



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

VOL. II NO. 97

THE HANSARD

Tuesday, 24th October 2023

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Serjeants-at-Arms, we do not have the numbers yet. Ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. Members, we now have a Quorum to transact business. Clerks-at-the-Table, can we proceed.

COMMUNICATION FROM THE CHAIR

RECOGNITION OF A DELEGATION FROM THE PARLIAMENT OF UGANDA

Hon. Members, allow me to recognise a delegation from the Parliament of Uganda. I wish to introduce to you a delegation of staff from the Parliament of Uganda. The delegation comprises the following:

- | | | |
|----------------------------|---|--------------------------------------------|
| 1. Ms. Geria Beatrice | - | Senior Principal Administrative Assistant. |
| 2. Mr. Mugisha David | - | Principal Economist. |
| 3. Mr. Kyaligonza Moses | - | Principal Policy Analyst. |
| 4. Ms. Ajilong Eacho Betty | - | Legislative Counsel. |
| 5. Ms. Mary M. Athieno | - | Office Assistant. |
| 6. Mr. Moses Lubwama | - | Office Assistant. |

The delegation is visiting the National Assembly of Kenya to learn about the execution of strategic programmes undertaken in the Office of the Speaker, the Parliamentary Service Commission (PSC), and other offices in the national Executive.

On my behalf and that of the National Assembly, I welcome them and wish them a fruitful engagement in the country.

(Applause)

Secondly, to Hon. Robert Mbui, in the matter of Hon. Sabina Chege and Hon. David Mwenje of the Jubilee Coalition and Azimio la Umoja–One Kenya Coalition Party, I will deliver my ruling tomorrow at 2.30 p.m.

(Applause)

Next Order.

(Hon. Mark Mwenje stood up in his place)

Hon. Speaker: What is it, Hon. Mwenje? Is it Mark Mwenje? I am very sorry. I was in the 7th Parliament and the 9th Parliament with your father. But the apple never fell far from the tree.

Next Order.

(Hon. Maero Oyula walked into the Chamber)

Hon. Oyula, take the nearest seat.

(Laughter)

MESSAGE

EXTENSION OF MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

Hon. Members, I have a Message from the Senate on the extension of the mandate of the National Dialogue Committee. Pursuant to the provisions of Standing Order 41(4) of the National Assembly Standing Orders relating to Messages from the Senate, I wish to report to the House that I received a Message from the Senate on 23rd October 2023 regarding the approval of the Motion on the extension of the mandate of the National Dialogue Committee.

The Message conveys that on Wednesday, 18th October 2023, the Senate considered and approved the Motion on the extension of the Mandate of the National Dialogue Committee without amendments. You will recall that on Tuesday, 17th October 2023, the National Assembly approved the Motion on the extension of the mandate of the National Dialogue Committee by a further 30 days from 28th October 2023.

The approval by the Senate in the same form as approved by the National Assembly concludes the bicameral consideration of the matter. The House is accordingly guided.

Next Order. Deputy Leader of the Majority Party.

PAPERS

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

1. Report of the Auditor-General and financial statements on the Upper Tana Catchment Natural Resource Management Project IFAD Loan No.1-867-KE; IFAD Additional Financing Loan No.2000002597-KE and Spanish Trust Fund Loan No. I-E-8-KE for the year ended 30th June 2023 and the certificates therein.
2. The National Government Constituencies Development Fund (NG-CDF) Board report on project proposals, approvals, disbursement status, and restrictions imposed on constituency accounts for the first quarter of the 2023/2024 Financial Year.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Chairperson of the Select Committee on Regional Integration.

Hon. Wanjiku Muhia (Kipipiri, UDA): Hon. Speaker, I beg to lay the following Paper on the Table:

Report of the Select Committee on Regional Integration on a study visit to the Common Market for Eastern and Southern Africa (COMESA) Headquarters in Lusaka, Zambia, from 24th May 2023 to 31st May 2023.

Hon. Speaker: Thank you. We will go back to Order No.5. At Order No.5(1b), I am told the Chairperson of the Select Committee on National Government Constituencies Development Fund (NG-CDF) had some comments to make. Do you? If you do not, then it is okay.

Hon. Musa Sirma (Eldama Ravine, UDA): I do not have any comment.

Hon. Speaker: Okay; fine. Order, Hon. Members. Next Order. Chairperson of the Committee on Regional Integration.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON STUDY VISIT TO COMESA HEADQUARTERS IN ZAMBIA

Hon. Wanjiku Muhia (Kipipiri, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Select Committee on Regional Integration on the Study Visit to the Common Market for Eastern and Southern Africa (COMESA) Headquarters in Lusaka, Zambia, laid on the Table of the House on Tuesday, 24th October 2023.

Hon. Speaker: Thank you. Hon. Sirma, I am told to stay your matter on laying the Report and giving notice of Motion. It is so ordered. Member for Westlands, Hon. Tim Wanyonyi. Can you give him the microphone?

FORMULATION OF A LAND POLICY ON ZONING LAND FOR AGRICULTURE AND BUILT DEVELOPMENT

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that land is a critical but limited factor of production that supports human habitation and food production; noting that agriculture is Kenya's main economic mainstay; appreciating that the Central Bank of Kenya (CBK) Monetary Policy Committee Agriculture Sector Survey 2022 estimated that the contribution of the agriculture sector to the country's Gross Domestic Product (GDP) to be 22 per cent directly and 27 per cent indirectly through its linkages with other sectors; further appreciating that the survey showed that the sector employs over 40 per cent of the country's total population; concerned that in the Lands Reforms Volume III Publication, the Kenya Land Alliance estimated that only 17 per cent of the country's land mass is classified as suitable for rain-fed agriculture land while the remainder is either semi-arid or arid; further concerned that the country's agricultural productivity has been decreasing over the years; cognizant of the fact that the decline in agricultural productivity is partly attributable to the shrinking agricultural land due to unplanned settlements that encroach on agricultural land; further concerned that agricultural lands in the rural areas are continually being sub-divided into small portions for build-up development thereby diminishing the land available for agriculture; noting that there is need to put in place measures for effective land use in the country in order to guarantee optimal use of agriculture; now therefore, this House resolves that

the Government, through the Ministry of Lands, Public Works, Housing and Urban Development puts in place a policy framework for effective land use in rural areas by consolidating and designating zones for built development for commercial and residential development with shared public utilities and separate zones for agricultural use in order to arrest further diminishing of agricultural land and steady the country's agricultural productivity.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Wanyonyi. Next Order.

QUESTIONS AND STATEMENTS

Hon. Speaker: Next Order. There are no questions. Hold on. Yes, Hon. Robert Mbui, the Acting Leader of the Minority Party.

(Laughter)

STATEMENT

COLLECTION AND TRANSPORTATION OF UPCOMING NATIONAL EXAMINATIONS

Hon. Robert Mbui (Kathiani, WDM): Thank you for the recognition, Hon. Speaker. I am seeking your indulgence and your advice as the head of this House. We are heading to the national examinations, and you are aware that Article 94(5) of the Constitution provides that no person or body other than Parliament has the power to make provisions that have the force of law.

Recently, the Ministry of Education, through the Kenya National Examination Council, communicated that all the people who will be managing this year's exams, the centre managers, are supposed to go to the sub-county headquarters to pick the exams twice a day. Previously, it was just once a day in the morning, and they would have the exams in the schools throughout the day. This new provision poses various challenges, especially during the rainy season. Distance will also be another problem. There is also the issue of terrain. The possibility that exams have to be done in the morning and returned to the sub-county headquarters and the afternoon one picked may pose a significant challenge.

Hon. Speaker, I want your indulgence so we can find a way forward for the sake of the citizens of this country and our candidates for this year. I have talked to some of the sub-county directors, and they are saying they are not even aware of whether they will be given additional funds to manage the extra trips. This is because the trips will be two, meaning the cost of transportation for the exams would double. Has the Ministry provided that kind of money?

There is also another issue that is of concern to the Ministry - the Taskforce. Recently, the House agreed that the Taskforce needs to bring its report to the House so that we can deliberate on it. We are about to close schools this term, and our teachers are supposed to prepare for next year. Unfortunately, we are not even sure which subjects will be taught in Junior Secondary Schools come January, next year. It is very important for the House to take up this matter so that everybody knows what needs to be done when schools close.

Hon. Speaker: Who is supposed to collect the exams; the school teacher or the invigilator?

Hon. Robert Mbui (Kathiani, WDM): The centre manager is supposed to go to the sub-county headquarters to pick up the exams and take them to school. When they do the

morning papers, they are required to take them back to the sub-county headquarters, pick up the afternoon papers, and again take them to the schools. It is a major challenge, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Hon. Members, before Hon. Melly responds, it is important to note that the matter raised by Hon. Robert Mbui...

(Loud consultations)

Order, Hon. Members. The matter raised by the Member for Kathiani came up in the House Business Committee (HBC). The HBC decided to give him leave to raise the matter on the Floor. If what he is saying is true, then it must be a source of concern to all of you.

Hon. Members: Yes, it is!

Hon. Speaker: We need the Chairperson of the Departmental Committee on Education to explain to the House because the integrity of examinations cannot be compromised under whatever circumstances.

(Applause)

Hon. Melly, if what we were told in the House Business Committee is true, then it is not right. A headteacher is also the manager of the examination centre of his school. That is not what used to be in the old days. There was an invigilator from a different school to superintend over the examination to avoid the temptation to cheat. Secondly, there are some areas in this country like North Horr where from one school to the centre where they pick the examination is probably 300 km. How do you expect the head of the centre to pick examinations in the morning, take them back, and then pick the afternoon papers and bring them to school again?

Some areas are prone to bandits that you must be careful about, like Hon. Makilap's Constituency. I have seen a news flash on 411 that some banditry is happening in some areas. If you have areas like those, Hon. Melly, remember that this country's children - whether in Kilimani Junior Academy, Turbi, Todonyang or Horoholo - must have the same treatment in examinations.

(Applause)

Before you give the House your assurance, I will provide opportunities for three or four Members on either side to comment on this very important matter. This is something that, as a House, you need to be on top of things. When children sit for examinations, those who pass must do so fairly, and those who do not pass must fail fairly.

Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. The issues that Hon. Mbui has raised are of great concern. We have received them from our constituencies. Every time the Kenya National Examinations Council (KNEC) changes the formats of delivering examinations, we are told the exam has been stolen. This is shameful. It is high time KNEC wakes up, becomes serious, and takes examination issues very seriously. It should have a policy that will begin from day one to the end, where the examination is delivered, supervised and sealed in great integrity.

Otherwise, there is this idea of doing this today and the other one tomorrow, and all of them flop. When the results are out, they are the first to admit that the examination was stolen.

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.*

It is high time the KNEC and the Ministry of Education took the issues of examination in this country back to the days of yore when we used to have real examinations where students would pass and fail fairly. I agree we need to hear from the Chairman on what policies are in place for this year. My constituency, Tharaka, is an example of what you have given. It is vast and schools are far apart. Students walk long distances to do those examinations.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Bumula. Take not more than two minutes each.

Hon. Wanami Wamboka (Bumula, DAP-K): I join this debate, Hon. Speaker, when our education system is experiencing a very sad situation. As we speak, schools do not have money for capitation. It has not been sent to schools. Headteachers do not have any money whatsoever.

As we speak, some of the teachers who marked examinations last time have not received their money. This House has been allocating money to the Ministry of Education and, therefore, to KNEC. We cannot continue this way. I call upon this House to take a strong position against KNEC and its Chief Executive Officer. Hon. Melly, my brother, we must work together on this to ensure that we flash out the culprits in KNEC who are making the situation unbearable for the children of Kenya.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Speaker. I want to join my colleagues in this issue. It is very important to have examination integrity in this country, which gives the Kenyan certificate what it requires. Examination issues are sensitive. As our children sit for examinations, we need to give them the confidence that being through school for those many years will be worthwhile.

There is this issue of bringing in examinations and taking them out twice daily. I know that the Ministry of Education has taken steps towards the shortening of the distance between where the examination is taken and the school. For example, in my constituency, I have one sub-county. However, I have four centres within the same sub-county where examinations will be picked and dropped. Containers have been distributed in this country to the nearest police station. That makes it possible for examinations to be dropped and picked up in the morning and afternoon. Unless there are other cases, containers have been put up in every police station or where there is an administrative unit where examinations can be picked.

Hon. Mbui, it is not practical that the Ministry will say that the distance is long. What is practical and on the ground right now, unless he has not visited his constituency recently, is that there are many centres where examinations can be picked. That is the position.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Hassan, Member for Kamukunji.

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Speaker. I support Hon. Mbui's position. It is terrible that in this day and age, we seem to be grappling with the same problem that we have had for very many years. It is bad for the students, parents and country. It is a terrible bloat on the consciousness of this nation as a whole. This is something we must fight, not only in the Ministry of Education or KNEC, but also nationally.

The culture of cheating and shortcuts is prevalent in our society and country. We cannot just blame students, parents and a few members of KNEC. We need more concerted effort. This impacts those children forever because they do not do well when they go to college. When they go to the university, they suffer because they were not prepared well and have fake results, which are bad for them. Therefore, we must do whatever is necessary to fight this scourge of cheating in our country.

Hon. Speaker: Thank you. Hon. Wanjiku Muhia.

Hon. Wanjiku Muhia (Kipipiri, UDA): Thank you, Hon. Speaker. Examination matters are serious. What the Deputy Leader of the Majority Party has alluded to is great but not practical.

I will give an example of my constituency. From one sub-county to where it is said is the middle, unless the examinations are taken by a bodaboda, the roads are horrible with those heavy rains. In the instances where we have vast constituencies like the ones you have just mentioned of about 300 km, even if they divide them by two, it will still be 150 km to the nearest examination centre. The idea is good, but it is not practical. The KNEC, Cabinet Secretary and the whole education fraternity must retract and re-visit this issue within the shortest time possible. They should supervise the examination without cheating but in a practical manner. Otherwise, it is not tenable, and that method is just horrible.

Hon. Speaker: Member for Turkana – is it East? Nicholas Ng’ikor.

Hon. Nicholas Ng’ikor (Turkana East, JP): Thank you, Hon. Speaker, for allowing me to contribute to this important Motion.

Hon. Speaker: It is a Statement.

Hon. Nicholas Ng’ikor (Turkana East, JP): I meant Statement. Hon. Speaker, as you have just said, the management of examinations this year is horrible. I have just come from my constituency, where I visited several schools for their prayer days last week. Centre managers, headteachers, and principals shared similar details to what was mentioned this afternoon, that the management of examinations has changed. They will pick up morning examination papers from the centre and bring them back to the constituency or sub-county headquarters on the same day. The same will occur with the afternoon examination papers, which they will bring back to the sub-county or constituency headquarters in the evening of the same day.

