

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 2nd July, 2014

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Well, hon. Members, as you are aware your own Constitution in Article 121 prescribes that no business may be transacted unless there is present in the National Assembly not fewer than 50 Members. Now, I am told we quorate. We may begin to transact.

PAPERS LAID

Hon. (Ms.) Kanyua: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday 2nd July, 2014:-

Report of the Departmental Committee on Justice and Legal Affairs on Petition by Mr. Adam King'ori Mwangi for enforcement of a court order in winding up Case No.10 of 1987.

Report of the Departmental Committee on Justice and Legal Affairs on the Victim Protection Bill, 2013.

Thank you, hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Education, Science and Technology, hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Hon. Speaker. I beg to lay the following Paper on the Table of the House today 2nd July, 2014:-

Report of a Study Visit to Portugal by the Departmental Committee on Education, Research and Technology.

Thank you, hon. Speaker.

Hon. Speaker: Next Order. Hon. Sabina Chege.

NOTICE OF MOTION

ADOPTION OF REPORT ON STUDY VISIT TO PORTUGAL

Hon. (Ms.) S.W. Chege: Hon. Speaker, I beg to give notice of the following Motion:-

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, this House adopts the Report of the Study Visit to Portugal by the Departmental Committee on Education, Research and Technology laid on the Table of the House today Wednesday 2nd July, 2014.

Thank you, hon. Speaker.

Hon. Speaker: Next Order. Hon. James Kimaru Bett, Member for Kesses.

REQUESTS FOR STATEMENTS

NON-PAYMENT OF HARDSHIP ALLOWANCES TO TEACHERS BY THE TSC

Hon. J.K. Bett: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding payment of hardship allowances to teachers by the Teachers Service Commission (TSC).

Hon. Speaker, over the years---

Hon. Speaker: No, I do not want those stories. Read what is there. We are doing away with this since we are debating amongst ourselves. Even if we are told about it over the years or centuries, this will not help. Just read what is there.

Hon. J.K. Bett: Thank you, hon. Speaker.

Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the non-payment of hardship allowances to teachers by the Teachers Service Commission (TSC).

Hon. Speaker: Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. I will ask the Member to give us three weeks.

Hon. Speaker: Hon. Bett.

Hon. J.K. Bett: Three weeks are okay, hon. Speaker.

Hon. Speaker: Very well. Hon. Sabina Chege, are you also requesting a Statement? You can see now why I keep telling you that this procedure is not working. Hon. Sabina Chege is being requested for a Statement and now she stands to seek a Statement. I keep wondering. Then on some occasion she will be giving a Statement and on another one she will be receiving an answer.

Now, proceed Sabina.

RELEASE OF QUAIL BIRDS INTO ENVIRONMENT

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources regarding the release of quail birds into the environment and the likely impact of the same.

Hon. Speaker, quail farming was introduced at the start of the year 2013; many farmers applied for licences from the Kenya Wildlife Service (KWS) to operate quail business.

Hon. Speaker: What is that you are reading? It is not what is on the Order Paper. Forget about that. Look at the Order Paper. Just read what is on the Order Paper.

Hon. (Ms.) S.W. Chege: The Chairperson of the Departmental Committee on Environment and Natural Resources regarding trade in quail birds and eggs and the likely effect of the release of birds into the environment.

Thank you.

Hon. Speaker: Hon. Amina Abdalla, trading in bird eggs, quails and such like birds and animals.

Hon. (Ms.) Abdalla: Hon. Speaker, I am sure that the Statement will be the last part of the sentence, which is “the likely effect of the release of large numbers of quail birds” because they cannot do the business without a permit; the new Act allows for this trade. Quails are one of the animals under the schedules that are allowed to be traded in on permits.

Hon. Speaker: Are you responding on the spot?

Hon. (Ms.) Abdalla: Hon. Speaker, I can, in fact, because sincerely this is a new phenomenon. Even if we gave it to the Ministry, all they will tell us is that they are going to do a study because the legal part about giving permits is already well articulated in the Act. The bit about those who are finding it not economical, and are releasing the quails to the environment--- This is something that requires a study; it could be the survival of the fittest and the food chain would deal with it. So, if we give time to the Ministry to, maybe, do a study--- To expect an answer from a business that has just collapsed would not be really fair to the Ministry.

Hon. Speaker: A business that has collapsed, is it a fortune? Is it something like a pyramid scheme? Hon. Sabina Chege, do you want a response which has got a report of a study done by the Ministry?

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. I raised this issue because one, there is an impact on the environment. I had three sections and so hon. Amina would not be able to answer. This is because I wanted to know the Government plans for handling the resultant effects. Two is about the sensitisation of the public to environmental impact of this and other farming activities; number three, is about measures put in place to deal with issues relating to investment in similar ventures, to minimise the risk or losses by farmers as well as to prevent exploitation by middlemen. So, it has other issues and it is not just about the environment.

Hon. Speaker: Hon. Amina, you are responding to issues about investments and middlemen. Maybe the Ministry will need to do some study about quails and the eggs which are said to have some magical power or something.

(Laughter)

Hon. (Ms.) Abdalla: Hon. Speaker, you will agree with me that the bits about the viability of the ventures and awareness of how to deal with--- That is a business issue. However, on the one on the impact on the environment I will ask the Ministry to give us information on what plans they are have. On the business, one I think we need to give it to the Ministry of Industrialisation or Trade.

Hon. Speaker: I think once we have the arrangement where we want these questions to be answered on the Floor here by Cabinet Secretaries it will become easier; this is because they may not have done studies and maybe they just need to put out radio and television advertisements to tell people to be wary of prophets of doom, who may claim prophetic and magical powers from quail eggs and such like business. So, hon. Amina, you will require about how many days to get the response? Is it three weeks?

Hon. (Ms.) Abdalla: Thank you, hon. Speaker. Three weeks is okay with me.

Hon. Speaker: Very well. Let us hear from Cyprian Iringo Kubai.

Hon. Iringo: Thank you, hon. Speaker. I would like to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the posting of national Government officers to Igembe Central Constituency.

Thank you.

Hon. Speaker: Hon. Abongotum, or his able deputy, the hon. Lentoimaga to respond. Maybe, the Leader of Majority Party should take up the matter of the posting of national Government officers to Igembe Central. Hon. Abongotum and hon. Lentoimaga have chosen to be away today!

Hon. A.B. Duale: Hon. Speaker, I think I will take over that and I can bring an answer on Thursday next week.

Hon. Speaker: I believe it does not require a committee meeting to get an answer. Let the Leader of Majority Party respond.

Let us hear from hon. Leonard Tonui.

Hon. Tonui: Thank you, hon. Speaker. I take this opportunity to request a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Co-operatives regarding legitimacy and continued existence of the Tea Board of Kenya. The Tea Board of Kenya continues to levy what we call "tax" although under ALFA Act, the Tea Board of Kenya ceased to exist.

Hon. Speaker: Hon. Nooru, hon. Tonui needs your response.

Hon. Nooru: Hon. Speaker, the Tea Board of Kenya is in existence. I will try to answer as much as I can.

This is a very simple matter because the Tea Board of Kenya is supposed to be dissolved under the ALFA Act.

However, the Tea Board of Kenya has not been dissolved because the Crops Act, which was in existence before has not been operationalised; the Statute Law (Miscellaneous Amendments) Act, which was to have dissolved the Tea Board of Kenya is still under consideration before the House.

Hon. Speaker: You said that this is a simple matter which you can answer on your feet. Can you tell us the amounts so far collected by the Tea Board of Kenya since January 2013 and where the revenue has been channelled to?

Hon. Nooru, are you able to give that response? It is part of the Statement.

Hon. Nooru: Hon. Speaker, the Tea Board of Kenya is still collecting the tax because---

Hon. Speaker: How much has been collected since January 2013?

Hon. Nooru: I do not have the figures because he has not asked about the figures.

Hon. Speaker: But you purported to say that this is simple matter, and you could respond to it on your feet! You are not the Cabinet Secretary! You know this is the problem and this is the danger you put yourself in.

Hon. Nooru: But I am only responding to what I have been asked, hon. Speaker.

Hon. Speaker: Hon. Tonui, you want to pursue him? Just pursue him because he has said he can answer it on his feet.

Hon. Tonui: Thank you, hon. Speaker. The Chairman of the Departmental Committee Agriculture, Livestock and Co-operative has been taking things in a very simplistic manner. I did even work on an amendment to the Tea Act and he has sat on it. It has never been moved in his Committee and he is saying that the Tea Act does not exist. We have sat down with the lawyers of Parliament and that Act still exists. Why is the levy still there? He should not continue treating it as a simple when it is not that simple.

This is an illegal levy on the farmers; from the time ALFA Act came into place in January 2014 it became illegal. They have continued collecting this levy illegally from the Farmers; this illegality must come to an end immediately.

I want the Chair to be more serious with these issues.

(Applause)

He committed misdeeds along the corridors of Parliament that I want to correct using a non-existent Act; that is why I raised it another time on the Floor of the House.

Hon. Speaker: Very well. Hon. Nooru, respond now. Do not dismiss your colleagues in the corridors of Parliament. We do not want that to happen.

Hon. Nooru: Hon. Speaker, I do not dismiss hon. Members in the corridors of Parliament. The way the question was put was that the existence of the Tea Board of Kenya is what was being queried. I simply said that the Tea Board of Kenya is in existence, because we are waiting for the Statute Law (Miscellaneous Amendments) Bill, which is in the Third Reading Stage now, to be passed.

Hon. Speaker: When are you going to give a response to this request?

Hon. Nooru: In one week's time.

Hon. Speaker: In one week's time. Is that okay, hon. Tonui?

Hon. Tonui: It is quite in order; I will urge him also to with what is before his Committee, or pass it to another committee.

Hon. Speaker: Very well. Let us hear from hon. Oyugi.

Hon. Oyugi: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding extra-judicial killings around the country, especially in the Coast region. Many people around the country have been shot and killed under unclear circumstances; the police has been describing the victims as radical.

Hon. Speaker: What you are reading is not what is on the Order Paper.

Hon. Oyugi: It is the same one that you approved, hon. Speaker.

Hon. Speaker: I do not know. The bigger Statement is already in the system.

Hon. Oyugi: I stand sufficiently guided. I would like to make a request Statement number 191 of 2014 on the Order Paper from the Chairperson of the

Departmental Committee on Administration and National Security, regarding alleged unresolved extra-judicial killings of youths, especially in Kilifi, Kwale and Malindi counties.

Hon. Speaker: Hon. Abongotum, you have the Floor to respond. Leader of Majority Party, you may have to take over this docket.

Hon. A.B. Duale: Hon. Speaker, I will have to pass this request for a Statement to the Chair and tell him that he must bring the answer to my good friend hon. Oyugi, within two weeks.

Hon. Oyugi: Hon. Speaker, two weeks is sufficient; I thank him.

Hon. Speaker: Very well. There is a Statement which is not on the Order Paper, but it is here. Just stick to the rules.

Hon. Kaluma, you have the Floor to proceed.

APPOINTMENT OF JUDGES OF THE HIGH COURT

Hon. Kaluma: Hon. Speaker, I am requesting a Statement from the Leader of the Majority Party regarding the appointment of Judges of the High Court of Kenya by His Excellency the President pursuant to Article 172(1(a) of the Constitution.

Hon. A.B. Duale: Hon. Speaker, allow Hon. Kaluma to sit because it is me who is talking. I will bring an answer within ten days because the President is in consultation with the Chief Justice. I will give them time to talk and I am sure after they talk and reach an agreement as two leaders of two different institutions, then both of them will provide me with the answer that I will deliver to the House and hon. Kaluma. So within the next ten days, I will bring an answer. Hopefully, I will tell the President and the Chief Justice to have a cup of tea and I take notes on the matter and then bring it. That is dialogue.

Hon. Kaluma: Hon. Speaker, I would pray that that dialogue also includes the Judicial Service Commission as an independent Commission, so that the CJ does not just sit there as the CJ but also the Chair of the Commission. I will wait for ten days. It is an urgent matter for the country.

Hon. Nooru: Hon. Speaker, yesterday afternoon, I promised the House to bring an answer to the Statement sought by Hon. Mohamed Abass concerning the operations of the Kenya Meat Commission (KMC).

Hon. Speaker: Do you have the response?

Hon. Nooru: Yes, hon. Speaker.

Hon. Speaker: Is hon. Mohamed Abass present?

Hon. Members: No!

Hon. Speaker: Now that he is not present, just table it and that concludes the matter.

Hon. Nooru: Thank you!

(Hon. Nooru laid the document on the Table)

Hon. Speaker: Any other, hon. Nooru?

OWNERSHIP OF THE KSC

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Hon. Nooru: Hon. Speaker, I have another on the Kenya Seed Company which was sought by Hon. Wamalwa but he is also not there. So I do not know what to do.

Hon. Speaker: Which one?

Hon. Nooru: On the ownership of the Kenya Seed Company.

Hon. Speaker: Just table it!

Hon. Nooru: Thank you.

Hon. Speaker: That is also another way and it will be captured in the records of the House.

(Hon. Nooru laid the document on the table)

(Hon. (Dr.) Pukose stood up in his place)

Hon. (Dr.) Pukose, it is not done that way. Have you read it?

Hon. Nooru: That is all for today, Hon. Speaker.

Hon. Speaker: Very well!

Hon. Kombe: On a point of order, Hon. Speaker. I am a sad man. I sought a Statement from the Chairperson of the Departmental Committee on Lands but it has never come to date. I am very much worried because the area in question, the residents are in a bad state because they are harassed every time by the Administration and the regular Police, who guard the salt harvesters in the area. Those people want to work on their parcels of land during this rainy season. I wish you could compel the Chairperson to bring the answer because he says it is ready.

Hon. Speaker: Where is Hon. Mwiru? Who is his deputy?

Hon. Members: Hon. ole Sakuda?

Hon. Speaker: Both of them have chosen to do other things. Hon. Kombe, you might continue being unhappy for a while.

(Laughter)

I am not too sure that even if the Statement was ready and was read here, it would make you any happier. Supposing it confirms one or two things that are still happening, you might end up being unhappy. But it is noted; approach the Clerk to get a letter to issue to the Chairperson of the Departmental Committee to provide the response. Approach the Clerk's Office to get a letter to issue to the Chairman.

May I get an indication of the interventions for Statements which have not come? Those who want to complain that they have sought Statements and they have not come, please approach the Clerk's office. There is a better way of dealing with the matter administratively.

