, what recourse do they have other than going to court, and why is the CBK not regulating such card issuing merchants?

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, the CBK approves products for any commercial banks that present different types of products, including payments products. However, there are some payments that are encrypted and that means you abide by the conditions. It approves conditions of service, but does not regulate the day to day transactions in those products. It is the same thing with electronic payments system; it approves the product and banks that are going to hold such products, but does not enter into contractual arrangements between two parties. That is the point I was making.

**Hon. Speaker:** Question 294/2023 by Hon. Walter Owino, Member of Parliament for Awendo.

### *Question 294/2023*

#### PROPOSED PRIVATISATION OF SOUTH NYANZA SUGAR COMPANY

**Hon. Walter Owino** (Awendo, ODM): Hon. Speaker, could the Cabinet Secretary:

- (a) provide the status of South Nyanza Sugar Company (SONY)'s request for financial assistance in the form of a bailout from the Government?
- (b) expound on the details of the proposed commercialisation/lease plan including the management of SONY's nucleus land, explain how the issue of ownership will be addressed, state the measures in place to protect the current employees from losing their livelihoods, and clarify on the guidelines in place to ensure a transparent and beneficial privatisation process for the company, particularly for the farmers who should benefit in both the short and long term?
- (c) provide the status of implementation of recommendations of the Task Force Report into the Crisis in the Kenyan Sugar Industry appointed by the Minister for Agriculture on 27<sup>th</sup> March 2003 as well as the Report on a Petition on inquiry into Crisis Facing the Sugar Industry in the Country by the Committee of the National Assembly as adopted on 20<sup>th</sup> June 2019, with regard to the privatisation of sugar companies?

Thank you, Hon. Speaker.

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. I have provided very elaborate tables and answers from Page 20 to this Question. Between the period 2019 and 2023, the company received a bailout from the Government through the Agricultural Food Authority (AFA) aimed at addressing farmers' arrears and factory maintenance as detailed in Table I on Page 20. I have Table I (a) and Table II (b). Table 1 (a) talks about disbursement in batches. Table II (b) provides dates when this happened. I have the bailout factory maintenance presented in Table III. I would prefer that if there are any specific questions after this, I will follow up because I have provided these tables to show the details.

The supplementary question on the plan to privatise state-owned sugar mills goes way back in 2015. The Privatisation Commission approved the sale of Government stakes in the five sugar companies, that is: South Nyanza, Nzoia, Chemelil, Muhoroni and Miwani. The current status is: Following the Cabinet meeting held in Sagana State Lodge on 8<sup>th</sup> August 2023, the President and his Cabinet vacated the earlier decision to privatise the five sugar mills. I wanted to make sure I state that because this House has debated the recent arrangement and they are familiar and happy with the process.

Finally, implementation of the Taskforce Report, 2019 is provided on Page 23. I have provided some details. We are saying that it is on course and spearheaded by the State Department for Crops at the Ministry of Agriculture. It is important to note that the progress has been slow because of the resistance from the stakeholders which is necessitated by the abandonment of the privatisation model in favour of the recent model. The National Treasury has continued to support the Ministry as reflected by the bailouts that have been shown on the farmers' arrears and factory maintenance. I want to refer to a meeting that was held in the Lake Region and the conference held in Kakamega on 8<sup>th</sup> and 9<sup>th</sup> of September, 2023. The stakeholders made recommendations on the following areas among others as noted in the Taskforce Report, 2019, validation of the taskforce report, establishment of a sugar board, sugar board to handle levies and not commodity funds, regional clusters, reinstatement of the Sugar Act, need for sugar regulations and waiving of debts. This is the report that is being followed up by the current stage of recent arrangements.

**Hon. Speaker:** Hon. Walter Owino.

**Hon. Walter Owino** (Awendo, ODM): Hon. Speaker, I am not very satisfied with the response, more so on the issue of payment of arrears to farmers considering that these arrears are dated back to 2019 when canes were supplied to some of those factories. I want the Cabinet Secretary to tell us when these farmers should be expecting to be paid their arrears. Should they wait for the transaction of leasing these sugar factories to end so that they are paid or the National Treasury is going to commit into paying them their arrears before the transaction starts?

Again, I would want to know...

**Hon. Speaker:** One at a time.

**Hon. Walter Owino** (Awendo, ODM): Okay. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Donya.

**Hon. Dorice Donya** (Kisii County, WDM): Thank you, Hon. Speaker. When the Cabinet Secretary is giving answers, it is like all Members are saying that they are not satisfied.

**Hon. Speaker:** Can you ask your question?

**Hon. Dorice Donya** (Kisii County, WDM): Even when we ask questions, the answers given are not clear to us.

**Hon. Speaker:** Yield the Floor. Hon. Caroli Omondi.

**Hon. Caroli Omondi** (Suba South, ODM): Thank you very much, Hon. Speaker. Could the Cabinet Secretary update the House on what steps the National Treasury has taken, being the custodian of all Government assets, in respect of recovery and preservation of the Miwani 10,000-acre land in view of the Court of Appeal decision when it was the last court of resort that that land is public land?

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you very much, Hon. Speaker. Let me say that in terms of arrears to farmers, I may not provide answers to that because I am not aware of the magnitude and how long it can take to get those funds. So, in essence, it is a question that can be followed up.

The second thing is that custody of national assets is the responsibility of the National Treasury. That is why the Government introduced the leasing model that is going to preserve the assets of these sugar factories. It means that it is the injection of new technologies and even capital, but...

**Hon. Speaker:** Cabinet Secretary, the question very simple. The Court of Appeal said that Miwani land belongs to the public, to which you are the custodian. Have you taken custody of that land? That is the question Hon. Caroli has asked. So, no theories.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. I have to follow it up with specific actions that have been taken. But I just wanted to mention that the National Treasury is the custodian of national assets. That will remain the same and I will take a position in terms of the legal precedents.

**Hon. Speaker:** Are you in custody of the 10,000-acre Miwani public land declared so by the Court of Appeal? If you do not have a ready answer, we can give you time.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, I do not have a ready answer to that question, but I just wanted to answer in a general way on what is specific to the National Treasury.

**Hon. Speaker:** To be fair to you, it was not a question framed earlier, but I direct you to write to Hon. Caroli Omondi and give him the answer.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, I will do that.

**Hon. Speaker:** We now go to Question 296/2023 by Hon. Gabriel Kagombe. I thought I saw Hon. Gabriel Kagombe in the House? Question dropped.

#### *Question 296/2023*

#### DELAYED DISBURSEMENT OF FUNDS TO NYS

*(Question dropped)*

**Hon. Speaker:** The last Question is by Nominated Member, Hon. Dorothy Ikiara. Cabinet Secretary, once you finish that, I will give minutes to Members who are agitated about the Kenya Revenue Authority issue.

#### *Question 356/2023*

#### DELAYED PAYMENT OF PENSIONS TO RETIRED TEACHERS

**Hon. Dorothy Muthoni** (Nominated, UDA): Hon. Speaker, could the Cabinet Secretary—

- (a) explain the reasons for delayed payment of pension due to retired teachers who languish in abject poverty years later after spending all they had following up on their pensions?
- (b) outline measures the Government is putting in place to ensure timely, efficient and effective payment of pension to retired teachers?

**Hon. Speaker:** Thank you, Hon. Dorothy. Cabinet Secretary, have you found your response?

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, I am getting my response. It is a long one.

**Hon. Speaker:** It is the last Question on the list. I encourage you not to go the long response route because the questions are very straight forward.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, let me say that this matter is a long one and it is presented in a very detailed way in terms of what has happened in the court cases up to the Senate. What has happened is that, in 2011 and as late as 2021, the Government decided to start paying the teachers. At present, over 21,000 teachers have been paid and the remaining ones are still in the pipeline to be paid. We do recognise that this is a matter that has been protracted and has been in court for many years. What happened is that payments were started. I have a detailed answer that shows even how the court cases have been resolved and payments have started. Slightly over 11,000 teachers are still remaining to be paid. The process is in the pipeline for them to be paid.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Dorothy.

**Hon. Dorothy Muthoni** (Nominated, UDA): Thank you, Hon. Speaker. I am not satisfied with the response because the Cabinet Secretary is answering about teachers who retired and had been awarded a salary increment in 1997. This is 27 years down the line and he is talking about a balance of 11,000 teachers who have not yet received their benefits. It is very sad to note that majority of these teachers have died and others continue to languish in poverty waiting for this payment. It is very sad when the Cabinet Secretary comes to the Floor of this House to say that there are 11,000 teachers remaining to be paid. He is not giving us the definite time when these 11,000 teachers will be paid. If the workers of this country diligently work for the Government for as long as it takes and then die without getting what is due to them, then this is something that I do not have any language to describe, especially on the suffering of these teachers. Let the Cabinet Secretary make a commitment to this House today on when these teachers are going to receive this payment.

*(Applause)*

Additionally, we do not even know who has been paid. Let him also provide a list of all teachers who have been paid since then because this money might be going to ghost people.

Hon. Speaker, I submit.

**Hon. Speaker:** Cabinet Secretary. Those are the emotions of a former teacher.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. Those emotions of a former teacher are very well understood. I am 10 months into this job and I stand here very sympathetic to that position. I have heard even worse stories from the Senate committees. Let me give you the exact figures that I have here just to show that this process is towards culmination. The National Treasury has since received a total of 23,467 revised claims. Revised means that they have been updated. This is because we wanted to make sure that from 1997, they have not lost any income from the Teachers Service Commission. Out of the 23,467 revised claims, 22,017 have been

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processed and paid. The total payments amount to Ksh16.084 trillion. The remaining 1,470 revised claims are in the pipeline of payment. The list of the 22,017 claims has been shared in a soft copy on the Parliament website so that you can see what has happened. Let me say that there is a serious effort to make sure that this happens. But it is also dependent on resource availability. We are solving a legacy issue and I do believe the emotive part of it. We will do our best to make sure that it is done.

Thank you, Hon. Speaker.

**Hon. Omboko Milemba** (Emuhaya, ANC): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. *Mwalimu* Omboko

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Speaker, something has come out. I do not know if the Cabinet Secretary is really right to say that the payments to the teachers is Ksh16 trillion. It sounds like there is a confusion. I cannot believe it can be trillions.

Number two, he is not speaking about the current teachers who have also not got their pensions, leave alone the 1997 ones, despite the fact that pension is a first charge on the Consolidated Fund Account (CFA). Can you tell us why pensions to teachers are not being paid?

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you very much, Hon. Speaker. Let me correct the figure that I gave. The figure is Ksh16.085 billion, not trillion. The full stop was not clear; it appeared like a comma.

I agree with the urgency of the matter. We have had these issues even at the county level and at current level in terms of pension remittances.

We are resorting to the Exchequer to draw down on this. Otherwise, they are supposed to be statutory deductions and we are reformulating our payment system so that those statutory deductions are automatic.

We have a similar current problem, not even legacy or historical problem,. It is a problem I am trying to rectify. We are now resorting to the Exchequer because those deductions were not provided for. In a sense, we try to work out round the clock on the basis of available resources and how much we can work with the documentation coming from Teachers Service Commission to finalise this.

**Hon. Speaker:** Cabinet Secretary, pension is a contributory fund. What you probably need to do is to tax the employee at source and match what you have taxed and then it goes into a special fund. The emotional disposition by Hon. Ikiara is justified, but the answer does not match that emotion. What I will advise you is, if you can prepare a comprehensive report on the delayed pension to teachers, then when it is ready, send it to the Leader of the Majority Party. I will give him an opportunity in two weeks to present it to the House.

Those of you who have agitations from your constituents who are teachers and suffering in the same manner, you can ride on Hon. Dorothy's Question so that a comprehensive answer can come here in two weeks' time.

Hon. Kagombe has reappeared and said he had stepped out to ease himself. I had dropped your Question, but I will give you two minutes to prosecute it. Go ahead.

**Hon. GG Kagombe** (Gatundu South, UDA): Thank you Hon. Speaker. The Leader of the Majority Party was trying to make sure that I do not ask this question, but then I will still present it.

*Question 296/2023*

DELAYED DISBURSEMENT OF FUNDS TO NYS

**Hon. GG Kagombe** (Gatundu South, UDA): Hon. Speaker, could the Cabinet Secretary—

- (a) explain why the National Youth Service (NYS) is yet to receive the allocated Ksh2 billion in the just-concluded Financial Year 2022/2023?
- (b) state the timeframe for the release of the said amount to NYS to enable the Service to clear its pending bills?
- (c) indicate when the remaining balance will be allocated to NYS to fully settle the pending bills?

**Hon Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Hon. Speaker, thank you very much. We have struggled with this matter. It is the whole issue of resources. So far, out of the Ksh5.4 billion, only Ksh2 billion has been paid, but everything is waiting for reimbursement. It is a scarcity of resources and this is a matter that has been with us for some years.

In a sense, it is not refusal to pay, it is the scarcity of resources. We have found ourselves in the last 10 months or so, having very serious constraints because of maturity of debts and that is why we have scarcity of resources. Thank you.

**Hon. Speaker:** Thank you. Hon Kagombe, are you satisfied?

**Hon. GG Kagombe** (Gatundu South, UDA): Hon. Speaker, I am not satisfied.

**Hon. Speaker:** Ask him a supplementary question.

**Hon. GG Kagombe** (Gatundu South, UDA): Under the Public Finance Management (PFM) Act, pending bills form the first charge in the subsequent year. These bills have been there and there are finances enough to do other things and to pay current bills, but not to pay the pending bills. This thing of pending bills is actually not pending bills. These are people's money that has been held. This is Government using people's resources. This is Government literally stealing from the people, because they have accepted supplies from private Kenyans who have gone to banks, taken loans and you are taking this money and telling them that we have scarcity of resources. Money is a scarce resource. There is no one time that money is going to be ample to do everything. But if you incurred an expenditure, please, pay up. Do not pay for new expenses and you have not settled the old ones. Hon. Speaker, please, we need to get a proper response from the Cabinet Secretary other than just say there is scarcity of resources. That cannot be an excuse.

**Hon. Speaker:** Cabinet Secretary, give a proper response.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you very much. I really get hang of it.

**Hon. Speaker:** Hon. Kagombe probably represents traders.

*(Laughter)*

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): For over 20 years, we have had too many committees on pending bills and we have seen the outcomes always. We are very sympathetic about that. Right now, we are in the process of forming another committee to put a stop to these pending bills by doing a final evaluation. For those that have been audited and found to be payable, we are in the process of payment.

In a sense, this is a historical issue. It did not start yesterday. We are sympathetic of this and I do believe they are people's incomes and they have lost their assets because of that. I will provide a full report even when we have covered the current state of payable bills. In this report, I focused only on those of NYS and I have gone into several stages in terms of showing the

details. What I cannot perhaps indicate is the actual payment time, but I will follow up with details in terms of payment period.

We have done a lot of analysis in that and we have covered the timeframe and even the kind of resources that are left to be paid out. It is something that I am going to follow up. Thank you very much.

**Hon. Speaker:** Hon. Dawood.

**Hon. Rahim Dawood** (North Imenti, Independent): Thank you, Hon. Speaker. Did I hear the Cabinet Secretary say he is going to form another committee to check the pending bills and for the last 20 years, they have been doing it and he will do another one and then another one?

We will not come to an end of it. People will not be paid. I think that is what he said. What happened to the last committee?

**Hon. Speaker:** Member for Manyatta.

**Hon. Gitonga Mukunji** (Manyatta, UDA): Thank you, Hon. Speaker. I feel like the Cabinet Secretary is not taking this issue of pending bills seriously as he should. I expected with the Question of Hon. Kagombe, the Cabinet Secretary will give us a clear strategy on how to deal with the issue of pending bills. However, the answer was very unsatisfactory and I believe we deserve a better explanation on how Treasury wants to deal with the issue of pending bills that has made Kenyans go bankrupt, others commit suicide and others lose their whole livelihood.

**Hon. Speaker:** Cabinet Secretary.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you very much for that question. The certainty of what is purely pending bills is very important. The last time we heard of it was during President Kibaki's regime. Out of the pending bills that were claimed to be pending bills, it was a small percentage that was certified and verified.

This House has created rules and regulations in terms of what can be paid as pending bills and what is the process of verification. We have to follow that process and be adherent to the law, but I am also very sympathetic that we should not have any pending bills.

**Hon. Speaker:** Cabinet Secretary. The Leader of the Majority Party who is a Certified Public Accountant (CPA) might perhaps tell you that under the PFM Act, it is a criminal offense for anybody to procure goods or services without an attendant budget.

**Hon. Members:** Yes

**Hon. Speaker:** As a Cabinet Secretary, you should give strict directions to persons manning public institutions that they should not and cannot procure goods and services from Kenyans without an attendant budget. Therefore, if they did that, as you deal with the historical baggage, at least, clean the now and the future so that we do not flout the law.

**The Cabinet Secretary for National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. I am well-guided. That is the position we have taken so far. We are trying to solve the legacy historical issues and the bad history that we have to contend with.

**Hon. Speaker:** Cabinet Secretary, before I release you, you circulated a list from the Kenya Revenue Authority that has caused severe agitation. I will give an opportunity to two or three Members to ask questions about it. We should be done in five minutes. I will start with Hon. Junet. I will only give an opportunity to three Members, so, do not raise your hands. I know who I am giving an opportunity to.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Speaker, the document that the Cabinet Secretary for National Treasury and Economic Planning presented today on the KRA recruitment is a classic example of what is called the animal farm. In the animal farm, all animals are equal, but some are more equal than others. It is really shocking. I do not think that

the Cabinet Secretary intended to table this document in the House today. If he did, then he came to commit a serious criminal offence.

Thika Town Constituency got up to 50 recruits while other constituencies only got one recruit, like yours truly.

*(Loud consultations)*

Suna East Constituency only has one recruit. Can you imagine that Kwale County, which has four constituencies, only has four recruits? If that is not absurd, then I do not know what that word means.

**Hon. Speaker:** Ask the Cabinet Secretary your question. You are making a statement.

**Hon. Junet Mohamed** (Suna East, ODM): Cabinet Secretary, what was the rationale used? In his initial answer, he said that he used the 2019 Census, but this must be a census that was conducted by the National Treasury a month or two ago. We have the data of the 2019 Census. What rationale did he use to recruit these people? Does it mean that there are people who are good in paramilitary training while others collect taxes better than others? Is it your surname or the “shareholding principle” that was used to recruit? That must be cleared up.

**Hon. Speaker:** You have made your point. Cabinet Secretary, just note down the questions. I will only allow three or four Members to ask questions. Hon. Pukose.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Thank you, Hon. Speaker. I represent Endebess Constituency which had no recruits. It does not appear on the list. Cabinet Secretary, what plans do you have to compensate constituencies where nobody was recruited?

**Hon. Speaker:** Hon. Wamboka, just ask one question.

**Hon. Wanami Wamboka** (Bumula, DAP-K): Hon. Speaker, it is very shameful that having travelled a long journey to try and make every Kenyan...

**Hon. Speaker:** Do not make a speech. Ask a question.

**Hon. Wanami Wamboka** (Bumula, DAP-K): It is very shameful that having travelled a long journey to try and make every Kenyan feel comfortable, the Cabinet Secretary gave the recruits paramilitary training. Will they be fighting with the people that they will be collecting taxes from? Can we also get the ethnicities of these recruits so that in the spirit of the Constitution, we may speak to the regional balance of the country?