Hon. Speaker, you have given an example of some constituencies or sub-counties. Let me give you a live example of my constituency.

Hon. Speaker: In 30 seconds.

Hon. Nicholas Ng’ikor (Turkana East, JP): There is a centre called Kapedo, which is 150 kilometres from Lokori, my sub-county headquarters. How can examination papers be taken from Lokori to Kapedo and then back in the afternoon? Traveling from the sub-county headquarters to that examination centre takes approximately seven hours. How will that be manageable? That issue must be addressed so that...

Hon. Speaker: Thank you. Hon. Makilap. We are coming to an end.

Hon. Joseph Makilap (Baringo North, UDA): Hon. Speaker, this is a Ministry of surprises. The first surprise is inconveniencing students and teachers as they sit for their examinations. That is the new surprise in town. We are not even interested in the CEO of the KNEC. The Cabinet Secretary for Education must be held accountable.

The second surprise is for students who come from bandit-prone areas. They have been told to leave their schools where they have been studying for all those years and sit for their examinations in other areas, in an environment that is unknown to them. They do not know what they will eat or how they will survive for those days.

The third surprise is that some schools are in bandit-prone areas. Currently, bandits have marooned General Service Unit (GSU) officers in Kapindasum. The security forces face greater insecurity than citizens. What about students?

This Ministry is full of surprises. It uses regulations to introduce changes in the education sector. There is a problem. Parliament must fix the surprises in the Ministry of Education so that there is order in the education system and our children sit for quality examinations with integrity.

Hon. Speaker: I will allow two Members from either side and then we end there. Member for Narok North, *Mama Agnes Pareyio*.

Hon. Agnes Mantaine (Narok North, JP): Thank you, Hon. Speaker, for giving me the opportunity to support the Statement. Examinations are a serious issue that we need to look into. Cheating during examinations has been going on for a long time. We need to deal with it once and for all so that we can issue certificates to those who have worked for them.

With regard to transporting examination papers twice a day, some areas, like my constituency have many wards with unpassable roads. My constituency has six wards. Transporting examination papers twice daily and reaching schools on time may be impossible. The Ministry of Education should look into that issue. Allowing examination managers to carry papers on a *boda boda* will be unfair. Examination papers are supposed to reach students without interference. Transporting them on a *bodaboda* will expose them to interference by different people and compromise their integrity. We need to look into that issue.

Hon. Speaker: Last is *Mwalimu* Omboko Milemba. That is the end of that story.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. Teachers are at the centre of everything that has been said. Examination centre organisers are headteachers or principals, who are teachers. In the event that anything goes wrong, teachers will be interdicted, punished and even dismissed by the TSC.

Currently, examination invigilators have been forcefully invited. Ordinarily, they are supposed to apply for those positions. But now, teachers have been given letters inviting them to invigilate the examinations and yet, they do not want to supervise them. Therefore, we will still have a problem with exam supervision.

Finally, because of time, lack of funds in schools is the key factor. Practical examinations require money, which is not there. The last tranche was sent a long time ago. Examinations are more important to this country than the economy, unlike in the United States of America (USA), where they value their economy more. Could the Cabinet Secretary for Education come to this House before recess to assure Members and Kenyans that the examinations will be clean? Otherwise, we will have a similar situation like last time, where one school got all the grade As while others got nothing.

Hon. Speaker: Hon. Melly, Chairperson of the Departmental Committee on Education. Do you have a response, or do I allow you to respond first thing tomorrow morning? Do you have the capacity to speak on behalf of the Ministry?

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Speaker. I cannot speak on behalf of the Cabinet Secretary. Please allow me to ask the Cabinet Secretary for the facts so that I can table them in the House tomorrow morning.

Hon. Speaker: Hon. Deputy Speaker, as always, you will preside over the House tomorrow morning. You will give Hon. Melly the first shot to table a Statement from the Cabinet Secretary to assuage the fears of Members and the public so that we do not deal a psychological blow to our children who will sit for the exams. We should encourage them to face examinations with courage.

On my behalf and that of Members, I wish all examination candidates in the country the best. I hope they all obtain good results to transition to the next level.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Kaluma. I hope it is not on the same issue.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I cannot raise the same issue after your wise decision. Since we are meeting Cabinet Secretaries in plenary tomorrow, Hon. Melly could raise the issue with your Office if the response given in tomorrow's morning sitting is unsatisfactory.

I rise under Standing Order 131, which permits a Member to raise certain issues before the House goes into the Committee of the whole House. Hon. Speaker, that Standing Order empowers you and gives you discretion ...

Hon. Speaker: Hon. Kaluma, the Order has not yet been called. You are anticipating debate.

Hon. Peter Kaluma (Homa Bay Town, ODM): I am sorry, Hon. Speaker.

Hon. Speaker: I suggest that once the Order has been called, the Speaker has left the Chair, and the House has gone into the Committee of the whole House, the Chairperson will give you the first bite to raise your issue.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thought the issue could only be dealt with by the substantive Speaker, not the Chair of the Committee of the whole House. Otherwise, the Chair would have to return to your seat to...

Hon. Speaker: Okay. Let us call out the order. I will hear you.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

Hon. Speaker: Hon. Members, before the Speaker leaves the chair, I will give Hon. Kaluma two minutes to prosecute what he wants to prosecute. I also want to encourage you that this Bill is literally precedent-setting. The Committee has proposed amendments to every clause, including the title. Ordinarily, I would have advised them to bring a whole new Bill. Since we have reached where we are, I have acceded to the amendments to be walked through.

Hon. Pukose and his group are going to prosecute for a long time, I believe, amendments to every clause, including the title. I hope that you will have the stamina and time because this is an extremely important Bill in the health sector of this country. Can I hear Hon. Kaluma?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, you partly prosecuted the matter I wanted to raise with you. This is a very important Bill.

The several amendments proposed, and I can confirm from pages 1479 to 1526, over 48 pages of the Order Paper today, are proposals by the Committee, including the title. I agree with the Committee. Then, there are proposals by other Members like Hon. Irene Mayaka, Hon. Peter Owino and Hon. (Dr) Nyikal.

The provision of Standing Order 131 empowers you to direct that where there are more than 10 amendments, those matters or the Bill itself can be referred back to the relevant Committee, which will be the Departmental Committee on Health, for harmonisation. This is what we call winnowing. I was requesting that we do not proceed to the Committee of the whole House if you allow. Because this matter is very serious, it goes for winnowing, and we harmonise all those amendments.

Because of the shortness of time, if you look at page 1387 of this Bill, it is a Bill proposing to repeal the whole of the Pharmacy and Poisons Board Act. It is seeking to repeal the Food, Drugs and Scheduled Substances Act. Both statutes are being repealed in terms of the whole act.

It seeks to repeal Sections 16, 17, and 18 of the Narcotic Drugs and Psychotropic Substances Act. I have looked at those Acts it is seeking to repeal. I have also looked at the sections of the various laws it is seeking to repeal, not in whole but in part, and they are very substantive. It will be, therefore, necessary that we go back to the relevant Committee so that we do not just deal with the Bill itself, but also be assured, by way of cross-checking that the good provisions in the various Acts of Parliament sought to be repealed are incorporated herein.

This is the reason I was requesting for winnowing. I know we need to transact this first for the reasons the Hon. Deputy Speaker has given me, but winnowing enables expedition. I was thinking if this were to be directed even tomorrow, then on Thursday, we could take the

shortest time on matters the House has generally agreed upon to expedite the consideration of this Bill at the Committee of the whole House.

I crave, Hon. Speaker.

Thank you.

Hon. Speaker: Hon. Chairman of the Committee, what do you say to that?

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. Having listened to Hon. Kaluma, I think you have already given a direction. This is a very important Bill. This is a Bill I introduced in the 11th Parliament, and we have gone through it. It is affecting a Department within the Ministry of Health, and we have proposals that we have tried as much as possible to accommodate from the Government.

I think we need to move to the Committee of the whole House and prosecute the Bill because that will hasten the process. I do not think we need to go back to winnowing and then reschedule it again for the Committee of the whole House. That will be a longer process.

Hon. Speaker: Hon. Deputy Speaker.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Speaker. I agree with the Chairman of the Departmental Committee on Health. As much as it looks like there are several amendments in this Bill, those amendments are not substantial. They are restricted to small corrections of the use of certain words so that we can be in tandem with World Health Organisation (WHO) standards. For example, at titling, it makes sense because the title is the Kenya Drugs Authority Bill. We are amending that to read Kenya Health Products and Technologies Regulatory Authority. It is to explain what the Bill is about. Laser treatment cannot be called a drug; it is a technology. It is just trying to make sure that the Bill is now with modern science, where treatment is not by drugs alone, but can also be by technology. It is a more comprehensive explanation.

The other amendment that I can pick as an example is the change of the word therapeutic cosmetic, which is being replaced with dietary supplements. Again, it will become an all-encompassing regulation.

Hon. Speaker: Thank you.

Hon. Gladys Boss (Uasin Gishu County, UDA): Lastly, Hon. Speaker, if you allow me, the other list of definitions is just to put the definitions in alphabetical order. There are no substantive changes or amendments. It is more definitional. In fact, the substantive amendments are only three.

Thank you. I propose we proceed.

Hon. Speaker: Hon. Members, there are some amendments that came to the Speaker's Chamber. One from Senior Counsel Otiende Amollo and one or two from other Members, including Hon. Kaluma.

I direct that when you get to those amendments, they all be accommodated. Normally, there is a time cut at which your amendments should be brought, but having approved them, they will all be considered. In the event you reach any clause that has competing amendments that are conflicting in nature, the Chairman of the Committee is at liberty to stay that amendment until the next day for harmonisation. I do not see any difficulty in that. That is part of our legislative process.

Hon. Members, we will go into Committee. All amendments that I have approved should and will be considered in the Committee of the whole House. Will you be upstanding, Hon. Members?

(Members stood up in their places)

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

IN THE COMMITTEE

[The Temporary Chairlady (Hon. Martha Wangari) in the Chair]

THE KENYA DRUGS AUTHORITY BILL
(National Assembly Bill No. 54 of 2022)

The Temporary Chairlady (Hon. Martha Wangari): Order Members. The House is now in the Committee of the Whole House for the consideration of the Kenya Drugs Authority Bill, (National Assembly Bill, No.54 of 2022).

Hon. Members, let us have order in the House. Hon. Nyenze, take your seat. Break that gathering. Hon. Sergon, take your seat. Member for Mogotio and Member for Laikipia, take your seats. We will have order. Member for Mogotio, take your seat. Order Members!

Clause 3

The Temporary Chairlady (Hon. Martha Wangari): Mover, Hon. (Dr) Pukose.

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

THAT, Clause 3 of the Bill be amended by deleting sub-clause (1) and substituting therefore the following new sub-clause (1)—

“(1) This Act applies to the regulation of—

- (a) medicines, medical products and technologies;
- (b) medical devices including radiation emitting products;
- (c) radiopharmaceuticals;
- (d) complementary, alternative or herbal medicines;
- (e) cosmetics and Borderline Products;
- (f) in-vitro diagnostics medical devices;
- (g) therapeutic feeds;
- (h) clinical trials;
- (i) nutraceuticals and dietary supplements;
- (j) digital health and technologies;
- (k) scheduled substances;
- (l) chemical substances; and,
- (m) biological products for use in humans and the starting materials used in their manufacture.

This is to comprehensively cover all aspects in the regulation of health products and technologies.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. I support the amendment, but I have not heard the Mover speak to scheduled substances, and I regret the Bill does not say what scheduled substances are. Unless this is clarified, I would urge the Members to oppose.

The Temporary Chairlady (Hon. Martha Wangari): If you would wish to speak to this issue, put an intervention. Hon. Otiende Amollo, are you on this one? Okay. Hon. Chairman, do you have a response to Hon. Kaluma’s?

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Chairlady. In (a), I am talking about medicines, medical products and technologies. What Hon. Kaluma needs to know is that scheduled substances are medicines. When we say “medicines,” they are in scheduled substances.

Hon. Peter Kaluma (Homabay Town, ODM): On a point of order.

The Temporary Chairlady (Hon. Martha Wangari): What is out of order, Hon. Kaluma?

Hon. Peter Kaluma (Homabay Town, ODM): Hon. Temporary Chairlady, the Mover is misleading the House. The term “scheduled substances” was clearly defined in the Pharmacy and Poisons Board Act. The question I am asking is whether “scheduled substances” have been defined within this Bill in the manner it was defined there. Otherwise, it is not clear what it is in the Bill.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, we are in Clause 3. This Clause does not talk about definitions. We have amended, and we are indicating comprehensively the cover of all aspects in the regulation of health products and technologies.” All those are health products and technologies and so, it is not definition. The Hon. Member is talking about definitions. If you go to definitions, you will find the definition of scheduled substances.

The Temporary Chairlady (Hon. Martha Wangari): Okay Hon. Members. I will now put the Question.

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

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

(Clause 3 as amended agreed to)

Clause 4

The Temporary Chairlady (Hon. Martha Wangari): Mover.

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

THAT, Clause 4 of the Bill be amended in sub-clause (1) by deleting the words — Kenya Drugs Authority and substituting therefore the words - Kenya Health Products and Technologies Regulatory Authority.

This is to accord with international best practises on establishment of centralised regulatory authority for health products and technologies.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Dawood.

Hon. Rahim Dawood (North Imenti, Independent): Hon. Temporary Chairlady, I agree with the reasoning that the Hon. Deputy Speaker had given earlier. That it should encompass all because technologies are used and in the drugs title, it was not there.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homabay Town, ODM): I support this amendment. The title of the Bill, as initially framed by the Hon. Temporary Chairlady, was the Kenya Drugs Authority Bill, and the authority was there for Kenya Drugs Authority. That was limiting, considering we are also dealing with technology. We are not just up to creating authorities but dealing with both drugs and technology applications in the health sector. I, therefore, support that amendment by the Committee.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Kaluma. Member for North Imenti. You have already spoken on this. Hon. Otiende, if you are not willing to speak on these ones, you remove your card.

(Hon. Otiende Amollo spoke off the record)

Your interest is in clause?

(Hon. Otiende Amollo spoke off the record)

Eight? Okay.

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

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

(Clause 4 as amended agreed to)

Clause 5

The Temporary Chairlady (Hon. Martha Wangari): Mover, Hon. Pukose.

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

THAT, Clause 5 of the Bill be amended by deleting the words, “but the Authority may establish branches anywhere in Kenya” and substituting therefor the words “or in such other place as the board of the Authority may, by resolution, determine”.