BILL

Second Reading

THE KENYA QUALIFICATIONS FRAMEWORK BILL

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

(Hon. A.B. Duale on 11.3.2014)

(Resumption of Debate interrupted on 1.7.2014)

(Several hon. Members stood up in their places)

Hon. Speaker: Order, hon. Members! Please follow the proceedings like the Member for Kisumu Village. Is it a village or city? Hon. Obura, find some place to patch yourself up. Hon. Members walking in, please take your seats so that we can transact business quickly. Why is it that hon. Members prefer to conduct business while standing? Is it greetings?

Hon. Members, the business listed as Order No.8 relating to the Kenya Qualifications Framework Bill, National Assembly Bill No.29 of 2013, had been debated and concluded earlier today. What remains is for me to put the Question on the Second Reading. It is therefore, important because it is voting, so that when you vote you know what it is that you are voting for and not just vote one way or the other without--- It is about that Bill.

(Question put and agreed to)

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

MOTION

ADOPTION OF REPORT ON DEVOLUTION OF HEALTH SERVICES

THAT, this House adopts the Report of the Departmental Committee on Health on Devolution of Health Services, laid on the Table of the House on Thursday, 20th March, 2014.

(Hon. (Ms.) Nyamai on 26.6.2014)

(Resumption of Debate interrupted on 1.7.2014)

Hon. Speaker: Who was on the Floor? There was a Member who was contributing to the Report of the Chairperson of the Departmental Committee. Was it hon. Gichigi?

Any other Member is free to contribute to this debate and I will give the first chance to hon. Okoth, the Member of Kibra. Hon. (Ms.) Kanyua are you contributing to this?

Hon. (Ms.) Kanyua: Thank you hon. Speaker I wish to contribute to the Report on Health moved by the Chairperson, hon. (Ms.) Nyamai. I congratulate her Committee for having brought it to the Floor of this House; it is about a conversation on matters of health and devolution of health services in our country. I think since we started

devolution, we have heard of many functions that were devolved. Education was luckily in the constitutional review process, very much in the fore, and so it was not devolved as much as was required then. This is because primary schools would be handled by county assemblies and county governments. On matters of health, I think it is very regrettable that health professionals in our country did not engage in as much a conversation on devolution of health as they did in relation to education sector. As we speak now, the only report that we have had in terms of looking at where devolution of matters of health is, is the one that hon. (Ms.) Nyamai and her Committee have brought to this House. I do support that Report.

I also want to regret very much that the Transition period of three years that was supposed to be given for matters of health to be devolved was not applied at the time of devolving them. What we have seen is a situation where all health matters and functions that are supposed to be devolved gradually were devolved at once. I remember the Chairperson of the Transition Authority saying that what we had was a free fall. In that free fall health matters fell freely. Today we have got a chance to look at whether this was the right way to go.

I speak also as somebody who comes from a county with a Level 5 hospital, and also as somebody who is a lawyer. A lot of silence exists in relation to matters of health. If you look at the question of Level 5 hospitals, you find that the Constitution does define national referral hospitals to be Kenyatta National Hospital and Moi Teaching and Referral Hospital. Beyond that there is only the definition of county health facilities, which does not define which levels of health facilities will actually go to the counties. What the Committee has done is to look at the health facilities in this country and tried to define what should go to the national Government and what should go to the counties. We still have the question of regional referral hospitals that needs to be answered.

(Loud consultation)

I think I will ask for your guidance in terms of consultations.

Hon. Speaker: Yes, the Leader of Majority Party and hon. Kaluma are consulting so loudly that hon. (Ms.) Kanyua cannot be heard.

Hon. (Ms.) Kanyua: Thank you hon. Speaker. Health is, indeed, a critical matter. On the question of regional referral hospitals, I support what the Committee says in terms of the national Government being asked to take care of regional referral hospitals. I think as we go on, we will be asking the Committee on Health to bring before this House a Health Bill that will deal with questions on health facilities. They touch on that in their Report.

I think in this particular time, the committee has done well to give us a policy direction; thereafter it should bring to this House proposed law that will need to guide debate.

On the regional referral hospitals we have a big problem in terms of several counties sharing one health facility. I hope that the Committee will begin to answer that question. I gave the example of the Nyeri Provincial General Hospital, which serves five other counties; the host county is made to bear the cost of running regional referral

hospitals. I think a mechanism needs to be arrived at that will require sharing of resources; that sharing will have funds to finance it.

On the question of Level 5 hospitals again, and borrowing from what the Judiciary has done--- We are in country where the Judiciary has promised to establish a high court in every county. I think the committee should also be bold enough to propose that every county be given a Level 5 hospital. We can start by refurbishing the 11 existing Level 5 hospitals, and then move on to a second set of counties in which Level 5 hospitals will be built. This has been done in the judiciary; there would be nothing wrong in doing it in health services.

You do know that a hospital comes with many facilities and development in the region where it is located. We will be asking the Committee to look into the question of having a Level 5 Hospital in every one of our counties. That is the direction that we should take.

As I conclude, I just ask that we put a little bit of emphasis on primary health care and non-communicable diseases. There is a hospital that has been calling all of us for check ups, I do hope that the hon. Members will continuously get themselves checked. There are many diseases in our bodies. I think it is important that those diseases be smoked out early. Hon. Members should start to get treatment early.

We speak a lot about diabetes and cancer; we have many cancers now in our country; there should be emphasis on these diseases. In my own county, one of the reasons we are told that we have a high number of diabetes patients is because of marrying close relatives. In Nyeri county, everybody is a relative of everybody; we have a very good culture there. We do not like paying dowry nuisance; so, we marry at home to avoid paying the cost of travelling to go and pay dowry. Because of that reason we are told that diabetes in our county is also genetic and we have continued to spread it among ourselves.

As we discuss matters of health--- I think they link us to national cohesion. If we allow a lot more intermarriage, or a lot more cross-cultural marriages--- We are also told that we will be fighting some non-communicable diseases that are genetic. It is not true that Nyeri women do beat men; that is just a fallacy.

In matters of health matters, a lot more attention needs to go to primary health care. We have a country where people do not drink enough water; these are matters that the Committee needs to continue guiding us on.

I support the Report. Thank you.

Hon. Mule: Thank you hon. Speaker. I want to amend the Report as follows:-

THAT, the Motion be amended by inserting the following words after the figure “2014” “Subject to-

1. Deletion of all the words appearing after the words “the functions” in recommendation No. 2 on page 9 of the Report and substituting therefore the following –

“The Committee therefore recommends that, in accordance with Article 187 of the Constitution, the National and the County Governments urgently enters into agreements with a view to transferring specific health functions to the National Government, including and not limited to, Level 4 and 5 health facilities ”

2. Deletion of recommendation No. 7 on page 10 of the Report, and substituting therefor the following -

“The Committee recommends that, the National Government and the Transition Authority, urgently sets up a Taskforce, to coordinate a phased and structured devolution of health functions as specified under the Fourth Schedule to the Constitution”

The reasons we are amending the Report is that after clear consultation and scrutiny of the inter-governmental relationship which governs the devolution of health, we have realized that the drafters of this Act, never thought that there would be some functions which would fail after they have been devolved. It is important that we amend this Report to conform with the current Constitution of Kenya, and to make sure there is a very clear position on how to correct the total mess, which has already been created by the Council of Governors arm-twisting the national Government to devolve health services wholly.

It is important to note that under the principles of transfer and delegation of powers, functions and competence in the Inter-government Relations Act--- This ensures that the transfer is in accordance with the provisions set out in this Act or the regulations to be made under it.

Hon. Speaker, it is clear that there are no regulations in this Act. So, for us to achieve what we intend to do, it is important that we form a task force comprising of members from the national Government and the Transitional Authority (TA) to make sure that we come up with a fully co-ordinated structure for devolution of health services as specified in the Fourth Schedule.

I beg to move and ask hon. Naomi Shaban to second.

Hon. (Dr.) Shaban: Thank you, hon. Speaker. I rise to second the amendments of the health Report. For the Departmental Committee on Health to have come up with this Report, it had to visit the counties and appreciate what is happening there.

I wish to draw the attention of my colleagues to Articles 95 and 96 of the Constitution. Article 95 is very specific. It talks about representation of the people by the Members of the National Assembly. The Senate represents counties.

Diseases attack human beings; they do attack our people. Whereas the Senate is responsible for taking care of the counties, we have the primary responsibility of making sure that health facilities and services are delivered to our people. If you look at Article 15 of Schedule Six of the Constitution on the provision for devolution of functions to be undertaken under an Act of Parliament, you will find that it is very clear that the legislation that is referred to must provide for the way in which the national Government shall facilitate the devolution of power, assist county governments in building their capacity to govern effectively, provide the services for which they are responsible and support county governments.

Hon. Speaker, the criteria was established in a hurry and the costing of our health services was not done. This was done in a hurry. This is what the medical people would refer to as “a dumping syndrome”. A dumping syndrome will not solve our health problems.

I want to point out that it is our responsibility, as the National Assembly to make sure that health services in this country run and run properly. There is no way we can

have a working nation if we do not have a healthy nation. We require a health nation. Wherever the governors and the county executives are doing, they should be able to work with us and with the Executive in the national Government to make sure that health services work.

I beg to second and request my colleagues to support these amendments.

Hon. Speaker: Hon. Members, you know debate on this Motion has been going on for some time.

*(Question of the first part of the amendment,
that the words to be left out be left out, proposed)*

Hon. (Dr.) Simiyu: Thank you, hon. Speaker, for giving me this chance to support the amendment. The reason for this amendment is informed by what Members actually had elucidated on the Floor of the House, in the sense that it touched on some constitutional matters. We had suggested that devolution of health be reversed. This appears to have been too drastic a measure or recommendation from the Committee. We felt that this could be ameliorated by removing the idea of reversing the devolution.

Devolution of health care should continue, but there should be a way of ensuring that what we are devolving is healthcare and not something else. This is because what happened was that when we went out in the counties to look at health facilities what we found was very distressing. Many counties had not even given the conditional grants to the Level 5 hospitals. This was the case yet those hospitals are in a deplorable condition. This shows that quite a number of county governments were not ready for the devolved health services as they were presented to them at that time.

Hon. Speaker, we are fully aware that this probably happened because the Government felt if it devolved a function and said that County “A” can get this function but County “B” cannot get it because it is not ready for it, then one governor might feel that he had been demeaned before his own electorate. Perhaps, that was what informed the decision to devolve all the functions at once to all the counties. Even though we understand that position, we would like to ameliorate it by ensuring that now that the function has been devolved the counties that have difficulties in running this function can be helped, so that they eventually deliver good healthcare.

We found very interesting situations. In fact, devolved healthcare in some places - I will not mention where - is being treated like the proverbial milk cow. People order many things on paper and then tell the people on the ground or in the hospitals to sign that they have received them when they have not received anything. In other words, the healthcare sector is becoming a major devolution of corruption. We cannot allow that because healthcare is critical. It is one of the planks of devolution. We felt that perhaps the Executive had been arm-twisted by the governors. Of course, the Executive runs the whole nation but the governors run their little enclaves. I think they might have some strength to arm-twist the Executive.

The Committee on Health felt that we can partner with the Executive to ensure that the devolved function is administered properly. That is why we have come up with these amendments; we can allow Members who had a different view about the constitutionality of what we have done to accept what we have done now. We have

removed bottlenecks and we will pass this Report so that in the coming few years of the Executive running this country--- When health facilities are in place, they can be facilitated to deliver healthcare to Kenyans. This is because they are a very important plank of devolution.

In some places, for example ASAL areas, there has been a lot of improvement in healthcare in the sense that they are now able to see drugs that they never used to see. So, devolution of healthcare has done a lot in some areas. However, in some areas healthcare that people were getting has actually been curtailed.

Hon. Speaker, with those few words, I support the amendment.

Hon. (Ms.) Mathenge: Hon. Speaker, I want to support this amendment. In doing so, I want to say that I think we were hasty in devolving the Level 4 and Level 5 hospitals to the county governments. This is because through the CDF we had constructed a lot of dispensaries and health centres. My view is that the county governments should actually have taken over the health centres and dispensaries so that they learn how health systems run.

When we had the Ministry of Public Health and Sanitation a lot of equipment, including motorbikes, was given to health centres. In a recent inspection of the health centres in my constituency I found out that all the motorbikes had been locked up, yet they were supposed to be used in giving people service. We should devolve only health centres and the dispensaries. The Level 4, Level 5 and referral hospitals must remain with the national Government. We should not play with the health of our people. If we give the county governments such a task, they do not have the capacity to run these institutions. They are not even in a position to run health centres and the dispensaries.

I want to agree with this amendment. I commend the Committee for bringing this amendment, so that the governors stop climbing the tree from the top; they should start climbing the tree from the bottom.

Hon. Oyugi: Hon. Speaker, for the comfort of my brother Mule, let me say that I support the amendment. I know he will be pretty comfortable with me saying making particular remarks. Let me thank you for allowing the adjournment of this particular Motion to today, so that we questioned some content in this Report.

We spent most of the morning agonizing over the recommendations of this Committee. I think the Report by the Departmental Committee on Health has raised salient issues in devolution in this country. I support and agree with the first recommendation, which speaks to an agreement which was urgently entered into between the county governments and the national Government. Even that particular---

I was just sharing with hon. Mule what needs to be done in accordance with Sections 24, 25, and 26 of the Intergovernmental Relations Act. The process of entering into the agreement is one which is going to necessitate sufficient inquiry. Section 26 specifies the ingredients of, and how, this particular agreement of transfer between the various county governments is going to be entered into. That will still involve the meeting with the President, Deputy President and the Council of Governors. That is what Section 26 of the Intergovernmental Relations Act anticipates. Whereas he has a thinly worded recommendation that I agree with absolutely, the place it is going to end up is the Summit. We, therefore, need to see what else we need to allow.

I shared with hon. Mule that what we need to allow lies in Section 25(c) of the Intergovernmental Relations Act. If I read that particular Section, it states thus: “The principles of transfer or delegation of powers, functions and competencies shall ensure that the transfer is in accordance with the procedures set out under this Act or prescribed by regulations made under this Act.”

Hon. Speaker, our research this morning and this afternoon shows that, perhaps, there are non-existent regulations that help in performing acts that are envisaged under Section 25(c). So, we need, as a Parliament, to request the Constitution Implementation Oversight Committee (CIOC) and the Departmental Committee on Health to come up with regulations that will give effect to Section 25(c). These regulations will do a couple of things. They will hopefully--- My understanding and interpretation of this law is that it only anticipates functions where both levels of government will be agreeable to one level of government thinking that it is unable to perform and the other government being in agreement. The Intergovernmental Relations Act does not anticipate a situation where, for example, the national Government says that the county government is not performing its functions appropriately. Therein lies the problem. If we had regulations that show us how to deal with the county governments when they are not performing their functions appropriately, then we would be able to solve our problems.