**Hon. Speaker:** Member for Chuka.

**Hon. Patrick Ntwiga** (Chuka/Igambang'ombe, UDA): Thank you, Hon. Speaker. I also looked at that list and I am still perplexed. The Cabinet Secretary is still in the House. The Government has not stopped employing people. I am sure KRA will conduct another recruitment exercise. This is not the last one. Will the Cabinet Secretary commit to consider constituencies that were short-changed in the recruitment exercise? I do not see anyone from my constituency.

On the issue of teachers who retired in 1997, as *Waziri* handles their issues, he should remember that there are people who had been promoted to join the Ministry of Education as officials yet they are not included in that retirement package. The package only talks about teachers and not ministry officials.

**Hon. Speaker:** Hon. Korere. That is the last Member who will ask a question. The Cabinet Secretary will then answer them. The concerns are all the same.

*(Loud consultations)*

**Hon. Sarah Korere** (Laikipia North, JP): Thank you, Hon. Speaker. I listened carefully to the Cabinet Secretary when he was making his presentation. He said that he used the 2019

Census in as far as regional distribution was concerned. Is he purporting that according to the 2019 Census, two communities constitute 70 per cent of this country?

The Constitution is very clear in as far as regional and affirmative action on marginalised groups, people living with disabilities and minorities is concerned. I want him to be very clear because I can challenge this list. If he tabled the list of recruits from Laikipia North Constituency, for example, I could swear that you will not find even one person from the Ndorobo and Yaaku communities, or one person living with disabilities.

Finally, he claims that 70 per cent of the KRA recruits went to Eldoret for paramilitary training. Are they training to be a tribal militia? Are they training to come and box, strangle, kick and kill traders and squeeze taxes out of them? What exactly are they doing?

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): On a point of order, Hon. Speaker.

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

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Speaker, I do not know whether the Kenya National Bureau of Statistics (KNBS) is under his Ministry. I heard what Hon. Sarah Korere said with reservations because I am certain that military bases do not train militia. They train our military whom we respect and honour.

*(Loud consultations)*

Hon. Speaker, protect me. Members know that if they have something to say, they need to seek the Speaker's attention and say it just like I did. Our military bases do not train militia. If the KNBS is under his Ministry, he could get information relating to what Hon. Sarah Korere and Hon. Junet said. With regard to the recruits only being from two communities, he could equally ascertain from the same census whether the said two communities constitute a higher population including those who have died and are in morgues, and those in schools and other institutions.

*(Loud consultations)*

**Hon. Speaker:** Let him finish.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): It would be unfair to profile communities based on their numbers. People who come from where Hon. Junet and Hon. Farah originally come from are endeavouring to increase their numbers. While I have one wife and only two children, some of them have up to four wives with a minimum of seven children.

*(Loud consultations)*

**Hon. Speaker:** Order! One thing at a time. Let the Cabinet Secretary respond to those questions. You will still have another opportunity to ask questions. Let him answer those five questions from Junet, Wamboka, Korere, Pukose and the Member for Chuka/Igambang'ombe. Cabinet Secretary, proceed,

**The Cabinet Secretary for the National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you, Hon. Speaker. The list I provided is the number of those who were interviewed and qualified; that is a consolidated list. What I do not have, I will follow-up. The information I have is on those who were interviewed and qualified. I also provided information of those who were disqualified. What I need to provide as a follow-up is information on those who applied and the distribution, then we will see the whole picture.

Not everyone who applied qualified. One thing we need to remember is that not everyone got the information and so we need to see the whole information. I provided information on the military training and justification. This is because the quality and nature of

the work requires physical fitness. Finally, I am going to look at the census data and the age cohort because they are two different components. I will follow-up to get more comprehensive information.

**Hon. Speaker:** Give the Floor to Hon. DK.

*(Loud consultations)*

Hold your horses, the Speaker knows what to do.

**Hon. David Kiplagat** (Soy, UDA): Thank you, Hon. Speaker. I want to say on the issue of revenue officers, I think we cannot punish the Cabinet Secretary. We do not know about the data because Kenyans needed to apply... Listen, I am entitled to my opinion.

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members!

**Hon. David Kiplagat** (Soy, UDA): I am entitled to my opinion. Can you find out how many people applied from your area before castigating the Cabinet Secretary? Thank you.

**Hon. Speaker:** Order, Hon. DK. Take your seat. This is Question Time and the Cabinet Secretary has not requested any support in his ability to answer questions. I gave you an opportunity believing you had a question to ask. Hon. Were, go ahead and ask a question.

**Hon. Charles Ong'ondo** (Kasipul, ODM): Thank you, Hon. Speaker. The Cabinet Secretary is not very clear on answers in as far as Kenya Revenue Authority issues are concerned. The advertisement was very clear that they were recruiting clerks. They were interviewed and paramilitary training came later. The question is: Are you aware that quite a number of Kenyans were knocked out in Eldoret and were subjected to pregnancy and HIV tests? Are you telling me, if you are pregnant or HIV positive, you are not supposed to work for KRA? How many did you turn back after successful interview in Nairobi?

**Hon. Speaker:** Hon. Makali Mulu.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you very much, Hon. Speaker. This matter of recruitment in this country is not new. I think it is not specific to the Cabinet Secretary for the National Treasury. This should be specific to all cabinet secretaries and principal secretaries.

As a House, we might need your indulgence because the National Cohesion and Equal Opportunity Committee is failing us. The matter we are discussing here should be a report of that committee, telling us the reasons those positions were not allocated in line with the population of each region because there should have been a proportionate way of allocating those positions. Otherwise, I think the simple answer we are not getting is that this is a Government of shares and those without shares should not expect to get these positions. Unfortunately, even those who are supposed to be having shares are not getting. Can we know whether there are some...

**Hon. Speaker:** Hon. Members, I am advised by the Clerk and I believe it is true that the matter is before the National Cohesion and Equal Opportunity Committee. If, indeed, it is then a report will come before this House and you will have an opportunity to debate and give direction as a House. Hon. Members, that being the case, I will end here and go to the next Order. Mr. Cabinet Secretary, you can feel the outrage in the House. Advise institutions under your watch to adhere to the law and act within it.

**Hon. (Dr) James Nyikal** (Seme, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** On the same matter or a different one relating to this Cabinet Secretary?

**Hon. (Dr) James Nyikal** (Seme, ODM): Yes.

**Hon. Speaker:** Okay.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Speaker, you have indicated that we are vacating this and moving to the next Order. That is where I seek your indulgence and guidance. After this, we are going to the Committee of the whole House on two Bills: The Digital Health Bill and the Social Health Insurance Bill. In the Social Health Insurance Bill, there is an issue that...

**Hon. Speaker:** Hold your horses Hon. Nyikal. Cabinet Secretary and your team, you are released.

**The Cabinet Secretary for the National Treasury and Economic Planning** (Prof. Njuguna Ndung'u): Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Nyikal, go on.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Speaker, on the Social Health Insurance Bill, we have an issue because the Committee amendments are different. At least, we have gone through some and they are different from what the Committee recommended. Therefore, in my view, this is a very serious matter and I seek your guidance in two ways. One, is it proper if a committee makes amendments and then they are changed on the Order Paper? Two, I seek your indulgence that we withdraw this particular Bill from the Committee of the whole House to give the Committee time to look through.

**Hon. Speaker:** Come again.

**Hon. (Dr) James Nyikal** (Seme, ODM): I seek your indulgence in two ways. One, is it in order that the Committee makes amendments and when they come on the Order Paper, they are different? Two, give this Committee time by withdrawing this particular item from the Order Paper so that they can go through all their amendments, be sure it is not just those we have noted to have problems, but have a look at all of them. Three, agree as a Committee that those are their amendments. I seek your guidance and indulgence on that.

**Hon. Speaker:** Dr Nyikal, you have actually jumped the gun. Firstly, we have not reached Order No.8 and you seem to be raising issues on it.

Secondly, when we reach Order No.8, in the Committee of the whole House, then the right process is to prosecute amendment by amendment. Whenever you find there is something amiss, you raise it at that time.

This matter came to Hon. Speaker's attention by way of a letter signed by a few Members of the Committee. I received it and directed the Leader of the Majority Party and the Chairman of the Committee to discuss the matter and prosecute it in the Committee of the whole House. I have also been told that the amendments that were not taken on board from the Committee have since been adopted by one Member. I was told that he would prosecute those amendments from the Committee.

That means all is not lost. As you go to the Committee of the whole House, diligently prosecute each amendment as it comes and see the best you can do to bring a good law in the legislative process. I received your letter and those who signed it. I have acted on it in the manner I have said.

**Hon. TJ Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. Kajwang'.

**Hon. TJ Kajwang'** (Ruaraka, ODM): Hon. Speaker, I will never go against your ruling because that is not possible from a ranking Member such as me.

Hon. Speaker, you have solved the problem in one way. Hon. Nyikal and I are requesting now not in terms of the Committee of the whole House, but if we can re-organise the Order Paper. Definitely Order No. 8(i) will come before the Committee of the whole House. However, it is unlikely that Order No.8(ii) will be prosecuted in the Committee of the whole House.

If it is possible, you can pronounce yourself on it. This matter can be taken back to Committee to reconcile and harmonise even tomorrow, so that it can come in the afternoon,

and we can consider it in the Committee of the whole House. Some of us have constitutional issues. There are a lot of constitutional issues here as to whether committees can disregard what they have agreed properly in a committee and bring before us an Order Paper which is different.

There is also a procedural issue on whether the Clerk can change what is in the Committee and print a different supplementary Order Paper which is totally in variance with the Committee's decision. These issues are fundamental, but we do not want to prosecute them now. We only ask that if it is possible, you can re-arrange the Order Paper and say that we deal with Order No.8(i). There are no problems there. We can tackle it tomorrow without all these issues that we have.

Hon. Speaker, I beg you to consider this proposal.

**Hon. Speaker:** Hon. Kajwang', as I discharge a quasi-judicial function here, nothing is before me to warrant me to do what you are asking.

Like I said, we have not reached that Order yet. You may have a legitimate point. However, that point can only be prosecuted in the Committee of the whole House which is the next Order. It will be highly unprocedural for Hon. Speaker sitting in plenary to direct matters in the Committee of the whole House to be stayed or stepped down. That can only be done there by whoever will be chairing it, on the understanding that there will be material sufficient to justify the request. Like I said, I got a letter on a matter that Dr Nyikal has very ably raised. I dealt with it in the manner that I said. I now invite all Members to be upstanding.

*(Hon. Speaker and Members stood in their places)*

*(Hon. Speaker consulted the Clerks-at-the-Table)*

Sorry, I have jumped the gun. Let us call the Order first. Take your seats. Call out the Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Speaker (Hon. Moses Wetang'ula) left the Chair]*

## IN THE COMMITTEE

*[The Chairlady (Hon. Gladys Boss) in the Chair]*

**Hon. TJ Kajwang'** (Ruaraka, ODM): Point of order, Hon. Chairlady.

**Hon. Chairlady:** Wait. Let me call the House to order and then you can raise your point of order because we have not even begun.

I now call the House to order. This is the Committee of the whole House to consider the Digital Health Bill (National Assembly Bill No.57 of 2023). We will also consider the Social Health Insurance Bill (National Assembly Bill No.58 of 2023). We shall start with the first one; the Digital Health Bill.

What is your point of order, Hon. TJ?

**Hon. TJ Kajwang'** (Ruaraka, ODM): Thank you, Hon. Chairlady. The point is very simple. We have just come from the plenary. We made interventions which Hon. Speaker in his wisdom made a ruling which is right that those issues can be canvassed in the Committee of the whole House.



These are the issues which we want to bring to your attention and seek your guidance on, before we begin. The point is simple. We request you to look at the Order Paper and re-order it just to make it convenient to some of us. Instead of waiting for Order No.8(i), some of us can do parliamentary assignments in this House elsewhere. It is unlikely that we may prosecute, finish or reach Order No.8(ii) because there are issues that we think should be raised. We want to raise them both constitutionally and procedurally. If Hon. Chairlady can be forthcoming and pronounce herself that we are unlikely to reach Order No.8(ii), then we can easily do our other parliamentary work as Order No.8(i) is being prosecuted. There is no problem with Order No.8(i), but there are some issues with Order No.8(ii)

I thank you.

**Hon. Chairlady:** I think you are speculating that we may not get to Order No.8(ii). Why not see how much progress we will make in the next 30 minutes with Order No.8(i)? We are starting with Order No.8(i).

*(Hon. TJ Kajwang' spoke off the record)*

That is what we always do in the House.

**Hon. TJ Kajwang' (Ruaraka, ODM):** We request you to re-order the Order Paper. You need to listen to us. If this is the case, because we have issues with...

**Hon. Chairlady:** Hon. TJ Kajwang', I have just ruled on that. We shall proceed with the Order Paper as set out. We shall start with the Digital Health Bill.

THE DIGITAL HEALTH BILL  
(National Assembly Bill No.57 of 2023)

**Hon. Ferdinand Wanyonyi (Kwanza, FORD-K):** On a point of order.

**Hon. Chairlady:** What is your point of order, Hon. Ferdinand?

**Hon. Ferdinand Wanyonyi (Kwanza, FORD-K):** Hon. Chairlady, let us be serious. I took so much time sitting in this chamber going through both Bills. It is only fair that Hon. T.J Kajwang' and the Member who gave him the information specify what clauses have been changed. We do not have to waste as much time as we did last night. We should get the specifics so that we can deal with them. We do not want to take too much time repeating the same.

**Hon. Chairlady:** Hon. Members, let us just begin with the Digital Health Bill as scheduled on the Order Paper.

*(Applause)*

In any case, both Bills have the same significance. Let us proceed.

**Hon. Junet Mohamed (Suna East, ODM):** On a point of order, Hon. Chairlady.

**Hon. Chairlady:** I am beginning to think that these are delaying tactics. What is your point of order, Hon. Junet? You have a minute.

**Hon. Junet Mohamed (Suna East, ODM):** Hon. Chairlady, both Bills are under one Order. Order No.8(i) and (ii). Why do we not address the Member's fears and then we can proceed together? Let him raise the issues he needs to and have them addressed, and then we move forward. That is an orderly way than saying one will come later on. They are all in one order and you cannot separate them. They are siamese twins.

**Hon. Chairlady:** Hon. Junet, I do not agree with you.

**Hon. Kimani Ichung'wah (Kikuyu, UDA):** On a point of order.

**Hon. Chairlady:** What is your point of order, Leader of the Majority Party? I hope you are not saying that we should reorder the Order Paper.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): No. Hon. Chairlady. I want to agree with you. The person who has raised those issues, Hon. TJ Kajwang', is not a Member of the Departmental Committee on Health from all our records.

The Chairperson of the Committee has signed the amendments on the Order Paper. Our Standing Orders are very clear that the chairperson of the committee is the one who signs off all reports and amendments appearing on the Order Paper on behalf of a committee.

Lastly, there are amendments under the Social Health Insurance Bill sponsored by Members, similar to those that have been referred to. It is only fair that we proceed and desist from the filibustering and wasting time. We should proceed as listed on the Order Paper. Whatever amendment Hon. TJ Kajwang' wants to bring, he can even file an amendment now. Those on the Order Paper might be similar or not.

Hon. Chairlady, I beg that we proceed.

*(Hon. TJ Kajwang' consulted loudly)*

**Hon. Chairlady:** Hon. TJ you are now out of order. You already made your case. I made a ruling that we shall continue with the Order Paper as it is from (i) to (ii). We will start with (i).

Hon. Junet, you have already made your point of order. Let us now begin.

**Hon. Junet Mohamed** (Suna East, ODM): On a point of order, Hon. Chairlady.

**Hon. Chairlady:** This is the last point of order.

**Hon. Junet Mohamed** (Suna East, ODM): My point of order is that I agree with the amendments. The chairperson of the committee can sign an amendment on behalf of the committee, but that does not mean that the amendments that the committee Members wish to carry are dropped by the chairperson. He does not have that executive authority. That is why it is called a committee.

If we are going to address the issues on (ii), then let us proceed to that. *Endelea na (i)*.

**Hon. Chairlady:** Let us proceed.

### Clause 3

**Hon. Chairlady:** Mover.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 3 of the Bill be amended in paragraph (h) by inserting the words "within and" immediately after the words "health facilities".

*(Question of the amendment proposed)*

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

*(Clause 3 as amended agreed to)*

### Clause 4

**Hon. Chairlady:** Hon. Anthony Oluoch, move your amendment. Is he in the House? That amendment is dropped.

*(Proposed amendment on Clause 4 by  
Hon. Anthony Oluoch dropped)*

*(Clauses 4 and 5 agreed to)*

*Clause 6*

**Hon. Chairlady:** Hon. Anthony Oluoch. He is not here.

*(Proposed amendment on Clause 6 by  
Hon. Anthony Oluoch dropped)*

*(Clause 6 agreed to)*

*Clause 7*

**Hon. Chairlady:** Hon. Chairperson.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 7 of the Bill be amended in sub-clause 2 by —

(a) deleting the term “Authority” appearing in paragraph (a) and substituting therefor the term “Agency”.

(b) by deleting the term “Cabinet Secretary” appearing in the proviso to substituting therefor the term “National Assembly”;

This is to tidy up the Bill because this is not an authority, but an agency.

*(Question of the amendment proposed)*

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

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

*(Clause 7 as amended agreed to)*

**Hon. Chairlady:** Sergeant-at-arms, can you bring us an extra microphone?

*Clause 8*

**Hon. Chairlady:** Chairperson.

**Hon. Robert Pukose** (Endebes, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 8 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words “competitively recruited and” appearing in paragraph (a);

(ii) deleting paragraph (f);

(iii) deleting paragraph (h) and substituting therefor the following new paragraph (h)—

“(h) three persons, not being Governors, nominated by the Council of County Governors with knowledge and experience in matters of digital health”;

This is just in (i) deleting the words “competitively recruited and” and appearing in paragraph (a) then deleting paragraph (a), (f) and substituting therefor the following new paragraph,

“the three persons not being governors nominated by the Council of County Governors with knowledge and experience in matters of Digital Health”

This is because governors’ health is more represented in the counties. Most of health is in the counties and, therefore, we want to have adequate representation by the counties.

*(Question of the amendment proposed)*

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

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

*(Clause 8 as amended agreed to)*

*(Clauses 9 and 10 agreed to)*

#### *Clause 11*

**Hon (Dr) Robert Pukose** (Endebes, UDA): Hon. Chairlady.

**Hon. Chairlady:** Hold on. Hon. Chairperson

**Hon (Dr) Robert Pukose** (Endebes, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 11 of the Bill be amended by—

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

“(1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Chief Executive Officer of the Agency”.

(b) inserting the words “in consultation with the Salaries and Remuneration Commission” immediately after the words “from time to time” in sub-clause (2);

This is in terms of recruitment of the Chief Executive Officer and we are asking that he be recruited in an open, transparent and competitive process. This is just making it cleaner and in consultations with the Salaries and Remuneration Commission immediately after the words “time to time” in Clause 11(2).

*(Question of the amendment proposed)*

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

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

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

*(Clause 11 as amended agreed to)*

*Clause 12*

**Hon (Dr) Robert Pukose** (Endebes, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 12 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the term “Authority” appearing in sub-clause (1) and substituting therefor the term “Agency”.

(ii) deleting the term “bachelor’s” in paragraph (a) and substituting therefor the term “master’s”;

(iii) inserting the following new paragraph immediately after paragraph (b);

(ba) has served in a management level for a period of at least five years;

(b) inserting the following new sub-clause immediately after sub-clause (2)—

(2A) The Chief Executive Officer shall be the accounting officer of the Agency.

In (i), we are just cleaning up. Instead of the authority, what we are creating is an agency. We are raising the qualifications to a Masters level.