This is to give the board discretion to determine the location of the Authority's Headquarters. It is stated that the headquarters of the Authority shall be in such other place as the board of the Authority may, by resolution, determine.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. I urge the Members present to reject the Committee's amendment, so that Clause 5 of the Bill is passed as it is. It clearly states that the headquarters of the Authority shall be in Nairobi. They had drafted that the Authority may establish branches anywhere in Kenya.

If this is left to a body of people, they will be changing the headquarters each time depending on whoever is chairing the board and members. In terms of resource allocation for

construction... Hon. Members, I pray we reject the Committee's amendment and make it clear under the law that the headquarters is in Nairobi, but other branches may appear everywhere.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. You have made your point. Hon. CNN.

Hon. Charles Nguna (Mwingi West, WDM): Thank you, Hon. Temporary Chairlady. I support what Hon. Kaluma has said. We need to reject this amendment because the headquarters should specifically be in Nairobi, where many authorities function from.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Member for Saku.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Temporary Chairlady. I support the amendment moved by the Chairperson. He is not talking about changing the headquarters, but that the board creates branches anywhere in the country. I think this is part of devolution. There is no way we can have all headquarters in Nairobi.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, just for clarity, the amendment in the Order paper does not change the headquarters. It only says that it can be determined by a resolution to such other place as the board of the Authority may, by resolution, determine. Member for Nakuru Town East.

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Temporary Chairlady. I rise to support the Chairperson's amendment. There is confusion regarding what is in the Bill and the explanation by the Chairperson that he is removing the headquarters from Nairobi. That is not the case. I support his amendment that branches can be determined by the board.

Thank you, Hon. Temporary Chairperson.

The Temporary Chairlady (Hon. Martha Wangari): I will give Hon. Basil, Member for Yatta.

Hon. Robert Basil (Yatta, WDM): Thank you, Hon. Temporary Chairlady. I agree with Hon. Kaluma that we need to be specific because it will be very costly if we have to change offices every time we have a new resolution. So, let us consider this.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): I will hear from Hon. *Wuod* chief. Hon. Chairperson, I will give you the last word.

Hon. Martin Owino (Ndhiwa, ODM): The reason I am supporting this is for the headquarters to remain in Nairobi. Only branches can be established elsewhere, as stated in the amendment.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Pukose, kindly summarise this matter.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, I want to read to Hon. Kaluma and other Members what the Bill states - that the headquarters of the authority shall be in Nairobi. We have gone further to say that the branches shall be in such other place as the board of the Authority may, by resolution, determine. It is branches to be determined, not the headquarters.

The Temporary Chairlady (Hon. Martha Wangari): Order, Members! Hon. Dawood. We will get there.

Hon. Rahim Dawood (North Imenti, Independent): Hon. Temporary Chairlady, I agree with what the Chairperson of the Departmental Committee on Health is saying. The Bill is not stating that Nairobi is not the headquarters. It is saying a resolution will be passed to determine where the other branches will be.

I do not understand what the problem is.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende Amollo.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairlady, I did not want to speak to this clause, but I want to persuade Hon. Pukose. On a closer reading of this clause, Hon. Kaluma may be right because of the use of the word ‘or.’ If you remove the words, ‘the headquarters of the authority shall be in Nairobi or in such other place as the board of the Authority may, by resolution, determine,’ then it will flow.

This means the headquarters will be Nairobi or any other place. I suggest the way to deal with this is not to debate too much. The substantive Speaker gave us leeway. If Hon. Pukose agrees, I can propose a further amendment to resolve this issue, which is by retaining the earlier clause that the headquarters of the Authority shall be in Nairobi. Instead of the word ‘or,’ it will read that the Authority may establish branches in any other place by resolution. So, it is clear that the branches can be established by resolution, not the headquarters.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairperson, I think Hon. Otiende has a point. Can we hear from you, Hon. Kaluma or Hon. Otiende has spoken for you?

Hon. Peter Kaluma (Homa Bay Town, ODM): Let me say something briefly. Hon. Temporary Chairlady, Clause 5, as currently drafted, establishes the seat of the headquarters in Nairobi and gives the board the freedom to determine where the branches can be in Kenya. If the amendment by the committee is carried, it will be saying that the headquarters shall be in Nairobi or any other place they may determine. But it will no longer speak to the opening of branches anywhere in Kenya.

That is why even the proposal for further amendment by Hon. Otiende Amollo may not help much. This is because it will be saying the board will determine by resolution.

A board as a corporate body, no doubt, will determine by resolution. Let us reject this Committee’s amendment and leave what is in the Bill, that the headquarters should be in Nairobi, but the board retains the mandate and power to determine wherever branches are in Kenya. Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Kaluma. Chairperson.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, I think the best thing is to drop the amendment.

(Applause)

*(Proposed amendment by Hon. (Dr) Robert Pukose
on Clause 5 dropped)*

The Temporary Chairlady (Hon. Martha Wangari): That is good. I will now put the Question.

(Clause 5 agreed to)

Clause 6

The Temporary Chairlady (Hon. Martha Wangari): Mover.

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

THAT, Clause 6 of the Bill be amended—

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

“(1) There shall be a Director-General who shall be the chief executive officer of the Authority.”

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) The Director-General shall be appointed by the Board, through a transparent and competitive process, on such terms as may be specified in the instrument of appointment.”

(c) in sub-clause (3) by deleting the word “four” and substituting therefor the word “three”.

(d) by deleting sub-clause (4) and substituting the following new sub-clause (4)

—
“(4) A person shall be qualified for appointment as a Director-General if such person—

- (a) holds a bachelor’s degree in pharmacy from a university recognized in Kenya;
- (b) holds a masters' degree in pharmacy, medicine or any relevant field from a university recognized in Kenya;
- (c) has at least ten years’ experience in pharmacy or its equivalent;
- (d) has served in a senior management position for at least five years;
- (e) is a member of a professional body;
- (f) meets the requirements of Chapter Six of the Constitution.”; and,
- (e) by deleting sub-clause (5).

This is for proper drafting of the clause.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): I support the amendments by the Committee on the grounds that the Authority being created will deal with very fundamental things, including the administration of drugs and the technology involved in this area. So, enhancing the experience of the Director-General to 15 years is appropriate. This will ensure that the person superintending over this very serious Authority is a person that we can trust.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Member for Yatta.

Hon. Robert Ngui (Yatta, WDM): Thank you, Hon. Temporary Chairlady. Paragraph (d)(iv) says that a person shall be qualified for appointment as Director-General if such person holds a bachelor’s degree in pharmacy. Kenyans are learned. Therefore, can we stick to a master’s degree? We do not need to have a first degree as a consideration.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I support the Committee’s amendment and, more so, to Clause 3, which proposes that the term of service be reduced from four to three years so that it accords with the Mwongozo guidelines. However, I tend to believe that the qualification criteria being established in Clause 4 are unduly restrictive. The role of the Director-General is to lead in administration. It is not to lead in the preparation of drugs, pharmaceuticals and their application. We are past the time when the Clerk or Speaker of a House, particularly of a county assembly, had to be a lawyer. Anyone who can lead a board as an executive should be given the leeway to lead. I would, therefore, request the Chairperson to remove ‘pharmacy’ as a requirement. Anyone who qualifies and has

served in administration or management, including in Parliament, can oversee this Board. The Board is not the one that manufactures the chemicals.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): I will give the chance to the Member for Seme. Thereafter, the Chairperson will respond to the issues that have been raised.

Hon. (Dr) James Nyikal (Seme, ODM): If you are going to be the Director-General, you must have the basics of pharmaceuticals, hence the reason for a first degree in pharmacy. When you come to paragraph (b), it is open to people who have a degree in pharmacy, but may also have a degree in administration or law. For this amendment, I think we should leave it as it is.

The Temporary Chairlady (Hon. Martha Wangari): Hon. T.J.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Temporary Chairlady, I am enjoying this discourse between my learned friend Hon. Kaluma, and my senior doctor seated beside me. In this House, we must agree on things. When it comes to lawyers, everybody says...

(Hon. George Murugara consulted loudly)

Hon. Murugara, please listen to me. The Chairman beside you is diverting your attention. If you do not mind, this relates to the Departmental Committee on Justice and Legal Affairs. They say that not only lawyers must be chairmen or CEOs, but when it comes to medicine, my doctor, who is seated next to me here, is very forceful that only people who have studied pharmacy can do this job. We must be very consistent with these things. I am aware that lawyers have issues with how society views them, but a time has come when we have to be consistent in our policies. I neither support Hon. Kaluma nor the Member for Seme, but this House must take a position...

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. T.J. Chairperson, proceed with your reaction to the issues that Members have raised.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, this amendment has been subjected to public participation. The qualification that one must hold a degree in pharmacy from a university recognised in Kenya must be a basic requirement. This is also a WHO requirement for this national medical regulatory authority to qualify for maturity Level 3. Therefore, you cannot just lower the standards and open the position of CEO of the organisation to anyone. We must also live up to the expectations.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, UDA): I support the amendment by the Chairperson. Additionally, I believe what Hon. T.J. is saying. Organisations that must be led by lawyers must be led by lawyers, the same as pharmaceutical organisations. I think we need to professionalise our way of doing things. If an organisation needs to be led by a pilot, then let it be led by a pilot; the same for teachers. Let us give pharmacists the opportunity to lead pharmaceutical organisations.

The Temporary Chairlady (Hon. Martha Wangari): You have made your point. Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, UDA): Hon. Temporary Chairlady, I rise to support Hon. (Dr) Pukose, but at the same time, agree with Hon. T.J. Kajwang'. The IEBC Act says that the Chairperson must be an advocate of the high court.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Gikaria, are you supporting the Chairperson? You cannot support the Chairperson and Hon. T.J. at the same time. I will give the Member for Ndiwa a minute, and thereafter, Hon. Kaluma will follow.

Hon. Martin Owino (Ndhiwa, ODM): If Hon. T.J. and the Departmental Committee on Justice and Legal Affairs could not get that, this is highly technical. You cannot have anyone without a basic degree in pharmacy doing this. I, therefore, support.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Gogo.

Hon. (Dr) Lilian Gogo (Rangwe, ODM): Thank you very much, Hon. Temporary Chairlady. I like the way this has generated quite a bit of involvement. But, for heaven's sake, I support the Chairperson. Let pharmacists run their own business. I support all the qualifications that have been put forth by the Chairperson. When it comes to matters where the leadership of organisations is open to lawyers or the public, or any other disciplines, it will do. But for this one, let us give pharmacists a chance, for heaven's sake.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Member for Rangwe. Hon. Kajwang', you have already made your point on this amendment. Member for Homa Bay Town, Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I am persuaded by the Chairperson that the nature of this work requires specialised personnel. I, therefore, request the Mover to delete the phrase 'or any relevant field from a university.' If we are saying it should be pharmacists or medics, what is being referred to as 'any relevant field?' It opens the field wide. Could we remove it?

The Temporary Chairlady (Hon. Martha Wangari): Order, Hon. Members. Let us be orderly. If you want to speak on this amendment, press the intervention button. Next is the Member for North Imenti.

Hon. Raheem Dawood (North Imenti, Independent): Hon. Temporary Chairlady, I agree with the Chairperson of the Departmental Committee on Health. To answer Hon. Kaluma's point, the amendment says you initially need to have a bachelor's degree in pharmacy, and the Masters can be in any other field besides pharmacy and medicine. In the Constitution, lawyers had their way. They put themselves in every commission and sector of Government. Lawyers have had it well and should let other people have it as well.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Member for Runyenjes.

Hon. Muchangi Karemba (Runyenjes, UDA): Thank you, Hon. Temporary Chairlady. I support the Mover, who is also the Chair of the Committee because his proposal is that we consider a person with a Bachelor's Degree in Pharmacy. A person can have a Bachelor's Degree in Pharmacy, but still possess another qualification in a related field.

The Temporary Chairlady (Hon. Martha Wangari): Member for Luanda.

Hon. Dick Oyugi (Luanda, DAP-K): Thank you very much, Hon. Temporary Chairlady. I support the Chair on this because professionals go to school to acquire technical skills in a given field. Therefore, it is very important to have a technical person heading this Authority. I support the fact that professionals should be considered.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Otiende Amollo.

Hon (Dr) Otiende Amollo (Rarieda, ODM): First, I support the Chair of the Committee. In truth, Hon. Dawood has explained it. As I understand this, the first is a basic degree in pharmacy. Thereafter, one is allowed to have a master's degree in anything. You can even have a Master's Degree in Business Administration (MBA) or anything else, which then will speak to the skills that we were talking about. It is not inconsistent.

Secondly, it would be outrageous to have a CEO who does not have a basic degree in pharmacy. Clause 8 insists that the chairperson of the board must have a degree in pharmacy yet the CEO is the technical person.

Hon. Dawood should withdraw what he has just said. He has suggested that lawyers created all offices for themselves. I was part of those who wrote the Constitution. What he said

was not true. Did Hon. Dawood want doctors to be judges in the High Court and the Supreme Court? Absolutely not. To that extent, I agree with Hon. TJ Kajwang’.

The Temporary Chairlady (Hon. Martha Wangari): Thank you.

(Question of the amendment proposed)

Before I put the global Question, there was a proposed amendment by Hon. Anthony Oluoch. The import of carrying the proposal by the Chair makes your proposed amendment fall, Hon. Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Apologies, Hon. Temporary Chairlady. I was speaking to my amendments when I was making my interventions. I later realised that the amendments as put on the Order Paper by the Chair and the Committee, on Clause 6(c) that deals with the 15 years of experience, had an issue. You have guided, Hon. Temporary Chairlady. I do not know if I can still prosecute or the import of the Chair’s amendments.

The Temporary Chairlady (Hon. Martha Wangari): The import is as it falls actually.

Hon. Anthony Oluoch (Mathare, ODM): I am guided.

The Temporary Chairlady (Hon. Martha Wangari): Okay

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

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

(Clause 6 as amended agreed to)

Clause 7

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

THAT, Clause 7 of the Bill be amended in paragraph (f) by deleting the words “Act. regulation under this” and substituting therefor the words “regulation under this Act”.

This is to correct a typographical error. What we are doing in Paragraph 7 of the Bill is to amend (f) by deleting the words “Act. regulation under this” and substituting therefor the words, “regulation under this Act”. It is just a typographical error.

The Temporary Chairlady (Hon. Martha Wangari): Allow me to propose the Question.

(Question of the amendment proposed)

Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, this clause requires further amendments. I had signified to the Speaker that we would propose amendments to it. Whilst I support the amendments of the Committee, look at Clause 7(a) and (b). Are they necessary?

You know we are a House of Parliament. We cannot be sitting to legislate against ourselves even where it is not necessary by saying a person shall not qualify for the position of Director-General if the person is a Member of Parliament or a member of the county assembly. Can one qualify if, indeed, they are a sitting Member of Parliament or a sitting MCA?