That leads me to the second recommendation that hon. Mule has made. He speaks to the fact that there is need to set up a task force urgently. This is where we were disagreeing all the time, but I gave in to some middle ground. I think there is no law anywhere, and I had a chance to look at the County Governments Act, the Transition to Devolved Governments Act, the Intergovernmental Relations Act and so on, and there is no where, where the setting up of a task force is anticipated. Dr. Eseli and the other Members of the Departmental Committee on Health were really emotional about this particular bit.

It is possible to set up a task force, but only a task force that is regulated under either the law or under regulations as anticipated under Section 25(c) of the Intergovernmental Relations Act. So, whereas it is possible to unlock the problem of devolution, it is also possible to set up a task force that will help in this. However, I do not think that even speaking to the amendment that hon. Mule has moved helps us unlock this. As I said before, I support this amendment in the spirit of helping us move forward. I am requesting the Leader of the Majority Party to request the CIOC to look at the formation of regulations that will show how we can sort out the problem of devolution if at all there will be one with regard to agriculture, health, or any other service that will be devolved, and which the Constitution requires to be given to the county governments.

Right now we are basically fighting fires in the Departmental Committee on Health. There are other functions that were devolved, for example agriculture and fisheries, but there is no way, in my understanding, in which this particular situation can be sorted out. What this needs is an inquiry in terms of how to make regulations that will help us follow the constitutional process to help unlock the issue of devolution.

It is true that we need to move together with the Committee on Health to ensure that healthcare gets attention. That way, the health sector will revert to normalcy. We will know which functions are performed by the county governments and which ones are performed by the national Government.

With those many remarks I support these amendments. I am only wishing that I will work with hon. Mule and his colleagues and give them more tips on how we can effect devolution of health.

Hon. Speaker: Hon. Ronald Tonui, please, speak to the amendment.

Hon. Tonui: Thank you, hon. Speaker for giving me the opportunity to contribute to this debate. Irrespective of whether the Report is amended, I stand to oppose it.

Hon. Speaker: Hon. Tonui, that is not the way it is done. During the workshop, you will be told how to go about it. First of all, you oppose the amendment because we are not yet discussing the Report. We are dealing with the amendment.

Hon. Tonui: Hon. Speaker, even the amendment is seeking a reversal of transfer of health services from the county governments back to the national Government. My strong belief is that since the services were taken to the counties, there has been more efficiency than when those services were with the national Government. I tend to think that the national Government is too big to be efficient. It is quite inefficient in many ways.

I believe that returning health services to the national Government will not be in the best interests of our people. I believe that this proposal is more motivated by our interest in getting involved in the health sector rather than the services to be provided on the ground. In my constituency, we have been having Longesa District Hospital for a long time, but it was not able to serve the people when it was being managed by the national Government. You could rarely have 20 or 30 patients going to that hospital in a day; but currently a large number of patients goes to the hospital for health care services. That is why I oppose the amended version of the Report.

Hon. Speaker, I would have wished that we talked of ways of improving access to health care services. We should be looking for ways and means of adequately funding the National Hospital Insurance Fund (NHIF) to enable it cover even the members of society who are---

Hon. Speaker: Hon. Tonui, you are now offending your own Standing Orders. Just stick to the amendment for now. You have a right to oppose it and say anything you want to say about it.

Hon. Tonui: Hon. Speaker, I am trying to deal with the whole matter at once.

Hon. Speaker: You are now discussing the merits of the Report. Remember that after you either approve or reject the amendments, we will go back to the Report. So, even as you speak to this amendment, you still reserve your right to contribute to the Report.

Hon. Tonui: Hon. Speaker, I wish to speak to the whole Report later on. In fact, I take this amendment to be of no consequence to my stand. So, I oppose the amendment.

Thank you.

Hon. Speaker: Hon. Members, it is absolutely important that everybody understands the Report and the proposed amendments because I do not intend to take any more time on it. I would like us to dispose of the amendment. You either approve it or reject it, so that we can go back to the main Report. So, we should not waste time on the amendment.

Yes, hon. Susan Musyoka!

Hon. (Ms.) Musyoka: Thank you, hon. Speaker. I stand to support the amendments.

Looking at the Ministry of Education, for instance, we see that the county governments were given only early childhood education. The rest was left to the national Government. Health services were fully devolved. Talking about health, we cannot compromise on the health of our people. Our tour of health centres across the country showed clearly that the county governments were not ready to handle the health services function. It was like delivering a premature baby. When a baby is premature, we do not put it back to the mother's womb. We have to put measures in place to nurse the baby to grow into a healthy human being.

These amendments are intended to improve the recommendations that are contained in the Report. They strengthen measures that will improve the situation that is in the counties. I definitely support the amendments. On the first one relating to Article 187 of the Constitution, we need to have changes taking place, so that Level 4 and Level 5 health facilities go back to the national Government. On the second amendment, we need a taskforce to harmonise the situation that we have because some counties have gone far ahead of others. Therefore, this cannot be done in a single statement. We need to have a taskforce to harmonise the situation out there.

With those remarks, I beg to support.

Hon. Speaker: Yes, hon. Njagagua.

Hon. Nyagagua: Thank you, hon. Speaker. From the outset, I would like to support the amendments brought by hon. Mule. The matter of transfer of functions from one level of the Government another falls under Article 187 of the Constitution. My position is that the President needs to move very fast and establish a taskforce to go round the country to find out the ills that affect our health services. Once the taskforce gives its report to the Summit, that is the President and the governors, it will be able to know what health services and hospitals to transfer back to the national Government.

Hon. Speaker, I am speaking with authority. The Embu County Government got about Kshs330 million for Level 5 hospitals as a conditional grant. However, the money was not all utilised on Level 5 hospital services. So, the governors have in unison turned the money they get for health services into "milk from a cow". It is only the County of Mandera which is very keen on improving the health services of its people.

Therefore, I support the amendment, so that we do not have all the health services in the country managed by the governors.

Thank you.

Hon. Speaker: Yes, hon. Michael Onyura!

Hon. Onyura: Thank you, hon. Speaker. I stand to support the amendment, particularly because it addresses a particular area that is causing confusion and worries to some hon. Members. About the part that talks about reversal of transfer of health services, there is a lot of concern and worry amongst hon. Members.

I know that the intention was not to at any time reverse transfer of functions to the national Government but rather to ensure that whatever functions are devolved are devolved in the most efficient manner. I believe that all of us fully support devolution. However, we must be very careful about how we devolve. It has to be done properly, carefully and in phases.

If we decide to just dump everything to the county governments at once, we will not be assisting the process of devolution. That is a sure way of making devolution fail. Therefore, the amendment will give us an opportunity to address the situation. The Report will eventually give us an opportunity to address areas in which we may have unintentionally taken steps that could be counterproductive to the whole process of devolution. This is not just with regard to health services. It could even show us a way of addressing other areas that may be facing similar problems. Good intentions yes, but the process could be counter productive to that. I support the amendment, hon. Speaker.

Hon. Speaker: Finally, hon. Lelelit Lati.

Hon. Lati: Thank you, hon. Speaker. I support the amendment because it conforms to the constitutional requirements. I do not think we have any other option but to amend this Report in this manner. This is because once the functions are devolved - Article 187 of the Constitution is very clear - we can only re-devolve them with the agreement of the other level of government. This is what the Report talks about, instead of just the Committee trying to act as the recommender without necessarily subscribing to Article 187 of the Constitution of Kenya---

I am very happy with the amendment because it allows the county governments to look at what they cannot do very well and agree with the national government. It is not fair to condemn the transfer of health functions to county governments wholesale. Where I come from, Maralal District Hospital was a desolate and forgotten place for so many years until the county government came in. Now, Maralal District Hospital is fully operational and is working. As I speak today my governor is in Michigan trying to procure lots of equipment for that hospital; these are things that we would not have expected from the national government.

So, sometimes when we look at these things, devolution has worked for areas that were marginalized like ours. I am very proud of our Constitution because it provides the mechanism for agreement. In a way the governors can agree if there is anything they cannot do. In fact, if you look at Maralal District Hospital, before it was given to the country government, there were five doctors who were supposed to work there, but you rarely found one of them at a given time. Now, the supervision authority is within Samburu County itself. All the doctors are now in the hospital because the people working in the county can supervise them very well. Sometimes we have to look at these things. I agree with the recommendation because it just gives the county government a way to agree with the national Government; I am sure they will work for the interests of our people. What they think they cannot do, they will give back to the national Government. What they can will remain at the county level.

The amendment tries to conform to the Constitution; the national Government and the Transitional Authority can work together and form a taskforce that can help us to see what areas we need to devolve in certain ways. If I am allowed to speak to the Report itself, after I have spoken to the amendments, I will go ahead.

Hon. Speaker: Unfortunately, I am not able to hear what you are saying.

Hon. Lati: You cannot hear? Okay just let me go ahead. I just spoke to the amendments, but I want to speak to the report itself.

Hon. Speaker: No, hon. Lati; you do not lose your right to contribute to the main Report. If you pass the amendment, then the Report will be discussed as amended. You still reserve your right under your Standing Orders.

Hon. Members, including hon. Jared Opiyo, freeze, you should freeze, including hon. Cecilia Ngetich and hon. Z.K. Cheruyoit; be in the House.

Hon. Members, I believe enough has been said about the intention in the proposal to amend the Report.

(Question of the first part of the amendment, that the words to be left out be left out, put and agreed to)

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)

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

Hon. Speaker: Resume debate on the Report as amended; those contributing now, bear in mind that you are contributing to the Report as amended.

Yes, hon. Ferdinand Wanyonyi, Member for Kwanza.

Hon. F. K. Wanyonyi: Thank you, hon. Speaker. I want to support the Report as amended. We were in a hurry to devolve this function and it is good that we brought these amendments. First of all, it is going to give us the opportunity to at least discuss functions and see how they can be devolved. As it is, if you go out there and look at Level 3 and 4 hospitals, you will find that services are very poor. I was wondering why we had devolved this function. Healthcare is very important; when you go to a dispensary or a hospital in your area you will find that despite the fact that they have got the money--- Basic needs sometimes are not met. You can imagine referring somebody all the way from Kitale to Eldoret because you cannot get proper services that are supposed to be devolved there.

Two, I have had cases about the basic needs, despite the fact that the function is actually devolved. You find even when someone has a fracture, they do not have the equipment to take the x-ray films. So, the best thing for us to do today, as a House, is to stop this devolution. After negotiations, we will get the functions properly outlined.

Thirdly, I have had serious cases out there with the health workers. I have gone to dispensaries and found that workers are very disillusioned because their basic needs are not met.

I have had cases where two people from my place have resigned and gone to Namibia, because workers welfare is not catered for. They do not even have houses. We were in a hurry to devolve this function, which is very important; because of the problems we are facing out there, let us relook at this function, and see the best way of handling even the workers.

The other thing is that you will go to a dispensary and find that the basic equipment for hospitals does not exist. In fact, I went to one dispensary and found that

they had borrowed some very essential equipment from another health centre. This showed that the county government was not prepared---

They were ill prepared for that function and, therefore, I support the Report. I hope that with this amendment, we will be able to see what functions the people in the county can handle. That is because devolving for the sake of it is not actually good. In any case, as has been mentioned elsewhere, the term was too short. Within a year, you have devolved everything else and, therefore, that, again, is a bit of a problem. Then, of course, in the county government, you will find that the county executives that have been actually given the responsibility - like the so-called ministers of health - where people are there because they are related to the Governor. I know of a case in a county where a person who is a total failure is actually in charge of health facilities. So, we expect the services to be very poor. This devolution was ill-timed and, therefore, we should wait until they are prepared. They should show to us that they are actually prepared. We have had cases in the past where we give money to the county and the money is still lying in the banks. That was even reported in the media. The Finance, Planning and Trade Committee Chairman is here and he will agree with me that some of them have not used their money properly. At times, the drugs they get are not the right ones in terms of quality because the source is not Nairobi. They just get them from some chemists around there and say they have equipped the hospitals with drugs. So, I want to support this Report and state that I think we rushed into devolving this function and, therefore, we should give ourselves time and in the next two years, we will be prepared. That way, healthcare out there will be properly managed. Lastly but not least, you will find that some of the workers in some of the dispensaries and health centers are not paid. I have a case where a hospital superintendent has not been paid for close to three months. Most probably, we will expect poor services and yet, the money is in the county.

So, with those few remarks, I support.

Hon. Speaker: Antony Kimaru.

Hon. Kimaru: Thank you, hon. Speaker. I stand to support the amendment to that particular Bill. When I do so, again, it is from a point of information and knowledge. That is because when we go back to our areas of representation, we must all agree that the level of service delivery at the local level is not up to scratch. I have an experience where, through CDF, we have built a maternity wing in a particular health centre. In spite of CDF spending so much money to put up such infrastructure, no personnel has been assigned duty to that particular place and, hence, such infrastructure is going to waste. I do not know whether the county government has the capacity to employ personnel to man such health facilities and if they do, they may not be addressing the situation. That is because you will find that in such a facility, the delivery of children may only be done during the day. One wonders when you have such an outpost so far away from the main hospital, what happens to all those patients who need services at night. If such a thing is not addressed, certainly, it shows there is a shortcoming in terms of capacity of county governments to man health services.

In my area, we have put up several dispensaries using CDF money. But we still see that disconnect there. There is no staff that has been deployed there and so, when you go to the Level 4 Nanyuki Referral Hospital, the level of service delivery has definitely gone down. There are so many areas that are not being addressed. It is evident that county

governments, at the moment, may not be ready to take over that responsibility. It is for that particular reason that I will support this Motion. I think the National Government is better placed to run those institutions. It can work hand-in-hand with the county government to make sure that health services - which are very important - are actually delivered properly to all the people of Kenya.

I support.