*(Question of the amendment proposed)*

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

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

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

*(Clause 12 as amended agreed to)*

*Clause 13*

**Hon (Dr) Robert Pukose** (Endebes, UDA): Hon. Chairlady, I beg to move:

THAT, Clause 13 of the Bill be amended by inserting the following new subclauses immediately after sub-clause (1)—

(2) A person qualifies for appointment as the Corporation Secretary of the Agency if the person—

(a) holds a bachelor’s degree in law from a university recognized in Kenya;

(b) is an Advocate of the High Court of Kenya;

(c) has at least five years’ experience as a corporation secretary or a similar governance role;

(d) is a member in good standing of the Institute of Certified Secretaries of Kenya; and

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

(3) The Corporation Secretary shall be the Secretary to the Board and shall—

- (a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board;
- (b) keep in custody, the records of the deliberations, decisions, and resolutions of the Board;
- (c) transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation and other relevant action;
- (d) provide guidance to the Board on their duties and responsibilities on matters relating to governance; and
- (e) perform such other duties as the Board may direct.

This is to make provision for qualification and functions of a Corporation Secretary of the Digital Health Agency.

*(Question of the amendment proposed)*

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

*(Clause 13 as amended agreed to)*

#### Clause 14

**Hon. Chairlady:** Where is Hon. Antony Oluoch? Is he back? You have been missing, proceed.

*[The Chairlady (Hon. Gladys Boss) left the Chair]*

*[The Temporary Chairman (Hon. David Ochieng') took the Chair]*

**The Temporary Chairman** (Hon. David Ochieng'): Hon. Oluoch, you have a microphone, proceed.

**Hon. Antony Oluoch** (Mathare, ODM): Thank you. Hon Temporary Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended by deleting the words “in consultation with” appearing immediately after the word “determine” and substituting therefor the words “upon the advice of”

The reason is to make the wordings of this clause consistent with the provisions of the Constitution. The role of the Salaries and Remuneration Commission under Article 234 of the Constitution is to provide advice on remuneration so the word “advice” is to be used in substitution of the word “consultation” in order to make it consistent with the provisions of the Constitution.

*(Question of the amendment proposed)*

Chair of the Committee. Your comment on this.

**Hon (Dr) Robert Pukose** (Endebess, UDA): I want him to prosecute again.

**The Temporary Chairman** (Hon. David Ochieng'): Hon. Pukose, ask Hon. Melly to let you listen to Hon. Oluoch. Hon. Oluoch justify.

**Hon (Dr) Rober Pukose** (Endebess, UDA): I am trying to look for the amendment.

**Hon. Antony Oluoch** (Mathare, ODM): I can take it again.

**The Temporary Chairman** (Hon. David Ochieng'): Yes please.

**Hon. Antony Oluoch** (Mathare, ODM): Hon. Chair I did not notice there was a change of guard. Sorry. The purpose of this is to substitute the words “in consultations with” the wordings “upon the advice of the Salaries and Remuneration Commission.” The purpose of this is to make it consistent with the provisions of Article 23(4) of the Constitution which provides that the role of the Salaries and Remuneration Commission is to advise so that there is no confusion.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Chair.

**Hon (Dr) Robert Pukose** (Endebess, UDA): I think it is a good amendment.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(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 14 as amended agreed to)*

### *PART III*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Part III of the Bill be renumbered as Part IX of the Bill and be rearranged in accordance with the proper chronological sequence.  
This is just chronological sequencing.

*(Question of the amendment proposed)*

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

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

*(Part III as amended agreed to)*

### *Clause 15*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 15 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (b)—  
“(ba) such levy fees for services rendered by the Agency”;  
This is to provide for levies as a source of money for the agency.

*(Question of the amendment proposed)*

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

*(Clause 15 as amended agreed to)*

*(Clauses 16, 17, 18 and 19 agreed to)*

*Clause 20*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 20 of the Bill be amended—

(a) by inserting the words “with the approval of the board and the National Treasury” immediately after the words, “on behalf of the agency”;

This is to provide additional checks and balances on investments by the Digital Health Agency.

*(Question of the amendment proposed)*

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

*(Clause 20 as amended agreed to)*

*(Clauses 21 and 22 agreed to)*

*Clause 23*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 23 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)—

“(h) facilitate the tracking and tracing of health products and technologies in the country”.

This is for quality purposes to ensure that only licensed health products and technologies are used in the country.

*(Question of the amendment proposed)*

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

*(Clause 23 as amended agreed to)*

*(Clause 24 agreed to)*

*Clause 25*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 25 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) de-identified, pseudo-anonymised or anonymised individual-level health data”;

This is to make provision for sensitive personal level health data that has been stripped of personal identifiable information.

*(Question of the amendment proposed)*



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

*(Clause 25 as amended agreed to)*

*(Clauses 26, 27, 28, 29 and 30 agreed to)*

#### Clause 31

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 31 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after sub-clause (b)—

“(bb) it is reasonably necessary for a lawful purpose”;

This is for alignment with the provisions of the Data Protection Act No.24 of 2019.

*(Question of the amendment proposed)*

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

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, you have an amendment to this clause.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Temporary Chairman. I beg to move:

THAT, Clause 31 of the Bill be amended by deleting paragraph (c) of sub-clause 2 and inserting the following new paragraph—

“(c) it is required for historical, statistical and research purposes where the data is anonymised.”

The reason is that the amendment as proposed seeks to ensure the principle of confidentiality and integrity is upheld for alignment with the principles of data protection under the Data Protection Act No.24 of 2019. This is for purposes of alignment and consistency with the principles of data protection.

*(Question of the amendment proposed)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): We had said in the amendment we have already done that we are aligning it with the provisions of the Data Protection Act No.24 of 2019. That is what he is saying. We have already done that amendment.

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

*(Clause 31 as amended agreed to)*

*(Clauses 32, 33, 34, 35, 36, 37 and 38 agreed to)*

#### Clause 39

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 39 of the Bill be amended in sub-clause (1) by deleting the word “date” appearing immediately after the words “integrity of the” and substituting therefor the word “data”.

This is just to correct a typographical error in drafting.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. It is a typo from the word ‘date’ to the word ‘data’.

*(Question of the amendment proposed)*

*(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 39 as amended agreed to)*

#### Clause 40

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 40 of the Bill be amended by deleting the expression (1).  
This is also another typographical error that we are just correcting.

*(Question of the amendment proposed)*

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

*(Clause 40 as amended agreed to)*

#### Clause 41

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 41 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “aggregate data, medical equipment data or data related to health research,” and substituting therefor the words “health data”;
- (b) by deleting the words “sensitive personal” appearing in the marginal note and substituting therefor the word “health”;
- (c) in sub-clause (1)(g) by deleting the word “unintentionally”;
- (d) in sub-clause (2) by deleting the words “five hundred thousand” and substituting therefor the words “one million”.

In 41(a), we are basically saying the provision ought to cover all categories of health data because sharing data is a grave breach and should not be allowed. We are also enhancing the fines to make them more deterrent and commensurate to the offences of mishandling health data.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Makali.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you very much, Hon. Temporary Chair. I think this amendment is very important. In my view, sensitive or personal health data belonging to individuals is something that this House must support so that we align ourselves to the Data Protection Act. I support.

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

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

*(Clause 41 as amended agreed to)*

*(Clauses 42, 43, 44,45,46 and 47 agreed to)*

#### Clause 48

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 48 of the Bill be amended by deleting the term “the” appearing in sub-clause (1) and substituting therefor the term “the”.

Hon. Temporary Chairman, this is just to correct a minor error in drafting.

*(Question of the amendment proposed)*

*(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 48 as amended agreed to)*

#### Clause 49

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 49 of the Bill be amended in sub-clause (1)—

(a) by deleting the word “guardian” appearing in paragraph (g) and substituting therefor the words “parent or an appointed guardian”;

(b) by deleting the word “guardian” appearing in paragraph (h) and substituting therefor the words “of an appointed guardian or next friend of the patient”;

**The Temporary Chairman** (Hon. David Ochieng’): What about it?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): We are deleting the word “guardian” appearing in paragraph (g) and substituting therefor the words “parent or an appointed guardian”;

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(Question of the amendment proposed)*

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

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

*(Clause 49 as amended agreed to)*

*(Clause 50 agreed to)*

#### *Clause 51*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, you have an amendment to this.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 51.

**The Temporary Chairman** (Hon. David Ochieng’): Say what you intend to do.

**Hon. Anthony Oluoch** (Mathare, ODM):

I intend to amend it by deleting the clause and then I proceed to give the reasons. For purposes of good drafting and neatness, Parliament must never make laws in vain, or similar laws where laws already exist to regulate that subject matter. The E-waste management is already comprehensively regulated under the Sustainable Waste Management Act No.31 of 2022. This is not only repetitive, but also runs the risk that this Bill may clash with the other Bill once it becomes law. This is already regulated elsewhere in another law.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much.

*(Question of the amendment proposed)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I reject that amendment because medical waste needs regulation which can be done by the Cabinet Secretary. Just a minute, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): As you put your thoughts together, let us have the Leader of the Majority Party.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, the amendment by Hon. Anthony Oluoch seeks to delete the entire Clause 51 which is dealing with e-waste disposal. I want to understand why Hon. Oluoch who hails from a constituency that has a huge problem with waste disposal, even solid waste, would want to increase more waste in Mathare and other parts of Nairobi. If we do away with this clause, then it means we will not be able to deal with e-waste management.

I strongly oppose the deletion and propose that we maintain that clause as it is in its entirety. Hon. Anthony Oluoch is not a Member of the Committee which had deliberated on this issue and agreed that they maintain that clause as it is.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Temporary Chairman, during the plenary, this was one of the matters that was most spoken on by many Members. They were very clear that they would want this waste to be disposed of as proposed by the Chairman because it was also a sensitive material. I suggest that it be retained as it is.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Pukose. Hon. Oluoch do not worry. I am coming back to you.

**Hon. (Dr) Robert Pukose:** Hon. Temporary Chairman, I reject the proposal by Hon. Anthony Oluoch to delete Clause 51 in its entirety because management of e-waste is key in terms of health information system. There is no conflict with the Sustainable Health Management Act No.31 of 2022. This is properly prosecuted as it is in the Bill.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Chairman, just to strengthen the position of the Committee on this, there is an element of e-waste that we should look at. Some of these are electronic equipment that retain information and are sometimes removed from service when they are not completely old. If you leave them, people can still extract information from that. It is very important that we dispose it of in a way that protects that information.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch.

**Hon. Anthony Oluoch** (Mathare, ODM): I am trying to persuade the Leader of the Majority party that in principle, I am not opposed to management of e-waste. As a law maker and a drafter who contributes a lot to drafting and lawmaking in this House, for neatness, we could have consequential amendments where you take it to an already comprehensive law on e-waste management. It exists as a law of this House; the Sustainable Waste Management Act No.31 of 2022. That is my only problem; replacement by a consequential amendment in an Act that already exists. I am not opposed to waste management, but how do we deal with it?

**The Temporary Chairman** (Hon. David Ochieng’): I wonder if more law will cause constipation, but we will decide either way.

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

*(Clause 51 deleted)*

#### *Clause 52*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 52 of the Bill be amended—

(a) by deleting sub-clause (2) and inserting therefor the following new sub-clauses—

“(2) A data controller, who being a custodian of, and who transfers outside Kenya, biological specimens, health images, human tissues and organs of a Kenyan citizen shall ensure confidentiality of personal health information:

Provided that where such transfer is for purposes of health research or post-mortem, the Data controller shall—

(a) provide a report to the Director-General for Health stating the findings;

(b) not share the health information without notifying the Cabinet Secretary; and

(c) seek guidance from the Cabinet Secretary in the manner the health information shall be stored, processed and destroyed.”

(3) The Cabinet Secretary shall in consultation with the County Governments, and relevant lead agencies, develop guidelines on health tourism

This is basically to specify that the requirements in Clauses 52(2)(b), (c) and (d) only apply in the case of health research in the event of a post-mortem. We also need to develop regulations for health tourism in compliance with Section 104 of the Health Act No.21 of 2017. The Bill alludes to the two in the Marginal Note of Clause 52.

*(Question of the amendment proposed)*

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

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

*(Clause 52 as amended agreed to)*

*(Clauses 53 and 54 agreed to)*

#### Clause 55

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, Members of the Board of the Digital Health Agency are bound by the Constitution, the Data Protection Act No.24 of 2019, and the oath of secrecy signed under the Official Secrets Act Cap.187.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Member, go on record and say that you want to amend the Bill by deleting the clause. Go on record and say that you propose that Clause 55 be deleted.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 55.

*(Question of the amendment proposed)*

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

*(Clause 55 deleted)*

*(Clause 56 agreed to)*

#### Clause 57

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 57 of the Bill be amended in sub-clause (1) by deleting the word “otherwise” appearing immediately after the words, “to any person” and substituting therefor the word, “other”.

This is to correct a minor error.

*(Question of the amendment proposed)*

*(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 57 as amended agreed to)*

*(Clause 58 agreed to)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Members, many of us are in the House, but I can only hear three or four voices. I wish more Members would participate in this process.

*Clause 59*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 59 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “two hundred thousand shillings or to imprisonment for a term of not less than one year” appearing in the proviso and substituting therefor the words “one million shillings or to imprisonment for a term of not less than two years”.

(b) in sub-clause (2) by deleting the words “two hundred and fifty thousand shillings or to imprisonment for a term of not exceeding six months” and substituting therefor the words, “one million shillings or to imprisonment for a term not exceeding two years.”

This is to enhance the fines to make them more deterrent and commensurate with the offences committed under the Bill.

*(Question of the amendment proposed)*

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

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

*(Clause 59 as amended agreed to)*

*(Clauses 60 and 61 agreed to)*

*New Clause 20A*

THAT, the Bill be amended by inserting the following new clause immediately after Clause 20—

Investment  
of Funds      20A. (1) All monies in the Agency which are not immediately  
required to be applied for the purposes of this Act shall be invested—

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- (a) in such investment in a reputable bank on the advice of the Central Bank of Kenya, being an investment in which trust funds, or part thereof, are authorised by law to be invested; and
  - (b) in government securities as may be approved by the National Treasury.
- (2) All investments made under this section shall be held in the name of the Agency.

*(The new clause was read a First Time)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson, move the Clause for Second Reading.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 20A be now read a Second Time.

**The Temporary Chairman** (Hon. David Ochieng’): It is on page 1275 of the Order Paper.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I am just opening the Order Paper. I have got it. This is to provide additional checks and balances on investments to be done by the Digital Health Agency.

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

**The Temporary Chairman** (Hon. David Ochieng’): Yes, Hon. Kemei.

**Hon. Justice Kemei** (Sigowet/Soin, UDA): Hon. Temporary Chairman, I fully support the new clause because it anticipates that this agency will have money, but it will be unable to use all of it at any given time. For purposes of increasing the overall accounts of the Agency, that money should be deposited or invested somewhere.

I support the amendment.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Makali. You have 30 seconds.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. As I support the Second Reading of this New Clause, it is important that we note a few things. Unless a Government institution is commercial in nature, it is not out there to make money. We are now talking about a Government institution investing money in things like trust funds, which are Government securities. Why would a Government institution invest resources when the Government is borrowing resources from other sources?

We need to approach the issue of investment very cautiously. I have seen this principle being applied to other funds that we are creating such as the Social Health Insurance Fund. The proposal to invest money keeps coming up. We need to tread very carefully so that the Government does not borrow money from banks which also hold Government deposits.

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

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

*New Clause 61A*

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THAT, the Bill be amended by inserting the following new clause immediately after Clause 61—

Transitional provision.

61A. A person, who being a data controller or data processor of health data or who has been handling health information before the commencement of this Act, shall, within six months of the commencement of this Act, comply with the requirements of this Act.

*(The new clause was read a First Time)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move that New Clause 61A be now read a Second Time.

This is to make provision to the existing Health Data Management frameworks in the country.

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

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

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

*(Schedule agreed to)*

## Clause 2

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson.

**Hon (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by—

- (a) deleting the definition of the term “health care provider” and substituting therefor the following new definition—  
“healthcare provider” has the meaning assigned to it under the Health Act, 2017;
- (b) deleting the definition of the term “health care services” and substituting therefor the following new definition—  
“health care services” has the meaning assigned to it under the Health Act, 2017;
- (c) deleting the definition of the term “health facility” and substituting therefor the following new definition—  
“health facility” has the meaning assigned to it under the Health Act, 2017;
- (d) deleting the word ‘voluntarily’ appearing in the definition of term “health tourism”;
- (e) deleting the definition of “pseudonymisation” and substituting therefor the definition of “pseudo-anonymization”;
- (f) inserting the following new definitions in the proper alphabetical sequence—

“de-identification” means removing or hiding personal information from records in such a way that the remaining information cannot be used to identify an individual;

“medical equipment data” means data relating to a medical equipment and contains manufacturer-provided information and client-created inventory information about such equipment and may include exhaust

digital data and individual data that may be classified as sensitive data under the Data Protection Act, 2019;

“health data custodian” a person or organization that possesses legal custody over health data;

“telehealth” means the use of electronic information and telecommunications technologies including videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications, to support long-distance clinical health care, patient and professional health-related education, public health and health administration;

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Pukose, would you tell us what you are amending in Clause 2?

**Hon (Dr) Robert Pukose** (Endebess, UDA): Yes. The amendment to Clause 2 is basically to align these definitions with the Health Act (No.21 of 2017) and provide for a situation where a person is incapacitated. The words “pseudonymisation” and “pseudo-anonymisation” are synonymous. However, ...

**The Temporary Chairman** (Hon. David Ochieng’): What are you talking about, Hon. Chairperson?

**Hon (Dr) Robert Pukose** (Endebess, UDA): I do not know whether we will prosecute one after the other.

**The Temporary Chairman** (Hon. David Ochieng’): No. What have you just said?

**Hon (Dr) Robert Pukose** (Endebess, UDA): I have said “pseudonymisation” and “pseudo-anonymisation”.

**The Temporary Chairman** (Hon. David Ochieng’): What are they?

**Hon (Dr) Robert Pukose** (Endebess, UDA): These are synonyms. When you look at the Bill, it is defined...Just hold on your horses. Pseudo-anonymization means the removal of personal identifiers from personal data so that the data subject is no longer identifiable.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you, Hon. Chairperson.

*(Question of the amendment proposed)*

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

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

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

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, you have an amendment to Clause 2.

**Hon. Antony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, I beg to move:

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THAT, Clause 2 of the Bill be amended by—

- (a) deleting the definition of the term “e-waste”; and
- (b) inserting the following new definition in the proper alphabetical sequence—  
“personal health data” means any information relating to the state of physical or mental health of an identified or identifiable person and includes records on the past, present or future state of that person’s health

The reason for this is that the term is used a lot in the Bill. However, it is not properly defined. The definition is, therefore, necessary for purposes of clarity to prevent misinterpretation and for statutory harmony.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson.

**Hon (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, allow me to consult Hon. Oluoch.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, in the spirit of give and take, would you please give the Chairperson an ear. Hon. Oluoch, what is the agreement?

**Hon. Antony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, after consultation with the Chairperson of the Committee, Leader of the Majority Party and Members of the Departmental Committee on Health, they seem to be insistent on maintaining the word “e-waste”. I concede to drop my amendment under (a) on condition that they have agreed to take on my proposed insertion of the definition under (b). So, I agree to drop (a).

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. So, Hon. Oluoch’s proposal for deletion of “e-waste” is dropped.