I am saying that in addition to the amendments the Mover is proposing, that is, Clause 7(a) and (b) be also deleted on his own moving because that serves no purpose. It is obvious that I cannot engage in any other gainful thing under the Constitution if I am a Member of Parliament or an MCA. In both cases, you are a State officer under Article 260 of the Constitution. The spirit in which we keep shouting against ourselves as Members of Parliament even where it yields no substantive benefits is not necessary.

Therefore, I support the Mover's amendment. I request him to amend Clause 7 further by deleting sub-clauses (a) and (b). If he does not, we will reject the whole clause.

I thank you, Hon. Temporary Chairlady.

(Laughter)

The Temporary Chairlady (Hon. Martha Wangari): Let us start with the Member for Mathare. Are you rising on this amendment?

Hon. Anthony Oluoch (Mathare, ODM): Yes, Hon. Temporary Chairlady.

To begin with, I had a proposed amendment. I support the part that seeks to add the words "persons with disabilities" in terms of being in tandem with the provisions of the Constitution. To the extent that it seeks to include persons with disabilities, I agree that issues of persons with disabilities be included.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen Baya. However, I am not sure if you are prosecuting the same issue.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairlady, I am wondering where the amendments by Hon. Kaluma and Hon. Oluoch are. We do not have any amendments by Hon. Kaluma on Clause 7.

Hon. Anthony Oluoch (Mathare, ODM): Are we on Clause 7 or Clause 8?

Hon. Owen Baya (Kilifi North, UDA): We are on Clause 7. Does he have amendments? Where are the further amendments? I understand the idea of further amendments, but they are not on record. Where are they on record?

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende.

Hon (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Chair. Hon. Kaluma, I want to help. Let me help Hon. Owen Baya understand the earlier ruling by the substantive Speaker.

As the Speaker ruled, some of us had written to him for amendments, but they were not incorporated on this Order Paper. The Speaker ruled that we could introduce them, including one that I will introduce because the Speaker had accepted them. That is why Hon. Kaluma is able to suggest a further amendment. In any case, there is no harm in introducing a further amendment when it is necessary to help an omission provided the Mover, Dr Pukose, agrees.

Let me say two things. First, I agree with Hon. Kaluma to this extent. Necessarily, you cannot hold another office such as this once you are serving as a Member of Parliament, an MCA or serving in the County Executive. Whether you state it or not, you are not qualified. It is not right to mention it as if there is something particularly against a Member of Parliament. We could as well have mentioned that you do not qualify if you are a cabinet secretary or in any other office. That is why I thought we could leave it.

Dr Pukose, I would like to persuade you while I support the amendment on its own with your permission. You need to make two other small amendments to Clause 7. First is when you look at Clause 7(d). It says "is convicted of an offence". I am sure it should read "has been convicted" because that is the disqualification. Otherwise, it does not become a disqualification. Second, Clause 7(e) says one does not qualify if he or she is a salaried employee. It should be "is a salaried employee". I persuade you to consider those two further amendments.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Otiende. I have amendments from Hon. Otiende given by the Speaker. Hon. Kaluma, I would like to know whether your amendments are on record so that we also consider them to be on record.

Hon. Kajwang’.

Hon. TJ Kajwang’ (Ruaraka, ODM): Hon. Baya, we are in this House to legislate. We cannot be derogative to ourselves. First, whatever it is, we cannot start abusing ourselves. It looks very bad out there, that we are abusing ourselves. The only point you are making, Hon. Pukose, is that a Member of Parliament, by an act of the Constitution itself, cannot work as a Chief Executive Officer (CEO) or administrator in this way. Every legislation must have an intention. What would be the intention of this? What would be the intention of a statement, to say that something which is obvious and constitutional, we specifically refer to it. Are we not just abusing ourselves?

This is what I am saying that nothing should proceed from this House in which we are saying that there is something very wrong with Members of Parliament. That a Member of Parliament is so questionable that he should not do this thing, yet the Constitution itself has said so. Otherwise, we are going to produce legislation in which we put ourselves at the point of, if I say foolishness would be unparliamentary. No, it is not unparliamentary. We would be foolish. Yes, we would be foolish. We would just be foolish or unwise.

The Temporary Chairlady (Hon. Martha Wangari): Yes, that is better. Hon. Kaluma, I would like to hear if your amendments are on record because what I have here is different.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I support the amendments by the Committee. I propose that the best way to approach it is to complete deletion of Clause 7. I am, however, persuaded that the amendment by the Committee will improve this provision. I would, therefore, suggest, in line with our Standing Orders, that you first put the Question in relation to the amendment by the Committee, and then you allow me room to move an amendment to delete Clause 7(a) and (b) and to add the word ‘has’ at (d) so that it is a person who has been convicted, not is convicted, who is unqualified. I would propose that you put the Question on the amendment by the Committee and then you permit me to move the amendment instead of deleting it.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, you will be moving a further amendment to the amendment. That then will be a bit neater.

Okay Members.

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

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

Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Temporary Chairlady. Just to get your guidance for purposes of procedure and moving fast, what Hon. Kaluma was asking is for the Chairman to move a further amendment as the Chairman, if he agrees. If that happens, then it would be faster instead of asking Hon. Kaluma to move a further amendment. That is what Hon. Otiende had also requested, if the Chairman so agrees.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): For the sake of neatness of debate and so that we understand how we are moving, it is important that if Hon. Kaluma had an amendment... I heard the Speaker, very clearly say that there are certain amendments he had approved to be brought although they came late. I am happy if those are brought so that we do not make amendments or open the whole Bill for amendments because the Speaker has said he allowed

amendments. If we do that, then everybody will introduce amendments on this Bill on the Floor. It is unprocedural.

The Temporary Chairlady (Hon. Martha Wangari): I want to guide the House. There were some Members who submitted amendments late. By the Standing Orders, it was after 2.00 p.m. You should do it before, but the Speaker made a ruling that even if they were seen after, we will indulge them, but we have to see the amendments. That is the point. Right now, the amendments I have are only for Dr Otiende Amollo.

Member of Parliament for North Imenti.

Hon. Rahim Dawood (Imenti North, Independent): Hon. Temporary Chairlady, I would request the Chairman to make a slight amendment to what Dr Amollo and Hon. Kaluma suggested where it says, ‘...is a Member of Parliament who can get it on resignation.’ You could be appointed a director-general, and at that time you are a Member of Parliament, but you can resign from the position to become a director-general. That could be done as well as a further amendment. It will be done by the Chairman himself.

The Temporary Chairlady (Hon. Martha Wangari): Member of Parliament for Ndhiwa.

Hon. Martin Owino (Ndhiwa, ODM): Hon. Temporary Chairlady, when you have resigned, you are not a Member of Parliament. That is out of question. I wanted you to give us guidance. With all these amendments coming from the Floor all the time, we will not finish this. If they were submitted as the Speaker said, let us have that guideline. Let us have them.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I have submitted my amendments through the Committee Legal Counsel, Madam Marlene Ayiro. She has gone to check them at the Speaker’s desk.

May I, therefore, move as we wait for that amendment that you declare Clause 7(a) and (b) outright unconstitutional and they be annulled from this Bill. These clauses say that if you are a Member of Parliament in (a), and in (b), if you are a member of the county assembly, you cannot be the Director-General of the Authority being proposed here. This is unconstitutional and a repetition. Under Article 260 of the Constitution, a Member of Parliament and an MCA are State officers. Under Chapter Six of the Constitution, a Member of Parliament and an MCA are already disqualified from holding any other position from which they can be in gainful employment. This provision flies in the face of the Constitution straight away. Without an amendment, I request that this Clause 7(a) and (b), be removed.

Lastly, on (d), when you say, ‘...is convicted...’ When you are drawing a law in relation to qualifications... This means you will be waiting for them to be convicted upon taking the job. It should be, ‘has been convicted.’ If they are not being amended as we wait for our copy of the proposed amendments, Hon. Temporary Chairlady, would you declare them null and void? In which case, you do not need to nullify them yourself. Put the Question, we pass this clause with those amendments.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, you know you are trying to bring your amendments through the backdoor because I have not seen them. I will give Hon. Elachi a chance, and then the Chairman.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Chairlady.

I support, especially after looking at how Members of Parliament have been treated in other appointments. The provision that a Member of Parliament cannot be a commissioner until after they have finished five years has really affected many of the Members who have left this House. The moment you bring it in, if you walk into a judge’s court, and he decides to interpret it in his own way, any Member who is no longer a Member of this House will not get the job. So, we must agree in this House that that is a clause that will infringe upon many lives of

Members who would wish to do other jobs once they are done with being Members of Parliament.

The Temporary Chairlady (Hon. Martha Wangari): Chair Departmental Committee on Health.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, when I listened to the Speaker's ruling, he said that there are Members of Parliament who presented their proposed amendments late and he approved them. The proposed amendments are with the office of the Speaker. Also, the Speaker said that if a Member wants to make a further amendment, he should consult the Chair. In Clause 7(d), Hon. Otiende Amollo is proposing a further amendment, that is, the words "has been convicted." It is an improvement to what is there. In Clause 7(e), he has proposed the words, "He is a salaried employee." I agree with those two further amendments.

The proposed amendments to Clause 7(d) and (e) have been picked from the Constitution. Whether we use them or not, it does not make any difference because the 2010 Constitution of Kenya states that a person shall not qualify for any position if they are a Member of Parliament, a member of county assembly or County Executive Committee. I agree with the proposed further amendments by Hon. Otiende Amollo on Clause 7(d) and (e) if he moves them properly. I wish he moves those further amendments and then we prosecute them.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Pukose, if I have heard you right...

(Hon. Gladys Boss consulted with Hon. Pukose)

Hon. Gladys, please, give us a minute I talk to Hon. Pukose. Hon. Chair, if I have heard you right, you are agreeing with the amendments that have been proposed on Clause 7(d).

Hon. Kaluma, I have your amendment from the Table Office. You are proposing to delete the entire Clause 7.

(Hon. Kaluma spoke off the record)

Your proposed further amendment to Clause 7 is a deletion.

Hon. Chair, are you agreeing with the proposed further amendments by Hon. Otiende?

(Hon. (Dr) Robert Pukose spoke off the record)

It is on Clause 7(d) and (e). Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, as I said before, I have proposed complete deletion of Clause 7. Remember, I said if there will be improvement, we may go from deletion to sustaining it. That is why I said I will support the amendment. It is a give and take at this stage.

The Temporary Chairlady (Hon. Martha Wangari): So, if Hon. Otiende moves, will you support Hon. Otiende's amendments?

Hon. Peter Kaluma (Homa Bay Town, ODM): I will support.

The Temporary Chairlady (Hon. Martha Wangari): If Hon. Otiende's proposed amendment is taken by the Committee, will you drop yours?

Hon. Peter Kaluma (Homa Bay Town, ODM): I will drop mine, but I will seek a further amendment to Clause 7 by deleting Clause 7(a) and (b). If they do not do that, you will allow me to move it.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): My further amendment is a simple one.

Hon. Temporary Chairlady, I beg to move:

THAT, Clause7(b) be further amendment by deleting the word “is” and substituting therefor the words “has been.” and Clause7(e) be further amendment by adding at the beginning the word “is.”

(Question of the further amendment proposed)

(Loud consultations)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, there is a leeway for debate at this point. So, it is okay. Hon. T.J what is out of order?

Hon. T.J Kajwang' (Ruaraka, ODM): Hon. Temporary Chairlady, what is out of order is how we are following our Standing Orders. We are in a conundrum. Hon. Otiende Amollo has moved a proposed further amendment. He had already written a letter and you have it. So, his amendment is correct.

Hon. Kaluma has also an amendment. He has written a letter and you are with it, whether it is a deletion or not. If you go to the Standing Orders, the priority one must follow, in my view, is that you start with what is top in the hierarchy of those amendments. So, if we start with Hon. Otiende's, thereafter, it should be as further amended by Hon. Kaluma because Hon. Kaluma's intends to delete the whole clause. So, he can be heard on any of those sections that we are talking about, just in case he wrote his letter to the Speaker, which he has confirmed that he did. What has not been said here is, if we say that Members of Parliament and MCAs should not do or do something, it is also discriminatory. Why are you choosing Members of Parliament? Why are you not talking about cabinet secretaries? It is discriminatory. The law itself is unconstitutional because it is discriminatory. You are picking on specific people and you are choosing on them. Hon. Baya, why do you want to legislate against yourself? Why on earth do you want to legislate against yourself on something that is discriminatory?

The Temporary Chairlady (Hon. Martha Wangari): Hon. T.J, you are pre-empting. We have agreed. I heard Hon. Kaluma. Hon. Otiende will move a further amendment on Clause7(b) and you will move yours as a further amendment on Clause7(a) and (b), then we will put the global Question.

Hon. Members, let us proceed like that. I will put the Question on the further amendment by Hon. Otiende, then I will allow Hon. Kaluma to move his further amendment on (a) and (b) then I will put the global Question.

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

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

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

The Temporary Chairlady (Hon. Martha Wangari): I will now allow Hon. Kaluma to move his further amendment.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I hope Hon. Kajwang' is learning.

I beg to move:

THAT, Clause 7 of the Bill be further amended by deleting Clause 7(a) and deleting Clause 7(b).

The reason I am moving this further amendment is because having Clause 7(a) and (b) is superfluous.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kalulma, you are moving deletion of paragraph (a) and (b) of Clause 7?

Hon. Peter Kaluma (Homa Bay Town, ODM): Yes.

The Temporary Chairlady (Hon. Martha Wangari): Good.

(Question of the further amendment proposed)

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

(Clause 7 as amended agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “Kenya Drugs” and substituting therefor the words “Kenya Health Products and Technologies Regulatory”;

(b) by deleting sub-clause (2) and substituting therefor the following new subclause (2)—

“(2) The Board shall comprise—

(a) a non-executive Chairperson appointed by the President and who shall—

(i) be a registered pharmacist of good standing with a degree in pharmacy; and

(ii) have at least ten years' experience in the pharmaceutical sector, five of which shall be at senior management level;

(b) the Principal Secretary in the Ministry for the time being responsible for health or a representative designated in writing;

(c) the Principal Secretary in the Ministry for the time being responsible for finance or a representative designated in writing;

(d) the Director-General for Health or a representative designated in writing;

(e) one person nominated by the Pharmaceutical Society of Kenya;

(f) one person nominated by the Kenya Pharmaceutical Association;

(g) one person nominated by the Kenya Medical Association;

(h) one person, not being a Governor, with knowledge and experience in health products and technologies nominated by the Council of County Governors to represent the interests of counties;

(i) one person, not being a public officer, representing consumer protection nominated by the Consumer Federation of Kenya; and

(j) the Director-General of the Authority who shall be the secretary and an ex officio member of the Board.”; and

(c) by deleting sub-clause (3) and substituting therefor the following new subclause (3)—

“(3) The Cabinet Secretary shall appoint the members of the Board under subsection (e), (f), (g), (h) and (i) by notice in the Gazette”.