Hon. Speaker: Hon. Rose Nyamunga

Hon. (Ms.) Nyamunga: Thank you, hon. Speaker. I also support the Motion as amended. First of all, it is important to realize that, for several years, the development of Kenya as a whole has been sort of skewed to the extent that some areas have been more developed than others. So, if we decide that we transfer all the medical facilities to the counties at the same time, it will mean that some counties are going to be left behind in terms of giving medical services. That is because those counties have challenges. If you take Kisumu, for example, which is my county, there is a lot of disparity across the county in terms of human resource. In some counties, the medical facilities are so well equipped in terms of doctors, nurses and all the staff that is required as compared to some counties in rural areas. So, if health care is transferred at the same time, some counties are going to suffer. Many Kenyans are already suffering because of lack of medical facilities. So, it is important that this thing is referred back and be done in phases. Therefore, the more equipped counties like Nairobi and Mombasa, which are the major cities and have got better facilities, are not treated the same as some counties like Turkana and many other areas that are not medically well equipped. If you look at the issue of operation challenges in terms of drugs, I think the distribution of drugs should be centralized so that each county can get its supplies. Medical supplies should be done according to the needs of a county. I see that there is an operational challenge. It cannot be done equally across the board. It has to be done in an equitable manner.

The other challenge that we have is financial. Not all counties can take care of medical services at the same pace for the simple reason that I have already stated - that some counties are more developed than others. So, it cannot be done at the same pace. It has to be done according to the needs of particular counties. So, there is a financial challenge. Another challenge that we have is the criteria of classifying medical facilities. That is because you realize that some medical facilities that can be referred to as a Level 5 or Level 4, if you go to some counties, they are completely nothing. Some of them look like health centers. So, I think that classification is also very important. It should be done across the board so that there is equality in service delivery and medical facilities to many Kenyans who cannot afford private hospitals.

With that, I beg to support the Motion in its amended form.

Hon. Speaker: John Nakara, the Member for Turkana Central.

Hon. Nakara: Thank you, hon. Speaker. I support the Motion as amended. By amending the Motion, we are respecting the Constitution of Kenya that was voted for by Kenyans. By the county governments and the National Government agreeing on specific functions to be transferred to the national level is one way of respecting the Constitution that Kenyans voted for.

Hon. Speaker, in doing so, the Governors and the National Government will assess the capacity of each county and find out whether it is able to run all the functions of devolved health units.

Hon. Speaker, as you are aware, some counties have no capacity to do so. They are not equal in terms of personnel and infrastructure. So, when the National Government and the county governments sit together and discuss, that will help them to come up with the functions to be given to the National Government and those to be given to the county governments.

Hon. Speaker, secondly, there are some counties with small budgets. You cannot give big functions to those counties which have small budgets because they cannot run them. The health component is very expensive, wide and important to all Kenyans.

So, in this amended Motion, we need the National Government and the county governments to agree so that they can give the functions that they cannot be able to fund according to their budget. It is a good thing. However, if we decide and say that we can give all the functions to the counties, some counties have small budgets and they cannot afford to give real services to the citizens residing in those counties.

Hon. Speaker, finally, in terms of training facilities, some counties do not have them on the health function. We suggest that those should have a common curriculum that will guide the health programme. That is because if we allow the training facilities to be in different counties, each county will have its own way of training medical personnel. By doing so, we can have different ideas coming into the health facilities.

Hon. Speaker, finally, in terms of promotions, we must have accepted qualifications where there is no tribalism, nepotism or corruption. If we leave such kind of services to the county levels, they may start promoting people through nepotism without considering qualifications.

So, hon. Speaker, I support the Motion as amended by the Members so that we can agree together and let the county governments be open to give the functions that they cannot do to the National Government. We are all serving Kenyans. There is no way the county governments can say they can do this and yet, they do not have the capacity. So, we are encouraging this debate so that the county governments can sit together and accept what they can give and take. That way, we can serve our citizens properly.

Thank you, hon. Speaker. I support the Motion.

Hon. Speaker: Hon. Ben Momanyi, the Member for Borabu.

Hon. Momanyi: Thank you, hon. Speaker for giving me a chance to contribute to this debate. I also rise to support the Motion as amended. Indeed, as Members of the National Assembly, we do a lot when it comes to health facilities in our constituencies. Devolving that facility to the counties at this point in time will make our constituents suffer a lot.

Hon. Speaker, it is our wish that Levels 1, 2 and 3 hospitals remain with us and Levels 4 and 5 can go to the counties. Referral facilities should remain with the National Government. We have done quite a lot in terms of improving health facilities in our constituencies and, all of a sudden, you find that they have been devolved. You find that most of the money we have already spent goes to waste because, in the counties, services in some of those small health facilities are very slow.

Hon. Speaker, I agree with the other Members who have spoken ahead of me that, if those facilities have to be devolved, it has to be done gradually so that we are able to complete some of the projects that we have already started. That is so that health facilities are closer to the people in our constituencies, instead of transferring them at once to the county governments.

Hon. Speaker, lack of personnel in the counties is already a serious problem. When you ask the county governments to post staff to those facilities, it is a serious problem. Therefore, we should be given the mandate so that we are able to transform the lives in our constituencies. From my point of view, a Member of Parliament is closer to ordinary *wananchi* more than the Governor who is the head of the county government.

Hon. Speaker, with those few remarks, I beg to support the Motion as amended. I thank you.

Hon. Speaker: Hon. Njoroge Baiya.

Hon. Baiya: Thank you, hon. Speaker for giving me the opportunity to contribute to this Motion. I also wish to support it as amended. The main highlight of this Report touches on the impact of devolution on ongoing health services in the country. There is no doubt that there is evidence of interruption of health service delivery in this country that has been contributed to by the process of devolution, almost leading in some cases to paralysis of service.

A case in point is an experience I had with one of my relatives in Kiambu District Hospital, which is a Level 5 hospital. She was admitted there and needed urgent blood transfusion and the service was very much delayed. When it was administered, she was partially given about two pints and the rest of the two pints were erroneously administered to another patient before any matching had been done. Unfortunately, it was a fatal case for the other patient indicating that, clearly, the quality and level of service is quite affected.

Hon. Speaker, we keep on receiving complaints from the health staff who are involved in health service delivery. They complain that they are demoralised. They do not seem to receive clear instructions. There is absence of policy clarity and it is like they do not really understand where they are really going.

Hon. Speaker, as far as devolution is concerned, that was not one of the outcomes that were actually intended. So, it begs the question: What is happening or who is responsible for what is really happening and what is our role as Parliament to ensure that the situation is averted?

Hon. Speaker, this Report of the Departmental Committee on Health, in my view, only highlights health as one of the devolved functions. However, I am very sure that even the other functions which have been devolved are equally affected. It is not only with regard to health service. The impact of non-effective devolvement is more severe, painful and not capable of being ignored.

Hon. Speaker, the purpose of devolution was to enable the functions that were being devolved to be performed more effectively and efficient by the recipient government. But what we are dealing with is a situation where that process of transition, the way it was designed and the way it is being implemented, there is a mis-match between the two.

Hon. Speaker, looking at Schedule Six of our Constitution, Article 15, it requires Parliament to ensure that there would be regulations for transfer of devolved functions. This was to take place within a period of not more than three years. The regulation under Article 15, Parliament was also required to enact a legislation binding the National Government to facilitate the process of devolution. The Government was also to assist county governments to build capacity of services that were to be devolved.

It was a requirement that the Central Government was going to support county governments in their discharge of devolved functions. Therefore, there is a binding responsibility for the Executive to support devolution and ensure that it does not fail. If there is failure of devolution at the hands of the county governments, the National Government cannot escape its responsibility.

Hon. Speaker, the National Government was further required to enact legislation establishing criteria that would have to be met by the county governments before they are given the functions that they were going to perform.

We were also required to ensure and make provisions for asymmetrical devolution of functions. What this meant is that some county governments have capacity but others do not have. Therefore, we were to allow those who have capacity to immediately assume those responsibilities and take action to enhance the capacity of those that do not have that capacity to acquire it; but not to simply devolve those services.

We were further required to ensure that the Constitutional Implementation Oversight Commission (CIOC) was to monitor the process of ensuring that there will be no interruption. The mandate of CIOC was to ensure that there will be no interruption of service delivery during the process of devolution. Therefore, Parliament went ahead to enact particular legislations and, in particular, the Transition to Devolved Government Act, 2012, which gave the country the legal framework for transition to devolved governments.

Hon. Speaker, Article 15 of the Constitution gave the purpose and it was to provide a legal and institutional framework for a co-ordinated transition to the devolved system of government and ensure continued service to the citizen. That was the legislation that was given by this Parliament. There was also a requirement under this legislation providing for a policy and operative mechanism during the transition period. It was also to provide for audit, verification and transfer between national and county governments of the various functions; ensuring that there would be fair transfer of assets and liabilities, and ensuring that there will be parity between the two systems of government.

Hon. Speaker, under this Act, Parliament---

Hon. Speaker, there are loud consultations right behind me.

(Hon. Gichigi and hon. Tonui consulted loudly)

Hon. Speaker: Hon. Gichigi and hon. Tonui, consult in lower tones.

Hon. Baiya: Hon. Speaker, Parliament under that legislation came up with an institution called the Transition Authority (TA). TA was set up. The functions of TA, as far as facilitating devolution was concerned, were very well set out. It was actually to

facilitate and co-ordinate transition, pursuant to Article 15 of the Constitution. It was also to facilitate and analyze the phases of transfer of functions.

There were very key functions to allow seamless transfer. It was to determine resource requirement for each function for those which were to be transferred. It was also to develop a framework for the comprehensive and effective transfer of functions pursuant to the Constitution. It was ultimately mandated to ensure that the successive transition to the devolved system of government was its ultimate mandate. It was also ultimately to prepare an inventory of assets and liabilities and make recommendations.

Hon. Speaker, on the powers of TA, it was given powers to gather information between any level of Government and to actually compel the information to be obtained so that it would be able to discharge its mandate quite well as it is anticipated under the law.

Hon. Speaker, Parliament went out of its way to make provision under Article 23 for the transfer of functions within three years. The procedure required that the county governments would receive the functions before elections were held---

Hon. Speaker: When it is analogue or digital, it happens like that. It just snaps. Therefore, pay attention to the lights. Let us have hon. Ken Okoth to contribute.

Hon. Okoth: Thank you, hon. Speaker. I actually rise to oppose this Report even as amended because I have a number of important concerns. Some are legal and some political, given where we are as country. The first thing I see as a problem with the amendment is the process within which powers had to be transferred.

One of the amendments that we have got here proposes that, in accordance with Article 187 of the Constitution, the national and county governments urgently enter into agreements with a view to transferring specific functions to the National Government. Now, the words “urgently enters into agreement” sound very vague to me. It is not specific and it does not give us the right timelines.

Hon. Speaker, let us look at the Inter-Governmental Relations Act which talks about the different parts if you go to, especially, Articles 25 and 26. But we start off with Section 22 of the Inter-Governmental Relations Act. It clearly states that the transfer of powers between different levels of Government shall be reported back to the National Assembly. There is a reporting requirement back to this House. The way it is set up there is not clear. Therefore, my problem is that, we are not even setting a clear mechanism that, whatever process or agreements, will be reported into this House. I had hoped to request hon. Members of the Health Committee and the Mover of this Motion to amend it so that it is very specific. There must be a reporting function back to the House under specific timelines.

The second problem with this issue here is really an attempt to directly or indirectly sabotage devolution and grab power away from our county governments; including our governors, the county assembly and the executives in charge of health at the county level. I think that problem can only be solved if you look at the amendment that has been proposed by hon. Mule and which passed - and is part of the Report - the problem will still be there. That is because the law that stands before this - when we go to Section 25 of the Inter-Governmental Relations Act - states very clearly that a government delegating power functions or competence under this part shall ensure that the transfer is in accordance with the procedure set out under this Act or a prescribed

regulation made under this Act. I think there is a deliberate effort to sabotage when you consider that the regulations under Article 25(c) have not been developed and there are no excuses that can explain why those regulations have not been developed. It is a full responsibility of the Attorney-General's Office and the Departmental Committee on Health. Why have they spent more than a year and they have not developed those regulations and brought them to the Committee of Delegated Legislation or the House to be passed beats me! So, I know that in some sense, when a Kenyan looks at this carefully, they will ask themselves: Why were functions not properly costed according to the law? Again, you go back to the Inter-Governmental Relations law that requires that any functions that are devolved; we ensure that adequate resources are provided to carry out the proper function. In the past year, nobody has been able to successfully explain the process in which the amounts of money that were given to county governments for health functions---

Hon. Mule: On a point of order, hon. Speaker. I did not want to interrupt my good friend, hon. Okoth, but he is misleading the House by saying that under Article 25, the Inter-Governmental Relationships Act, there are regulations to provide for that. We know very well that, as a Committee, we have worked tirelessly for the health policy and the Health Bill which is lying at the Attorney-General's Office, so that we can regularize this and make sure that devolution works. Why should he mislead the House, while being my good friend?

Hon. Speaker: Well, even if he was not your good friend, he is merely advancing a position that is different from yours. Proceed, hon. Okoth!

Hon. Okoth: Hon. Speaker, I thank hon. Mule for clarifying that his Committee has done some work and it is the Attorney-General who is at fault for not bringing those regulations. The fact is that those regulations are not here. But before I was interrupted, I was talking about what exists in the law. The law talks about the costing of functions which has not been explained to us. At which level was it decided how much money would go to the counties? Do we know if that money was adequate and appropriate to the task that the county governments were expected to do? If we want to kill devolution in this country - and I am disappointed that the CORD leadership in this House that should be the robust Opposition is missing in action right now as we discuss a very important matter that is a key part of our platform and the implementation of the Constitution - is absent. We do not have an official CORD position and so, even as the country listens to us and our fellows in Jubilee try to take a stand with us or against us in this debate, they are not sure what the official CORD's position is. That is because we have not yet debated and agreed on it. Be that as it may, I will continue here and say that philosophically, I believe that we must devolve power to the county governments. We must devolve resources to county governments. We must, regardless of our politics with any of the governors, make sure that we support the institution of governorship because governors will come and go but county governments must stay. They must be given the capacity to do their job well. If we do not recognize the role of the summit and again we go back to the law--- The law is the Inter-Governmental Relations Act and the Jubilee people have been very careful recently been telling us that if we want dialogue, then it must be done within existing institutions in our laws and Constitution. My friends, you cannot have your cake and eat it at the same time. The existing institution for inter-

governmental relations is the Summit of Governors and the National Government. These amendments here are trying to sneak a way to go around the Summit.

Hon. Speaker: Hon. Okoth, this is a Report of a Committee of the House. It is not about coalitions and so, you can express yourself on it. Remember, even if you belong to a super coalition, you are at liberty to express whatever opinion under the sun as long as it is within the law. Do not fear; you are protected. But this is not about those coalitions.