(Proposed amendment to Sub-clause 2(a)  
by Hon. Antony Oluoch dropped)

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

Hon. Members, that marks the end of the Committee of the whole House to consider the Digital Health Bill. I, therefore, call upon the Mover to move reporting. Hon. Members, we have concluded consideration of the Bill. Mover.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report to the House its consideration of the Digital Health Bill (National Assembly Bill No.57 of 2023) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Members, as you are aware, the Digital Health Bill and Social Health Insurance Bill are almost inevitably intertwined. We will proceed to also do the Committee of the whole House for the Social Health Insurance Bill and then finally consider them together. I, therefore, request we now move to the Committee of the whole House on the Social Health Insurance Bill.

*(Several Members spoke off the record)*

Is that why you are being called back? Hon. Nyikal, go ahead.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Chairman, this is what I raised with the Speaker before we came to the Committee of the whole House. I once again raised it when we were starting the Committee of the whole House, but I was advised I raise it when we are on the particular item.

My concern is that we are going to the Committee of the whole House on the Social Health Insurance Bill. When we looked at the amendments in substance, they are different from the Committee amendments that were recommended which are in the Committee Report. What we have, if you look at the Committee Report, and this is in Clause 35 and Schedule 1, Part VI, is different from the amendments that are on the Order Paper. So, I have two issues. Firstly, is it correct procedure or wise that the Committee recommendations that constitute the amendments change when they get to the Order Paper?

Secondly, I had indicated earlier that we need time. We were asking that this item be put aside so that the Committee goes and looks at it and all the other changes and comes to a conclusion on this matter. The amendments we are having which are the main amendments are not what the Committee recommended. That is my issue and it is important that this matter is canvassed. Colleagues and Hon. Members, when we get into a situation where what you discussed and recommended specific amendments in the Committee is not what appears on the Order Paper, rather it is different, is it still a Committee amendment? Even if it is in the signature of the Chairperson? That is a procedure we should look at because these kinds of things if left to go on... We will find it is us in the Departmental Committee on Health today and tomorrow it will be in your committee. Then you will wonder if these things that are alien to the committee are part of the committee amendments?

Hon. Temporary Chairman, this is my point that I wanted to prosecute. I sought your guidance before we got into this process.

*(Hon. TJ Kajwang’ spoke off the record)*

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon.TJ.

**Hon. TJ Kajwang’** (Ruaraka, ODM): Thank you, Hon. Temporary Chairman. I have been patient on my seat waiting for this opportunity to intervene on this matter since we broke off from the plenary. I am trying to raise my voice. This is the first time I am told that the Leader of the Majority Party cannot hear me. When I am civilised, I speak in good tones.

There is an issue here. I do not know what coincidence brought you to the seat because there are constitutional issues here that we need to canvass. They go beyond the Departmental Committee on Health. Hon. Temporary Chairman, just to let you know that I have looked at the Committee Report. I am begging for the Temporary Chairman’s attention.

*(Hon. Temporary Chairman  
consulted the Clerks-at-the-Table)*

**The Temporary Chairman** (Hon. David Ochieng’): Okay, here I am.

**Hon. TJ Kajwang'** (Ruaraka, ODM): I do not have to be a Member of this Committee to look at the Committee Report. I have looked at the Bill and the Order Paper. I have nothing in substance to talk about inside that amendment. My issue is what Hon. Nyikal has said on the Constitution and the procedure. If we do not make these things clean, next time it will be a problem because we would have already consented to a precedent which is wrong. If in a Committee you have agreed on certain things and then you come before the plenary and you find a totally different thing...

*(Hon. Kimani Ichung'wah consulted  
Hon. Temporary Chairman)*

Hon. Leader of the Majority Party, please, allow the Temporary Chairman to listen.

*(Hon. Kimani Ichung'wah spoke off the record)*

You can give us time. There is a Committee Report which is still subsisting and shows very clearly that it is different with what you are faced with in plenary. Constitutionally, would you say that that is part of legislation? In this dispensation that we have, committee proceedings and sittings is the grapevine of how we make legislation. If then the Chairperson or anybody else brings in a different amendment, would you say that that is the legislation which was taken to public participation? Is it the legislation which the committee has agreed with? Is it something which we can incorporate with in our laws? That is the first issue which is a constitutional issue of making legislation.

Secondly is on procedure and in this case, I want to call out the Clerk of the National Assembly. This is not the problem of the Temporary Chairman anymore. If there is a committee, there are proposals, and then there are amendments, can the Clerk of the National Assembly on his own volition develop an Order Paper which is at variance with what the committee said in procedure? Does the Clerk of the National Assembly have that privilege irrespective of the enormous pressure? I know that the Clerk of the National Assembly in this instance has a lot of pressure to change what was in the Committee Report with what we see on the Order Paper.

Thirdly, can we now treat this Supplementary Order Paper before us as a truthful or honest document before the National Assembly that we can discuss? We can quickly show that it is different from the Committee Report. The way the Supplementary Order Paper has been drafted, is it a document which we can use? Hon. Temporary Chairman, we beg that you look at this carefully. We have no emotions here. We just want to make laws and I know there could be pressure from different quarters, but even that pressure can be properly sanitised and done in a proper way. As the Speaker has said before, even thieves have decorum. Can we clean the issues in a manner that befits the National Assembly so that we can accommodate and argue them out? That is the point of my discussion.

**The Temporary Chairman** (Hon. David Ochieng'): I would like to hear from the Leader of the Majority Party and the Chairperson of the Committee. I will give all of you a chance to say whatever you want to say.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Temporary Chairman. Indeed, this matter was raised when the substantive Chair was on the seat as we began debating on the other Bill. I have keenly listened to what Hon. T.J. Kajwang' has averred in his very lengthy submission. He started with heavy words like 'constitutional matters', and I keenly listened to hear what is unconstitutional in how the Order Paper is ordered and what is listed in it. There is absolutely nothing that he has adduced before you that touches on any constitutional matter.

Secondly, I am certain that Hon. T.J. must have been in the House when this debate began yesterday. He would have raised the matter in plenary during the Second Reading. Yet, he did not. Before you took the Chair, I had also mentioned earlier that Hon. T.J. Kajwang' is not even a member of the Committee. Therefore, he can only base his argument on what he is reading in the Committee Report, which we considered yesterday, just as we all are. That Report was tabled and signed by the Chairperson of the Committee in line with our own Standing Orders.

I have keenly listened to Hon. T.J. taking offence with the Clerk having listed those amendments as they appear in the Order Paper, but the Office of the Clerk does not propose amendments. It is Members who take their signed amendments to the Office. The amendments in the Order Paper are properly signed by the Chairperson of the Departmental Committee on Health. As Hon. T.J. Kajwang' says, it is true that the amendments proposed by the Committee in their Report are not in the text as they are in the Order Paper. Hon. T.J., yourself, Hon. Temporary Chairman, and I have been here long enough to know that when a Committee report is tabled in the House, it ceases being a report of that Committee and becomes the property of the House. It is up to the House to agree or disagree with the Report.

Lastly, I am happy that Hon. Makali is seated here and has amendments. If you look at the text, parts of the amendments that Hon. T.J. Kajwang' is speaking about are in the Order Paper and were proposed by other Members. Nothing in our Standing Orders or the Constitution, as Hon. T.J. Kajwang' wants to make us believe, says the Committee must carry amendments contained in a committee report. Any Member of this House can read that Report, pick an amendment, and propose it during the Committee of the Whole House. That is what able Members of Parliament, like Hon. Makali Mulu and Hon. Anthony Oluoch, have done. They read the Report, found amendments that they agreed with, proposed them, and the Chairperson of the Committee found no need to propose the same amendments since they are before the House. The only thing that remains now is for Hon. Nyikal, a member of that Committee, to support the amendments by Hon. Makali Mulu and Hon. Anthony Oluoch and oppose that of the Chairperson if he does not agree with him. I have heard that Hon. T.J. has not got into the nitty-gritty of the amendments. I want to assure you that the import of all those amendments and the net effect is zero. It is the same.

Therefore, Hon. Temporary Chairman, just like the Chair who was ahead of you had ruled, what we had seen was an attempt to filibuster and spend time on non-issues. We know. I said it, and I want to repeat it for the record, that this Bill...

*(Loud consultations)*

Hon. Temporary Chairman, please protect me from the Members shouting behind me.

I said it yesterday during the Second Reading. This Bill on Social Health... You saw the Digital Health Bill... If Prof. Phylis Bartoo from Moiben could be listening, there were no issues with the Digital Health Bill. But this Social Health Insurance Bill deals decisively with cartels. I said it yesterday. There are cartels that I know are already mobilising and lobbying Members. We must not fall prey to the corruption cartels that have brought down the healthcare sector of our country by now trying to spend time debating issues that are not...

**Hon. Temporary Chairman** (Hon. David Ochieng') Honourable Member, that is dangerous ground. Order!

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Temporary Chairman, I am not saying cartels are inside here, but I said yesterday that this Bill is under attack from many quarters. We must...

**Hon. Temporary Chairman** (Hon. David Ochieng'): Hon. Leader of the Majority Party, will you resume your seat?

*(Loud consultations)*

Hon. Members, you know the issues being raised are very important. Let us not introduce issues that are not important. As the Leader of the Majority Party finishes, because I want him to finish, I request all of us to remain on the straight and the narrow.

Leader of the Majority Party, finish.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you. Most obliged. The gist of the matter is this: Are there amendments to this Bill proposed by the Committee that are on the Order Paper? The straight answer is yes. Are there amendments proposed by the Chairman that may not be in the text of the Committee's Report? The straightforward answer again is yes. What do we do as a House? It is to consider all amendments. If Hon. Nyikal has further amendments, or if Hon. T.J. has further amendments... I believe we have done it before. You have indulged us even to move an amendment on an amendment.

Therefore, I beg that we drop the filibustering, get to the substantive work of legislating, and save the people of Kenya. We need to save them. They are being auctioned because of health bills. The solution is in this Bill. Let us legislate.

**Hon. Temporary Chairman** (Hon. David Ochieng'): Thank you. Let us do so. This chance will go to Hon. Pukose to clarify the issues of amendments that were being raised and about the variances.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Thank you, Hon. Temporary Chairman. Hon. T.J. Kajwang' has raised some issues about amendments, that there are amendments which might not have undergone public participation. You know that amendments are brought to this House by Members who have not participated in public participation and yet, those amendments are prosecuted. When we take the Bill for public participation, it is not just one amendment. We take it for the whole Bill. So, the entire Bill undergoes public participation. Once the Report is tabled in the House, what that means is that it becomes a document of the House so that Members can look at what was received from the public participation and see what amendments they can prosecute.

I have seen Hon. Makalu has made some amendments which he has picked from the Report of the Committee. Some of those amendments that Hon. Nyikal might be talking about are not lost. The House will still pronounce itself on them. It also means that when we table a report in the House, the House can debate that report or any amendments in it and accept or reject it. It does not mean the House will support everything the Committee has decided. Even those amendments we proposed as a Committee, the House has a right to reject or accept them. It does not mean that the House will accept wholly all amendments by the Committee. In any case, Hon. Nyikal is a member of the Departmental Committee on Health. He is free to propose any amendments that may have been left out in this document.

Hon. Temporary Chairman, I urge that we proceed by prosecuting the Committee of the whole House. Members can speak to specific amendments as we put them before them.

**The Temporary Chairman** (Hon. David Ochieng'): Thank you very much. The Member for Chuka, Hon. Patrick. I will come to this side. I will not leave anyone unheard.

**Hon. Patrick Ntwiga** (Chuka/Igambang'ombe, UDA): Thank you, Hon. Temporary Chairman. The matter on the Floor is important. Hon. Nyikal is a senior Member of this House and a member of the Departmental Committee on Health, where I am the Vice-Chairman. He is one of the most active members of the Committee. His being a member of the Committee does not dissociate him from being a Member of this House. And this is a House of debate. That is what we are doing in this session. We are debating this Bill. Whether you are a member of the Departmental Committee on Health or not, every Member is free to bring any matter as we debate this Bill.

So, Hon. Temporary Chairman, I request that you rule that we proceed with debate on this Bill. As we debate, we will give time to Hon Nyikal to raise his issues on this Bill. If he wants to propose any amendments, the matter is on the Floor. Most issues that the Committee agreed upon are the same ones that Hon. Makali Mulu has brought up. That is his main amendment. I request that you rule that we proceed with debate on this Bill.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. I will give this chance to Hon. Oundo. One minute each.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Thank you, Hon. Temporary Chairman. With the admission by the Chair of the Committee that some of the proposed amendments by the Committee had not been carried, we beg to ask the question: What is the power or authority of the Chair of the Committee? Does he have the power to cherry-pick what to present and what not to present?

On the argument that the Report has been tabled in the House, it has not been discussed and adopted by this House to either approve or not approve the amendments. As Hon. Kajwang’ has said, this is a matter of constitutionality. What are the powers of a Chair of a Committee to override the Report of an entire Committee and choose only to present what is good to him? Even if there is too much pressure, we can open the pressure valve a little bit so that we can do things in an orderly manner. We are legislating for posterity. Kenyans and generations to come will go through *the Hansard* and pick out this anomaly, which will be an embarrassment to this House.

Thank you, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Millie, one minute.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Chairman, I apologise and thank you for indulging me. I have just come from the airport and do not have my card. As we go on, when I carry my hand, I request that you kindly indulge me. I think this matter has come before this House before. I would encourage the Leader of the Majority Party. Your name is the Leader of the Majority Party. It means you have a majority. When you misuse your majority, it shows impunity. Even in Committees, you have a majority. Please follow the procedure for posterity. If a Committee has passed a report, it is unprocedural for the Chair to sit unilaterally and change or amend the report of the Committee. You are making the work of Committees useless.

Going forward, I would want to encourage that we follow procedure. I know the Chair of the Committee is a guy who listens. People listen to him. I have been to his Committee. He can encourage Members, Members will listen to his amendments and he will have the Members. But the way we are going is unprocedural, it is wrong, and we are setting a terrible precedent in this house.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): On a point of order, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): Leader of the Majority Party.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Millie is fond of mentioning my name and even assuming that I am the Chair of the Committee and yet, I am not the Chair of the Committee. If we are speaking procedures, I want you to restrict yourself to whether the amendments on the Order Paper are rightly before the House. The straight answer to that is that these amendments are rightly before the House. Hon. Pukose as the Chair or, even a Member who is not even a member of that Committee has a right to propose amendments. Any Member of this House can propose amendments, so long as the Clerk has signed them. I have seen those amendments.

**The Temporary Chairman** (Hon. David Ochieng’): The point is well made, Leader of the Majority Party. Hon. Makali.



**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. Some of us have been in this House for too long to appreciate some of the things we do. I want to give some statements of fact.

When amendments come to this House, they can be carried by the House or rejected. On the basis of that, then you lose your amendment. That is position No.1. Two, when committees bring amendments to this House, it is not a must that we approve them. In the past, we have rejected committee's amendments. There are times we have requested the Chair of the Committee to do further amendments to accommodate Members' input into the Bill. The problem we have here is very simple. The problem which is being expressed by the Members of the Departmental Committee on Health is that these Members sat for two weeks. After sitting for two weeks and interacting with stakeholders through public participation, there were things they were able to build consensus on. On the basis of that consensus building, they appended their signatures to the Report saying that both sides – the Majority and Minority - agree to make certain amendments. What I would have imagined is that those amendments would be brought to the Committee of the whole House as Committee amendments by the Chair and then the rest of us who do not belong to the Committee can also move our amendments. Now, it is the work of the Chair to convince the House, both the Majority and the Minority sides, to support these amendments. If we do not support, he loses it. It is the work of us on the other side to do the same.

The issue of concern is that, at times, we have witnessed in this House where Members do not vote on the basis of objectivity. We become more of voting machines. We have made progress with amendments. I will be prosecuting mine, but I ask the Members to use objectivity. When it comes to proposed amendment that is good for the country, we vote for it irrespective of whether it is the Committee's amendment or whether it is an individual Member's amendment.

With that, we can proceed. We need to move clause by clause. I urge Members to support what is good for this country.

**The Temporary Chairman** (Hon. David Ochieng'): Lastly, Hon. Sunkuli. Please, make it one minute.

**Hon. Julius Sunkuli** (Kilgoris, JP): Hon. Temporary Chairman, I just want to say that in the Departmental Committee on Health where I sit, we have developed very good comradeship. We have a lot of respect for our Chairman and for ourselves. I have been in the House long enough to know that all we are having is our say because for sure I can tell Members of the Opposition that we are not going to have our way on this one. But let me say this: The amendments that are in the Order Paper in a small way reflect what we discussed in the Committee.

Taking away the amendments is equal to removing the wind from the sails. These are the same things that we were discussing yesterday. For example, should the NHIF staff be sacked when we have the new authority? We said that we would not have them sacked. The import of what we have now is that the NHIF staff will not be safe anymore. Even if anybody ...

**The Temporary Chairman** (Hon. David Ochieng'): Thank you very much, Hon. Sunkuli.

*(Hon. Baya spoke off the record)*

Order, Hon Baya!

Hon. Members, you have heard each other. You have heard what Hon. Nyikal and Hon. Kajwang' have said. I believe that the issues being raised are not very light. I will leave the determination of the legal issues to the substantive Speaker for the future. However, this will

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be my direction for now for us to proceed. I advise that any amendments that were on the Committee's Report and were not carried will be allowed to be brought during this period. Anybody who has amendments that he wants to make should prepare them; I will allow them to be moved during this session. That is my ruling on this matter so that we can finally settle this.

*(Applause)*

I do not want to go into the semantics. If the Committee's Report amendments have not been carried, I will allow them to be carried now. Bring them. We will request the Chair to adopt and move them so that we move with them when they have been voted on. May we proceed?

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Chairman** (Hon. David Ochieng'): Hon. Chair, be alert.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended in sub-clause (2)(c) by deleting the word "investing" appearing immediately after the word "receiving";

The Social Health Authority is not expected to have a surplus of funds. All funds will be expended towards the provision of health services.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*Clause 5*

**The Temporary Chairman** (Hon. David Ochieng'): Hon. Chair.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) empanel and contract health care providers and healthcare facilities upon inspection, licensing and certification of the health care providers and healthcare facilities by the relevant body;

This is to specify that the Social Health Authority will be responsible for empanelment and contracting of healthcare providers and healthcare facilities while the relevant body contemplated under Clause 35 will be responsible for inspection, licensing and coordination of healthcare providers and healthcare facilities.

*(Question of the amendment proposed)*

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

*be left out, put and agreed to)*

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

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, you have an amendment to this particular Clause. Do you have your card today?

*(Laughter)*

We cannot locate you. We cannot see your card. Okay, there you are. Please move to the seat that has a microphone.

**Hon. Anthony Oluoch** (Mathare, ODM): I am there. Hon. Temporary Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended by deleting paragraph (i).

The amendment seeks to remove the functions of complaints handling from the Social Health Authority as there is already a Dispute Resolution Committee established under Clause 45 of the Bill to hear and determine the complaints.

**The Temporary Chairman** (Hon. David Ochieng’): Are you proposing to delete paragraph (i)?

**Hon. Anthony Oluoch** (Mathare, ODM): Yes. I am proposing to amend Clause 5 by deleting paragraph (i) because a dispute forum is already established under Clause 45 of the Bill. I move.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I reject the amendment by Hon. Oluoch.

**The Temporary Chairman** (Hon. David Ochieng’): You cannot just reject. Give us the reasons. It is good to do so.

*(Laughter)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I oppose it. In paragraph (i), which he wants to delete, the provisions of the First Schedule shall have effect with respect to the Authority, which will receive and address complaints that may arise from the implementation of this Act. In the fair administration of justice, we must first resolve the internal mechanism before we go outside.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much. Hon. Oundo.

