

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 28th September 2021**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****COMMUNICATION FROM THE CHAIR****DELEGATION FROM NANDI COUNTY ASSEMBLY IN SPEAKER'S ROW**

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation of Members and Staff from the County Assembly of Nandi who are seated in the Speaker's Row. The delegation comprises of: -

Hon. Geoffrey Kevolwe	-	Leader of Delegation;
Hon. Milka Chumba	-	Member;
Hon. Elphas Cheruiyot	-	Member;
Hon. Pius Singoei	-	Member;
Hon. Rose Chesang	-	Member;
Hon. Chepkwony Ronoh	-	Member;
Hon. Clara Chepkemei	-	Member;
Mr. Henry Tarus	-	Director, Human Resource;
Dr. Abraham Mulwo	-	Board Member;
Ms. Damaris Maiyo	-	Deputy Director Committee Services; and
Ms. Janet Jelimo	-	Clerk Assistant.

Hon. Members, the delegation which is drawn from the membership of the Committee on Members' Services and Facilities is in the National Assembly on a benchmarking visit, specifically to share experiences and learn good practices with our counterpart Committee and other offices.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay.

I thank you.

(Applause)

PETITION**SUSPENSION OF TEACHERS' PROFESSIONAL DEVELOPMENT**

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

Hon. Omboko Milemba (Emuhaya, ANC): I, the undersigned, on behalf of Messers Moses Mbora, Francis Yivo and Justus Nyakundi, being representatives of the Kenya Union of Post Primary Education Teachers (KUPPET), Nairobi Branch and other concerned teachers across the country, draw the attention of the House to the following:

THAT, on 22nd September 2021, the Teachers Service Commission (TSC) rolled out the Teacher Professional Development (TPD) undertaken by all practising teachers every five years as mandatory refresher modules for renewal of certification;

THAT, despite the fact that teachers are directly affected by the TPD policy, the Teachers Service Commission did not involve teachers in the preparation of the policy framework for the TPD and its subsequent roll-out, contrary to the mandatory requirements of Article 232 (1) (d) of the Constitution;

THAT, without consultations with teachers, the TSC committed teachers to personally meet the burden of paying Kshs6,000.00 for each module of the TPD Programme, or a total of Kshs180,000.00 for the entire programme;

THAT, the Teachers Service Commission has not made public to the teachers of this country and other stakeholders in the education sector the considerations it based on in arriving at the above exorbitant cost per module;

THAT, it is in public domain that teachers are underpaid, most of them have stagnated at the same job group for a period varying between 10 and 20 years and, with the recently signed non-monetary Collective Bargaining Agreement (CBA), it is insensitive for the TSC to require underpaid teachers to pay a whopping Kshs180,000 for a certification programme;

THAT, fair international labour practices demand that an employer who comes up with compulsory employees' capacity strengthening programmes should shoulder the attendant cost of the training;

THAT, in unclear circumstances and notwithstanding the existence of reputable public universities countrywide, TSC selected only four education institutions namely, Riara University, Mount Kenya University, Kenyatta University and the Kenya Education Management Institute (KEMI), all based in Nairobi region to run the TPD Programme for teachers drawn from all over the country;

THAT, given the nature of basic education as a mandatory public good guaranteed under the Constitution, professional development of teachers ought to be approached holistically and the certification process standardised under the ambit of the Ministry of Education and not the Teachers Service Commission;

THAT, the decision by TSC to manage teachers' professional development and regulate the teaching profession is a departure from the established practice where professions have self-regulatory mechanisms and bodies that are distinct from employers;

THAT, to achieve a well-coordinated and holistic approach, the Teacher Professional Development Programme ought to have been integrated in the ongoing capacity strengthening programmes for teachers on the Competency Based Curriculum so as to avoid duplication of Government effort, waste of public resources and subjecting teachers to bearing the burden of a mandatory programme;

THAT, if the TSC is not restrained from implementing the Teacher Professional Development Programme, the rights of teachers and stakeholders under Article 232(1) (d) of the Constitution stand the risk of being prejudiced;

THAT, the matters raised in this Petition are not pending before any court of law, constitutional or legal body;

Therefore, your humble petitioners pray for intervention of this House to:

- (i) cause the TSC to undertake public participation on the TPD Policy as required under Article 232(1)(d) of the Constitution and take into account the views of teachers and stakeholders in order to build consensus on and ownership of the Programme;
- (ii) restrain the TSC from rolling out the Teacher Professional Development Programme, as currently designed, until the concerns raised by the petitioners are resolved;
- (iii) inquire into the circumstances under which the TSC selected only four institutions, all in the Nairobi region, to offer the TPD Programme despite there being other reputable universities countrywide;
- (iv) recommend to the Ministry of Education to take over implementation of the Teacher Professional Development Programme as an integral part of the Competency Based Curriculum uptake;
- (v) recommend that the Ministry of Education meets the cost of the mandatory professional development programme for teachers in public institutions in line with international labour practices that obligate an employer who comes up with compulsory employee capacity-strengthening programmes to plan to shoulder the attendant cost of the training;
- (vi) put in place a necessary legislative framework to provide for the establishment of a professional regulatory body for teachers, so as to avoid conflicts of interest where the TSC acts as both an employer and a regulator of teachers; and
- (vii) make any other recommendations deemed fit in securing the petitioners' rights.

Your humble petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: I will allow for limited comments and clarifications. Let us have the Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you very much, Hon. Speaker for the opportunity. Since last week, I have been receiving phone calls from teachers drawn from Nyando Constituency, some of whom are asking me to provide them with monies so that they can attend this training. My late father was a teacher. Unfortunately, before he passed on, he advised me to become a teacher as a last resort. That was based on all the mistreatment that was perpetuated on the teaching fraternity then. The same mistreatment has continued to date.

This is a unilateral decision that has been made by the TSC without looking at the costs that will be passed over to individual teachers. Organisations carry out trainings and refresher courses. However, that is usually at the cost of the attendant organisation. For the first time, we are seeing an organisation passing the training costs to its employees. That is utterly unacceptable. As has been ably alluded to by Hon. Omboko Milemba, our teachers do not make much money. Dispensing Kshs6,000 towards that training is in itself a mistreatment. We, therefore, ask you to apply brakes until all the necessary remedies are put in place for teachers to undertake that training.

Hon. Speaker: Let us have John Mbadi, Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I thank Hon. Omboko Milemba for representing teachers very well in this House.

Much as I appreciate the work of the TSC - and they have been doing very good work in many areas - the Committee needs to sit down with them and rescind this. I ask myself whether

the TSC looks at the pay-slips of teachers. Our teachers are underpaid. They are suffering. Some of them have taken loans. Out of nowhere, you come up with a policy that requires them to again spend money on their improvement so as to offer services to their employer. Even here, Members of Parliament take refresher courses. We go for benchmarking. That is funded through taxpayers' money. Why would we subject teachers to pay for their refresher courses? It does not make sense at all. I hope the Chair of the Committee, Florence, will deal with this issue very fast before it gets out of hand.

Finally, I also have an issue with how the universities were picked. Why on earth would you pick Riara at the expense of the University of Nairobi or Moi University? It does not make sense. I am not trying to look down on those universities, but Mount Kenya? Riara? Even if I am asked to choose which university to go to for a refresher course, would I choose Mount Kenya University?

Hon. Speaker: Let us have Nominee 001.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. I support Hon. Omboko Milemba who is actually a *mwalimu*. Bringing this Petition here is a move geared towards protecting teachers. I am sure this House will protect teachers because they are suffering.

Nowadays, no one in his or her wildest dreams would want to be a teacher. In fact, entering the teaching profession is just by default. If you ask any school-going child what they want to become, none of them will say they want to be teachers because of how teachers are mistreated in this country.

Professional development of any profession is supposed to be done by professional bodies, not employers. As an employer, if I force people to go for refresher courses, I will charge them cumulatively what I have been paying them. I will force them to go for refresher courses where I have already agreed with the universities or schools they will go to. As Hon. Mbadi has said, how did they pick those four universities? Some of them are private universities. Were there some kickbacks that were applied to the TSC?

We must protect our teachers. Therefore, I hope the Departmental Committee on Education and Research will protect our teachers.

Hon. Speaker: Let us have the Member for Makueni

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me the opportunity. There have been quite a number of concerns from teachers, especially from Makueni. One thing which is clear about this matter is that there was no public participation.

Second, is the distribution of the universities. Nowadays, Kenya has universities all over, from Coast to Nairobi, Central Kenya and Western Kenya. There are many universities where this matter can be conducted.