Hon. Okoth: Hon. Speaker, I will desist from coalition matters. But all I want to say is that we cannot circumvent an institution that exists in our law, which is the Summit of Governors. However much we dislike the Head of the Summit of Governors, you must sit down and dialogue with him. That is because he represents the opinions and feelings of the governors and county governments. Yesterday, you mentioned that anything that we debate here that is not constitutional, or does not take into account the good laws that we already have, it is an exercise in futility. So, I am not very worried about the outcome of this vote if this report passes. That is because I know the political and legal reality is that there is a problem with the taking away and grabbing power from our county governments and they will resist that. I am sure the Senate will come to their support to make sure that the authority is not taken. All I am saying is that, as we push for this Report and pass the final version of it---

Hon. (Dr.) Simiyu: On a point of order, hon. Speaker. Is the hon. Member in order to insinuate that this Report is trying to take away the functions from the county governments? This Report, as amended, is not taking away functions from the county governments. That is very clear. I do not know why the hon. Member keeps on misleading the House.

Hon. Speaker: Hon. Okoth has a way of interpreting the amended version of the Report, but he is at liberty to even mislead himself if he wants to as long as the rest of you are not misled.

(Laughter)

Hon. Okoth, continue!

Hon. Okoth: I am at liberty to share my best thoughts as I see them in the service of this country, and I wish my colleagues would be comfortable in discussing them with me on and off the Floor. But I will wrap up by simply saying that we fought for a Constitution and devolution of power and resources at the national level. For the people who are against devolution and want to sabotage it, what better way to do that than to violate the requirements and procedures clearly laid out in the Inter-Governmental Relations Act to hastily award things to the county governments without the proper costing and capacity building. This is so that the county governments are seen to fail and we fall into that trap and use it conveniently to grab power away and bring it to the old centralized system that is not where our Constitution should be taking us.

On a practical matter, I think this Report is misguided because one year in the three year window for devolution of those competencies to the county government has already passed. We are almost halfway through the second year---

Hon. Mwangi: Hon. Speaker, thank you. I think our Committee has no sense of taking us back to the old days. What we are fighting for is the lives of the people of Kenya. The health of this country is paramount. We know that we fought for devolution and it is there to stay. When we were going round the country visiting some of the hospitals, we found out how our people were suffering. Some of the hospitals do not even have drugs and yet, here in Parliament, we are budgeting and allocating monies for our hospitals that are not performing. We are asking the Government now to act. We acted in a hasty manner. Let us do what is favourable to our people. Let us act! Let us ask our governors to come back to their senses; not to look at the monies but to look after the lives of Kenyans.

When my friend hon. Okoth says that we are trying to reverse, I fail to understand him very well. We are not trying to grab power from governors. What we are telling them is: "Governors! You have failed in your roles. Let us first go." We know what happened. When we got elected, everybody did not understand what devolution was all about. What they did is that they went to the Executive and forced it to give them powers to take over everything since they wanted to control all the monies. It is high time that the Government listens to this House and the Departmental Committee on Health so that we amend this law. If we can get Level 4, Level 5 and Level 6 hospitals back to the Government and leave all the other cadres to the county government, I think we shall be on the right way. By so doing, we shall know where we are heading to.

On the matter of distribution of drugs, I think the best distribution center for drugs in this country is Kenya Medical Supplies Agency (KEMSA). That is the only way we can control drugs and avoid giving our people chalk. If we allow everybody to distribute drugs to our hospitals, we shall be going back to the old days of corruption. Let KEMSA perform its duties. It was created because there were problems. Why do you want to go back?

A law does not come just like that. When God came up with the Ten Commandments, he had problems with people who he had created. That is why we created Kenya Medical Supplies Agency to distribute drugs.

With those few remarks, I beg to support the Report as amended.

Hon. Speaker: Hon. Onyango Oyoo, Member for Muhoroni

Hon. Oyoo: Thank you very much hon. Speaker for giving me the opportunity---

Hon. Speaker: Who is now assuming the role of the Leadership of the Minority?

Hon. Oyoo: Thank you very much hon. Speaker for giving this golden opportunity to speak to this Motion that touches on a very noble course in the hierarchy of human needs in this country. This Motion could not have come at a better time. It is coming at the backdrop of a time when Kenyans are crying on the way devolution governments are being run. It was a wrong time as much as we support devolution. I think we needed time, a lot of stability in devolving many of our various departments and, more so, health. I will take this time to walk this House through the devolved functions of the Government. We have education; despite the fact the Government has challenges in economic, security and others. Education has been done well, save for the Early Childhood Development that was devolved. The Early Childhood Development that was devolved to county government is wanting. As much as the Government has challenges in education, university, secondary and even tertiary colleges are being

managed properly, despite the financial challenges that we have in the country. Health was so great a department and need, to have been devolved. I want to take this opportunity to thank my colleague hon. Muli, for coming up with a very pragmatic amendment that needs to be supported. This thing does not require party allegiance, tribal allegiance or those other considerations. People are dying in hospitals. Who does not know that the county governments do not have the capacity and they lack preparedness? We have county governments where institutions that were devolved and, more so, health, are not functioning properly. We will go back home and the public will still rely on us as their Members of Parliament. The public has not been educated that health centers have been devolved. There is the governor and the Members of County Assemblies who prefer to devote most of their resources for foreign travels because they are the people who lack exposure. They want to travel and go to see the world. They do not know that those monies are badly needed to spruce up the health centers and to beef up the medical amenities and facilities that are badly needed back home. So, I want to say that this Motion could not have come at an opportune moment. The idea is not to stifle devolution; the idea is to remedy wanting situations where health centers are lacking medicine; where health centers are lacking doctors and basic facilities that we badly need in our country. It is not about devolution. We just want the Transitional Authority and the Government to take back the Level 4 and Level 5 hospitals, spruce them up and make them conducive and affordable to the public in the meantime. When the county government grows up and they know what they are supposed to do, we will give them back to them. But not today when we have MCAs who will still come, take the center stage and they want to challenge the Members of Parliament on why the health centers are not well stocked with medicines, not knowing that this is now a devolved function and they have the money. Most of them have even bigger budgetary provisions than their Members of Parliament. I want to take this time to thank hon. Mule, support this amendment Bill and say that it could not have come at a better time. We will take those powers back to the county government when they will be mature enough to know their role. When the Governors will know that we need medicine and facilities in health centers and not monies to devote to the MCAs, who have held them hostage turning impeachment on their eyes. So, they have given MCAs money to go for trips outside to see the world which they have always coveted to go and see, leaving people dying here; leaving facilities without medicines. Hon. Mule my colleague, I want to support you and to urge those people out there to realize that we are not trying to stifle the powers of the governors. We are not trying to take away the so-called devolved functions which they had. But things like education and Health must be taken very seriously. I want to thank the Government, despite the fact that we have financial challenges; the functions that were left with the National Government are going on well. Security, despite the fact that there are challenges, you can see the Government trying to single-source security gadgets from Safaricom because they understand the challenges that they know are serious. I want to thank hon. Mule. I encourage Kenyans to wake up. We must take back health facilities and make them a national function.

Thank you very much hon. Speaker for giving me the opportunity to support this noble Bill

Hon. (Ms.) Munene: Thank you hon. Speaker for giving me this opportunity to support this Report as amended. The reason why I am saying this is because our people are suffering out there. That is because we give our governors money but they are not bothered about our people. If you go to hospitals, especially the Level 4 and Level 5, you will find that there is no medicine. There is also no medicine in the dispensaries that were built using money from CDF. For example, in my place, there is one dispensary where we used to buy things for. We took the Governor to see it and take over its management but since then, he has not done so. So, we are not killing devolution. But just like Jesus Christ came to this world to save and heal our people, if we sit here as hon. Members of the National Assembly and our people are dying because they do not get anything, then there is no need for us to be in this House. We are the ones allocating the money and yet, the governors are not bothered. Their work is just to give MCAs money to go everywhere, when they know that their work is to help the people who elected them. That is the reason why we are saying: "Thank you", to the Committee and its Chairlady. Thank you very much because when you sat down with your Committee, you agreed to think about Kenyans.

I am here to support. Thank you very much.

Hon. Speaker: Hon. Mule is now not moving the amendment but is contributing.

Hon. Mule: Thank you, hon. Speaker. I want to abide by the laws. I had already contributed to this Motion when it started and so, I want to give a chance to another Member. Thank you.

Hon. (Dr) Eseli: Thank hon. Speaker. Unlike hon. Mule, I had only contributed to his amendment but now it is a chance to contribute to the body of the whole Report. I am usually impressed by the amount of interest this Report has raised. I did not anticipate that. But that just goes to show how much Members have been following up on the health care of their constituents and they have seen the constraints they are facing. I want to make some things very clear.

Let nobody say that we are trying to claw back a devolved function. The devolved function remains where it is. The Constitution is very clear. The National Government retains the role of referral hospitals. The question we need to ask and answer is: Are we satisfied with the two referral hospitals; that is, Moi Teaching and Referral Hospital, Kenyatta National Hospital and the Specialized Spinal Injury Unit? Are those the only functions we are satisfied the National Government should run for this nation? Let us look at equity also. When we look at equity, would it not be wise then to distribute the National Governments referral function more widely across the country? That is why we are saying: Since nobody sat down and decided which levels should remain as referral centers for the National Government, we need to give the National Government more referral centers to be able to give quality medical services to Kenyans. That is why this Report has come up.

The other question we need to ask ourselves is: Are our healthcare workers working in optimal conditions vis-a-vis their welfare, their training and remuneration? You will find that there has been a lot of industrial unrest in the healthcare sector since the devolution came about.

Hon. Speaker, this Report attempts to address that crucial issue of making sure that the welfare of the healthcare workers and their training is taken care of. That is why

we are recommending a commission such as the Health Services Commission which is non-constitutional.

There is an issue which I think was very critical. We devolved healthcare before we had a policy in place or a Health Bill. The Committee has been working with the Executive in the process of formulating those two. We hope that soon they will be able to bring them to the House. We ask the House to prioritize those issues; that is the healthcare policy and the Health Bill when they are brought to this House. This is because if those things were in place, probably we might not have faced very many problems.

There is no governor or county that should worry that we are taking away some functions from it. There are those county governments which we know are doing well on healthcare. We have mentioned before the ASAL areas where people are now enjoying good healthcare which they did not have before. Those governments will be assisted to move faster since they are already on the right track. However, there are those county governments that are off the track. Those governments will be assisted and brought back on track. They will also be assisted to start moving and move faster so that they can deliver better healthcare.

Hon. Speaker, there is the issue of the conditional grants. Those grants were given to the county governments in the last Budget and they were specifically for Level 5 hospitals. But, unfortunately, many of those governors did not take that money to those hospitals. Those hospitals did not see a dime of that money and yet, the services are deteriorating. I asked myself later on what informed the Leader of the Majority in the current Budget to do away with conditional grants? This is because conditional grants are conditional. We are able to follow up and ask the county governments what they did with the conditional grant for Hospital “X”. Where did they take that money which was meant for Hospital “Y”? The county governors can do anything they want with that money without anybody following up because we do not know whether it is a conditional grant or not. However, when there is a conditional grant, we can be able to ask: “Where is the money for this hospital?” Up to now, I still do not understand what informed the Leader of the Majority Party to move an amendment to remove conditional grants.

There is the issue of strategic health commodities. There are some strategic health commodities if left to the counties alone, they might not be able to purchase them. That is because when you purchase in bulk, you get discounts. There are some vaccines that need specialized care; that is the cold chain treatment right from purchasing to delivery. Those functions are beyond the abilities of the county governments. Indeed, up to now, the county governments have agreed that vaccines are usually handled by the national Government through the Extended Programme for Immunization. Indeed, there are some functions which we cannot just say: “Let us run them.” Take other functions like the HIV/AIDS. The care of HIV/AIDS is mainly by the national Government through donor-support. Again, that cannot be devolved. So, there are some strategic health interventions that just have to remain with the national Government, and that is where KEMSA comes in.

KEMSA purchases drugs in bulk. We are all aware that, that agency has some accountability issues, but I do not think we should kill it. We should rather revamp it and ensure that those accountability issues are removed and let KEMSA compete in the

market to service the county governments. That is because it will purchase those drugs in bulk. When you purchase in bulk, you are assured of a lower price and quality.

Do not be surprised right now if you find a county government that has purchased chalk and think that it is paracetamol or Panadol for that matter. One county government actually advertised in the national newspapers for chloroquine, which is no longer used to treat malaria. It is completely outlawed and yet a county government advertised for huge quantities of chloroquine. We are saying that we want our county governments to succeed and we are ready to assist them to succeed. They should not look at what we are doing as being anti-them. However, they should look at what we are doing as being friendly to them.

If a kid is learning to walk, you hold his or her hand until he or she is able to steady himself or herself on his or her feet. That is what we are trying to do; to hold their hands and ensure that they are able to walk on their two feet.

Hon. Speaker, with those many remarks, I support the Report.

Thank you.

Hon. Gichigi: Thank you, hon. Speaker. I also rise to support this particular Report as amended. What we are trying to do is to correct a wrong. The Constitution was very clear that the transfer of functions ought to have been phased in three years. It even anticipated a situation where the three years might not be enough and gave a framework where the two levels of governments could engage each other so that certain functions may be left with the national Government. This is where the capacity of the county government was not up to date for that particular function.

Hon. Speaker, the problem arose last year when there was a lot of intimidation and allegations that the Government and the President was anti-devolution. Because of that intimidation, the Executive was forced to simply transfer all the functions even the ones that the counties were certainly not ready for. This habit of giving deadlines, blackmail or intimidation so that people can grab power is the same thing that is happening now. There is intimidation that if you do not dialogue with me or if you do not talk to me, I will do this. The intention is simply to grab. That is what happened last year. Because of the intimidation that the Government was anti-devolution, those functions were transferred when the counties were not ready.

Hon. Speaker, the other thing that did not happen was proper stakeholder consultations. We have heard officers who work in the health sector complaining because they are not understood by the people they were put under. We have serious problems. While we do not have the capacity as Parliament to revert the functions that have already been transferred to the national Government, what this Report is trying to do is--- It is important that the people who are contributing and will vote on this Motion understand the import of this Report, especially the amendments.

This Report does not revert the functions to the national Government. This House is not capable of doing that. It is recommending that a task-force be formed so that those functions that the counties are not ready for can be, through the constitutional framework, given back to the national Government to be dealt with until the capacity of the county governments is built. After that, we can take them back there. Ultimately, we have no alternative other than giving these functions to the counties. However, let us not make the

citizens of this country and even the officers who work in the health sector suffer by rushing and purporting to be supporting devolution.

You are not supporting devolution by saying that health remains there. You are actually an enemy of that devolution. The Constitution was very clear and I think it is important that we pass this Motion.