**Hon (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman, we probably need to make further amendments because the principal administrator of this Act is the Authority. How do you receive and address complaints against yourself? You are a prosecutor, judge and investigator in one entity. That is why we raised it yesterday, but time was not enough. We must find a mechanism. You cannot receive complaints against yourself, investigate them and make judgments against yourself.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Temporary Chairman, I read this Act at night. The proposal by the Hon. Chairman is right. I was more worried when I saw too much

powers being given to the other body that Hon Oundo was talking about. For internal mechanisms, you cannot deal with something you cannot receive complaints about. Other bodies will not be blocked from overseeing and bringing those challenges as the Authority deals with complaints affecting their matters. It should remain that way.

Thank you, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Finally, Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, Hon. Oundo has said that the Authority will have complaints coming within itself. In the fair administration of justice, you must exhaust the internal mechanisms that you have in place. We have also established a Dispute Tribunal appointed by the Judicial Service Commission (JSC) to look into other matters.

**The Temporary Chairman** (Hon. David Ochieng’): Finally, Hon. Oluoch.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, for the avoidance of doubt, first, we are not saying that there should be no complaints. It is only that they cannot be heard against the very person you are complaining about. In law, there is a maxim called *nemo judex in causa sua*. You cannot sit in judgment in your own case.

Finally, to make this point clear, if you look at Clause 45 of the Bill, there is an already established entity which should be allowed to take up the complaints. The part (i) is misplaced. Let us agree that it is a misnomer to be here and, at the same time, establish a Committee which will receive the very same complaints.

**The Temporary Chairman** (Hon. David Ochieng’): I think it is a question of understanding what comes first.

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

*(Clause 5 as amended agreed to)*

#### Clause 6

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 6 of the Bill be amended in sub-clause (2) by—

(a) deleting the term “Cabinet Secretary” appearing in paragraph

(a) and substituting therefor the term “National Assembly”;

and,

(b) deleting paragraph (e).

In (a), the decision to charge or dispose immovable property requires the approval of the National Assembly. In (b), the Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards the provision of health services.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. (Dr) Oundo

**Hon. (Dr) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Chairman, I stand to oppose that amendment. It might be done in abundance of caution because of the history of losing public funds. However, the social health fund we are discussing here is based on the principle of insurance. Many contributors pay, and only a few benefit from the fund. This is because if each person who contributed benefitted, then the fund would not be viable.

That is why it is normal practice all over that any excess funds that are not claimed in any financial year must be invested in an interest-earning account so that the benefits accruing can be improved over time. That is the principle of insurance; I do not know what the fear here is.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

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

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

*(Clause 6 as amended agreed to)*

#### Clause 7

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chair, I beg to move: THAT, Clause 7 of the Bill be amended—

(a) in sub-clause (1) by-

(i) deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) a representative of the County Executive Committee Health Caucus;”

(ii) deleting sub-paragraph (iii) of paragraph (h) and substituting therefor the following new sub-paragraph—

“(iii) a representative of the consortium of health care providers;”

This is to increase the representation of the counties since health is a devolved function under Part 2 of the Fourth Schedule in the Constitution. Also, to specify that the board members will be drawn from the consortium of healthcare providers to represent the interest of faith-based and private sector healthcare providers.

**The Temporary Speaker** (Hon. David Ochieng’): Thank you.

*(Question of the amendment proposed)*

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

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

*(Clause 7 as amended agreed to)*

#### Clause 8

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended in sub-clause (2) by—

(a) deleting the words “private health facility” appearing in paragraph (d); and,

(b) inserting the words “or parliamentary reports” immediately after the word

“law” appearing in paragraph (e).

This is to make directors, officers or shareholders of private health facilities eligible for appointment as members of the board of the Social Health Authority. Also, to prevent a person that Parliament has found culpable of contravening Chapter 6 of the Constitution from being appointed as a member of the board of the Social Health Authority.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kangogo.

**Hon. Kangogo Bowen** (Marakwet East, UDA): Hon. Temporary Chairman, I want to support the amendment by the Chairperson. The private sector, especially in health, plays a very critical role. Having them on this board will help boost health standards in the country.

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

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

*(Clause 8 as amended agreed to)*

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): What is out of order, Hon. Millie?

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Chairman, I kindly request to be availed with the Order Paper which has the amendments.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Millie’s request is very reasonable. The Table Office, please facilitate her to participate in this.

*(An Hon. Member spoke off the record)*

No. Hon. Millie did not ask you. She asked me. I have said what should be done to her. So, let us proceed. Hon. Millie is sorted out.

*(Laughter)*

Hon. Millie, I am sure you are now sorted out.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Yes.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. So, we go on. We are in Clause 9 now, Hon. Chairman.

#### *Clause 9*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move: THAT, Clause 9 of the Bill be amended by deleting the words “permission from the appointing authority” appearing in paragraph (b) and substituting therefor the words “lawful cause”.

This is to prevent misuse of this provision as it is impractical to get permission to be absent from a Board meeting with the President.

*(Question of the amendment proposed)*

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

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

*(Clause 9 as amended agreed to)*

*(Clauses 10, 11 12 and 13 agreed to)*

#### Clause 14

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chair.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman I beg to move: THAT, Clause 14 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the term “bachelor’s” appearing in paragraph (a) and substituting therefor the term “master’s”;

(ii) deleting paragraph (b);

(b) in sub-clause (4) by deleting the words “outsource services and enter into and sign commercial contracts” appearing in paragraph (f) and substituting therefor the words “enter into and sign contracts”;

(c) by inserting the following new sub-clause immediately after sub-clause (5)—

“(6) The administrator of the Funds under sub-section (3), shall ensure that the monies held in the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund, including any earnings or accruals, are spent only for the purposes for which these Funds are established.”

This amendment seeks to ensure that the Chief Executive Officer (CEO) has a high level of technical expertise required of the specialised entity established in the Bill. Then, we are deleting paragraph (b). The exercise required of the CEO of the Social Health Authority is more in line with the health sector.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kajwang’

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I want to inquire about something from the Hon. Chairman because the amendments are being moved too fast, and I may not be on that page.

**The Temporary Chairman** (Hon. David Ochieng’): That is okay.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): There was a proposal in the Bill that only lawyers would be CEOs. Is that still in the amendments proposed by the Hon. Chairman? This is because we said before that it was unlawful and unconstitutional to say in legislation that only lawyers could be anything.

**The Temporary Chairman** (Hon. David Ochieng’): That is right.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I am asking the Hon. Chairman a question.

*(Some Members spoke off the record)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Members, you should allow Hon. T.J. to ask a question.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Members are just something else. Anyway, the Hon. Chairman got the point.

**The Temporary Chairman** (Hon. David Ochieng’): Allow him to respond to you.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Yes.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. T.J., I have deleted that requirement in Clause 14 of the CEO being an advocate of the High Court of Kenya. I have done that.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Leader of the Majority Party, go ahead.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, I want to support what Hon. T.J. has said. The drafters of this Bill made a mistake. I think it is a typographical error. Clause 14(1)(b) of the Bill says that the CEO should be an advocate of the High Court of Kenya. If you go further to Clause 14(1)(c) of the Bill, it says that the CEO should have at least 10 years of knowledge and experience in health insurance, health financing, health economics, health administration or any other relevant field. Therefore, I agree with Hon. Chairman and Hon. T.J. You know that lawyers are fond of wanting to be everywhere.

*(Hon. Junet Mohamed approached the Clerks-at-the-Table)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Junet, you cannot do that.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): I did not hear what Hon. Junet said, but it is unfair, especially to accountants like me, who would otherwise make very good chief executive officers, and you exclude them by law from qualifying to be CEOs. Therefore, we support this amendment.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oundo, please.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman, I want to draw the attention of the Chairman of the Committee to the contradiction we have in these amendments. We have deleted the provision of investing extra funds, yet when you go to the amendments he has proposed under Clause 14(c), adding sub-clause 6, we are talking about including earnings or accruals. Where do earnings or accruals come from if not from investment? I just wanted to bring to his attention the contradiction and the lack of flow regarding this matter.

Thank you.

**The Temporary Chairman** (Hon. David Ochieng’): He is still in order. He is referring to the same sub-clause 6.

*(Hon. Kimani Ichung’wah spoke off the record)*

No, Leader of the Majority Party. He is okay. He is referring to Clause 14(c)

*(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 14 as amended agreed to)*

*(Clause 15 agreed to)*

Hon. Makali, what is the problem?

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): It is important to go on record, Hon. Temporary Chairman. On the clause that we have just passed, I wish the Chairman would have done a further amendment to delete the word ‘earnings and accruals’ so that we align with the earlier deletion of investments.

**The Temporary Chairman** (Hon. David Ochieng’): I have no chance to debate this, but I would request Hon. Pukose to talk to Hon. Oundo and Hon. Makali. I do not believe that just because they cannot invest, they cannot earn. Let us proceed.

*(Hon. Junet Mohamed spoke off the record)*

We are not going back on this. There is nothing out of order. We are going to Clause 16. Hon. Junet, there is nothing out of order.

*Clause 16*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 16 of the Bill be amended—

a) in sub-clause (2) by—

(i) inserting the following new paragraph immediately after paragraph (a)—

“(aa) is an Advocate of the High Court of Kenya;”

b) by renumbering the existing sub-clause (6) as sub-clause (3).

The Corporation Secretary needs to be an Advocate of the High Court of Kenya to qualify to practise as provided under the Advocates Act CAP. 16. This is also to correct a minor error in the numbering of sub-clauses because we have also done some renumbering there.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(Question of the amendment proposed)*

*(Hon. T.J. Kajwang’ spoke off the record)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kajwang’, just say you support.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I support, but I wish there could be a further amendment to say that only advocates who have practised for 35 years and have been Members of Parliament. In that case, I would be the only one recommended for that position. I support.

**The Temporary Chairman** (Hon. David Ochieng’): Talk to the Chairman. You could convince him. Hon. Millie.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon Millie will take the position before me. I drop that amendment.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Chairman. I support, though I do not know whether the Corporation Secretary has to necessarily practise. Nonetheless, I want to correct what Hon. T.J. is saying. I am a ranking Member even in law, not only in the House. I am still his senior.

**The Temporary Chairman** (Hon. David Ochieng’): That is what he said. He said if he allowed the amendment, you could get the job instead of him.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): I will get the job instead of him.

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

*(Clause 16 as amended agreed to)*

#### Clause 17

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended by inserting the words “upon the advice of the Salaries and Remuneration Commission” immediately after the word “determine”.

This is to provide for the involvement of SRC which is responsible for advising the national and county governments on the remuneration and benefits of all public officers under Article 230 of the Constitution.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you, Hon. Chairman.

*(Question of the amendment proposed)*

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

*(Clause 17 as amended agreed to)*

*(Clauses 18, 19, 20 and 21 agreed to)*

#### Clause 22

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 22 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clause (3) —

(3) Any revision of the approved budget estimates by the Board shall be approved by the National Assembly in the supplementary budget estimates.

The National Assembly appropriates funds for expenditure by the national Government and other national State organs under Article 95 of the Constitution.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Makali Mulu.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you very much, Hon. Temporary Chairman. We need to think seriously about this amendment. This is because it means here that any time a budget of the Board is changed, it will have to be presented to the National Assembly. We all know very well that there are too many boards in this country which fall under Semi-Autonomous Government Agencies (SAGAs), but their budgets never come to the National Assembly. Are we discriminating against this Board and, if so, why are you doing this, Hon. Chairman?

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, this Social Health Insurance Fund will get its money from the Exchequer. Parliament will appropriate its budget. If the Board needs to make any adjustments, then it must be done through a supplementary budget like for any other State organ, or it can spend money and come to regularise through the Public Finance Management (PFM) Act.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kanyuithia.

**Hon. (Dr) John K. Mutunga** (Tigania West, UDA): Hon. Temporary Chairman, I want a clarification here. Does this have to come from the Authority or through the mother Ministry? I know that the process is that the mother Ministry makes the request to the House and then does disbursement to this particular entity. Will it have to come directly?

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Pukose.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): My fellow Chairman, normally, entities make their budgets based on the proposals they have and then take the same to the mother Ministry. Through the mother Ministry, the proposals come to Parliament for appropriation. From there, the entities can spend their money. I do not know why people are opposing the amendment.

**The Temporary Chairman** (Hon. David Ochieng’): I thought this was quite straightforward. The Leader of the Majority Party.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, Hon. Makali Mulu is a member of the Budget and Appropriations Committee. If you read Article 95 of the Constitution, you will find that money to the Fund will be appropriated by the National Assembly for indigent and vulnerable persons. That is the import of that amendment. If you revise your budget from this fund and money was appropriated to pay for the indigents and vulnerable, then you have to bring it during the supplementary budget for *post facto* approval by Parliament.

Otherwise, it is money being appropriated by the National Assembly, and it is only fitting that if you revise, you must bring it to the National Assembly for approval in the subsequent supplementary. We should be happy that it is giving us some muscle.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*((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 22 as amended agreed to)*

*(Clause 23 agreed to)*

*Clause 24*

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**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 24 of the Bill be amended by deleting the word “may” appearing immediately after the words “Cabinet Secretary” and substituting therefor the words “shall in consultation with the Board”.

This proposal makes it mandatory for the Cabinet Secretary to make regulations on implementation of the Primary Healthcare Fund upon consultation with the Board.

*(Question of the amendment proposed)*

*(Question, that the word 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 24 as amended agreed to)*

#### Clause 25

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman, do you have an amendment?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Yes

**The Temporary Chairman** (Hon. David Ochieng’): What is it?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Chairman, I propose to delete (2)(d) and (e).

**The Temporary Chairman** (Hon. David Ochieng’): You need to first be on record and say that these amendments are not on the Order Paper and then explain to Members what they are about.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): The amendment I propose to delete 25(2)(d) and (e). It is not in the Order Paper. There is established a fund to be known as the Social Health Insurance Fund. Funds from the national Government, county governments and their respective entities for the administration of the compulsory public service employee’s insurance benefits scheme, and (e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of the employee benefits.

What we have done is that we have already removed the enhancement. Subsequently, that enhancement is no longer there. Therefore, we do not need to have those two clauses.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Members, because this is not in the order paper, I want to repeat. If you have your document on the main Bill...

*(A Member spoke off the record)*

That is what I have just said, and that is why I have asked him to explain. If you go to the Bill, Clause 25 on pages 1682 and 1683, it is deleting (2)(d) and (e).

*(Hon. (Dr) Robert Pukose spoke off the record)*

Hon. Oundo

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman. It is a good precedent that we can move amendments as we move along. This is a good precedent, and I thank you for that ruling. However, the long-term import of these deletions is the return of the insurance cartels in the health insurance sector. The drafters of the Bill intended that if public entities were to have enhanced medical coverage for their staff, the best and the only place would be through the Social Health Insurance Fund.

By deleting that Clause, we are returning the medical covers we previously had, like the Police Medical Cover and medical covers for other parastatals. We are not solving the problem that this Bill is trying to cure. We are reinventing private medical insurance schemes to maintain the status quo.

**The Temporary Chairman** (Hon. David Ochieng'): I want you to respond to all the issues together. Hon. Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Chairman, that amendment is not on the Order Paper and that, in itself, is significant. I want to give information to the House so that it can make a decision. Enhanced medical schemes were those in which the Kenyan Government paid for health covers of civil servants such as teachers, and the police were brought into the NHIF to manage it. Therefore, they were getting a better scheme. In the case of the police, they remitted Ksh5 billion to the NHIF but, when it was worked out, it was found that the NHIF had used about Ksh10 billion. The argument for removing their scheme from the NHIF then was that it was a loss-making venture.

I want Members to listen to this carefully, because our country is in danger. The moment their scheme was removed from the NHIF and they decided to pursue private medical insurance, the scheme now pays Ksh10 billion to the private sector. When the medical schemes are under the NHIF, they remit less but spend much more when using private medical insurance schemes.

One of the Committee's considerations was whether we could have social health insurance schemes for civil servants, but control them through the new Authority. This is public money. If this money is being paid out for workers' medical schemes, how come when they were under the NHIF, only Ksh5 billion was remitted? Why is it that when they were under a private medical insurance scheme, Ksh10 billion was remitted? Why the difference yet the number of workers remained the same?

If you ask me as Nyikal and not as a Member of the Committee, we should strengthen our systems and manage this money within the Authority.

**The Temporary Chairman** (Hon. David Ochieng'): I will give this chance to Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, UDA): Thank you, Hon. Temporary Chairman. Could the Chairperson of the Departmental Committee on Health, who has moved an amendment to delete this Clause, consider withdrawing that amendment? I say this because just the other day, I met a former Member of Parliament called Njuguna Roho Safi from Gatanga.

**The Temporary Chairman** (Hon. David Ochieng'): He is the Chairperson of the Association of Former Members of Parliament.

**Hon. David Gikaria** (Nakuru Town East, UDA): Exactly.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Temporary Chairman, on a point of information.

**Hon. David Gikaria** (Nakuru Town East, UDA): I will listen to him.

**The Temporary Chairman** (Hon. David Ochieng'): Go ahead, Leader of the Majority Party.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Temporary Chairman. Hon. Gikaria has allowed me to inform him. We are currently legislating for a social health

insurance scheme. There was need for those enhanced packages because the previous social health insurance scheme was not working. The Chairperson proposes that we will not need enhanced packages if we allow the social health insurance scheme to work. I identify with what Hon. Gikaria was going to say about former Members of Parliament who are enjoying...

**The Temporary Chairman** (Hon. David Ochieng’): I was a member of the Association for one-and-a-half years.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Yes, Hon. Temporary Chairman. You were a former Member for one-and-a-half years. You enjoyed those enhanced benefits. One of the reasons for the enhanced benefits was that the normal social health insurance scheme was not working. We are now creating a scheme with a fund for chronic and critical illnesses. Therefore, we do not need enhanced schemes.

Hon. Speaker, those enhanced schemes have also been a very lucrative avenue for looting from the NHIF. These are the taps I was saying yesterday that they must be closed. I invite Hon. Gikaria and Hon. Nyikal to join us in closing those taps.

**The Temporary Speaker** (Hon. David Ochieng’): Thank you. Hon. Gikaria, this is your chance.

**Hon. David Gikaria** (Nakuru Town East, UDA): The Leader of the Majority Party assures me that if I become a former Member, I can use the Social Insurance Fund.

So, I support.

**The Temporary Speaker** (Hon. David Ochieng’): Thank you. Hon. Chairperson, do you still want to say something on this?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): My colleagues have prosecuted it. What we do not want is abuse of the scheme where you put little and spend more. This will deplete the Social Insurance Fund, and other people will not be able to access it.

**The Temporary Speaker** (Hon. David Ochieng’): Thank you.

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

*(Clause 25 as amended agreed to)*

#### Clause 26

**The Temporary Speaker** (Hon. David Ochieng’): Hon. Chairperson, proceed.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 26 of the Bill be amended by—

- (a) deleting the word “be” appearing immediately after the words “register as” in sub-clause (1);
- (b) deleting the words “registration with the Social Health Insurance Fund” appearing in sub-clause (5) and substituting therefor the words “compliance with the provisions of this Act on registration and contribution”.
- (c) by inserting the following new sub-clauses immediately after sub-clause (5)—
  - “(6) A person who is a non-Kenyan that intends to enter and remain in the territory of Kenya for a period of less than twelve months shall be required to be in possession of a travel health insurance cover as may be designated by the Cabinet Secretary.