The composition of the board should comply with the *Mwongozo* code of governance for State corporations in terms of numbers, skill mix and professional expertise. That should include all relevant players involved in matters of health products and technologies.

The members of the board are not State officers. Hence their appointments do not require approval by Parliament. The Cabinet Secretary notifies the public of the appointments in the *Kenya Gazette*.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Thank you.

(Question of the amendment proposed)

Hon. Baya, do you want to contribute to this amendment?

Hon. Owen Baya (Kilifi North, UDA): No.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Oluoch, do you want to contribute to this amendment?

Hon. Anthony Oluoch (Mathare, ODM): Hon. Temporary Chairlady, I wanted to contribute to Clause 8(7) of the Bill which is not part of what the Chair has proposed to amend. I will ask to be given an opportunity to prosecute Clause 8(7) of the Bill.

The Temporary Chairlady (Hon. Martha Wangari): Let us deal with Hon. Chairman’s amendment first. Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, these amendments by Hon. Chairman are diluting very good provisions which are already put in terms of qualifications and appointment process for both the chairperson and members of the board.

The board chairpersons and other appointments have been tribalised in the recent past. Just the other day, we were debating the matter of employees at the Kenya Revenue Authority (KRA). You can also see what is happening at the Teachers Service Commission (TSC). Some areas have employed teachers up to those who graduated in 2022, yet in other regions like mine, those who graduated in 2003 are not employed. Clause 8(3) of the Bill deals with appointment of the chairperson and members of this important board. Let us agree that it is very important. Let us subject them to parliamentary approval to confirm that those ideals under guarding public service, in terms of the face of the nation and qualifications set, are adhered to.

Clause 8 (2)(a) of the Bill is very clear that the President will appoint the chairperson of the board. The qualification criteria have also been set very clearly under Clause 8(2)(a)(i) and (ii) of the Bill. The Committee is diluting the qualification criteria by proposing amendments.

Hon. Members: How?

Hon. Peter Kaluma (Homa Bay Town, ODM): Do you want me to read them?

Hon. Members: Yes.

Hon. Peter Kaluma (Homa Bay Town, ODM): Clause 8(2)(a) of the Bill says that the Board shall comprise—

(a) a non-executive chairperson appointed by the President and who shall—

- (i) be a registered pharmacist of good standing with a degree in pharmacy; and,
- (ii) have at least ten years' experience in the pharmaceutical sector, five of which shall be at senior management level.

Hon. Temporary Chairlady, if you go to how it is being amended, Clause 8(2)(a)(i) of the Bill is reiterated.

I hope the Chairman is with me. It is a repetition. Clause 8(2) (a)(ii) of the Bill says that the non-executive chairperson shall have, at least, ten years' experience in the pharmaceutical sector, five of which shall be at senior management level. What is being amended?

An Hon. Member: Nothing.

Hon. Peter Kaluma (Homa Bay Town, ODM): Nothing. Leave the Bill as it is.

I thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, I have looked at the Bill and amendments which do not have to be in Clause 8(2)(a) of the Bill. There are other sections under Clause 8 of the Bill that are being amended, from (b) all the way to (j).

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, my issue is neatness. If you are not amending by deletion or substitution, you do not need to amend.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairlady, I have proposed amendments which I will move. I have shared with Dr Pukose and we are in agreement. I have an issue with what has been spoken to first. The difference I see in what is being proposed for amendment and what is there is the idea of Parliament's approval. In the Bill as presented, there is a requirement of the Cabinet appointing with the approval of Parliament. The essence of the amendment is to remove that bit of approval of Parliament.

Secondly, the clauses that allow the cabinet secretary to appoint members of the board are Clause 8(3)(e)(f)(g)(h) and (i). As I see it, these are clauses where other bodies will nominate a person. Even if we do not approve them in Parliament, the responsibility is for those other bodies. It will be wrong for the Pharmaceutical Society of Kenya to nominate their person and then he is brought here and we reject him. That is why I have no problem with the proposed amendments.

With your permission, Hon. Temporary Chairlady, can I move the amendment that I had proposed and it is only in one clause?

The Temporary Chairlady (Hon. Martha Wangari): Not yet, Hon. Otiende Amollo.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you.

The Temporary Chairlady (Hon. Martha Wangari): In fact, you and Hon. Oluoch will move the amendments. Let us prosecute this amendment first. Hon. Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Hon. Temporary Chairlady, I have listened to the proposed amendments. I have concerns with the chairperson's qualifications.

While I agree that we need very specific qualifications for the chief executive officer (CEO), the board is normally for policy and strategic direction. On a serious note, we have very many parastatals in this country. I do not think we have gone to that extent of defining the qualifications of the chairperson of the board. Why do you want to treat this board as if it is special? Let us leave it open to somebody who can chair a board and, provide policy and strategic direction for this important Authority. It will be done.

I plead with the Chairperson to drop this requirement where we have a CEO who is a pharmacist and you want a chairperson of the board who is one. We will have conflict of interest, since it will be a non-executive chairperson position.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, UDA): Hon. Temporary Chairlady, I stand to support the amendment by Hon. Chairman.

This issue came up today in the morning when we were looking at a Bill. The President appoints chairpersons. That should not change in this Bill only. I totally agree with the Chairperson, Dr Pukose, on this. We should leave the amendment as it is.

Hon. Kaluma indicated that there is nothing to amend. The Order Paper makes it clear that the amendment seeks to delete sub-clause (2) and substitute it with a new clause. I agree with Hon. Pukose, the Chairperson of Departmental Committee on Health.

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I would like us to look at a certain principle. It is a general principle that does not only apply to this amendment. The Bill proposes that the chairperson of the board should be a pharmacist and it also includes the number of years of experience in management that he or she should have. The truth is that most of us can manage anything. The other truth is that the results are different when you manage something that you have experience in. In fact, if board members do not have technical knowledge, the directors will run the Authority. We have seen that happening at the National Health Insurance Fund (NHIF) and elsewhere, where directors misdirect the chairperson, who depends on them to understand the intricacies of the institution.

The chairperson of the board should have management experience. Experience in the same field is also important. We should maintain that principle across other boards. That was the Committee's position. Therefore, I support it.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Hon. Temporary Chairlady, I agree and disagree on certain aspects. Different people bring in different ideas on the board. The Bill proposes that all members of the board be pharmacists. What about trends in the country? What about having an information and technology (IT) expert on the board? I believe that every board should have members from different professions. There must be a finance expert and people from other professions. However, if everyone on the board is from the same profession... Some board members will be appointed by the cabinet secretary. Therefore, you could have one person today and a different person tomorrow. I believe the chairperson of the board should provide good governance.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Elachi. Hon. Baya, go ahead.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Temporary Chairlady. I agree with Hon. Nyikal who was once a Principal Secretary in the Ministry of Health, and also the Director-General of KEMSA. The members of the board being nominated by the cabinet secretary under Clauses 8(2)(e), (d), (h), (i), (j), and (k) are well-versed in their professions. You do not want to install a chairperson who will be the only person with no knowledge of pharmacy. He or she will be swamped with ideas from those professionals. You also do not want to stick a director-general of the Authority with a chairperson of the board who may not even understand pharmacy. Pharmacists manage these organisations in such a way that the board chairperson needs to be the strongest pharmacist on the board. We have problems in our parastatals because managers of those entities have no knowledge of the areas they are appointed in. There will be no efficiency in such a scenario.

Hon. Temporary Chairlady, we need to put our "foot" down and tell pharmacists that if the Director-General of the Authority will be a pharmacist, the chairperson of the board should be an even more qualified pharmacist.

The Temporary Chairlady (Hon. Martha Wangari): Member for Nyeri Town, Hon. Maina Mathenge.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Temporary Chairlady. I am a Member of the Committee. I support the Committee's amendment. The pharmaceutical practice is not any other ordinary practice. We put our lives and the lives of others on the line. The presence of a knowledgeable person in this area in terms of the decisions of the board is key and paramount. Their knowledge and experience should match the knowledge of all other technical people on the board.

(Hon. Charles Nguna consulted loudly)

The Temporary Chairlady (Hon. Martha Wangari): Hon. CNN, stop shouting at the Temporary Chairlady. Have your card ready and I will see you. Hon. DMM, you have finished.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Temporary Chairlady. I support the amendment.

The Temporary Chairlady (Hon. Martha Wangari): I will give the next chance to the Member for Kiminini, Hon. Bisau Kakai.

Hon. Bisau Kakai (Kiminini, DAP-K): Thank you, Hon. Temporary Chairlady. While I support the Chairperson's amendment, the current problem in the medical sector is that we talk about pharmacists without looking at the end of the chain. Having a pharmacist with some medical supply chain experience is good. We may have medicines in warehouses and we get a pharmacist who tells us their chemical composition, but he or she does not know how to move them from point A to point B to ensure that there is a steady supply chain. The chairperson should be a pharmacist with some medical supply chain experience so that we can merge the two. We should get a chairperson who understands drug composition, but can also ensure that drugs get to the right place.

The Temporary Chairlady (Hon. Martha Wangari): You have made your point. Member for Tinderet.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Chairlady. I rise to support the Chairperson of the Committee and the Chief Whip of the Majority Party. We have problems in the Kenya Private Sector Alliance (KEPSA) as a result of appointing non-professionals who do not understand ongoing issues. We will encounter problems if we do not appoint a pharmacist who understands pharmacology and the drug supply chain in the whole sector.

I ask Members to support the Chairperson's amendment. It is self-explanatory and clear.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. Clause 8 speaks to the appointment of a non-executive chairperson appointed by the President. Remember we said that the Director-General of the Authority is the Chief Executive, who is a technical person. The phrase "non-executive" in the description of the chairperson of the board has been included in terms of execution or enforcement, so as to give leadership and to chair. We cannot restrict the President too much such that the board cannot operate other than with a pharmacist.

Hon. Temporary Chairlady, if you can chair this House in plenary as well as you are doing, why not chair this board? The amendment to Clause 6 makes it seem as if we are creating jobs for pharmacists. The original Clause 8(5) included engineers because we even had medical technological appliances and equipment. That has been deleted. We have included a degree in pharmacy as a qualification everywhere, including chairing a meeting. Hon. Temporary Chairlady, what are you doing right now?

The Temporary Chairlady (Hon. Martha Wangari): Do you want to be informed by the Deputy Speaker?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I request that we either delete this amendment or you allow me to move my amendment to delete this entire clause.

The Temporary Chairlady (Hon. Martha Wangari): Do you want to be informed by Hon. Gladys Boss, the Deputy Speaker?

Hon. Peter Kaluma (Homa Bay Town, ODM): The Deputy Speaker taught me. I will always be glad to be informed by her.

The Temporary Chairlady (Hon. Martha Wangari): Yes, Hon. Gladys Boss.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Temporary Chairlady. We are losing the objective of this Bill, which is to move Kenya from Maturity Level 1 to Maturity Level 3, at a minimum. We want to achieve Maturity Level 4. We have not achieved Maturity Level 3 because according to the World Health Organisation (WHO) Global Benchmarking Tool, we allow pharmaceutical technologists to hold certain positions and to be involved in regulation-making. By including the word ‘pharmacists’ in the Bill, we are trying to ensure that we meet WHO standards. Kenya will then become competitive and sell its locally manufactured drugs to the entire world. We are only selling to Uganda and maybe Burundi at the moment. If we do not amend this Bill, Kenya's regulatory capacity will remain at Maturity Level 1. Countries at Maturity Level 1 are Somalia, Burundi, Uganda and Kenya.

Currently, the countries that are at Maturity Level 3 are Egypt, South Africa, Tanzania, Ghana and Nigeria. Within the next six months, Tanzania and Rwanda will be at Maturity Level 4. So, Kenya shall lag behind and never export drugs and vaccines it manufactures, all because we have not made sure that we are at WHO standards. So, this is not going to put anyone out of work. We are just trying to become a pharmaceutical manufacturing country that is capable of exporting. That is the bigger picture. We do not want Kenya to lag behind on this particular point.

In fact, if you want to confirm, Kenya has been trying since the last Parliament to achieve this status. Let me bring the attention of Hon. Kaluma to what we call Kenya's Strategic Health Plan. If you read it, you will realise that we have been trying to achieve that since the last Parliament. And I must commend the Chairperson of the Health Committee because he is trying to make sure that we achieve something that we have failed to do in the last six years.

And for that, I kindly persuade Hon. Kaluma to rethink and be guided.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, allow me to put the question on this.

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

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

We had another amendment. Hon. Otiende Amollo, by this amendment being carried, yours will fall. You wanted to amend Paragraph (j) and the import of this being carried is that yours is dropped. Hon. Oluoch, yours also falls.

Hon. Otiende, I have your amendment here. The amendment is on Clause 8(2) which has already been amended by Hon. Chairperson's amendment that was carried.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairlady, I actually have the benefit of having discussed this with Dr Pukose, and we are in agreement. It is only that procedurally we had to move. I had initially thought that the suggestion by Hon. Gikaria would carry us faster. That is, where there is an amendment proposed by the Chairperson and

there is a discussion to improve it, if you then allow the Chairperson to move a further amendment rather than even me moving an amendment after. It would be faster.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): And my understanding first is that there are grave clerical errors in this amendment No.8(2). It does not amend (h) because (h) reads exactly the way it reads in the Bill. Therefore, my further amendment will still be relevant in respect of the Bill itself. And my amendment on that Bill, and we are in agreement with Dr Pukose, is only this. Clause 8(2)(h) mistakenly talks about Council of County Governors. While we all know that...

The Temporary Chairlady (Hon. Martha Wangari): Which one are you reading, Hon. Otiende? Is it the Bill or the amendment? Because we have already put the Question on the amendment by the Chairperson.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): I am on the Bill. And they read exactly the same. In the Bill, 8(2)(h) is exactly what is 8(2)(j) of the Bill. On that, there is no amendment. What was amended was the numbering. And therefore, the substantive amendment on 8(2)(j) remains relevant.

The Temporary Chairlady (Hon. Martha Wangari): It does not remain relevant, Hon. Otiende. I know you know this. We have already carried the amendment by the Chairperson. So, we cannot refer then to (j) on the Bill because the amendment has been passed.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairperson.

Hon (Dr) Robert Pukose (Endebess, UDA): Hon. Otiende's amendment is that there is no Council of County Governors. It is supposed to be the Council of Governors to represent the interests of counties. It is just a typo error which can be corrected through a further amendment because we cannot say a Council of County Governors.