Although the Law Society of Kenya (LSK) does a similar thing, first, it is in the Law Society of Kenya Act and the Regulations. Secondly, it is distinguishable from what the TSC is trying to do for quite a number of reasons. Lawyers do not have a common employer, but teachers do. Therefore, if there is proper public participation, there will be proper guidelines on this matter because refresher courses are important. However, they must be handled in a humane manner, within the law and the Constitution.

I support the Petition and believe that the Committee and this House have the capacity to resolve this matter which touches on the teachers of Kenya.

Hon. Speaker: Let us have the Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you, Hon. Speaker. I stand to make a serious addition to this Petition. If the Teachers Service Commission thought that this is a

good idea, it would have budgeted for it. We want to know the procurement procedure used to procure the four universities.

Lastly, teachers have committed their salaries. Teachers' pay slips have very little money. What punishment will be meted to those who will not attend in case they have no money to pay? The TSC needs to take care because the consumer of this item called Teacher Professional Development training is not the teacher. It is the TSC on behalf of the learner. So, a teacher must not be punished or told to train on his behalf as if he is going to consume it.

I support this Petition and thank you, Hon. Speaker.

Hon. Speaker: Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker.

First, I would like to quote the words of the former late President Nelson Mandela on matters education. He said: "The most powerful weapon to use to change the world is education." It is true education has been changing. There are many dynamics that are going on. When you look at many other professional bodies whether it is the Law Society of Kenya or doctors, they are encouraged to be going for continuous development because the environment is dynamic. The TSC had such a wonderful idea to come up with this but, the challenge is how it is going to be implemented. We salute them for the proposal but not the implementation. Many such practices at the international level, when an employer wants to improve efficiency, they take their staff for that development. So, we humbly request the TSC to look for a way of funding because teachers are already stressed. It is a wonderful idea but we want it to go through public participation and if possible we look for a funding framework

Otherwise, I support the Petition. I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Hon. Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I support the Petition by Hon. Omboko Milemba. When the Committee will be looking at this Petition, I advise that when we are talking about the Competency Based Curriculum, there are a lot of issues being said out there that this CBC curriculum is only applicable in Finland and Singapore and not any other country.

So, where are we heading to as a country? When it comes to the TPD, how can we conduct it in a humane and in a more affordable way? It is more important that they look at the policy and see what this House can do so that the Petition can also be tabled in this House for debate and if there are recommendations, the House can adopt them. I would request that this be done within the shortest period possible and not the usual number of days that we take to dispense of with petitions. If we can do it in two or three weeks' time, this is a matter of national importance and can be addressed urgently.

With those few remarks, I support.

Hon. Speaker: Let us have the Hon. Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I also rise to agree and support the Petition. There is hue and cry in the country when it comes to this programme that was introduced without teachers being involved.

Back to our Constitution, once some of these policies are developed there is extremely urgent need for public participation so that teachers can also have their input and say how best they can go about the development programme. Teachers are just settling down from the national de-localisation that is going on, such an expensive exercise. Though it has found favour with Kenyans, it is expensive on their part. To call upon them to start paying Ksh6,000 for the programme is again digging deeper into their pockets and ensuring that they go through hardships. It is high time this

House rose and stood with the teachers. Let us have regulations developed either under the TSC Act, or under the Education Act, so that we can speak for them as we discuss the regulations. They can equally participate when these regulations are being developed and know how best they are going to be trained continuously for their own development.

As regards the universities, may it go on record that we have got universities everywhere, including my own constituency, where I have Tharaka University. Therefore, if universities are the ones to be offering these programmes, then let us have each university wherever it is so that these teachers are best served.

I support.

Hon. Speaker: Let us have the Hon. Member for Kimilili

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker for giving me this opportunity to support this Petition. This House has given various institutions in this country very little delegated authority to develop these policies. However, it seems some institutions are misusing these powers. I cannot imagine how an employer would wake up one morning and say that you must do a particular course and you must do it from particular universities. We have so many institutions in this country that are under the TSC which can come up with a curriculum that can be offered for free to these teachers. You cannot have situations where you want to punish people you have employed and whom you are unable to remunerate properly. So, this House must rise to the occasion and say “No.” I wish the Committee would first summon the TSC and stop them from implementing this directive until this matter is heard and determined.

Hon. Speaker, I support this Petition.

Hon. Speaker: Let us have the Hon. Member for Gilgil.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I also rise to join my colleagues in supporting this Petition. The education sector in this country has been having very serious issues. I think the impact would be felt several years to come.