It will be good if the Senate - and I hope that they will see sense - also support this Motion. The governors also should see sense, sit down with the National Government and say that they should be given functions when they are ready. I am also going to request our brothers in the Senate to become friendly to the health sector. It may have been mentioned here that the Budget and Appropriations Committee allocated about Kshs3.7 billion for the Level 5 hospitals and ring-fenced that particular fund for the health sector. The money was given to the Governors to do as they please. There is now an attempt to say: "The national Government, please, deal with the health sector". I think that is not being friendly to devolution and especially the health sector. I am requesting my sister not to play politics with the citizenry of this country. I support this Bill. And, please, it is good for you before you say that you are opposing this and bashing devolution, to read the Report and understand it. The Report is not doing that; rather it is supporting devolution.

Hon. G.W. Omondi: Thank you, hon. Speaker. I also stand to talk on this Report as amended. I support it as amended. This Report allows us to approach this particular sector being devolved in a more sober manner. So far, we have been excited and a lot of mistakes have been done.

Hon. Speaker, talking from my experience of what I have seen happening in Siaya District Hospital, this Report is just but a tip of the iceberg of what is going on. The Report talks about doctors resigning *en masse* and going elsewhere. If this Committee had decided to go county after county to talk to the people to see what is happening, we would have seen a gloomier position. That is because some of the doctors who are resigning now are not going away. They are going back to the hospitals and they get stranded patients there. They ask for fees and they treat the patients using Government facilities. I have a case where somebody broke his leg in Siaya. I called the hospital superintendant and she told me that a local arrangement had been done because a doctor from Moi Referral Hospital had visited the hospital and he wanted Kshs50,000 to operate on the patient's leg. The county government at that time did not know what was happening in the hospital. I refused and I had to transfer that person to Kisumu where he was operated on by Government doctors. That cost him Kshs10,000 only. So, those are some of the things we need to know.

Hon. Speaker, I accompanied the Budget and Appropriations Committee to Mexico to see how they run their system. We realized that they have a standing committee that looks at all the functions being transferred. If something goes wrong with that function, it is recalled back. I do not know why we are in a hurry. The point about devolution was to give proper service to our people, but we have ended up not giving them service. We know that most of these commissions, especially the CIC, are more concerned about what Parliament is doing and how much money is not being given. Why can they not walk around and see what is going on in the counties so that when devolution is done, it is done in a proper manner? We are getting a very raw deal!

There are some health centres which were put up through CDF. Now, because money has been devolved, the county governments want to construct similar hospitals. Really, why are they constructing other health centres? They want to use the money. If I may digress a little bit, even with regard to the education which is devolved, we give bursaries to children in the local areas and yet, the ward representatives also want to give the bursaries. If you tell them to look at our lists so that we do not duplicate, they do not want to listen. It is, therefore, high time that we looked at not only the health sector, but everything so that we are sure that we are going to give our people proper service. We should not be concerned about how much has been devolved and how much we are using.

With those few remarks, I support the Report as amended.

Hon. (Ms.) Wahome: Thank you, hon. Speaker for this opportunity. I want to support the Report as amended and join others who have said that the Report is timely. The recommendations that have been arrived at have clearly been arrived at after wide consultations with various stake holders. I have looked at Page 4 of the Report which shows that the Committee went fairly far in consulting more than ten stakeholders in that area. The consultations revealed the challenges that the health sector has been facing since the devolution of health services. Unless we want to stand here and be hypocritical and deny--- We represent people at the grassroots level. All of us know that the health sector has not worked well and the devolution of that service may not have been well factored or timely in terms of even costing. We know that the law allows the transfer, but with the relevant costing of the devolved function.

Although monies have been devolved to cater for the health services, we know that even before then, we had serious challenges in terms of personnel, their emoluments, housing, medical and pharmaceutical facilities. So, when we have a Report that clearly tells us that it is time to intervene in order to sort out the mess which we may have possibly created or seen happening, then it is unfortunate that one or two voices are coming out to say that this is another attempt to kill devolution.

We are talking about Level 4 and Level 5 hospitals. Of course, referral hospital services remain at the national level. We also have a structured way of dealing with the issue that is at hand. There will be a forum where the county governments will consult and agree under the facilitation of the Transition Authority (TA) so that they can look at the issues that have now emerged and agree that we need to do this. In every constituency, we have possibly more than 15 health facilities in Level 3. It is not that the county government shall not continue to do work in the health sector. I am happy to note that this Report has clearly stated that there are issues about drugs in the counties. It also states that the workers are not happy. They have come up with their own proposals. We all know that the workers were actually refusing to be retained at the payrolls of the county governments because of the uncertainties facing their agreements - how they would be paid and issues to do with their benefits.

I want to commend this Committee for moving swiftly and timely. One of the challenges that they have mentioned in this Report is that we disregard the three year period for devolution to occur and after that, there is evaluation. We have been told that unless we intervene, we are going to have a crisis. Are we going to wait and deal with a crisis or intervene at this level? We should support this Committee. They are moving under Article 187 which states that if a function or power is transferred from one level to

another, it is acceptable as long as agreements are entered into to manage that process. Therefore, I fail to understand where the Member for Kibra Constituency is coming from in his opposition to this Report. In any case, if a county government fails to manage whatever function has been devolved, there is also a provision to bring it back to the National Government, but with necessary consultations and participation of the people. Therefore, we want to commend the Committee for moving this way and we should support them.

Looking further, I see a problem of standardization, the duration and quality of services provided. The Committee observed that the sector lacks a framework to address health workers' welfare and as such, was of the opinion that this should be addressed.

Hon Speaker, I support this Report, noting that we are discharging our duties as Members of Parliament. We need to classify the health services. We need a proper mechanism of dealing with emerging issues. We also need to expedite the Health Bill. The Committee has noted the same. In summary, the task-force should look further and engage more deeply with the county governments, so that even what they are doing for the dispensaries at the constituency-level, is addressed. I have personally opened three dispensaries since I was elected. I have done so in consultation with the county government, and there has not been any problem. I am operating as a Member of Parliament and it is still not my function.

Members of Parliament continue to facilitate the construction of health facilities. A lot of money from the Constituency Development Fund (CDF) kitty is going to dispensaries even though we know that this is a devolved government function. These are also community projects. Therefore, it is appropriate for us to intervene at this level. I believe that the county governments will not be viewing this negatively. Every time we make a move, we are seen from a negative point of view.

Hon. Speaker, this is a confirmation that the National Assembly is mindful of how devolution works. If health services fail in this country, we better say it and agree that devolution will have failed. If provision of health services is not properly organized, we will be dealing with a sick community. How shall we be able to justify that we devolved this function? We did not cost it. Even when we heard and saw a crisis, we did not do anything. It is acceptable that we now re-look at it through a proper management agreement. The Transitional Authority, which has sometimes been accused of lethargy and inefficiency, should note that there is concern from the National Assembly on how they manage this particular aspect, together with how they engage the county governments, so that the presumed "killing" of devolution is erased in peoples' minds.

Hon. Speaker, I had, indeed, put an intervention because the Member for Kibra had said that he knew the Senate would not allow this to happen. It is wrong for a Member of this House to use this platform to advocate for the Senate because this is our Floor; it is not Senate's Floor. I did not get an opportunity to make that intervention, but it is not right for a Member of Parliament to stand here and advocate so much for the Senate, instead of concentrating on the Report that belongs to us.

Hon. Speaker, I beg to support.

Hon. Speaker: Yes, hon. Onyura!

Hon. Onyura: Thank you very much, hon. Speaker, for giving me the opportunity to contribute to this debate. I support the Report.

Hon. Speaker, the Report has highlighted quite a number of issues and challenges that are being faced in the health sector. Those problems are there. It is actually true and we have noticed them. Talk to the citizens who are supposed to get those services and they tell us what is happening. Even when those services were being provided by the National Government, there was so much inefficiency. But the situation seems to be getting worse in the circumstances in which we are today. That is why, once we notice any problem, we should take note of it with a view to addressing it.

As I said, the only people who feel that there is no problem, and who feel that health services are being provided well, are the governors, the county executives and, to some extent, MCAs. If you talk to the staff of hospitals and other medical health facilities in the counties, you will realise that they are demoralized and uncertain about the future of those facilities. They are confused because they do not know who their employer is at the moment. They do not know the fate of their employment contracts. They do not know what will happen to their pensions. That is because devolution was done in a hurry. Some of the policies and even, perhaps, the regulations that should have been in place first before devolving health services were not considered. So, we cannot pretend that those problems do not exist.

Hon. Speaker, I want to disagree that this Report is getting involved in what can be called “power politics”, trying to take away powers from the governors. If that were to be the case, I would not have supported it. I support it because I fully support devolution and we must assist devolution to work.

[Hon. Speaker left the Chair]

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

Hon. Temporary Deputy Speaker, would it not have been good, the Constitution having allowed us a leeway of around three years, that devolution of health services would have been phased? For example, primary health care facilities like dispensaries would probably have been devolved in the first year. In the second year, we could devolve the health centres. Eventually, we can devolve Level 4 and Level 5 facilities. This would have worked very well. When you allow experience to build up, you allow the development of skills and competencies necessary to be developed. That is what the Report says. That is what should be done.

We expect that when the task-force being proposed comes into being, it will address a number of issues that appear to be missing. For example, there is no provision for county governments to allocate a particular percentage of their budgets to medical services. The task-force should be able to come up with something binding like the Abuja Declaration so that, even the county governments can be required to allocate a certain minimum percentage of their budget to healthcare. It has been said that one or two counties have actually given the right priorities and they are doing the right thing. I want to say here that the experience and what we are observing on the ground is that the majority of counties are not giving the health care the priority that it deserves.

Some of these services and areas are very sensitive and need to be handled very carefully; health is one of them and of course the others would include security and perhaps food sufficiency. These are areas that we need to handle, even if we are devolving them. As a Member of the Committee on Health I know that they are dealing with issues of Health Bill and health policies, so that we can create proper coordinating structure that will oversee even matters of quality assurance. We do not need to have different standards in our 47 counties.

At the moment, I am sure that there is no facility or structure that oversees the standards, quality assurance and so on. With what the Committee is recommending, we should put up structures that can then address that kind of requirement. What is most important is to ensure that even if devolution is going to take place, it is done gradually, so that there is progressive assumption of responsibility.

The other thing that I want to support on this is what some of the members have mentioned here, that there is need to look at the issue of referral hospitals. There is need to perhaps upgrade or ensure that progressively, we have a referral hospital in each county. This will also assist in decongesting the two referral hospitals that we have now.

Hon. Temporary Deputy Speaker, with those comments, I support the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Dennitah Ghati.

Hon. (Ms.) Ghati: Thank you, hon. Temporary Deputy Speaker, for the opportunity. I wish to support the Motion as amended. I know that health care is a fundamental right to every citizen and I am happy that the Committee on Health has actually gone round to look at the state of health care in this country.

I did not see my county here but I can assure this House that health care, especially in my country of Migori is wanting. Talking to people, they still have not felt the devolved services of health care. That is why I am saying that certain functions have to be retained in the national Government and others at the county level.

When you look at the health facilities in most of our counties, pharmacies are still empty, they have no drugs and yet we are pumping a lot of money to the counties. So, we are not seeing value for our money and that is why there are certain functions that if retained at the national level, it is easier to manage. If you look at the doctors, you find that those in our counties, most of them have their own private practice. They siphon some of these drugs from the hospitals and take to their private clinics. When a patient goes to hospital, you will find that patient being referred to a clinic that this doctor owns. This is unacceptable.

We need to look at the capacities of our hospitals in the counties. How are we able to empower our people? We need to build capacities of our health care; doctors and clinicians, so that they are able to look at the issue of health care very seriously. As of now, I want to assure and also agree that counties have very limited capacities to handle the issue of health care. That is why when you look at the Constitution that we have in this county, it is a phased process. It is a process that is going to be implemented in phases, so that we do not give counties more than they can swallow. They are chewing more than they can swallow. What we want to do is to build their capacities slowly, so that when we finally transfer the functions to these counties, they are able to deliver services to the people the way they are supposed to.

I want to echo what my colleague has said; health care is a fundamental right to every citizen in this country. It is enshrined in the Constitution. The Bill of Rights in Chapter Four of the Constitution is very clear on health care. Therefore, as we think about making sure that counties are able to get what they deserve in terms of health care, we also need to ensure that Judiciary establishes courts in each county. We also need to ensure that each county in this country has a referral hospital, is well equipped and has all the required minimum standards.

Hon. Temporary Deputy Speaker, you are also aware that I had an accident. It would be prudent that each county can also in future handle issues of spinal injury, cancer and so on. Our counties should have doctors who are well equipped and are specialized in spinal injury, cancer, chemotherapy and all these things. This Motion is in good faith for this county and this Bill is going to come out at the most critical time when we are waiting to see how we can transfer functions slowly to our counties.

We are not killing the spirit of devolution. I have been on the forefront advocating for devolution, but we do not want to give functions to counties. We do not want to give them food so that they eat more than they can swallow. We want to move strategically so that we empower our people and they are able to benefit from the services that are being provided.

For these reasons, I beg to support this Motion as amended.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, very well spoken. Hon. Christine Ombaka.

Hon. (Ms.) Ombaka: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to support this Report as amended. My contribution to this is that devolution should not be a new thing. My understanding of devolution is that you bring services to the people at the grassroots. This is because some services have never been available at the grassroots and that is why many of our people come to Nairobi to seek treatment of various kinds of ailment. So, when devolution is introduced, then it is a good thing because we are going to receive the services that we have never had for years. It should minimize travelling to Nairobi to seek specialized treatment. That is my understanding of devolution. You devolve what you did not have that was somewhere else like in Nairobi and take it back to the county.

Hon. Temporary Deputy Speaker, if that is the case then we need to devolve many things. One, we need to devolve the structures of health care. The Level 2, 3 and 4 hospitals need to be removed and we just have one level straight and have all the services that we have missed over the years to be introduced there. So, just like my colleague has just said, the services that were never there need to be given under one roof and let the people on the ground access those very services.

In my county which is Siaya, we have never had things like dialysis for example. We have never had kidney transplants. People travel to Nairobi for that and this is what needs to be devolved. That is where people need to be helped. They travel for long distances. They have to look for accommodation when they come here and they cannot afford these services. These are the areas that we need to devolve in terms of the services that we have never had.

Hon. Temporary Deputy Speaker, while devolution of services is being done we also need to look at the skilled staff. We do not have them. They are all resigning and

leaving. The nurses are not there and even the simple cleaners sometimes are difficult to get. So, what I am supporting is that devolution is a good thing but when programmes or facilities do not have the kind of services that we have never had for a long time, then that is what needs to be devolved. So, we devolve the staff, services and everything that matters.