(7) The Cabinet Secretary shall establish the policy, regulatory or administrative measures to give effect to sub-section (6)".

(a) is to correct a typographical error. (b) is to enable the enforcement of the mandatory registration and contribution to the Social Health Insurance Fund. Lastly, it is to make it mandatory for all foreign nationals visiting Kenya on short-term stays of less than 12 months to have travel insurance coverage to protect public health. This is especially true during health-related emergencies like COVID-19 and other diseases. Many countries have implemented mandatory travel insurance, especially after the COVID-19 pandemic, like Egypt, Rwanda, United Arab Emirates (UAE), Russia, Saudi Arabia and the entire Schengen region. Many Members must have medical insurance cover whenever they travel to those countries.

**The Temporary Speaker** (Hon. David Ochieng'): Thank you.

*(Question of the amendment proposed)*

The Hon. Oluoch, proceed.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, I had this amendment, but listening to the Chairperson of the Committee, it appears what I had proposed is carried in his amendment.

**The Temporary Speaker** (Hon. David Ochieng'): Correct.

**Hon. Anthony Oluoch** (Mathare, ODM): So, I drop mine and support the Chairperson's amendment.

*(Proposed amendments to Clause 26  
by Hon. Anthony Oluoch dropped)*

**The Temporary Speaker** (Hon. David Ochieng'): Thank you. Hon. Oundo, one minute.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman, I am just curious to know. This is because it is a requirement to get Government services; you must be a registered member of the Social Health Insurance Fund. How practical is it to implement because, for example, if you arrest me in a *changáa* den, will you not book me in the police station, which is a public service, because I am not registered in this scheme? Some things are very good, but in reality...

**The Temporary Speaker** (Hon. David Ochieng'): Hon. Dawood.

**Hon. Rahim Dawood** (North Imenti, Independent): Hon. Temporary Chairman, I agree with what the Chairperson has suggested. I am wondering how they will implement for a non-Kenyan coming into the country. Where will they be checking? At the airport or the porous borders?

**The Temporary Speaker** (Hon. David Ochieng'): Hon. Chairperson, respond to that quickly.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Dawood is a third-term Member of Parliament, and he knows the process when he wants to travel to Schengen. For Meru, he does not need a visa. So, in all other countries where we travel, you must attach your medical insurance when applying for a visa. That has been the common practice.

**The Temporary Speaker** (Hon. David Ochieng'): Thank you.

*(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)*

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

*(Clause 26 as amended agreed to)*

#### Clause 27

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 27 of the Bill be amended in sub-clause (6) by deleting the word “ten” appearing immediately after the words “equal to” and substituting therefor the word “two”.

The proposed penalty of 10 per cent for failure to pay contribution is too punitive. Therefore, the Committee settled on 2 per cent.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kanyuithia.

**Hon. (Dr) John K. Mutunga** (Tigania West, UDA): Hon. Temporary Chairman, I agree with the Chairman that it is punitive to have 10 per cent because there is a likely failure. This will encourage people to pay the arrears if they have them.

**Hon. Junet Mohamed** (Suna East, ODM): On a point of order, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Junet, I am sorry because I did not see you. Go ahead.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Temporary Chairman, these contributions will be from everyone now, including those who earn little money. If you put a penalty at 2 per cent, it is very high. I propose we reduce it to 1 per cent.

If you make a penalty punitive, people will look for a way to avoid and escape it. Just make it simple so that somebody knows paying a penalty is easier than hiding. Look at people who are on *fuliza*. They now take a new sim card so that they do not pay it.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Pukose, approach Hon. Junet.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, I hear Hon. Junet. Indeed, that is why the Committee found, in their wisdom, that a penalty of 10 per cent would discourage people from paying the arrears.

For instance, the most vulnerable people in our communities will now move from paying Ksh500 to Ksh300. If you do not pay Ksh300 in a month, your penalty will be Ksh30, and you will be discouraged from paying. Now, at 2 per cent, your penalty will be Ksh6. We are encouraging you to pay. I want to plead with Hon. Junet that Ksh6, even the fisherfolk...

**The Temporary Chairman** (Hon. David Ochieng’): You have made your point, Leader of the Majority Party. Yes, Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): According to the Leader of the Majority Party, the contribution of Ksh300 is little money.

He is forgetting that his Hustler Fund gives people Ksh500 only. Hon. Chairman, reduce the penalty to 1 per cent. Kenyans are tired of these penalties.



*(Loud consultations)*

*(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 27 as amended agreed to)*

**The Temporary Chairman** (Hon. David Ochieng’): Before I read the next clauses, I want to request something from the Members. There are some proposals you may have that are very good, like the ones you had yesterday in the Sugar Bill. Before we read the clauses, approach the Hon. Chairman and talk to him to get a consensus if it is something you strongly believe in. I plead with you.

Thank you very much.

*(Clauses 28 and 29 agreed to)*

*Clause 30*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 30 of the Bill be amended by deleting the word “may” and substituting therefor the words “shall in consultation with the Board”.

The amendment seeks to make it mandatory for the Cabinet Secretary to make regulations on implementation of the Emergency, Chronic and Critical Illness Fund upon consultation with the Board.

*(Question of the amendment proposed)*

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

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

*(Clause 30 as amended agreed to)*

*Clause 31*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, after consultation, I withdraw the amendment to Clause 31.

*(Proposed amendment to Clause 30 by  
Hon. (Dr) Robert Pukose withdrawn)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Junet, what is the problem?

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Temporary Chairman, Clause 30 went with lightning speed. The clause proposes that the Cabinet Secretary may make regulations. What if he refuses? These regulations are very important, and they have to come to this House.

**The Temporary Chairman** (Hon. David Ochieng’): Order, Members.

*(Hon. Kimani Ichung’wah stood in his place)*

Leader of the Majority Party, take your seat.

*(Loud consultations)*

Order, Members! Hon. Junet, that is spent. You have a very good researcher in your office; use him. The Hon. Chairperson was trying to do what you asked him to do. He was trying to make it mandatory for the Cabinet Secretary to consult the Board.

*(Clause 31 agreed to)*

*(Clause 32 agreed to)*

*Clause 33*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, move your amendment.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Temporary Chairman. I beg to move:

THAT, Clause 33 of the Bill be amended by—

(a) inserting the words “and in the Kenya Gazette” immediately after the words “website” appearing in sub-clause (3)

This is to insert the word ‘Kenya Gazette’ alongside ‘website’. This is pursuant to Article 35 of the Constitution in terms of the right of access to information. This publication on healthcare providers should be made as widely accessible as possible. I hope that the Chairperson will find this not offensive.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, this amendment adds value to the Bill. I do not think there is a problem with that.

*(Hon. Anthony Oluoch raised his hand)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oluoch, you are being supported. What have you forgotten?

**Hon. Anthony Oluoch** (Mathare, ODM): The part (b) of it.

**The Temporary Chairman** (Hon. David Ochieng’): Go ahead.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Chairperson for agreeing with that. I want to drop part (b), which seeks to delete the word “Committee” after the words “Dispute Resolution” in sub-clause 33 (5). However, reading the correct version of the Bill,

the Dispute Resolution Committee is set under Clause 45. I find this consistent and, therefore, drop part (b) of this amendment.

**The Temporary Chairman** (Hon. David Ochieng’): That is the spirit. Hon. Oluoch’s proposed amendment to Clause 33 (b) is dropped. We will vote on the first one.

*(Proposed amendment to Clause 33(b) by  
Hon. Anthony Oluoch dropped)*

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

*(Clause 33 as amended agreed to)*

#### Clause 34

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman. I beg to move:

THAT, Clause 34 of the Bill be amended in sub-clause (7) by inserting the words “and is liable upon conviction to a fine not exceeding one million, or to imprisonment for a term not exceeding two years or to both” immediately after the words “commits an offence”.

This is to provide for the penalty for the offence of displaying an identification issued by the authority without the permission of the authority.

*(Question of the amendment proposed)*

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

*(Clause 34 as amended agreed to)*

#### Clause 35

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Members, we have proposals by Hon. Oluoch, Hon. Makali Mulu and the Chairperson. Let me start with the Chairperson’s amendment.

*(Hon. (Dr) James Nyikal spoke off the record)*

Hon. (Dr) Nyikal, do you have an amendment on this too?

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Chairman, this is one of the cases where the Committee had an amendment similar to that of Hon. Oluoch.

**The Temporary Chairman** (Hon. David Ochieng’): Will you allow Hon. Oluoch to move his amendment and then you can contribute?

**Hon. (Dr) James Nyikal** (Seme, ODM): Yes.

**The Temporary Chairman** (Hon. David Ochieng’): Proceed, Hon. Oluoch. Hon. Leader of Majority Party and Hon. Nyikal, allow Hon. Oluoch to move his amendment.

**Hon. Antony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, I beg to move: THAT, Clause 35 of the Bill be amended by—

- (a) deleting sub-clause (3) and (4)
- (b) renumbering the existing sub-clause (4) as (3) “

Hon. Temporary Chairman, this is one of the contentious clauses the Committee had said had been dropped. The purpose and reasoning for deleting sub-clauses 3 and 4 is that what is proposed to be outsourced or delegated is the core mandate of the Authority created under this proposed Bill. Therefore, it defeats logic that the very core mandate of this Authority is being delegated to other persons, which may be unreasonable and subject to abuse. I, therefore, propose that sub-clauses 3 and 4 be deleted. I am also proposing to renumber the existing sub-clauses 4 as 3 for us if the amendment is carried.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much. Hon. Makali, let me propose the amendment first.

*(Question of the Amendment proposed)*

Hon. Makali, you have the first bite on this because you have a similar amendment.

**Hon (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. I think my amendment is similar to Hon. Oluoch’s amendment. I plead with Hon. Members to listen to me, because this is important. We are saying that we want to outsource the claims payment issues. What will happen, assuming we did that? Let us look at the operations!

What will happen is somebody out there will do all the paperwork and then present the papers to the claims management office to pay. If you are the one seated in the claims management office as an officer paying, would you not take time to review the paperwork and the paper tray again so that before you pay, you are convinced this is worth paying? So, even before you think about the payment, what you would have done is go through double procedures in terms of payment. The outsourced agent will bring the papers, which will take as long as it has taken him to process them. So, first, that causes a delay in processing the payments. To me, I think we do not need this outsourced service.

I like what the Hon. Leader of the Majority Party keeps saying. He has always said we want to amend this law to do away with the cartels already in the NHIF. I can tell you for sure, without any fear of contradiction, that this is going to be the biggest cartel in town. This arrangement is going to be the biggest cartel in town. We are not being told that for this outsourced service, people will be earning some commission for processing that. Obviously, they cannot process without any payment. So, we are not even thinking about that. Imagine if this fund was a fund of Kshs40 billion and you give 0.01% for processing; how much money are we talking about?

What will happen is that people will start fighting for this opportunity, and that is why you create room for rent-seeking. Hon. Members, I plead with you to allow the NHIF internal team to process their payments and make the payment. That will help this country.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Let us have Hon. Nyikal.

**Hon (Dr) James Nyikal** (Seme, ODM): I once said it here: The Hon. Speaker Muturi listened to me. You cannot say that if there are chicken thieves in a village, the village stops keeping chickens. Catch the thieves. The whole effect here is this Bill creates an entire claims management office so that what he is doing is claims, and the whole essence of any insurance is claims. That is what insurance is all about.

You have cars, and you have everything in those claims. Once we have created that office, we then tell that office that they must outsource. Why, then, are we creating that office in the first place? Okay, we have argued that there are cartels and corruption. I have been in Government at very high levels.

The private sector is the seat of corruption in this country. Until we settle with that, we will fight within and not get anywhere. Why do we think the people out there are not corrupt and cartels? We have created a new authority and given it powers, with the chair appointed by the President. Let this Authority manage the unit we have done under it. Let them do the work.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Kangogo

**Hon. Kangogo Bowen** (Marakwet East, UDA): Thank you, Hon. Temporary Chairman. I want to seek clarification from the Chairman. Which functions are the claims management office going to perform as an institution? Which functions are they going to outsource?

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. T.J.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): We have preached this enough. I know you are an authority in insurance law. You can give excellent directions on this matter. Members, this evening, let me urge you that we do not come into this House to do anything else. It is to make good laws for our people. The Leader of the Majority party said many people are pushing. When we make a position here, do not think there is some pressure outside. We are just looking at the law and giving you the right opinions and advice to make better decisions.

Hon. Temporary Chairman, what has come out is that Clause 35 should be looked into.

*(Loud consultations)*

There is a lot of discussion by the Whip from the Majority Party.

**The Temporary Chairman** (Hon. David Ochieng’): Order, Members. Go ahead, Hon. T.J.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): It is now apparent that, under Clause 35, the Committee had agreed to retain this thing internally. Committee, it is here in the Report. I have it. On page 34, you will see that everybody in the Committee had agreed. Now you see that this is a proposal outside the Committee. What Hon. Oluoch is saying, and I want to support him in this, is to reintroduce what the Committee agreed on. It is what they did public participation about and what Kenyans out there think is the correct thing. I urge you, Members. Even though you may have come with a different mind, vote with your head on this one. Vote with your conscience and vote for the right thing. I rest my case.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much, Hon. T.J. The Chairman will have the last say on this.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I oppose the proposed amendment by Hon. Oluoch in that I also have an amendment that I will move once we dispense with what Hon. Oluoch has.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. There was a question by Hon. Kangogo. I think you have decided not to answer it.

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

Hon. Chairman, you have a further amendment to this.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 35 of the Bill be amended—

(a) by deleting sub-clause (3) and substituting therefor the following new subclause (3) —

“(3) The Claims Management Office may delegate the performance of its functions under subsection (2)(a) and (b) to a suitable entity”;

(b) by deleting the words “or a broker” appearing in sub-clause (4) ;

(c) by deleting the words “not more than five” appearing in the proviso to subclause (4) and substituting therefor the words “a suitable number of”; and

(d) by renumbering the existing sub-clause (4) as (5).

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Further amendment to Clause 35(2)(b) is on medical claims based on the benefit package. I am doing a further amendment which states thus: “... and a claim settling agent” after the words, “medical insurance provider”.

There is no medical insurance provider.

**The Temporary Chairman** (Hon. David Ochieng’): No. Hon. Chairman, stick to the amendment you have in the Order Paper. Do you have the Order Paper?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Yes. I am doing a further amendment.

**The Temporary Chairman** (Hon. David Ochieng’): Okay.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I am doing a further amendment to Clause 3(b) by deleting the words “or a broker” appearing in sub-clause 4 and substituting therefor the words “and a claim settling agent”.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman, we want to have this done neatly so I will allow the Chairman to move it in the right way

Clause 35 has no 3, 3(b) or 3(c).

*(Hon. Kimani Ichung’wah and Hon. Robert Pukose consulted loudly)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): 35(4).

**The Temporary Chairman** (Hon. David Ochieng’): Go ahead. That is where we should be, 35(4).

**Hon. (Dr) Robert Pukose** (Endebess, UDA): The entity referred to under sub-section 3... I mean it is at Clause 35(4) that I propose we substitute therefor the words “and a claim settling agent”.

**The Temporary Chairman** (Hon. David Ochieng’): Leader of the Majority Party, I want us to let the Chairman move the amendments as in the Order Paper and then you will move a further amendment.

*(Hon. Kimani Ichung’wah and Hon. Robert Pukose consulted loudly)*

The Chairman of that Committee is on his feet. There is no vacuum.

**Hon. (Dr) Robert Pukose** (Endebess, UDA) Let me move my amendments as per the Order Paper then allow the Leader of the Majority Party to move further amendments.

**The Temporary Chairman** (Hon. David Ochieng’): Perfect.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 35 of the Bill be amended—

(a) by deleting sub-clause (3) and substituting therefor the following new subclause (3) —

“(3) The Claims Management Office may delegate the performance of its functions under subsection (2)(a) and (b) to a suitable entity”;

**The Temporary Chairman** (Hon. David Ochieng’): Leave it at that. I want us to deal with that particular amendment first.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Oundo. I will just give one opportunity from this side and one from the other side.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman, I support the amendment as moved by the Committee Chairman and hopefully there could be a further amendment. It is far much better than the demon in the Bill. The word “may” will remain “may” and we hope there is nowhere it will be taken to mean “shall”.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. TJ.

**Hon. TJ Kajwang’** (Ruaraka, ODM): I support that amendment. We should always display this kind of maturity. We want good legislation. This is far better than what we have in the Bill. Members, if Hon. Pukose’s amendment fails, the Clause will remain as it is in the Bill. You are travelling to Mathare on your way to Ruaraka. We want to show maturity. We should support good legislation.

I support those amendments and the further amendments. We will consider them. The further amendments will refine the process.

*(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 35(3) as amended agreed to)*

Hon. Chairperson, take your seat. We will do this systematically. Is Hon. Kagombe in the House? He had an amendment that precedes the Hon. Chairperson’s amendment. He is not in the House, therefore, his amendment is dropped.

*(Proposed amendment to Clause 35 by  
Hon. GG Kagombe dropped)*

Hon. Chairperson, go ahead with your amendment to Clause 35(4).

*Clause 35(4)*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 35 of the Bill be amended—

(c) by deleting the words “not more than five” appearing in the proviso to sub-clause (4) and substituting therefor the words “a suitable number of”; and

The import of the amendment is that when we stipulate that not more than five entities shall be contracted to manage the claims from the zones identified in the manner prescribed in the Regulations, we are limiting.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson, I am sorry that I keep interfering with your movement of the amendments. Start with the first amendment in that Clause.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 35 of the Bill be amended—

(b) by deleting the words “or a broker” appearing in sub-clause (4);

(c) by deleting the words “not more than five” appearing in the proviso to sub-clause (4) and substituting therefor the words “a suitable number of”; and  
(d) by renumbering the existing sub-clause (4) as (5).

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much.

*(Question of the amendment proposed)*

Hon. Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): You chose the lesser of two evils. The evil in the original Clause is worse than the evil that we are currently adopting. It is a better provision. The best option would have been not to delegate those functions. If we are to delegate the functions, this is a better option in a bad situation.

I support the amendment.

**The Temporary Chairman** (Hon. David Ochieng’): Leader of the Majority Party, I do not want to put the Question. I want you to move a further amendment so that we carry them together. Is your further amendment on Clause 35(4)?

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Yes, Clause 35(4).

Hon. Temporary Chairman, I beg to move:

THAT, Clause 35 of the Bill be further amended by deleting the words “or a broker” appearing in sub-clause (4) and substituting therefor the words “and a claims-settling agent”.

The import of that amendment is that the work that we are delegating to medical insurance providers cannot be done without claim-settling agents. I know what Hon. Junet is speaking to. Those who are licensed by the Insurance Regulatory Authority (IRA) under the Insurance Act are already catered for in the Bill. Anybody who may be delegated with the work of claims management must be a medical insurance provider or a claims-settling agent who is licensed by the IRA under the Insurance Act. That ensures that they are accountable to a regulatory authority.

*(Question of the further amendment proposed)*

Yes, Hon. Makali.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. I support the amendment and the further amendment. Now that we have opened room for delegating, this is a lesser evil than the previous one.

I support the amendments.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Chairman. Hon. Members, please, pay attention to these things. I want some clarification from the Chairperson. The agent given the work to do claims is also a claim-settling agent. Does it mean that this agent will be given money to pay those claims? If so, remember we shall now be taking money from this organisation and giving it to another guy to pay. That is my fear. So, let that be sorted out.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. TJ, let me have another...