The Temporary Chairlady (Hon. Martha Wangari): But Hon. Pukose should guide the House.

Hon (Dr) Robert Pukose (Endebess, UDA): We need your guidance, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): We cannot now be talking about Clause 8(2) on the Order Paper. We already substituted by carrying your amendment. You cannot refer to (j). In fact, the (j) on your amendment is on the Director-General of the Authority.

Hon (Dr) Robert Pukose (Endebess, UDA): I am on (h).

The Temporary Chairlady (Hon. Martha Wangari): But the amendment for Hon. Otiende is on (j).

Hon (Dr) Robert Pukose (Endebess, UDA): No, it is on (h). It is what is now (h) on my amendment. He wants to do a further amendment to (h).

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende, you said you had already spoken to the Chairperson. I thought maybe the Chairperson would have moved it at that point. By now it is overtaken by events. Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, UDA): If Hon. Otiende's amendment comes in, we are amending what we have already passed and that is the import of carrying the amendments by the Chair. This should have been done much earlier because it is incorporated in the amendment, but as it is now, it has been overtaken by events.

The Temporary Chairlady (Hon. Martha Wangari): It has been overtaken by events. Hon. Otiende, are we on the same page?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): As a point of order, Hon. Temporary Chairlady, first of all, I think we are becoming more rigid than the way we were guided to proceed. Because that rigidity will lead us to spoil this mood. I have my written amendments and the Speaker allowed me to move them. When the Chair spoke, you guided that I wait for

the Chairperson to finish and then I would move my amendments. Now you are telling me that I cannot even move the amendments. That creates the rigidity that cannot help us.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende, I think I will be the last person to be accused of rigidity because all we have been doing this afternoon is actually accommodating Members the whole time. Hon. Otiende, I have your amendments here. Your amendment is on Part 2(a)(i) and (j) of the Bill and it is totally different from the proposal and the amendment of the Chairperson that has already been carried. If the import is that your amendment falls, we cannot say to reduce rigidity, that we go against our own Standing Orders. We have another amendment by Hon. Oluoch which he will prosecute because it is not impacted by what has already been passed. Let us make progress.

Hon. David Gikaria (Nakuru Town East, UDA): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Gikaria what is out of order?

David Gikaria (Nakuru Town East, UDA): Hon. Temporary Chairlady, you have guided us very well, and we appreciate. At one point, Hon. TJ Kajwang' said that the way you are moving, you can even be a Chair of anything. I think what we just need to do is accommodate each other and accept what Hon. (Dr) Otiende is saying. Since they had agreed with the Chairperson, the Chairperson then needs to assist us by moving what Dr Otiende had indicated.

The Temporary Chairlady (Hon. Martha Wangari): Order, Members. Let us hear one Member at a time. Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): The principle I know is that if one amendment is carried, which nullifies the other, that amendment removes what was going to be amended. However, in this case, what Hon. Otiende intended to amend is still there. Actually, it is not a very big amendment; it is just technical. It still exists in the Bill except that it has been renumbered, where (j) is now (h).

The Temporary Chairlady (Hon. Martha Wangari): Hon. Member for Seme, let me just guide a little bit. Hon. Members, we have been good this afternoon I do not want us to go south. I want to give a way forward because we have already replaced. You cannot now read 8 (2), we have put a new section all together by having the amendment of the Chair. So, any Member who had amendments on (2) has nothing to amend.

Hon. (Dr) James Nyikal (Seme, ODM): It is still there (h).

The Temporary Chairlady (Hon. Martha Wangari): No, Hon. (Dr) James Nyikal. The only recourse for this would be to recommit. It is the only way out. I will allow Hon. Oluoch to move, but before that, what is it, Hon. Omboko?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Chairlady. I want Hon. (Dr) Otiende and his cohort to listen to me. Indeed, the amendments by Hon. (Dr) Otiende Amollo had been spoken on by the substantive Speaker. You are further explaining well the fact that the Chair went early, makes his amendments not to fall. The direction you are taking is good because we need to retain the good understanding. Consensus will be important. If that amendment is a small one, say, on technical errors and grammar, then let us take it to recommitment, so that we do not lose the spirit that otherwise we were moving with. That is my comment.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma. I want to bring this to a close.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, I am relying on your great wisdom this afternoon. You have given Members a lot of latitude and this is how legislation is best done. I hear Hon. (Dr) Otiende Amollo to be saying that the clause he desired to amend does still exist in its substance, word for word. If it is so, I hear him to be

saying the only thing which has happened is that it has been re-numbered following the amendment by the Committee. Instead of recommitting, may I crave your indulgence that because that amendment will improve the Bill when it will be enacted into law, we allow Hon. (Dr) Otiende to move his amendment, but in amended form.

The Temporary Chairlady (Hon. Martha Wangari): What will happen, Hon. Kaluma, is that the recourse for Hon. (Dr) Otiende will be a recommittal which is also an option in this House. I mean it is not out of reach, but we cannot remedy it as it is right now. We will then do a recommittal at the end.

Hon. Oluoch, prosecute your amendment.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 8 of the Bill be amended in sub-clause (7) by inserting the words “fair representation of persons with disabilities” immediately after the words “regional balance.”

The import of this, which I have tried to persuade the Chairman through the Deputy Speaker, is to add a language of the Constitution that includes after the words “regional balance”, “fair representation of persons with disabilities”. I said it is in concurrence that the proposed amendment be carried.

(Question of the further amendment proposed)

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

(Clause 8 as amended agreed to)

Clause 9

The Temporary Chairlady (Hon. Martha Wangari): Mover, that is, Chair.

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

THAT, the Bill be amended by deleting Clause 9.

This provision contradicts the legal framework for appointment of the chairperson, board members and chief executive officers of State corporations or semi-autonomous Government agencies. The chairperson, board members and director-general of the authority are not State officers and hence do not need to subscribe to an oath.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, this is the one amendment I support without further amendment. You can imagine the number of authorities, the number of boards, parastatals and State corporations that we have. If we were to require that the chairperson and the members of the board should swear some oath through the Chief Justice, would the Chief Justice be doing any other work than swearing board members? This is the kind of elevation that I agree with the Chair.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, where we are agreeing we make progress.

Hon. Peter Kaluma (Homa Bay Town, ODM): On this one, put the Question.

The Temporary (Hon. Martha Wangari): Thank you.

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

(Clause 9 deleted)

Clause 10

The Temporary Chairlady (Hon. Martha Wangari): Mover.

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

THAT, Clause 10 of the Bill be amended in sub-clause (1) by deleting the words —section 12 “appearing in paragraph (c) and substituting therefor the words —section 11.”

This is to correct the cross-reference as Clause 11 makes provision for removal from office of the members of the board of the Authority.

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

Clause 12

The Temporary Chairlady (Hon. Martha Wangari): Mover.

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

THAT, Clause 12 of the Bill be amended by—

(a) inserting the following paragraphs immediately after paragraph (e)—

—(ea) regulate the disposal of health products and technologies;

(eb) monitor the market for the presence of unregistered and illegal health products and technologies;

(ec) conduct analytical tests of health products and technologies;

(b) deleting paragraph (f) and substituting therefor the following new paragraph (f) —

(f) ensure continuous monitoring of the safety of health products and technologies regulated under this Act through analysis of reports on adverse reactions and events, including any other health product and technology use related issues and take appropriate regulatory actions when necessary;

(c) deleting paragraph (g) and substituting therefor the following new paragraph (g)—

(g) regulate clinical trials and ensure that clinical trial protocols of health products and technologies are being assessed according to the prescribed ethical and professional criteria and defined standards including mandatory bioequivalence studies;

(d) inserting the following new paragraphs immediately after paragraph (g)—

(ga) approve the use of any unregistered medicinal substance for purposes of clinical trials, emergency use and compassionate use;

(gb) carry out pharmacovigilance audits and inspections in order to ensure compliance with good pharmacovigilance practices and the prescribed requirements;

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

(n) appoint inspectors and order inspection of manufacturing premises, medical devices establishments, importing and exporting agents, wholesalers, distributors, pharmacies, including those in health facilities and clinics, retail outlets and any other premises and vessels subject to regulation under this Act;

(f) inserting the following new paragraphs after paragraph (o)—

(oa) conduct national regulatory authority lot release, official authority batch release of specified biologicals to ensure the quality, safety and efficacy of biological products through a regulatory release system in compliance with established approaches, policies, guidelines, procedures and in line with World Health Organization and internationally recognized guidelines;

(ob) carry out and promote research related to medicines and health products;

(g) inserting the following paragraphs after paragraph (q)—

(qa) ensure that all health products and technologies manufactured in, imported into or exported from the country including through parallel importation conform to prescribed standards of quality, safety and efficacy;

(qb) enforce the prescribed standards of quality, safety and efficacy of health products and technologies manufactured, imported into or exported out of the country;

(qc) grant or revoke licenses and permits for the manufacture, importation, exportation, distribution and sale of health products and technologies;

(qd) maintain a register of all authorized health products and technologies manually or electronically;

(qe) regulate licit use of narcotic, psychotropic substances and precursor chemical substances in accordance with the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic substances, 1971 or the United Nations Convention against Illicit Traffic of Precursor Chemical Substances, 1988;

(qf) inspect and license all manufacturing premises, importing and exporting agents, wholesalers, distributors, pharmacies including those in hospitals and clinics and other retail outlets;”

Hon. Temporary Chairlady, in (d) this is to provide for approval of health products and technologies during emergencies and for pharmacovigilance which checks the safety of health products and technologies.

In (e), this is to specify the premises subject to inspection by the Authority. In (f), this is to enable the conduct of research by the authorities and conduct of lot releases which are a key competent in the regulation of production of vaccines. In (g), this is to include critical functions of the Authority based on best practices in regulation of import and export of health products and technologies that will enable the country attain WHO Maturity Level 3.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Mayaka.

Hon. Irene Mayaka (Nominated, ODM): Thank you, Hon. Temporary Chairlady. I want to support the insertion of clause 12(ga) which in essence gives approval for use of any unregistered medicinal substance for purposes of clinical trials, emergency use and compassionate use.

The reason I am supporting this clause is because it will allow for substances like *cannabis sativa* famously known as *bhanga* for medicinal purposes by cancer patients. I am passionately advocating for this because my aunt was a cancer patient. One of the things that kept her going was because she used some *bhanga* substance. This amendment will allow our hospitals and homecare providers to use unregistered medicinal substances to assist patients to maintain and have... You cannot oppose.

The Temporary Chairlady (Hon. Martha Wangari): I think you have made your point. We are on the amendment by the Chairperson.

Hon. Irene Mayaka (Nominated, ODM): That is the amendment by the Chairperson. I am just adding more meat as to why it should be carried.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Mayaka, do not debate, the Bill has already gone through Second Reading. Hon. Kangogo.

Hon. Kangogo Bowen (Marakwet East, UDA): Hon. Temporary Chairperson, I heard the Member saying we are inserting a clause to legalise *bhanga* as medicine. I oppose.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kangogo, the amendment by the Chairperson has not touched on such a substance but Hon. Irene Mayaka has the freedom to contribute to the same using her own words. I want to confirm that *cannabis sativa* or *bhanga* is still illegal in the country. Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairperson, I think that statement by Hon. Mayaka should be expunged from the record because it is self-incriminating. She is saying she did an illegal thing and wants this House to be used as a spring board for such. She needs to withdraw that statement from the record of the House because it should not be seen to be condoning illegal things. It is neat for her to do so because she is a young... She should not besmirch this law. Irene, I know you are an intelligent person but I want to teach you a little lesson. It is unparliamentary to make such statements and it is good for you to withdraw.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen, do not address Hon. Irene Mayaka but me.

Hon. Owen Baya (Kilifi North, UDA): I like her.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, are you on the same or on the amendment?

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. The amendments by the Committee are very detailed. I need to remind Members that this particular clause is at the stem of this Bill if enacted. The Chairperson should have kindly given us the following clarifications:

One, in the proposed amendment to paragraph (ga) what does “compassionate use” mean? Can he explain now that it is being used in a technical context?

Two, in this amendment we should be including all the functions currently put under the Pharmacy and Poisons Board in the Act we are seeking to repeal in the Seventh Schedule and the Authority established under the Food, Drugs and Scheduled Substances Act. Could the Chairperson also confirm to us that those functions vested in those bodies under those Acts, now that we are repealing them, have been incorporated as he explains to us if the medicines for compassionate use are for love?

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairperson, do you have any reaction to the Members?

Hon. (Dr) Robert Pukose (Endebess, UDA): They are supporting.

The Temporary Chairlady (Hon. Martha Wangari): I will put the Question. Hon. Pukose please clarify on record.

Hon. (Dr) Robert Pukose (Endebess, UDA): I want them to specify on which clause.

(Hon. Peter Kaluma spoke off the record)

The Temporary Chairlady (Hon. Martha Wangari): Order, Hon. Kaluma! Order, Members! You cannot answer each other across the aisle. Let me read for you Hon. Pukose because I saw you were a bit distracted. He is referring to clause 12(ga) which states:

“(ga) approve the use of any unregistered medicinal substance for purposes of clinical trials, emergency use and compassionate use”;

The question is: What is compassionate use? Can you clarify this?

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, when we talk about empathy, sympathy and compassion, it is in line with terminally ill patients with cancer. More often, they are given medicines to relieve their pain. That medicine is for compassionate use.

(Hon. Peter Kaluma spoke off the record)

I am explaining to you a point on ‘compassionate use’ yet you are asking me to allow Hon. Nyikal to explain. Hon. Nyikal is seated right behind you. You would have consulted him silently so that he gives you the explanation, but you want the rest of Members and the entire nation to hear this. Let me give you the explanation now. This comes in when patients are terminally ill with cancer and are at a stage where only the pain can be managed; this is with the knowledge that the drugs given to the patient will not cure them.

(Hon. Peter Kaluma spoke off the record)

No, we are talking about palliative care here.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, you know that is illegal in the country.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, that is true. I would not want to go that direction, Hon. Kaluma.

(Hon. (Dr) James Nyikal spoke off the record)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Nyikal, I note that you have an amendment which will come after this. Hold on. You will prosecute your amendment. I will put the Question that Clause 12 be amended as proposed by the Chairman.

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

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

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

I will now allow Hon. Nyikal to prosecute his amendment before we put the global Question on this clause.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 12 of the Bill be amended by deleting paragraph (t).

In my opinion, we do not need this provision. That is why I propose that it be deleted because we are dealing with technical issues here. Paragraph (t) will confuse issues whether the management of personnel will be under a different Act or remain under the Pharmacy and Poisons Board for the time being. That is why I propose that paragraph (t) be deleted. I hope you have followed my argument.