It does not matter whether it is Level 2, 3 or 4, what matters is that the health centre must have what it takes to be a health centre. The health centres must have staff, medicine and various facilities so that they can give comprehensive health care. So, what is coming out is that we have only two national hospitals which are of Level 6. Level 6 should be brought down to the grassroots. We do not need to travel to Nairobi to go to Kenyatta National Hospital (KNH). I want to see at some point that Siaya Hospital looks like KNH. That is what is being devolved. That is what we never had. So, we are getting it because of devolution. We must see the benefits of devolution. We must bring services that we never had at the grassroots and county level and that means also you devolve many other things that go with what it means to have good hospitals or health centres that can provide comprehensive health services.

Hon. Temporary Deputy Speaker, that is all I have otherwise, thank you very much. I support the Report.

The Temporary Deputy Speaker (Hon.) (Ms.) Mbalu: Hon. Katoo ole Metito, Kajiado South, you are on intervention.

Hon. Katoo: Yes, hon. Temporary Deputy Speaker. I am on intervention. I am requesting your direction because this Motion No.9, in my opinion, has been exhaustively debated. All issues have been raised since yesterday. This is the second day. The Motion has been discussed, amended and discussed in an amended form and I would kindly request you to call upon the Mover to reply so that we go to the other Bills.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The debate in the House belongs to the hon. Members. I am forced to put the Question. It is you to decide.

(Hon. (Ms.) Otucho stood up in her place)

Hon. Emaase, resume your seat. Resumption of a seat is not debating. Do you want me to use the words "sit down"? They are un-parliamentary words. Let me put the Question.

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Members: Division. Division.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The numbers for a Division are not even enough. You are only five out of a great number. The Division cannot be allowed. Hon. Rachel Nyamai, it is the decision of the House that you be called upon to reply as the Chairperson of the Departmental Committee on Health.

Hon. Members: Donate one minute.

Hon. (Dr.) Nyamai: Hon. Temporary Deputy Speaker, I can hear many voices of Members requesting me to donate a minute.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Rachel Nyamai, if a Member requests for the same you are not supposed to donate.

Hon. (Dr.) Nyamai: Okay. Thank you very much, hon. Temporary Deputy Speaker for your guidance. I would like to thank the hon. colleagues seated in this House for the high level of debate that they have given this Motion. I really want to thank you for giving it a lifeline.

Yesterday, hon. colleagues you remember that we realised that we needed to handle some matters. I appreciate the amendment that has been brought to the Floor by the Departmental Committee on Health through our colleague, hon. Mule. I thank you hon. Members for supporting this Motion.

Hon. Temporary Deputy Speaker, this country is moving very fast in terms of infrastructure development. I would like to thank Members of Parliament today who are seated in this House for also saying that the health sector also needs to move with the same speed as infrastructure development. I really appreciate that.

Hon. Temporary Deputy Speaker, we appreciate that we are debating about devolution of health today because things are wrong on the ground. You go to a health facility and you find that there is no detergent, the support staff is resigning and the nurses are not in the health facilities because there is no medicine to give. I really thank the House today for speaking about this so that the country, the Executive and the governors can make a decision on this matter.

Hon. Temporary Deputy Speaker, I would like to point out that our health facilities are surviving on Kshs870 million which is a grant that is given through the national Government straight to the health centres and to the Level 3 and Level 4 health facilities. So, hon. Temporary Deputy Speaker, I really appreciate that today we have realised that there is a problem with the funding. In the 2013/2014 Budget the Ministry of Health devolved over Kshs60 billion and this money went to the counties. The question is: How much of this money reached the health facilities? It is sad to realise that most of these monies went to the comfort of people who are seated somewhere in this country and who are enjoying their comfort when our own people are dying of disease.

Hon. Temporary Deputy Speaker, as we are here we do not know how much money will reach the Level 5 hospitals this year because money has not been appropriated to those health facilities. For the benefit of the House, Level 5 health facilities are the former provincial hospitals and they are 11 in number. In the 2013/2014 Budget, the money that was meant for them did not reach these health facilities and most of it is being diverted to construction of new health facilities. This is not the spirit that was meant, especially when this money was being devolved.

Hon. Temporary Deputy Speaker, as I respond, I would like to say that we are the people's representatives. We cannot bury our heads in the sand and assume that things are okay. Today, Members have shown that something is wrong with the health sector. The task force needs to run as fast as possible and reach out to the counties and find out which counties are ready to take up health services and those which are not ready. I appreciate the amendment that it is through agreement. It is not forced but it is through agreement that our people will benefit. With clear terms of reference, this taskforce will be able to achieve the intended purpose.

Hon. Temporary Deputy Speaker, I would like to say that governors are not above the law. If money is meant for a certain function and it does not reach the said beneficiary, Treasury has authority to recover the money; especially money which was meant for Level 5 hospitals in the 2013/2014 Financial Year. It should be diverted to health facilities because they are crashing; this will give them a kick-start to life.

Hon. Temporary Deputy Speaker, the Constitution has a lacuna because it does not define “referral health facility” and “county health facility”. This Report will give us a chance to define this. The Constitution defines “health” as “a right”. The question is: Where does the buck stop? If a sick person in my constituency cannot access health care, he or she will not think of my governor. They will think of the Cabinet Secretary for Health, the Government and the buck stops with the presidency.

As I conclude, if you are not careful, we are going to be producers of health workers who will go to other countries and benefit them. This is because health workers are not given the attention that they deserve. Health is a special profession; just like security. I appreciate the fact that we will need to discuss with our health workers.

Lastly, I would like to say that the national Government needs to build the capacity of the counties to prepare them to take up these functions. This is a report we concluded a while back, but we knew that if we brought it on the Floor it would have been a hot button.

With those few remarks, I appreciate hon. Members for supporting the Report. I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you for your reply. Hon. Members, for the obvious reasons, very well known to you, I am not in a position to put the Question. I direct that this Question be put during the next sitting.

Let us move to the next Order.

Second Reading

THE SCRAP METAL BILL

(Hon. A.B. Duale on 1.7.2014)

(Resumption of Debate interrupted on 1.7.2014)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): We had the Leader of Majority Party who was still moving.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. From the health sector Bill we have moved to the Scrap Metal Bill. What a divergence? We have been dealing with health and human beings and now we are dealing with scrap metal. Again, today for the second day, I am not seeing one serious stakeholder; hon. Sumra, but I am sure he can get the HANSARD.

Hon. Temporary Deputy Speaker, as I move this Bill, I do not want to take a lot of time. This is basically a Bill that is replacing the current Scrap Metal Act, Cap. 503; which has been amended and repealed several times and it is of no use. We have the Scrap Metal Bill which seriously affects the infrastructure of our country. As I said

yesterday, Kshs50 million is spent on Thika Superhighway repairs. The moment it is dark, there are people who come to the road; not to drive, cross, or do anything else, but to make sure that they pluck the rails, sign boards; lighting systems and ultimately cause accidents.

It is estimated that the illegal export of scrap metal is currently costing the country an estimated amount of Kshs4 billion in revenue loss. Therefore, this Bill will create a system or administrative issues that will prohibit persons from dealing with scrap metal without a licence. It is introducing a licence system and it is also introducing scrap metal dealers licence by a body that will be called the Scrap Metal Council. This body will create a law or an avenue for dealing with a person who destroys any metal intended for Government infrastructure. It will provide the penalties and procedures of vetting scrap metal dealers upon an order made by the High Court. It will provide for exports of non-ferrous category of scrap metal through quota restrictions.

Part II of the Bill establishes the Scrap Metal Council and provides for its composition and functions. Part III of the Bill deals with the administrative issues relating to dealing in the scrap metal. Clause 5 prohibits a person from dealing in scrap metal without a licence.

Clause 10 provides for the issuance of a licence by the council to be formed under this Bill, for one to deal in scrap metal. Clause 24 makes it an offence for a person to destroy any metal intended for Government infrastructure, the likes of the rails, ports and the highways. Clause 25 provides for how one can forfeit scrap metal licence upon an order given by any of the judicial systems. Part IV provides for the enforcement of the provisions.

Clause 26 provides for the appointment of scrap metal inspectors. Clause 30 deals with the powers of inspectors. Even inspectors do not have the powers the way they want; they have some limitation on how they enforce the law.

Hon. Temporary Deputy Speaker, Part V of the Bill deals with the miscellaneous provisions of this Bill. Clause 33 of the Bill empowers the Cabinet Secretary (CS) for Industrialization and Infrastructure to make rules and regulations. Clause 34 repeals the current Scrap Metal Act, Cap.503. Therefore, once this Bill goes through Parliament in all the stages and is assented to by the President, the Scrap Metal Act, Cap.503, becomes repealed or becomes irrelevant.

Finally, the schedules provided in the Bill are the forms to be used for administrative purposes. I think I have highlighted the salient features of this Bill.

These illegal scrap metal dealers do not come to our counties because there are no roads in northern Kenya. Therefore, we are very happy that this law is coming and we hope that the Euro Bond; the Kshs174 billion is infrastructure money which will go to Turkana, Garissa, Wajir and Mandera counties. That is the undertaking and an MOU signed with the Jubilee Government; those of us who are in Jubilee Government.

At least, we have had cattle rustlers but we never had those who steal road infrastructure. The metal “rustlers” are never found in our area. It is not because they did not have a choice but it is because the roads are not there. I hope the Committee on Finance, Planning and Trade will re-look at the Bill and come up with more amendments. At the end of the day, we will have a law that will help all Kenyans.

With those many remarks, I urge my colleague, the Majority Whip, hon. Katoo ole Metito to second.

Hon. Katoo: Thank you, hon. Temporary Deputy Speaker. I rise to second this Bill on Scrap Metal. I would like to say that the scrap metal sector is a very huge sector in terms of revenue and in employment creation. It is reported that the world over, about 400 million tonnes of metal is recycled every year. This results in huge revenue injected into the global economy.

Hon. Temporary Deputy Speaker, in terms of employment, this sector in Kenya employs, either directly or indirectly about 500,000 people. So, that highlights the fact that the scrap metal sector is a very important sector and requires good regulations, good administration and management for it to thrive well. However, as it is now, the sector is not regulated and I will highlight the very bad things that are happening in the sector at the moment. Anyone with scrap metal can sell it to any buyer without having to explain the origin of the metal and how he has acquired it or show proof of ownership and that is not good. The absence of regulation has opened the doors to illicit scrap metal retail and wholesale; the thriving of the black market exportation.

Currently, collectors can operate without being registered so they have no licence. They can move from one town to another in search of scrap metal. There is also a loophole that has allowed many to acquire scrap metal in black markets nationwide from people who vandalize public properties. The biggest problem of scrap metal sector as we speak now is vandalism of public property, mostly public infrastructure. This vandalism has a lot of cost. For example, the Government has to spend millions of shillings in trying to repair or replace public infrastructure that has been vandalized. This is reversing the good work that has been done by the Government. For example, the Kenya National Highways Authority (KENHA) reports that it spends about Kshs120 million annually on repairs of just two roads; Mombasa and Thika roads to replace facilities that have been vandalized by scrap metal thieves along those roads. This is a lot of money that should have been used for repairs, maintenance and construction of new roads.

The other problems we are facing right now from lack of regulating the scrap metal sector are the high rates of accidents on our roads. This is partially attributed to vandalism of very important traffic warning signs that scrap metal thieves keep removing along the roads. The Government has tried before to stop vandalism of public property. For instance, in June 2010, there was a ban by the Ministry of Trade on scrap metal from Kenya. That ban was extended and approved by the East African Community (EAC) and it applied to exports outside the block; the EAC. But this did not help at all. Actually, it even harmed honest businesses because there are those in the scrap metal industry who are doing honest business. That ban did not offer any solution to stop the criminal elements. It led to job losses. As I said, this is a sector that employs so many people. It also led to a reduction in people's income because dealing with scrap metal results in income for families.

Let us come to way forward which I think will come after the enactment of this Bill before the House today. This Bill is meant to rein in this escalating incidence of vandalism of public infrastructure by unscrupulous dealers. Under this proposed Bill, dealers will be prepared to reveal sellers' names, identity numbers, telephone numbers

and physical addresses. This will guide the police investigating potentially illegal transactions. It is in clause 22 of this Bill.

The other very good element of this Bill is to try and bring order to the industry. As I said earlier, the Bill will address legal loopholes that have facilitated the black market trade. This is well expressed in Part II of the Bill because under this Bill, there is establishment of Scrap Metal Council which will be set up to regulate and monitor trade. This will bring the much needed order in the industry. It is through this council that traders and whoever will be seeking to have a licence will be vetted. This will smoke out rogue traders who are always not ready to play according to rules.

If you look at Part III of the Bill, it makes it mandatory for all dealers to keep a record of the type and source of metals they acquire and requires a 14 days delay before scrap metal is melted. Currently, any stolen scrap metal is immediately melted and this erases evidence thus making investigations by authorities impossible for lack of evidence. The 14 days delay proposed by the Bill will be a solution to this. If you look at Part IV of the Bill, specifically clause 30, it provides for the facilitation of the Government Scrap Metal Inspector who will be verifying the source and I think it is a very important thing. It is a departure from the current situation. In a nutshell, the Bill is aimed at streamlining the scrap metal sector. Therefore, I wish to request the support of the House and ask my colleagues to give their input, modify it and enrich it as we move to the next stage and approve the Bill.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to second.

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Simba, you cannot rise on a point of order before we put the Question. Nothing is out of order.

(Question proposed)

Hon. Simba, you have just walked in. what is your point of order?

Hon. Simba: On a point of order, hon. Temporary Deputy Speaker. If you check the presence of hon. Members, we have no quorum. It is important for us to have quorum because this is a House of order.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Simba, you are not being heard. Can we let hon. Simba, who has just walked in, to be heard?

Hon. Simba: On a point of order, hon. Temporary Deputy Speaker. We do not have numbers. We have no quorum and we cannot proceed with the business of the House if we do not have quorum. Check properly; we are less than the quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I order for the Division Bell to be rung.

(The Division Bell was rung)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members! You can now resume your seats. I confirm that we have the numbers and we can proceed.

Hon. Nderitu, Member for Ndaragwa, we had already proposed the Question on the Scrap Metal Bill, National Assembly Bill No.6 of 2014.