**Hon. TJ Kajwang’** (Ruaraka, ODM): Hon. Temporary Chairman, I am glad that you are handling this very professionally. We have to deal with a further amendment before we get to the original amendment by Hon Pukose. This is okay but remember the claims settlement agent has not been defined in this particular Act. From what I have heard from the Leader of the Majority Party, the agent could be defined in another legislation. Having not been defined here may not meet the interest of what the Leader of the Majority Party has in mind. This is



because he will not be known as the person registered in the legislation he is referring to. I want to urge the Leader of the Majority Party to make it easier by defining the words ‘claims settlement agent’ as defined in the other Act.

**The Temporary Chairman** (Hon. David Ochieng’): Correct.

**Hon. TJ Kajwang’** (Ruaraka, ODM): That way, we will be very clear and refer to the person we would hold to account in that legislation. He needs to improve his amendment by putting in other words to convince us that we should adopt it.

**Hon. Junet Mohammed** (Suna East, ODM): On a point of order, Hon. Temporary Chairman.

**The Temporary Chairman** (Hon. David Ochieng’): What is out of order, Hon. Junet?

**Hon. Junet Mohammed** (Suna East, ODM): I want to contribute. Hon. Temporary Chairman, I want to agree with what Hon. TJ is saying. The way we can cure this, now that Members are saying this amendment is better than what is in the Bill, is that, maybe, regulations can be brought later on how to handle claims management and settlement. That is what I would advise the...

**The Temporary Chairman** (Hon. David Ochieng’): Leader of the Majority Party and the Chairperson of the Committee, you have listened. Could the Leader of the Majority Party respond? Is he in the House? Chairperson of the Committee, go ahead. Hon. Rindikiri.

*(Hon. Kimani Ichung’wah stood in his place)*

Leader of the Majority Party allow him first for one minute. Go ahead.

**Hon. Mugambi Rindikiri** (Buuri, UDA): Hon. Temporary Chairman, I have a small experience in the insurance sector. A claim settlement agent is a person authorised to process, pay and negotiate claims on behalf of an entity. Do we have the capacity of agents registered by the Insurance Regulatory Authority (IRA) whose responsibility is to settle or negotiate claims? The premiums they are paid are negotiated between the entity and the agent. We need to be very careful because we are going to give the entire chain of claims settlement to an agent. That is why Members are saying that we need to be very careful. That is my argument. We have to agree on the claim settlement processing but when it comes to claim payment, it is deeper.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairperson.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Thank you, Hon. Temporary Chairman. The claims settlement agent investigates and settles claims and is registered under the Insurance Act. The only thing the Leader of the Majority Party can do is to further amend it to read “as per the Insurance Act”. I think that would help.

**The Temporary Chairman** (Hon. David Ochieng’): I wanted to give an opportunity to the Leader of the Majority Party. I thought you advised him on what to do. I want to hear his response to the matter. Go ahead.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Thank you, Hon. Temporary Chairman. Let me be methodical like you have wanted us to be in prosecuting the amendments. I want to answer Hon. (Dr) Nyikal. First, these entities are being delegated work by the Claims Management Office. The Chairperson’s amendment to Clause 35(3) says “under sub-section 1(a) and (b)”. Sub-section 1(a) reviews processing and validation of medical claims from healthcare providers and facilities. Sub-section 1(b) appraises medical claims based on the benefit package. It has nothing to do with payment. I think I have answered Hon. Nyikal and he looks happy.

On the question of medical claim agents, they are licensed and defined under the Insurance Act. Indeed, that is why we have married it with what is already provided for. They are licensed by the IRA under the Insurance Act. Further, to answer what Hon. Junet is asking

whether there will be regulations, sub-clause (4) that is being renumbered as sub-clause (5) states that the Cabinet Secretary shall make regulations. We are not making it optional for the Cabinet Secretary. He or she must make regulations for the better carrying out of the provisions of this section. Therefore, Hon. Temporary Chairman, I think the matter is settled.

*(Loud consultations)*

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much. Hon. TJ, you have done very well by advising the Leader of the Majority Party on what to do.

*(Hon. TJ Kajwang’ spoke off the record)*

**The Temporary Chairman** (Hon. David Ochieng’): No, you are not making him happy; you are making the Bill better.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Since Hon. TJ seems uncomfortable with the insurance claims agent, we can say “insurance claims agent as defined under the Insurance Act.”

**The Temporary Chairman** (Hon. David Ochieng’): Correct. Hon. Members, we will first vote on the Leader of the Majority Party’s amendment then we go to the Chairperson’s amendment.

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

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

*(Clause 35 as amended agreed to)*

Clause 36

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Makali.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. I wished to delete Clause 36 if my amendment to Clause 35 were carried. Having lost it to Clause 35, I wish to withdraw this amendment.

*(Proposed amendment to Clause 36 by  
Hon. (Dr) Makali Mulu withdrawn)*

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much.

*(Clauses 36 and 37 agreed to)*

Clause 38

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 38.

The Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards provision of health services.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, UDA): Hon. Temporary Chairman, I rise to support the Chairperson on this amendment. There was a water company which was making profits and we asked ourselves, for what purpose? You need to spend that money to enhance water supply. What the Chairman has said is right. It will enable us to enhance health services. Instead of having excess money, it should be used for purposes of health services.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Chairperson, for that amendment. When I looked at the clause, I was very worried given the experience we had with NHIF investing in housing. I am very happy with that particular amendment.

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

*(Clause 38 deleted)*

*(Clause 39 agreed to)*

*Clause 40*

**Hon. (Dr). Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 40 of the Bill be amended in sub-clause (4) by deleting the words “or in pursuance of an authorisation of the Board”.

This is to enhance financial accountability as contemplated under the Public Finance Management Act (No.18 of 2012).

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Kemei.

**Hon. Justice Kemei** (Sigowet/Soin, UDA): Thank you, Hon. Temporary Chairman. I fully support the amendment by Hon. (Dr) Pukose. This country is suffering from governance issues. If we can tighten and make institutions responsible for matters accounts, then we will do this country a favour.

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

*(Clause 40 as amended agreed to)*

*Clause 41*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 41 of the Bill be amended by deleting the proviso to sub-clause 2.

The proviso is superfluous as it limits the administrative expenses as provided in sub-clause 2.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(Question of the amendment proposed)*

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

*(Clause 41 as amended agreed to)*

*(Clauses 42 and 43 agreed to)*

#### Clause 44

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 44 of the Bill be amended by:

(a) deleting the word “Committee” wherever it appears and substituting therefor the word “Tribunal”;

(b) inserting the following new Sub-Clause immediately after Sub-Clause 2—

(3) A person who is not satisfied with an order made by the Tribunal under Sub-Section (2) may appeal to the High Court within twenty-one days from the date the order is made.”

This is to establish a tribunal to handle disputes related to social health insurance which are complex and specialised in nature and to provide for redress to the High Court.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Hon Millie.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Chairman, I wish to support especially Sub-clause 2 on giving a chance for appeal to the High Court. I have worked a lot on mainstreaming human rights, and an appeal process is necessary for a human rights process.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(Question of the amendment proposed)*

*(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 44 as amended agreed to)*

#### Clause 45

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 45 of the Bill be amended by—

(a) deleting the word “Committee” wherever it appears and substituting therefor the word “Tribunal”;

(b) in sub-clause 2 by—

(i) deleting the words “Cabinet Secretary” appearing in paragraph (a) and substituting therefor the word “President”;

(ii) deleting the words “Cabinet Secretary” appearing immediately after the word “appointed by the” in paragraph (b) and substituting therefor the word “Judicial Service Commission”

This is to establish a tribunal to handle disputes related to Social Health Insurance, which are complex and specialised in nature.

*(Question of the amendment proposed)*

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

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

*(Clause 45 as amended agreed to)*

Clause 46

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 46 of the Bill be amended by deleting the word “Committee” wherever it appears and substituting therefor the word “Tribunal”.

This is just to align it. Instead of a Committee, we have established a tribunal to handle these Bills related to Social Health Insurance which are complex and specialised in nature.

**The Temporary Chairman** (Hon. David Ochieng’): You are substituting ‘Committee’ with ‘Tribunal’.

*(Question of the amendment proposed)*

*(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 46 as amended agreed to)*

*(Clause 47 agreed to)*

Clause 48

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 48 of the Bill be amended in sub-clause (1) by—

(a) inserting the words “continue to” immediately after the words “under this Act shall”; and

(b) deleting the words “developed pursuant to the relevant written law”.

This is to emphasise that the existing systems will be leveraged upon in digitisation of processes under the Bill.

*(Question of the amendment proposed)*

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

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

*(Clause 48 as amended agreed to)*

#### Clause 49

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 49 of the Bill be amended—

(c) in sub-clause (1) by deleting the words “one million” appearing in the proviso and substituting therefor the words “two million”;

(d) in sub-clause (5) by deleting the words “five hundred thousand” appearing in paragraph (a) and substituting therefor the words “two million”;

This is to enhance the fines to make them more deterrent, and to make them commensurate to the offences committed under the Bill.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Yes, Hon. Mudeny.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Chairman, I would request the Committee to re-look at this matter a fresh from another angle. Many a times, Government bodies delay to pay because the disbursement from the National Treasury has delayed. How do we remedy such a situation? Can the Hon. Chairman, through the Committee, tell us how they thought about it? How do we remedy that situation? For example, constituency offices have not been paid. There is a delay. By charging them a million, you will wipe out all the operational costs. He probably needs to explain so that Kenyans can understand.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman, this is to you. Let us have Hon. Junet as the Chairman thinks of an answer.

*(Loud consultations)*

**Hon. Junet Mohamed** (Suna East, ODM): For example, when there are delays in disbursements to the counties, and salaries are not paid on time, how does he want to deal with that? And the money is with the National Government.

**Hon. David Gikaria** (Nakuru Town East, UDA): Maybe it is just to air what *Mheshimiwa* Oundo was talking about. Clause 49 starts with “fails without lawful excuse”. That will address what Hon. Oundo is saying. You are exempted if you can give lawful excuse. I totally agree with what Hon. Pukose was saying.

**Hon. Temporary Chairman:** Hon. Nzengu.

**Hon. (Eng) Paul Nzengu** (Mwingi North, WDM): Thank you, Hon. Temporary Chairman. I also want to agree with the proposed amendment. I thought the original Bill was too lenient to people who overcharge and falsify documents. As currently constituted, people have been held hostage by these providers. I agree with the Hon. Chairman.

*(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 49 as amended agreed to)*

#### Clause 50

**Hon. Temporary Chairman:** Hon. Chairman, move your amendment.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): I beg to move:

THAT, Clause 50 of the Bill be amended in sub-clause 2(e) by deleting the words “which shall be within a period of one month from the date of submission of the claim”;

The time-frame of settling claims ought to be set out in proposed regulations.

*(Question of the amendment proposed)*

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

*(Clause 50 as amended agreed to)*

*(Clause 51 agreed to)*

#### Clause 52

**Hon. Temporary Chairman:** Hon. Chairman, move your amendment.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 52 of the Bill be amended by deleting the words “risk spreading and”.

The Social Health Insurance Fund, being a social Fund with one pool, is not supposed to provide enhanced schemes. As such, there is no need to spread risk.

*(Question of the amendment proposed)*

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

*(Clause 52 as amended agreed to)*

*(Clauses 53, 54 and 55 agreed to)*

New Clause 49A

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 49—

Recovery of sums  
due under this Act  
Act.

49A. (1) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Authority, as the case may be, the amount of any contribution or any other sum that was not obtained in a lawful manner, together with any penalty found to be due from such person to the Authority and any sum so ordered shall be recoverable as a fine and paid into the Funds.

(2) All sums due to the Authority shall be recoverable as debts due to the Authority, and without prejudice to any other remedy, may be recovered by the Authority summarily as a civil debt.

(3) All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any authorized officer of the Authority.

(4) All sums recovered by legal proceedings in respect of monies which should have been paid into the Funds shall, when recovered, be paid into the Funds.

(5) Despite any other written law, the assets of the Funds shall not be liable to attachment under any process of law.

*(The new clause was read a First Time)*

**Hon. Temporary Chairman:** Mover, move Second Reading.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 49A be now read a Second Time.

In 49A(1), it says, “The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Authority, as the case may be, the amount of any contribution or any other sum that was not obtained in a lawful manner, together with any penalty found to be due from such person to the Authority and any sum so ordered shall be recoverable as a fine and paid into the Funds.”

**Hon. Temporary Chairman:** Hon. Member, these amendments are in the Order Paper. Just move.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 49A be now read a Second Time.

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



**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): The advocates in the House and the Chair need to look at subclause 3. For those who have not seen nor heard, it says “all criminal and civil proceedings under this Act without prejudice to any other power in that behalf, be instituted by any authorised officer of the Authority.” To my understanding, criminal proceedings in this country are an exclusive reserve of the Office of the Director of Public Prosecutions (ODPP). We need that clarification. We might be doing something that is unconstitutional. The EACC has requested for prosecution powers but it has been denied and I wonder how this can be delegated to an authority that is not provided for in the Constitution. That is something that needs to be clarified.

**The Temporary Chairman** (Hon. David Ochieng’): The Leader of the Majority Party, do you want to offer clarification on this?

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, I hear what Hon. Oundo is saying but this is also in the current NHIF Act, verbatim as it is. The Authority’s officers are instituting, not prosecuting. The work of prosecuting is done by the DPP.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Gikaria, do you want to be a lawyer this evening? Go ahead.

**Hon. David Gikaria** (Nakuru Town East, UDA). After what we had in Mombasa, we have become a little bit serious with our work, Hon. Temporary Chairman. I support this amendment. If you look at the New Clause 49A, subclause 5, it says that: “Despite any other written law, the assets of the Funds shall not be liable to attachment under any process of law.” I want to agree. There is a tendency of people going to court and attaching properties. This will go a long way in protecting the property.

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

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

### *First Schedule*

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I wish to drop the amendment on (a) and b(i) (ii), (iii) and retain amendment on (c) Paragraph 6.

*(Proposed amendment to (a) and b(i), (ii), and (iii) dropped)*

Hon. Temporary Chairman, I beg to move:

THAT, the First Schedule of the Bill be amended—

(c) in paragraph 6 —

(i) by inserting the following new sub-paragraph immediately after subparagraph (3)

“(4) Despite the provisions of sub-paragraph (2) and (3), the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.”

(ii) by renumbering the existing sub-clause (4) as sub-clause (5).

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): I will start with the Leader of the Majority Party.

*(A Member spoke off the record)*

Normally, when the Chair proposes amendments, we deal with them then we come to yours. Go ahead.

**Hon. Kimani Ichung'wah** (Kikuyu UDA): Thank you, Hon. Temporary Chairman. I rise to support this amendment. If you may remember, during the Second Reading of this Bill, we were at pains to explain to Members that not a single member of Staff of the NHIF will be laid off. Indeed, the amendment that the Chair has proposed is buttressing that point. That, not a single Member of staff will be laid off unless that member of staff opts not to work for the Authority that will succeed NHIF.

If you read the wordings of that particular amendment: “(4) Despite the provisions of sub-paragraph (2) and (3), ...” Sub-paragraph (2) is where the staff of the NHIF...

*(Loud consultations)*

Hon. Temporary Chairman, protect me from the noise from the gracious lady from Uasin Gishu, the Member for Baringo North and the Member for Aldai. Kindly ask them to... Hon. Millie Odhiambo is struggling to hear what I am saying.

**The Temporary Chairman** (Hon. David Ochieng’): Order! Prof. Bartoo, your classes can be done after this.

**Hon. Kimani Ichung'wah** (Kikuyu UDA): They can desist having *kamukunjis* here. There are people we have to separate like Prof. Bartoo and Hon. Marianne Kitany.

*(Laughter)*

**The Temporary Chairman** (Hon. David Ochieng’): Go ahead. “Separate” is a very strong word there, Leader of the Majority Party.

**Hon. Kimani Ichung'wah** (Kikuyu UDA): That was on a light note, Hon. Temporary Chairman.

I was saying, if you read sub-paragraph (2), that is where the Fund will employ all the employees who are working with the NHIF. They are assured that for the next one year, they will continue to work with the NHIF until 12<sup>th</sup> months lapse.

In sub-paragraph (3), the new Social Health Authority will be required to appoint those who are suitably qualified. The further amendment by the Chair says:

“...the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.”

Indeed, this is true. This is what Hon. Junet said yesterday in his contribution. That, priority must be given to the staff of the NHIF. So, those who will be found to be suitably qualified for the positions in the approved staff establishment are certain that they will get their jobs.

Will those who are not suitably qualified be dispensed with? My straight answer is, No! They shall be redeployed to other sectors within the public service. It is granted that there will be those who will opt to retire because they will feel that after we have passed the Digital Health Bill – that will transform in a great way how the new NHIF will work – they will not be techno savvy enough to work there. When they will retire, they will enjoy their retirement

packages. I just want to allay the fear that has been alluded to elsewhere. I have heard that many Members are being lobbied by the staff of NHIF for fear that they will lose their jobs. Not a single member of staff will lose his job on account of the passage of this Bill.

Thank you, Hon. Chair. You have now guaranteed the country that at a time when many Kenyans are jobless and looking for jobs, no single member of staff of the NHIF will lose his or her job.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Member, if I may clarify, at this point we are dealing with the First Schedule, sub-clause 2(2) which says:

“Despite subparagraph (1), the Authority may within one year from the appointed day dispose of any of the assets vested in the Authority under subparagraph (1).”

I want us to deal with that one first then we will come to paragraph 6(1). I do not know if I have been understood. Paragraph 6(1) is where there is so much interest. I want to put the Question on Paragraph (2)(2) of the First Schedule and then we go to Paragraph 6.

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

With that, I want us to move to Paragraph 6.

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Paragraph 5.

**The Temporary Chairman** (Hon. David Ochieng’): It was withdrawn. So, we will go to Paragraph 6. Before we prosecute Hon. Chairman’s amendment, there are proposed amendments by Hon. Oluoch and Hon. Makali. If they are carried, we will go to Hon. Chairman’s amendment. I call upon Hon. Oluoch to move his amendment to the First Schedule.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, I beg to move:

THAT the First Schedule of the Bill be amended in Paragraph 6 by deleting sub-paragraphs (2), (3) and (4) and substituting therefor the following new sub-paragraphs—

(2) Subject to sub-paragraph (3), the officers and inspectors appointed for the administration of the Fund on the appointed day shall be deemed to be officers and inspectors appointed by the Authority under Section 17 of the Act.

(3) Notwithstanding the provisions of sub-paragraph (2), within twelve months after the appointed day, the Authority shall review the qualifications of all persons deemed to be employees of the Authority under sub-paragraph (2) and may retain those found suitably qualified for employment by the Authority subject to—

(a) such persons opting to remain in the service of the Authority;  
and

(b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority.

If you look at Paragraph 6 (i) of the First Schedule, it presupposes that there will be a transfer of assets. There is absolutely no mention of the transfer of the staff or human resource. Clearly, whoever is behind this amendment thinks that an authority or entity exists without its staff and has some sinister motives. The NHIF is in all the sub-counties, including your constituencies.

This proposed amendment seeks to ensure that you preserve the establishment of the persons who are there first, as you create the new entity. Then, the new entity or Authority can

thereafter assess the people for purposes of competencies and then decide whom they will retain in a manner that is legal and acceptable.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Temporary Chairman, the proposed amendment will save the human resource that we have even as we transit to have an enhanced Social Health Insurance Fund.

Thank you, Hon. Temporary Chairman.

*(Question of the amendment proposed)*

The first bite will go to Hon. Makali because he has a similar amendment.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you, Hon. Temporary Chairman. As I said yesterday, my concern is exactly what Hon. Oluoch has said. When you look at Paragraph 6 (i), as you transfer cash and assets to the new Authority within the first one year, we do not indicate that the staff will be transferred. Even though Leader of the Majority Party has said that it would be in one year, it is not in the Bill.