The Temporary Chairlady (Hon. Martha Wangari): So, your proposed amendment is to delete paragraph (t)?

Hon. (Dr) James Nyikal (Seme, ODM): That is right.

The Temporary Chairlady (Hon. Martha Wangari): I will propose the Question.

(Question of the further amendment proposed)

Hon. Chairman, are you in agreement with that amendment?

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, I agree with the amendment by Hon. Nyikal. It is a good amendment.

The Temporary Chairlady (Hon. Martha Wangari): Therefore, Members, I will put the Question.

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

(Clause 12 as amended agreed to)

Clause 13

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman, you have an amendment to Clause 13. Move it.

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

THAT, Clause 13 of the Bill be amended by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) collaborate with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate for the furtherance of the purpose of the Act;”

(b) inserting the following new paragraphs immediately after paragraph (a)—

(aa) adopt and implement any such internationally recognised good regulatory practices;

(ab) determine and implement effective and efficient reliance mechanisms;

(ac) issue, suspend, withdraw or revoke any license or compliance certificate granted under this Act;

(ad) levy, collect and utilise fees for services rendered;

(ae) grant or withdraw licenses and permits to manufacturers, wholesalers, retailers, importers, exporters and distributors;

(af) develop guidelines on the manufacture, import and export, distribution, sale and use of medical products.

This is basically to comply with WHO requirements for regulatory functions in the global benchmarking tool especially on control, offer, imports and exports. In deleting paragraph (a) and substituting therefor the new paragraph (a), the Board may collaborate with

such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate for the furtherance of the purpose of this Act.

The Temporary Chairlady (Hon. Martha Wangari): Alright, Members, I will propose the Question.

(Question of the amendment proposed)

Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, the amendment Clause 13(a) is appreciated because the provision in the Bill is too restrictive. It replaces 'enter into association with' with 'collaborate.' 'Going into association' is different and may be too difficult. That is an amendment that I support, just like the other amendments.

However, I am worried about some additional amendments which ought to be in Clause 13 and which I want to submit to the House and the Mover for consideration. This is to Clause 13(c), which is still being retained, that says: 'receive any grants, gifts, donations or endowments and make legitimate disbursements from'. There are some restrictions under Chapter 6 of the Constitution about what gifts can be received and to what amount. There is a law on that. On opening bank accounts for the funds of the Authority, is this provision necessary, more so in an Act of Parliament? This can be done maybe in a schedule or regulations; it is administrative. On a statement like: 'establish such committees as it may consider', that can be in the Act.

As I support the amendments by the Chairman, I would request him that in the spirit of moving forward, he considers making those additional amendments to paragraphs (c) and (d). They may not only be superfluous but also open to corrupt practices.

I thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kangogo.

Hon. Kangogo Bowen (Marakwet East, UDA): Hon. Temporary Chairlady, I support the amendment by the Chairman, especially part (a) which brings about collaboration in line with WHO. Additionally, in the field of medicine, it is always good to associate and work with professionals and best practices all over the world. So, this amendment will add a lot value. On the point raised by Hon. Kaluma, the issue of gifts and grants can be abused. Hon. Pukose should explain to the House how it will be implemented.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Chairlady. I support the amendment by Hon. Pukose, more specifically on issues that had been raised by Hon. Kaluma. I will insist on levy, collection of fees and opening bank accounts. As indicated by Hon. Pukose, the Director-General is supposed to relate with peers in other parts of the world. For example, the UN can gift this country, maybe in form of drugs, grants and all other things. So, the institution will receive them officially as part of the relationship with peers and other institutions.

Two, there can even be exchange of information about a particular drug, idea or knowledge in a particular field. The fact that we have put gifts and grants here, it is not to individuals in office but to the institution of the Authority, led by the Director-General, who is supposed to be the custodian. I support.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Martin Owino.

Hon. Martin Owino (Ndhiwa, ODM): Hon. Temporary Chairlady, I also rise to support this. The Authority is not going to work in silos; it is going to follow the global practice. Clause (b) (aa) is important because it talks of adapting and implementing good and internationally recognised regulatory practices.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Let us now have the Member for Ruaraka.

Hon. TJ Kajwang' (Ruaraka, ODM): Hon. Temporary Chairlady, I also want to support the Chairperson. With a lot of respect, Hon. Kaluma has been stung before and once beaten, twice shy. Sometimes he has good proposals but they could be conspiracy theories.

(Laughter)

The law proceeds on the premise of good faith that these collaborations will be legal and for official purposes. In any case, these corporations and agencies that we are creating are amiable to our Public Investments Committee (PIC). We will, therefore, ask them to appear before this House. For example, if they receive money from the LGBTQ associations – which is a big deal to Hon. Kaluma – we will question them. We must proceed on the premise that these collaborations are honest.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. TJ. I also agree with you on Hon. Kaluma's biases caused by some stinging.

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

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

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

(Clause 13 as amended agreed to)

(Clauses 14, 15, 16, 17, 18, 19 and 20 agreed to)

(Hon. Peter Kaluma spoke off the record)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, you cannot withdraw because your amendments were not assented to by the Speaker. However, we have been magnanimous to include everyone moving forward. I propose that you do not address yourself to that matter because we are already done.

Clause 21

The Temporary Chairlady (Hon. Martha Wangari): Mover.

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

THAT, Clause 21 of the Bill be amended—

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

“(1) The Board may establish such scientific advisory committees of the Authority, as may be necessary for the effective performance of the functions of the Authority.”

- (b) in sub-clause (3) by deleting the words “Cabinet Secretary” and substituting therefor the words “Board of the Authority”;
- (c) in sub-clause (4) by deleting the words “Cabinet Secretary” and substituting therefor the words “Board of the Authority”;
- (d) by deleting sub-clause (9) and substituting therefor the following new sub-clause (9) —

“(9) An advisory committee shall submit, at least once every six months, a report to the Board of the Authority, with respect to its activities and the Board shall submit a copy of each report to the Cabinet Secretary.”

The scientific advisory committee ought to offer technical advice and report to the Board – which is its appointing Authority – which then advises the Cabinet Secretary accordingly.

Thank you.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. Just for clarity, when we passed Clause 13, we gave the Authority the powers to establish such committees as it may consider necessary for the performance of its function and the exercise of its powers under the Act. Why are we repeating this in respect of the Board? What is being proposed under Clause 21 (a) (1) is that the Board may establish such scientific advisory committees. Now they are calling them “scientific advisory committees”. Whatever it is, the phrase “such other committees it may require for the due performance of its functions” is already catered for in Clause 3.

With due consideration, I submit that this does not add substantively to the Bill and it is superfluous for repetition.

I thank you.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr.) Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. Unless we want to treat this Board as a very special board, boards normally operate with sub-committees. Boards have sub-committees. I am a Member of a board, so I am speaking from experience. Hon. Kaluma is saying that we should not make this Board look so unique that is not under the management of other parastatals. We have too many parastatals in this country which are led by boards. We should be careful not to open a floodgate. We might start getting requests from boards which might bring confusion. I wish that we would adhere to the standard set in terms of board operations.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Pukose, the two Members have raised the same issue in terms of being superfluous in the drafting as this has been passed under Clause 13. Kindly respond to that.

(Hon. (Dr) Otiende Amollo spoke off the record)

Hold on, Hon. Chairperson. Let us hear from Hon. (Dr) Otiende first.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Chairlady. As the Committee Chairperson considers that, if you look at the Bill as originally drafted, it appears that Clause 21 was tailored for the Cabinet Secretary to be in charge of this process, but now we are changing this to the Board. The effect of that is what my colleagues have talked about. You are actually creating parallel advisory committees in the same organisation.

Secondly, the amendment allows the Board the discretion; it says, “The Board may”. However, in sub-clause (d), the new advisory committee will submit a report every six months and the Board “shall” submit it to the Cabinet Secretary. We are not establishing an advisory committee of the Board but appointing an advisory committee of the Cabinet Secretary because the Board does not have a discretion whether to submit or what to submit. The amendment says, “it shall”. It does not use the words “it may”. Therefore, there is a conceptual problem with this whole reformulation of Clause 21.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Hon. Members, is that the last contribution? Hon. (Dr). Pukose, you will wind it up. Let us first have Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Chairlady. The amendment by the Chairperson means that this is a committee of the Board. In fact, it is a Committee that will be reporting to the Kenya Drugs Board which reports to the Cabinet Secretary. This is a sub-committee of the Board which shall not be created by the Cabinet Secretary. He or she cannot create a Board for a parastatal. The Board members will create their sub-committee that shall report to them and then they forward their findings to the Cabinet Secretary. Therefore, this is in order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Pukose, kindly address the issue and refer to Clause 13 of the Bill.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairlady, Clause 13 of the Bill talks about the collaboration of the bodies or organisations within or outside Kenya, as it may be considered necessary. We are not talking of any sub-committee that has been established in Clause 13 of the Bill. I have not seen any sub-committee that has been established in Clause 13 of the Bill.

Clause 13(e) of the Bill says that the Authority shall have powers necessary or expedient for the proper performance of its functions under this Act, including to establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers. It will establish other committees. A Scientific Advisory Committee is a specialised sub-committee that will inform the Authority on complex scientific matters. It is a sub-committee of the Authority but not of the Cabinet Secretary.

What we have just done is clean up. Instead of the Cabinet Secretary establishing the Scientific Advisory Committee, the Board will establish it. It will look at complex matters within the Authority. It will be reporting to them every six months. It is mandatory for them to do so. There are other normal committees like the Budget and Human Resource Committees that are not subjected to anything but, the Scientific Advisory Committee has some special roles that it will be looking into. It will be advising the Board which will then advise the Cabinet Secretary.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairlady, there is a difference between the committees that are set up in Clauses 13(e) and 21 of the Bill. Clause 13(e) of the Bill says that the Authority shall have powers necessary or expedient for the proper performance of its functions under this Act, including to establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers.

My understanding is that these are normal committees that look at human resource, budget and audits in the management of the functions of the Board. Then, there are those that look at the scientific aspects. That is why this Bill is very clear. It establishes Scientific Advisory Committees which are different. We should allow the Authority to function with them. This is a big area or corpus. It requires a lot of advisory by looking at the subject area that it covers. We are in order to allow the committees in Clause 13 of the Bill and establishment of Scientific Advisory Committees in Clause 21 of the Bill.

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I am just going further on what Hon. Baya has said. There is a difference between the committees. Further, those Scientific Advisory Committees are listed. These are not ordinary committees, but they are specific standing committees. That is why it is necessary to establish them in law.

This Bill covers very broad areas. For example, we are talking about human medicine, veterinary medicine, and drugs that are used for beauty and quality control. What comes out is that each one of them will require a standing committee. Later on, we will find out that there are standing committees that are listed.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Temporary Chairlady.

A Member: Put the Question.

The Temporary Chairlady (Hon. Martha Wangari): Order, Hon. Members. Let us listen to Hon. Kaluma and then Hon. Owen.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, look at Clause 21(1) of the Bill in an unamended form. Hon. Chairman of the Committee is being distracted. It says that the Cabinet Secretary may establish scientific advisory committees, as may be necessary for the performance of the functions and powers of the Cabinet Secretary under the Act. The point I am making...

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, we have an amendment on the Floor of the House. Please address it.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Chairlady, that amendment derogates from the substance of this provision. The committees that the Members are talking about are the ones we spoke about in Clause 13 of the Bill which the Board and the Authority can form.

(Loud consultations)

Let me make my point. You cannot bring an amendment which derogates from the substratum of the clause or provision. This is a technical Scientific Advisory Committee for the Cabinet Secretary but not the Board. The ones for the Board are in Clause 13 of the Bill.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, I hear you. Clause 13 of the Bill, which we have already passed without amendments, is about the Authority which is not the same as the Board. Clause 21 of the Bill is addressing the Board of the Authority. The mandate under Clause 13 of the Bill does not affect the one under Clause 21 of the Bill.

(Hon. Peter Kaluma spoke off the record)

Hon. Owen.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairlady, I would like to draw Hon. Kaluma's attention to Clause 21(2) of the Bill which says that the scientific advisory committees established under subsection (1) shall be in addition to those established in the Fourth Schedule of this Bill. If you go to the Fourth Schedule of the Bill, you will see the committees.

Hon. Kaluma needs to listen.

(Hon. Peter Kaluma, Hon. (Dr) James Nyikal, Hon. (Dr) Robert Pukose and Hon. Millie Odhiambo-Mabona consulted with the Hon. Temporary Chairlady)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen, are you addressing Hon. Temporary Chairlady?

(Laughter)

Order Hon. Members. I will now put the Question.

Hon. Owen Baya (Kilifi North, UDA): Yes.

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

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

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme has an amendment that was approved earlier which is in the Order Paper.

(Hon. (Dr) James Nyikal spoke off the record)

Hold on, Member for Seme. I want to get the import of Hon. Chairman's amendment because he has deleted and substituted sub-clauses 4 and 9 that you intend to amend. Your amendment will suffer; it will fall. Give him the microphone.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Chairman's amendments have taken care of my amendment. So, I do not have to move it. I withdraw it.

*(Proposed amendment by
Hon. (Dr) James Nyikal withdrawn)*

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Dr Nyikal.

(Clause 21 as amended agreed to)

Part IV

(Question of the amendment proposed)

The Temporary Chairman (Hon. Martha Wangari): Mover

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

THAT, part IV of the Bill be amended by deleting the title and substituting therefore the following new title-

PART III—HEALTH PRODUCTS AND TECHNOLOGIES

Hon. Temporary Chairlady, this is to ensure harmony with the title of the Bill as proposed for amendment and to correct a minor error in numbering of the parts of the Bill. We are correcting from part IV to part III.

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

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

be inserted, put and agreed to)

(Part IV as amended agreed to)

Clause 22

The Temporary Chairman (Hon. Martha Wangari): Mover.

Move your amendment for clause 22.

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

THAT, Clause 22 of the Bill be amended-

(a) in the marginal note by deleting the word medicines and substituting therefore the words health products and technologies;

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

(i) deleting the words sell any medicine appearing in the opening sentence and substituting therefore the words sell, manufacture, supply, distribute or dispense any health product or technology;

(ii) deleting paragraph (d) and substituting therefore the following new paragraph (d)-

(d) is falsified;

(c) in sub-clause (3) by-

(i) deleting the word medicine appearing in the opening sentence and substituting therefor the words health product or technology; and

(ii) deleting the words pharmaceutical product appearing in paragraph (b) and substituting therefor the words, health product or technology.

In (a), this is to harmonise the terms used in the Bill with the title of the Bill as proposed for amendment.

In (b)(i), this is to broaden the scope of prohibited sale of health products and technologies to include manufacturing, dispensing, distribution and supply of health products and technologies.