Hon. Nderitu: Thank you, hon. Temporary Deputy Speaker for this opportunity. I would like, first of all, to say that I highly regret that I wanted to contribute on the Health Motion but I was not able. I will try to put my input in this Bill about scrap metal. We know very well that we have a very big tragedy in our country.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members! We need to hear what the Members are contributing. There is nothing out of order. Let us have the hon. Member make his contribution.

Hon. Nderitu: I am contributing. We are discussing a very important Bill about scrap metal. I do not know where hon. Arati came from. I think he is just out to sabotage the Bill. That would be very unfair considering the problem we have about scrap metal dealers in this country. I would like to mention that the prices of scrap metal in the world are rising every day. I was reading an article where I read that scrap metal that was sold in this country in 2012 fetched Kshs.2 billion. In 2011, it fetched Kshs.1 billion and that is 100 per cent increase. It is very unfortunate that Kenya does not produce any scrap metal, but you find that we are selling steel and ore more than the countries producing scrap metal. I remember when construction on Thika Superhighway was completed we walked there only to be shocked to find it vandalized. You can imagine the impact of such vandalism. It increases road carnage. Before the expansion of this road people were running away from Thika Road because of endless traffic jams. I feel very sad when we do not have regulation to guide the way we deal with scrap metal. I am very sure this Bill will bring sanity in the way we manage the scrap metal business.

I would like to mention the creation of a council which is very welcome. Prior to this, the old regulation required one to get a licence from an inspector in the county level. One of the things we want to remove with the passage of this Bill is roadside dealers in scrap metal. This is because most of the dealers in scrap metal do not have restricted premises. Mostly in the informal sector, almost everybody sells scrap metal. I am very sure that if this Bill is enacted, the procedure of licensing the scrap metal dealer will be followed to the letter so that we avoid those activities.

Hon. Temporary Deputy Speaker, on licensing we would like the council that will be mandated with this work to be very serious on the issue of follow up. There are very many things that have been proposed like giving names, identity card number and putting your thumb when you sell scrap metal. Just like any other sector, for example, the land sector and the bank sector, photographs should be required especially from the people who are dealers or sell a certain tonnage of scrap metal. I know that this can prevent stealing of transformers and electrical cables.

We have an issue with regard to inspectors. I highly support the Bill because it touches on who should be an authorized inspector. It talks about somebody who has done metallurgy. I think this Bill should be clear from the word go. This is because majority of

us have not come across a course at the university that deals with metallurgy. So, we should be very clear on who these inspectors are so that their qualification and character can be ascertained. This is because we do not want a case where the inspectors that we give this work become the people who connive with scrap metal dealers.

The Bill also touches on the origin of scrap metal. I know there are very many people who sell scrap metal that does not have origin. The sign boards have very big names some from estate agents. You will find that the people who buy scrap metal, buy it knowing very well that they are coming from irregular sources. If this Bill is passed, some of the problems we have in connection with scrap metal business will be a thing of the past.

On penalties, I have seen the prescribed penalties, but I still think that the penalties are not punitive enough in some areas. You will find somebody selling scrap metal will serve one-year jail. We should be more serious on this. If we want to curtail theft of road signs in our urban areas and roads, we should re-look at the issue of the penalties and fines. The fines should be commensurate with the tonnage of scrap metal that a person has been caught with. Otherwise, a blanket fine will be to our disadvantage.

Hon. Temporary Deputy Speaker, I would have liked to contribute further on this but as I had said earlier on, my aim was to contribute on the Motion on Health.

With those few remarks, I support the Bill.

Hon. Iringo: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. At least, I am happy that I have got a chance to speak despite my brother, Simba, coming to disrupt the cool afternoon of this august House.

I rise to support this Bill on Scrap Metal. It is high time that we went this direction. We need to tame trade in scrap metal because sometimes it is a nuisance. Once we have old metal and unwanted items, we need somebody to recycle or collect them. However, this has been done haphazardly in this country. It has even ended into vandalism of most important instalments in this country. This is especially the road signs, guard rails and many other items which are of protective nature as far as motoring is concerned.

Hon. Temporary Deputy Speaker, with these regulations, it will be prudent now for those people who have licences to engage the right people to collect the necessary scrap metal which is required. Of late, you find people going for *masufuria* in people's homes so that they can go and sell them. People steal even very important gadgets of vehicles to go and sell.

You might leave your stove outside and it is picked and sold as scrap metal. I even propose that there should be a regulation to confirm whether an item is worth being classified as scrap metal. They should pass some test so that you do not take a genuine item and classify it as scrap metal.

Hon. Temporary Deputy Speaker, there is even vandalism of power transformers. We have had very many problems with power, especially in my constituency and Meru County as a whole. We have very many transformers where oil has been siphoned and residents and villagers are left without power. This is taking Kenya Power a very long period to repair the same at the detriment of the consumers of this power. This is affecting people who have fridges and watch World Cup matches. It is very hard for the

Kenya Power to replace these gadgets when they are stolen. It also becomes very expensive.

The Mover of this Bill, the Majority Leader said that there is a council in the Bill which has to be formed. I will bring an amendment on this because we do not need very many councils in this country. That is whatever we do we have a council or a commission. We can even have a department in the Ministry of Industrialization and Enterprise Development or any other relevant Ministry that can be allocated duties of ensuring that this Bill is implemented to the letter. I am not for the idea of the Government establishing another council so that it can be issuing licences. I will prefer that a Government department is charged with the same once we pass the law. This is as opposed to creating other centres of power and it becomes a big problem.

The people who will get these licences should have premises and places where they will collect scrap metals and they should be inspected regularly to ascertain that they are not dens of thuggery and robbery where vehicles are stolen, dismantled and hidden there. We have seen these things happening. The places become dens of criminals and the people who are not very good to the society.

I believe that we shall have a smooth business for our brothers with these regulations. This is especially those who are scared that this Bill is coming to push them out of business. I believe that the Bill will regulate their business and we are regulating everything in this world. We are going digital. We are going in the right direction and things are changing. Let us move from the old laws and embrace new laws so that we can move forward together. This is not a punitive measure to kill people's businesses. Personally, I do not see it that way. The brothers who are trying to sponsor others to stop us from debating this Bill should think twice. They should know that we are trying to regulate their businesses and not killing them.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support.

Hon. Moi: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to ventilate on this issue of the scrap metal. The consideration of this Bill is timely because of the need to rein in unscrupulous metal traders. We have had a lot of vandalism and theft with regard to metal because traders want to make a quick buck. They steal public infrastructure. In 2010, the Ministry of Trade banned export of scrap metal from Kenya. This was an attempt to curb the destruction of public infrastructure. The ban did not help much. Currently, anyone can sell scrap metal to any buyer without explaining where they got the scrap metal or how it was acquired. Because of that we have illicit scrap metal on the retail and wholesale levels.

It is unfortunate that Kshs120 million was used to repair both Mombasa Road and Thika Highway as a result of vandalization of guard rails and road signs. Lives have been lost on highways because the warning signs have been vandalized. The establishment of the Scrap Metal Council will go a long way to regulate the industry by issuing licences and sanctioning transgressors. Even the appointment of scrap metal inspectors will go a long way in bringing order to this chaotic industry.

Under this law, I want to believe that the inspectors have been empowered to enter into any premises or buildings or vehicles without arrest warrants. Knowing what Kenya is like, I believe that empowering the inspectors to carry on their work without arrest warrants would be a breach of the provisions of the Constitution. I believe that

penalties will aid in bringing the unscrupulous traders to book. I support this Bill. I support its intentions. However, we need to make those small amendments. That way, the passage of this Bill will be very timely.

Hon. Nyenze: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute on this very important Bill. I want to say from the outset that I support this Bill. It is very well drafted although it contains some small errors that should be corrected. I have noticed that on Page 115 of the Bill, Clause 25(5)(b), there is a word “personas” and yet it should be “the person was”. The other one is on Page 114, Clause 22(1) (b) which refers to “identity number” instead of “identity card number”. This ought to be corrected. Otherwise it is a very good Bill. If you want to know how important this Bill is, take a walk along Harambee Avenue where there are major Government offices such as the Office of the President, Sheria House, National Treasury and so on. You will notice that the covers to eight manholes have disappeared. This is because of the demand for scrap metal. People are removing covers of manholes and this is posing danger to Kenyans. The holes are so deep and somebody could easily fall in and die.

This Bill is timely because it modernizes the Scrap Metal Act, 1962 Cap.503 of the Laws of Kenya which became outdated despite attempts to modernize it through amendments which were done in 1966, 1997 and 2012. Since this Bill seeks to regulate the scrap metal industry, it is very good to look at the realities that we have in Kenya to ensure that the vandals are weeded out. I will support this Bill for that reason. According to the Economic Survey, 2014, Kenya exported scrap metal worth over Kshs2.5 billion in 2013. These exports, hon. Shakeel tells me, came from Kisumu. However, the scrap metal came from all over the country and Nairobi was most targeted. This was done because there is market in those foreign countries. Kenya is losing Kshs16 billion every year to vandals. They target public utilities. They go for the guard rails, the road signs and so on. Our modern facilities are being vandalized because people want to make money. I do not know whether it is because of poverty or there is market for the scrap metal. This Bill is good and it will curb that.

The telecommunication industry has lost a lot of wires. I saw a bridge in Western Kenya where the guard rails have disappeared and a river with a lot of water flows beneath the bridge. Hon. Major. Waluke can attest to this. Today, Kenya Power is losing 3,000 transformers every year. They also lose about 200,000 metres of power cables to thieves. If this goes on, where will Kenya Power be tomorrow? Telkom Kenya unearthed a syndicate of criminals who steal their communication copper cables and wires and then sell them to scrap metal dealers.

Hon. Temporary Deputy Speaker, the originator of this Bill is my friend. He has done a good job because the passage of this Bill will save this country a lot of the money it has lost over the last few years. The scrap metal industry has criminal elements who steal metal components for sale. The thefts are not restricted to scrap metal. Even old cars are being stolen for people to sell them as scrap metal. All those countries that have allowed haphazard export of scrap metal face similar problems. The cost of raw materials in the steel industry is very high. The cost of steel items is consequently very high. In Kenya, steel products are very expensive.

I am sure that most hon. Members are builders. Some 10-15 years ago, twisted steel wires like the Y16, Y12 and Y8 used to cost a fraction of what they cost today. The

reason is that we have allowed export of scrap metal. The countries that import from us produce steel products at cheaper cost. Those who allow exportation of the same produce steel products at a higher cost because they find themselves with raw materials deficit.

Hon. Temporary Deputy Speaker, I have said many times that in Kenya, we have the Numerical Machine Complex, which has a very big foundry for converting scrap metal into steel. Let us use scrap metal to make the Numerical Machine Complex very active. It will employ our people and produce steel at cheaper costs. We will be able to manufacture steel and iron products cheaply. Currently, the Numerical Machine Complex operates at a very low rate. We should make it to operate at 100 per cent capacity.

We anticipate the growth of the manufacturing industry. In order for this country to grow economically, we have to undertake manufacturing. Most of the manufacturing, especially of steel, iron and so forth, require the scrap metal that we export to other countries. If our economy is to grow by a double-digit, we have to learn from the countries that have succeeded. They went into value addition in the agricultural sector. They went into manufacturing of basic items, instead of importing everything. They created jobs and modernised their transport infrastructure for smooth flow of goods to the market. Those countries took off economically.

Hon. Speaker, today most of those countries are middle income economies. It has been repeated over and over again that at Independence, Kenya was at par with the Tigers of the South-East Asia. Today countries like South Korea, Taiwan, Singapore, Hong Kong and Malaysia have GDPs that are over 30 times that of Kenya. What went wrong within a span of 50 years of Independence?

What went wrong is that we never embraced manufacturing. We started importing everything. We never added value to our exports. We export a lot of tea and coffee. We export a lot of raw materials. Instead of undertaking very simple manufacturing to add value to our agricultural produce, we sell it in its raw form and get very low income.

Hon. Temporary Deputy Speaker, it is my opinion that this is a very timely Bill and it is in line with Vision 2030. We have to work very hard to industrialize this country so that we provide jobs because of the cry in the villages where these Members come from. It is about employment, creation of jobs and creation of wealth. Our people need somewhere to work and have an income to live happily.

Today, we are talking about the cost of living; let us embrace manufacturing of steel because we have a very active building industry. Houses are being built in Nairobi every now and then and in all other urban centers and also in the rural areas. We have to manufacture our own things and I am happy that we have local industries producing our own steel here but we have to modernize them. Now that iron ore has been found in Kitui County, Taveta and Kilifi, let us use this to manufacture and export. I do not want us to start exporting raw materials. Let us do value addition, manufacture metal bars and export so that we earn more rather than exporting raw materials.

This country is very lucky. In what is referred to as Mui Basin in the county of Kitui, we have the best coal in the world called Lignite Coal; a lot of it more than any other place in Africa. We have also the biggest deposits of limestone and iron ore along the same Mui Basin. These are all ingredients for heavy industry for this country to take off. All we need is infrastructure and good arrangement with local population so that they are not ripped off the minerals that God put there. The local people need to get their

share and if we start manufacturing, as this Bill supports, we will stop the exportation of scrap metal.

This country will take off, move forward and even attract more foreign direct investment because there will be availability of steel. The construction industry depends on steel and concrete, which we have in plenty. If you take a country like Japan that does not have iron ore deposits, they recycle the vehicles and other equipment that they make to manufacture very beautiful cars and gadgets for trade. What do the Japanese use to succeed? They use the human capacity and available materials which are scrap metal to manufacture and sell to us.

We are very learned and educated workforce, why can we not copy? The Tigers of South East Asia copied and today they are giants. In fact, today China is lending money to the United States of America (USA) and other European countries. Most of the contracts in Europe and the USA are being handled by the Chinese. If you buy something in Canada and USA, you will find that it is made in China. So, why can we not borrow that? Within less than 30 years, China has become the second largest economy on the globe. What have they done that we cannot do?

For this country to develop, we need Bills like this one which promotes the prohibition of exporting---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyenze, Leader of Minority Party, your time is over. Hon. James Rege, have the few minutes or seconds remaining.

Hon. (Eng.) Rege: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to add my voice. I rise to support this Bill because it seems to be part of the Bill which I introduced in the 10th Parliament, where we sought to amend the Parliamentary Act relating to the energy and communication sector which was to prevent damage to communication installations and vandalism of metallic infrastructure.

This Bill was passed in---

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. James Rege, you will have your nine minutes in the next sitting.

Hon. Members, the time being 6.30 p.m. this House stands adjourned until tomorrow, Thursday, 3rd July, 2014 at 2.30 p.m.

House rose at 6.30 p.m.