I am proposing that we amend the First Schedule by deleting paragraphs 2, 3 and 4. Then, we substitute them with an additional statement which says—

“The officers and inspectors appointed for the administration of the Fund on the appointed day shall be deemed to be officers and inspectors appointed by the Authority under Section 17 of the Act.”

This will firm up the position the Leader of the Majority Party has mentioned. It will give the staff confidence and assurance that within the first one year, they will be staff of the Authority which will use its own internal appraisal and evaluation system to determine who is fit to remain and exit. We can come up with a package to encourage those who are exiting to go home with. Even though the Leader of the Majority Party has assured them, the Bill does not capture them. They are not assured of the first one year. My amendment is meant to give them the assurance that within one year, they will be staff of the Authority.

I submit, Hon. Temporary Chairman.

*(Loud consultations)*

**The Temporary Chairman** (Hon. David Ochieng’): Allow me to give this opportunity to Hon. Chairman first. Let him clarify something first.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Thank you, Hon. Temporary Chairman. I oppose the amendment by Hon. Oluoch. The NHIF staff will not be affected by this new structure of the Authority. They will remain staff of NHIF for one year. During this period, the Authority will set up its structures. When they do so, they will now recruit from NHIF staff who were there within that period of one year. If you bring NHIF staff in the Authority before you establish structures and put in systems, then it will not work. We must provide for the new Authority which we are establishing its structures.

However, in the amendment which I shall bring, the staff of NHIF shall be given priority in recruitment to the new Authority. Nobody is losing. The Bill says that those who are qualified will be absorbed. There is a consultancy report which was done by the World Bank. It established that there was a mismatch between the qualifications and what they were doing. Therefore, we must give the new Authority the power and leeway to recruit people who are competent and the ones whom they require. If the rest of the staff want to retire, they can do so. However, if you have skills to serve in the public service, then you will be taken there on the same terms you were working on but not to a disadvantage.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Pukose, does what you have just talked about in the amendment?

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Yes.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. TJ Kajwang’

**Hon. TJ Kajwang’** (Ruaraka, ODM): Hon. Temporary Chairman, I wanted to stand on a point of order, but I want to contribute because it will prejudice what I want to say. The Leader of the Majority Party and Hon. Pukose are talking about this one-year transition. I want to put them to task here. We have a blue copy of the Bill and the amendments. Is there anywhere in this Bill that has this one year you have mentioned? They are misleading this House. Hon. Deputy Speaker is out of order because she is standing between you and Hon. Pukose, and I want to address Hon. Pukose.

**The Temporary Chairman** (Hon. David Ochieng’): You are the one who is speaking. She is not out of order.

**Hon. TJ Kajwang’** (Ruaraka, ODM): Hon. Temporary Chairman, they are just misleading the House. There is nothing about one year. I want to put him to task, when I finish, to show us where these words are written. Members listen to me. When a legislation says that it will be reviewed, you can go to the bank and know that the word “review” is tantamount to sacking. You do not have to put it in legislation. Every Board member, employee and CEO always review their staff automatically. We do not have to put it in legislation.

I want to tell you that we did this with the Ethics and Anti-Corruption Commission (EACC). However, the practice in this National Assembly has not been to take away the employees. We removed the CEO. We removed Prof. Patrick Lumumba here. We sent him home but we did not charge the employees. Where will you take these people? Why are you dispossessing them and making them unemployable?

Lastly, I want to disclose my interests. My brother is an employee of NHIF. I know that Hon. Millie’s brother who was my classmate is an employee of NHIF. I cannot be in National Assembly...

*(Hon. Kangogo Bowen spoke off the record)*

Give me a minute. I am disclosing my interest, Hon. Kangogo. That is allowed in the Constitution. I cannot be in the National Assembly and then I certify the sacking of my brother. It is not possible.

**The Temporary Chairman** (Hon. David Ochieng’): No! No!

**Hon. TJ Kajwang’** (Ruaraka, ODM): Why are we rendering these people unemployed?

**The Temporary Chairman** (Hon. David Ochieng’): Order, Members. Order! Order, Hon. Kangogo. The Leader of the Majority Party and the Chairperson of the Departmental Committee on Health just made some very good submissions here.

*(Hon. (Dr) James Nyikal and other Members consulted loudly)*

Order, Hon. Nyikal. The Chairperson of the Departmental Committee on Health has made some very good contributions here, which I wish were in writing. What I am ordering now is that yourself, the Leader of the Majority Party, and Leader of the Minority Party, take three to four minutes to get a text that will help move this process forward. Please, let us do that so that we proceed with the process. I will allow a few comments on this matter as they do that. Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Temporary Chairman, I listened very carefully to the Leader of the Majority Party. As you said, his contributions are not in the

amendment. We are discussing about over 1,800 people or employees who have families, children, dependants, and over 10 other people relying on them. We cannot just sit here and certify that 1,800 people go home just like that. What we need to do is to put that in this Bill. That is if the Leader of the Majority Party was genuine in his contribution. That there will be a transition of one year and that some staff are going to be redeployed and re-absorbed in other government institutions and new entities. This is because we are here to protect the interests of the people of Kenya. The people of Kenya start with those 1,800 employees of the NHIF. We cannot just put them under the bus.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much. Hon. Kangogo.

**Hon. Kangogo Bowen** (Marakwet East, UDA): I heard the Chairman of the Committee, the Leader of the Majority Party, and my colleagues from the other side, give contributions, especially on what is going to happen to the current employees of the NHIF. It is my view that it is not automatic that the current employees of the NHIF should transit to the new agency.

The problems we have in the NHIF are collusion between some employees in the NHIF and providers of health services. Even as we transit to the new healthcare system, it is my view that employees of the NHIF must be vetted. Those who will qualify or pass vetting will transit to the new agency. Otherwise, we are going to transfer the same problem and corruption in the NHIF to the new agency.

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you for this chance. When you hear both the Chair and the Leader of the Majority Party speak, both are very strongly saying that nobody will lose their place of employment. Equally, when Hon. TJ speaks, he speaks for the same. What we need to realise is that, yes, the two parties are saying we need to protect the workers. Let it be in writing so that it is actually law, not being said verbally.

Second and lastly is that employees of the NHIF must be protected not to lose their places. These are workers of this country.

*(Applause)*

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Makilap, one minute.

**Hon. Joseph Makilap** (Baringo North, UDA): Hon. Temporary Chairman, this Bill is a complete transformation of healthcare. What we want to secure for this country, and Kenyans are watching us, is the lives and welfare of employees of the NHIF. Corruption is across the board in this country. We should not fix the people of the NHIF only. There should be a clause to say that employees of the NHIF shall transit to the next authority. Employ and vet the managers.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you. Hon. Millie Odhiambo. Leader of the Majority Party, we only have one minute because we are out of time.

**Hon. Millie Odhiambo-Mabona** (Suba North, ODM): Thank you for giving me this opportunity. I thank Hon. TJ for already declaring interest on my behalf. I declare interest as per the law that my brother who comes immediately after me is an employee of the NHIF. The reason I have come straight from Geneva to the House is not just my brother but also the thousands of people that I know work with the NHIF. My brother has been sick for many years and has been supported by the NHIF staff. It is not only NHIF. If it is an issue of corruption, in the corruption index, the police are always number one. We cannot fire the police because of corruption. I have spoken to Hon. Ichung’wah and I want to state that we are concerned about the same thing. Hon. Ichung’wah is saying that he wants to protect the NHIF. The Chairman is

saying that he wants to protect the employees of NHIF. As a lawyer, I can tell you that is not said in this Bill. Can we provide wording to protect all employees including my brother Dan?

**The Temporary Chairman** (Hon. David Ochieng’): Thank you very much.

*(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)*

Let us go to Hon. Pukose’s amendment.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the First Schedule of the Bill be amended—

(c) in paragraph 6 —

(i) by inserting the following new sub-paragraph immediately after sub-paragraph (3)

“(4) Despite the provisions of sub-paragraph (2) and (3), the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.”

(ii) by renumbering the existing sub-clause (4) as sub-clause (5).

I submit.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Yes, Hon. Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Chairman, this is what we do not understand: when you say that you are recruiting, where are these people that are now applying? You have not exactly said where you are. You have thrown these guys out. There is possibility that even at this time, there can be a further amendment. When we were discussing here...

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Nyikal, just a minute. When we started this process, I said this and I want to repeat. Further amendments are not on anybody. I said anybody can bring an amendment. Instead of going on and on, give us a text so that we can put this to question, and then we can look at yours. That will make us progress.

**Hon. (Dr) James Nyikal** (Seme, ODM): That is exactly what happened yesterday. Hon. Temporary Chairman, you advised me yesterday when we were discussing the Sugar Bill, that we let this one pass, and after we are done, then we will discuss mine. It came out clear that once that is gone, you cannot come and discuss this. If we are doing further amendments, we must do them when this is still alive.

**The Temporary Chairman** (Hon. David Ochieng’): Where is your proposal?

**Hon. (Dr) James Nyikal** (Seme, ODM): With the agreement of Dr Pukose, we are proposing that we put an amendment that says: “Staff who were still staff of NHIF”. We can then know that they were still staff of NHIF.

**The Temporary Chairman** (Hon. David Ochieng’): I want to put the Question.

*(Loud consultations)*

Hon. Members, the amendment we are considering now is by Hon. Pukose. I proposed to you that you should approach Hon. Pukose and propose your amendment. Let me give you an example. If what you want to achieve is 100 per cent transition of NHIF staff, you can propose that if they do not get a job with the new Authority, they can be transferred back to Public Service. You should have proposed that by now instead of just going round in circles without proposing possible amendments.

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

*(First Schedule as amended agreed to)*

### *Second Schedule*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Second Schedule to the Bill be amended by deleting sub-paragraph (8) of paragraph (1) and substituting therefor the following new sub-paragraph—

(8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by the concurrence of a majority of all the members present and voting at the meeting.

This is to provide for decision making by the majority on the Board.

*(Question of the amendment proposed)*

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

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

*(Second Schedule as amended agreed to)*

### *Clause 2*

**The Temporary Chairman** (Hon. David Ochieng’): Hon. Chairman.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended—

- (a) by deleting the word “National” appearing in the definition of the term “Board”;
- (b) in the definition of the expression “primary health care” by deleting the words “at every stage of their development, through their full participation and at an affordable cost to the community and country, in the spirit of self-reliance and self-determination” and substituting therefor the words “at levels 1, 2 and 3 of health services, to meet their health needs at every stage of the life cycle, with their full



- participation and at an affordable cost to the community and the country”;
- (c) by deleting the definition of the phrase “risk spreading”;
  - (d) in the definition of the word “spouse” by deleting the words “who for the time being is named as such by the contributor for that financial year”;
  - (e) in the definition of the word “tariff” by deleting the words “to deliver the most efficient and cost-effective care to patients”; and
  - (f) by inserting the following new definition in the proper alphabetical sequence—  
“medical insurance provider” has the meaning assigned to it under the Insurance Act (Cap. 487).

This first amendment aligns the clause with Clause 4 of the Bill that establishes the Social Health Authority. The second amendment specifies that primary healthcare services are offered at Levels 1, 2 and 3 as delineated in the First Schedule of the Health Act (No.21 of 2017). In paragraph (c), the Social Health Insurance Fund, being a social fund with one pool, is not supposed to provide enhanced schemes and, as such, there is no need for risk spreading. The fourth amendment aligns the definition of the term ‘spouse’ with the definition in the Marriage Act (No.4 of 2014). Lastly, matters of efficiency and cost effectiveness will be considered during the identification and setting of applicable tariffs.

*(Question of the amendment proposed)*

**The Temporary Chairman** (Hon. David Ochieng’): Is Hon. Oluoch in the House? Not in the House.

*(Proposed amendment by  
Hon. Anthony Oluoch dropped)*

Hon. Kagombe? Spent. Also, not in the House.

*(Proposed amendment by  
Hon. GG Kagombe dropped)*

*(Question, that the word 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)*

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Chairman** (Hon. David Ochieng’): I call upon the Mover to move reporting on the Social Health Insurance Bill (National Assembly Bill No.58 of 2023).

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report to the House its consideration of the Social Health Insurance Bill (National Assembly Bill No.58 of 2023) and its approval thereof with amendments.

**The Temporary Chairman** (Hon. David Ochieng’): Thank you.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

## IN THE HOUSE

*[The Deputy Speaker (Hon. Gladys Boss) in the Chair]*

## MOTION

CONSIDERATION OF REPORT ON THE DIGITAL HEALTH BILL  
(National Assembly Bill No.57 of 2023)

**Hon. Deputy Speaker:** Hon. Temporary Chairman.

**Hon. David Ochieng’** (Ugenya, MDG): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Digital Health Bill (National Assembly Bill No. 57 of 2023) and its approval thereof with amendments.

**Hon. Deputy Speaker:** Mover

**Hon. Kimani Ichung’wah** (Kikuyu, UDA): Hon. Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I request Hon. Beatrice Adagala to second the Motion for agreement with the report of the Committee of the whole House.

**Hon. Adagala Beatrice** (Vihiga County, ANC): Thank you Hon. Deputy Speaker. I stand to second.

*(Question proposed)*

*(Question put and agreed to)*

## BILL

*Third Reading*

THE DIGITAL HEALTH BILL  
(National Assembly Bill No.57 of 2023)

**Hon. Deputy Speaker:** Mover.

**Hon. Kimani Ichung’wah (Kikuyu, UDA):** Hon. Deputy Speaker, I beg to move that the Digital Health Bill (National Assembly Bill No.57 of 2023) be now read a Third Time.

I also request Hon. Julius Taitumu to second.

**Hon. Julius M’anaiba** (Igembe North, UDA): Hon. Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read  
a Third Time and passed)*

## MOTION

CONSIDERATION OF REPORT ON  
THE SOCIAL HEALTH INSURANCE BILL  
(National Assembly Bill No.58 of 2023)

**Hon. Deputy Speaker:** The Chairperson.

**Hon. David Ochieng'** (Ugenya, MDG): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Social Health Insurance Bill (National Assembly Bill No.58 of 2023) and approved the same with amendments.

**Hon. Deputy Speaker:** Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Deputy Speaker, I beg to move that the House agrees with the Committee in the said report. I also request Hon. Mary, Member for Mwea, to second the Motion for agreement with the report of the Committee of the whole House.

**Hon. Mary Maingi** (Mwea, UDA): Thank you, Hon. Deputy Speaker. The NHIF is doing a good job but has been due for reforms for many years. It has been marred with corruption.

*(Loud consultations)*

Allow me to contribute before I second. I am on the Floor. Let me make my contributions.

**Hon. Deputy Speaker:** Hon. Members, allow her to proceed.

**Hon. Mary Maingi** (Mwea, UDA): The reforms that we have made today were long overdue. The establishment of the Social Health Authority will ensure that there is transparency and accountability in the way that the Social Health Insurance Fund dispenses with its operations. The establishment of a claims management department within the Social Health Authority will ensure that there is transparency in the way that the Social Health Insurance Fund engages with its providers and the public while discharging its duties.

With those many or few remarks, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

## BILL

*Third Reading*

THE SOCIAL HEALTH INSURANCE BILL  
(National Assembly Bill No.58 of 2023)

**Hon. Deputy Speaker:** Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Deputy Speaker, I beg to move that the Social Health Insurance (National Assembly Bill No.58 of 2023) be now read a Third time. I also request Hon. (Capt.) Ruweida to second.

**Hon. Ruweida Mohamed** (Lamu East, JP): Hon. Deputy Speaker, I second.

**Hon. Deputy Speaker:** Leader of the Majority Party switch off your microphone.

*(Question proposed)*

The first one is the Leader of the Majority Party.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Deputy Speaker, before you put the question, allow me to take this opportunity to thank these great patriots. They have sat here the whole day from 9.00 a.m. to 9.00 p.m., to change the architecture of our healthcare insurance sector and change lives for the Kenyan people.

In conclusion, let me just reassure Members who had reservations on the question of the First Schedule and Clause 6. As I said, the NHIF until the new authority is set-up and recruits its staff, their staff will continue to work because the Fund will continue until it is succeeded.

That is why in the Bill, Clause 6 covers transition and there will be very smooth transition. Not a single staff member of NHIF will lose their job. I know many Members have been lobbied by staff of NHIF believing that upon the enactment of this Bill, they would lose their jobs. I want to assure them that they shall not lose their jobs. Those who may opt to retire will retire. Those who shall be found unsuitably qualified to work with the new authority, shall be redeployed within the public service. That is what this Act is saying. Therefore, be rest assured that the Kenya Kwanza administration is in the business of creating jobs, not firing people from their jobs, unless you are part of the corruption cartels.

That is why we have objected to the mass blanket transfer of staff of NHIF. As you know, there are staff who are on suspension, but they are still staff of NHIF. They are on suspension because they are under active investigations by the Ethics and Anti-Corruption Commission (EACC) and other investigative agencies over matters to do, especially with claims management and claims payment at NHIF.

With those many remarks, once again I thank all these great patriots and the people of Kenya can see. I hope a list must be published of all the Members who sacrificed time from their families to work late into the night and ensure that no other Kenyan family will suffer the anguish of having their property auctioned on account of hospital bills.

This new Bill will change how healthcare is managed in this country. This is together with the two Bills: the Primary Health Care Fund and the Facilities Improvement Fund are being considered by the Senate. They will come to this House once adopted by the Senate. This will make us realise what we promised the people of Kenya. I am certain whether you were in Kenya Kwanza or Azimio last year, we all went out to Kenyans and promised them Universal Health Coverage. This will be realised with the adoption of these four Bills.

I beg you that when the other two Bills come from the Senate, and then they go through public participation in line with our procedures, we shall be here— patriotic as we have been today— to enact them and pass them into law.

Thank you very much, Hon. Members.

**Hon. Junet Mohamed** (Suna East, ODM): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I will give the opportunity to one Member because we are out of time.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Deputy Speaker, this is a House of debate. We sat here from morning to this time so that we could participate. Anyway, let me stop there.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Junet, I have given you the permission to speak. So, there is no point to lament. Proceed and debate.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Deputy Speaker, we are not here to listen to Leader of the Majority Party only. Anyway, I thank Members of the Minority Party who took time and stayed here the whole day, especially Hon. (Dr) Oundo, Hon. (Dr) Nyikal, Hon. TJ Kajwang, Member for Magarini and all the other Members. They have stayed here the whole day to make sure their contributions are recorded. The minority must have their say and the majority have their way. That is how Parliament is conducted.

Secondly, I urge the Leader of Majority Party that there is a serious anomaly and omission we have made. We are creating Social Health Authority in this Bill. We cannot use the word ‘authority’. The police force was changed to National Police Service and all humanity issues providers are called services. In the Miscellaneous (Amendment) Bill, I propose to the Leader of the Majority Party to change the name from “Social Health Authority” to “Social Health Services”. ‘Authority’ is draconian. People think it is all about collecting money but not providing services. I pray that this Bill will be transformative and help Kenyans. Let us hope for the best. I wish every Member a good night.

Thank you very much, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you, Hon. Junet.

*(Question put and agreed to)*

*(The Bill was accordingly read  
a Third Time and passed)*

### ADJOURNMENT

**Hon. Deputy Speaker:** Hon. Members, the time being 9.13 p.m., the House stands adjourned until Thursday, 28<sup>th</sup> September 2023 at 2.30 p.m.

The House rose at 9.13 p.m.

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