In (b)(ii), this is for alignment with international best practice as proposed terminology is recognised by World Health Organisation (WHO).

In (3)(i) and (ii), this is to harmonise the terms used in the Bill with the title of the Bill as proposed for amendment.

Thank you.

(Question of the amendment proposed)

The Temporary Chairman (Hon. Martha Wangari): Is there interest in this matter? If not...

(Hon. (Dr) Nyikal spoke off the record)

Hon. Nyikal, just hold on. Let me put the Question on this one by the Chairman.

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

(Question, that the words to be inserted in place)

thereof be inserted, put and agreed to)

The Temporary Chairman (Hon. Martha Wangari): Hon. Nyikal, I will give you the chance to move your amendments on this.

Hon. (Dr) James Nyikal (Seme, ODM): My amendment on Clause 22 is very simple. It is just a cross reference. If you look at 22(3), which is saying, “(i) shall not apply to the sale of medicines compounded by pharmaceutical technologies”, my amendment is it should be (1)(a). Why am I saying (1)(a)? If you are excluding (a)(b)(c)(d) from the regulation because they are being compounded, the only one you can exclude is (a) because when you compound a product, it is not registered. It is something you are making at the pharmacy as you are doing it. That substance cannot be registered.

However, (b)(c) and (d) should still apply, because those qualities are still required, whether you are compounding in pharmacy or it is coming registered. That is why I am saying instead of (1), we should say (1)(a).

The Temporary Chairlady (Hon. Martha Wangari): Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): As I speak to the proposal by Hon. (Dr) Nyikal and his explanation of the meaning of the word compounded, I then beg to understand from him, Hon. (Dr) Pukose and the Committee, whether it is the opinion that under Clause 22(3), “a pharmaceutical technologist can compound such a product”? This is given the explanation by Hon. (Dr) Nyikal on the meaning of compounding.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay town, ODM): Hon. Temporary Chairlady, I support the amendment by Hon. (Dr) Nyikal safe to add that I am concerned at provisions we have like in Clause 22(a) where we are prohibiting the sale of any medicine that is not registered by the Authority. Such are the provisions which have been applied to kill all our traditional medicines around. Let me tell you Hon. Temporary Chairlady something for which our women are being operated on and being chopped off like fibroids, if you met Dr Margaret, my own mother, just one glass of portion and she would send you for Magnetic Resonance Imaging (MRI). Yet when you take them for approval, the people in charge of the approval, including World Health Organisation (WHO), just steal these things from our people.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, address the amendment.

Hon. Peter Kaluma (Homa Bay Town, ODM): We must allow “compassionate” the way we had used...

The Temporary Chairlady (Hon. Martha Wangari): Address the amendment on the Floor.

Hon. Peter Kaluma (Homa Bay Town, ODM): I am only saying that the amendment is good, but we should be alert so that we do not kill our traditional medicine under the guise of pleasing the WHO and these other bodies. I can tell you Hon. Temporary Chairlady, my own wife delivers in the maternity ward not more than five minutes but these drugs cannot be applied because they are not registered. When you apply for their registration, they steal them. Let us avoid such provisions in as much as we accept this amendment.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Alright. Hon. Chairman.

Hon. (Dr) Robert Pukose (Endebess, UDA): You know Hon. Kaluma would like to practise alternative medicine. There was a Bill in the 11th Parliament on Traditional Medicine that went to the Senate and did not come back from there. It died there. I hope Hon. Kaluma can take up that Bill and reintroduce it in the House.

The Health Act provides for traditional medicine but we now need to actualise it. It should not be a problem.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Nyikal's amendment?

Hon. (Dr) Robert Pukose (Endebess, UDA): I support Hon. (Dr) Nyikal's amendments. They are good amendments.

(Several Members spoke off the record)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, one at a time. Hon. Chairman, are you done?

(Hon. (Dr) Robert Pukose spoke off the record)

Okay. Hon. Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I know where Hon. (Dr) Otiende is coming from. It is a very important point. It is taken care of in other places but when we are talking about "compounding", in my view and the view of the Committee, for the act of compounding, pharmaceutical technologists can also compound. On that one I do not think we need to make that distinction. Mine was just that we must still adhere to all the strict issues except (a).

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

The Temporary Chairlady (Hon. Martha Wangari): We are getting to a close on this Hon. TJ. One minute.

Hon. TJ Kajwang' (Ruaraka, ODM): Hon. Temporary Chairlady, let us not get tired. You can see the resilience of Members here. We are working towards the same course. Just to ask the Hon. Chairman, Hon. (Dr) Pukose, if you go to the definition of medicine, it says "medicine means any substance or mixture or substance used or purporting to be used for whatever manufacturing..." My eyes are really getting far from the light source it would seem. Time has come for it. It says that medical substance, still on the same page on definitions. It also says "any drug, medicine, product...".

So that you help laymen like us, if you have defined medicine to be like that, you create an offence on persons who may want to prescribe things which under medicine are actually medicine. Hon. Kaluma should not be wished away like that because he is making sense. There are certain products in this definition which are medicines and you have created an offence for them. Is that not self-contradictory, for the benefit of some of us who are laymen?

The Temporary Chairlady (Hon. Martha Wangari): Let us have Hon. Melly. I did not know Hon. TJ became a layman.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Chairlady. I want the Chairperson of the Departmental Committee on Health to speak to the thoughts of Hon. Kaluma and Hon. TJ on this "medicine". The fact that these drugs have some efficacy, can heal or have an effect on our bodies, they are medicines. I want this to be in law or regulated so that this problem is addressed. I feel the Chairperson has to speak on this.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Deputy Speaker.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Temporary Chairlady. I think we are not doubting the existence or use and usefulness of herbal medicines. We are talking about approved medicines here. The day herbal medicines will be approved, then at that time, they shall come under the ambit of this particular Bill. For now, it is premature.

The Temporary Chairlady (Hon. Martha Wangari): Chairperson, please wind this up.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Chairlady. Medicine is made using either synthetics or herbs from trees and plants. When talking about

traditional medicine, this field is not regulated. Those practising traditional medicine come in various forms: herbal doctors, wizards, bone-setters or bone technologists and neurosurgeons in Elgeyo-Marakwet who can remove depressed bone fractures from your brain. This is an area without regulation on practice or what forms an offence when practising as a traditional medical practitioner. This is a wide field and I indulge the House to debate this at a later date when I bring a Bill.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Otiende, what is out of order?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Chairlady. I respect Dr Pukose, and the intention of both the Bill and amendments, which I have no substantive opposition to. While it is true there is yet to be a clear regulatory framework for traditional medicine, it is also true when you create an offence it does not exclude this area, so they are covered in that offence.

Whether there is a regulatory framework or not, this amendment states that any person shall not sell any medicine that is not registered by the Authority and, therefore, this creates an offence and covers that area. We have to be careful if we want to exclude that area. If we do not, all those traditional medicines and herbs that our aunties, *nyanyas* and others apply, will fall under here with the consequence of being an offence for which they will be fined Ksh1 million. We have to be careful. That is my point of order.

The Temporary Chairlady (Hon. Martha Wangari): Member for Central Imenti.

(Hon. (Dr) Robert Pukose spoke off the record)

Hold on, Chairperson.

Hon. Moses Kirima (Central Imenti, UDA): Hon. Temporary Chairlady, with due respect to Hon. Pukose, this Bill proposes to make all other medicines, especially traditional medicine, illegal unless we introduce a parallel proposal to the document you have before you. My mother-in-law has arthritis and has been taking medication for a long time. When she stopped and started taking traditional medicine, she started walking again. Are we saying that if she gets medicine from the person who has been administering it to her, that person will be charged with a criminal offence because that medicine is not authorised? Are we going to let our people die because of conventional medicine? This Bill is specifically trying to say that there is falsified medicine and medicine that is allowed. I wonder why it did not specify that there are traditional medicines which ought to be, at least, considered and leave room for them to be accommodated later. As it is, we are going to criminalise everything, which will open a Pandora's Box.

The Temporary Chairlady (Hon. Martha Wangari): You have made your point. Hon. Members, I beg that we do not debate. This is not the Second Reading stage. Let us be precise. Hon. Makali.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. How I wish that the Chairperson of the Committee could listen to the input of Members. As Members have said, this amendment is going to be suicidal to the medicine world. You have sat on that chair during consideration of many Bills, but I have never seen such a struggle. After two hours, we are still on Clause 22. How I wish we got a more polished Bill for this House to debate. There are lots of gaps. I am not an expert in this debate, but I can see *kuna shida kidogo*.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Makali, the Speaker already spoke to the Bill earlier and said that it is unprecedented. As you can see, there is not much rigidity because we had canvassed it earlier.

Next is the Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Temporary Chairlady, I am not anticipating debate but thinking out loud. If you look at the concerns being raised by Members and the provisions of Clause 23 and in light of the fact that we ought to have thought about traditional medicine in the same manner we brought four health Bills together, do you want to introduce a clause that will address the concerns of Members? Tomorrow, our traditional or alternative medicine practitioners should not find themselves in cells when Clause 22 becomes applicable.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairlady, as we progress we may start defining what traditional medicine is, which will take us to the Second Reading stage. This Bill has been debated. A report by the Committee is available. If someone has an amendment, we should discuss it and move forward. Currently, we are moving...

(A Member spoke off the record)

No. Let me have the microphone. Hon. Temporary Chairlady, I want to tell the Member that...

The Temporary Chairlady (Hon. Martha Wangari): Hon. Owen, address the Chair.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairlady, they are asking us to start defining medicine. For instance, there are many people who sell supplements. Those supplements are not medicine. My wife likes boiling and drinking 'Mkilifi'. Do you call that medicine? We might have to go to what is medicine and what is not. Anybody who wants to trade in medicine should be registered. Put the Question on this.

The Temporary Chairlady (Hon. Martha Wangari): We need to make progress, Hon. Members. I will give a chance to Hon. Martin Owino first. Hold on.

Hon. Martin Owino (Ndhiwa, ODM): I think we are missing the point here. The current Pharmacy and Poisons Board (PPB) does not regulate traditional medicine. If we want to regulate traditional medicine, let us think of another Bill. It is not in this one.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Member of Ndhiwa. Member for Homa Bay Town Constituency, not for Seme.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Chairlady. We need to proceed. Let me thank Members as we continue to sit. The concern of the Members here is that medicine as defined in the Bill - I know we have not reached it - is very wide. That definition is repeated in Clause 63. It is also repeated in the Sixth Schedule which defines medicine to be anything capable of giving relief.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Kaluma, you are preempting debate. Let us restrict ourselves to Clause 22.

Hon. Peter Kaluma (Homa Bay Town, ODM): You remember I raised this matter and the substantive Speaker indicated and ruled that any problematic clause can be referred back to the Committee for harmonisation. That is what the substantive Speaker said. Could I request that the consideration of this contentious clause be referred back to the Committee for harmonisation and reconsideration in line with the ruling?

I thank you.

(Loud consultations)

The Temporary Chairlady (Hon. Martha Wangari): Order, Hon. Members. I will put the Question.

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

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

(Clause 22 as amended agreed to)

Clause 23

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

THAT, Clause 23 of the Bill be amended in sub-clause (1) by—

(a) deleting the word “medicines” appearing in paragraph (a) and substituting therefor the words “health products or technologies”;

(b) deleting the word “medicine” appearing in paragraph (b) and substituting therefor the words “health products or technologies”; and

(c) deleting the word “medicine” appearing in paragraph (c) and substituting therefor the words “health products or technologies”.

This is just to harmonise the terms used in the Bill with the title of the Bill as proposed for amendment. It is a straightforward amendment.

(Question of the amendment proposed)

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

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

The Temporary Chairlady (Hon. Martha Wangari): Hon. Oluoch, you have another amendment.

Hon. Anthony Oluoch (Mathare, ODM): Yes, Hon. Temporary Chairlady.

I beg to move:

THAT, Clause 23 of the Bill be amended in sub-clause (2) by —

(a) deleting the words “one million” appearing in paragraph (a) and substituting therefor the words “two million”; and

(b) deleting the words “two million” appearing in paragraph (b) and substituting therefor the words “five million”.

I consulted the Chair on Clause 23(7) on the enhancement of penalties prescribed under sub-clause 2(a) and (b). That, the fine should be enhanced to Ksh2 million on the first instance an offender makes an offence.

The Temporary Chairlady (Hon. Martha Wangari): Are you moving the amendments, Hon. Tom?

Hon. Antony Oluoch (Mathare, ODM): Yes, I had already proposed the amendment as per the Order Paper. I was giving my justification that this ought to be enhanced considering the offences being spoken about here; persons who purvey or may carry themselves to be labelling, packaging, trading, which may be life threatening. Enhancing it to Ksh2 million in

the first instance, and in (b), move it from Ksh2 million to Ksh5 million. Subject to whether the Chairman will agree, my consultation with the Deputy Speaker, Hon. Shollei, was that we remove the Ksh2 million, which I proposed at Ksh5 million to say that person will be in prison for five years without the option of the fine. That will be a further amendment that the Chairman can consider. My amendments are as per the Order Paper for the enhancement.

I move.

The Temporary Chairlady (Hon. Martha Wangari): Hon. (Dr) Otiende, hold on.

(Question of the amendment proposed)

QUORUM

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Temporary Chairlady. For the reasons that we have just discussed and given the ambit of this criminal net, I would oppose the enhancement. If anything, I would have lowered the bar, either in terms of amount or years in jail.

My point of order is that it appears we do not have quorum.

The Temporary Chairlady (Hon. Martha Wangari): A Member has stood in his place, and mentioned quorum. Serjeant-at-Arms, ring the Bell for 10 minutes. We will follow our Standing Orders.

(The Quorum Bell was rung)

(The House resumed)

IN THE HOUSE

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

MOTION

ABSENCE OF QUORUM IN COMMITTEE DURING
CONSIDERATION OF THE KENYA DRUGS AUTHORITY BILL
(National Assembly Bill No.54 of 2022)

Hon. Deputy Speaker: Hon. Temporary Chairlady.

Hon. Martha Wangari (Gilgil, UDA): Hon. Deputy Speaker, I beg to report that while we were in the Committee of the whole House considering the Kenya Drugs Authority Bill (National Assembly Bill No.54 of 2022), Hon. Otiende raised an objection that there was no Quorum present in the Committee. There was no Quorum present at the expiry of ten minutes.

In furtherance with the provision of Standing Order 35(2)(b), I report that fact.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 6.20 p.m., the House stands adjourned until Wednesday, 25th October 2023, at 9.30 a.m.

The House rose at 6.20 p.m.

Published by
Clerk of the National Assembly
Parliament Buildings
Nairobi