I join my colleagues to say that this programme needs to be well thought out. On one side is the issue of teachers having to commit the already overcommitted salary. They have loans they are servicing and they cannot spare any more money. Already they are asking us to support them with bursaries while we cannot even support the population of our students with the same.

The other issue that I am very keen about is this CBC programme that has been very tight this year because of COVID-19; in terms of the time that has been spared for teachers to even have their own time for their families. The social growth and network for teachers is also being compromised because not much time is being spared.

On the issue of the universities, even in Nakuru we have enough universities and cannot reiterate that enough. Let this thing be re-thought. Let there be public participation. Article 10 of the Constitution is very clear on it. Let these stakeholders be part of the programme. Otherwise, it will not work.

I support Hon. Omboko Milemba that we give enough timelines and framework to implement this programme.

I support

Hon. Speaker: Let us have the Member for Kitutu Chache.

Hon. Richard Onyonka (Kitutu Chache South, FORD-K): Thank you, Hon. Speaker. It is Kitutu Chache South.

During the 10th Parliament, we were in this Chamber struggling to figure out how we could make the TSC an independent commission. The reasoning was that despite the TSC managing matters education, it would be a commission that would take care of the welfare and interest of the

teaching fraternity. So, for us it is quite shocking to see the TSC asking teachers to pay for themselves so that they can go for training. We would like this House to ask the TSC Board to revisit and review the decision they have made so that we can ensure our teachers are retrained and it is done within the law.

Secondly, the TSC must come up with a way on how the payments will be made for the training to be done and it does not have to be done in Thika and other areas. All counties have institutions and universities. That is what devolution was meant to be. Distribute some of these things so that there is equity and fairness.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Chepalungu.

Hon. Gideon Koske (Chepalungu, CCM): Thank you, Hon. Speaker. I had the same discussion in the morning. First and foremost, issues that touch on teachers are very critical to most of us, especially in my constituency of Chepalungu where we have about 4000 teachers.

I look at this programme in four categories. One, the cost. I am a Member of the Departmental Committee on Labour and Social Welfare. Labour practices demand that an employer who comes up with compulsory employee capacity strengthening, should plan to shoulder the attendant cost of the training. When they say this training's cost is Kshs 6000, there is the cost of transport and there is the cost of maintenance. So, in reality a teacher will inject about Kshs 60,000 per semester and the scheme is going for about 30 years. They do the first quarter for five years and subsequently up to 30 years. Why do you want to train a teacher who is 50 years? He is almost retiring and you are telling him...

Mr. Speaker, kindly add me some time.

Hon. Speaker: You are wasting your time.

Hon. Gideon Koske (Chepalungu, CCM): Secondly, is family bond. Schools run for three terms. The break between the terms is a family bonding time, which is very critical. In some cases children would be studying far away from their parents. Therefore, that is the period where the family bonds.

Thirdly, is about public participation. Was public participation undertaken in terms of creation of awareness and collection of views of the TSC employed teachers before rolling out this programme? Three is about the school calendar. During this COVID-19 pandemic...

Hon. Speaker: Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker. I would like to congratulate my brother, Hon. Omboko Milemba. I would like to say this professional development programmes are good. They help to strengthen a profession. Teaching has for many years not been considered a profession. The people at the TSC are trying to bring some professionalism into it for which we congratulate them for. However, the way they are trying to bring in this professional development programme within the fraternity is what we are questioning. They need to involve teachers, through the teacher's union so that they can contribute and say, this is what we want.

Secondly, why pick universities that have never been known for education? There are universities in this country like Kenyatta University, the other one is Kikuyu and Moi University which offer education in this country. These universities have been left out. So, we question the motive of choosing specific universities including private universities, which have never been known to actually support education.

Thirdly, is the idea of cost; why do you want to burden teachers with the cost of attaining a professional development course, so that they can be promoted? What that means is that those

teachers who are wealthier and have resources, will get the promotions; those without funds will continue to be denied promotions. This is a matter of national importance and I think we should give it the attention it requires. It needs to be stopped until consultations are carried out.

I thank you, Hon. Speaker.

Hon. Speaker: Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker for the opportunity to comment on the proposal given by Hon. Omboko. We have seen a lot of drama in the implementation of CBC. Teachers, students and schools have problems and everyone else. Every aspect of implementation should start with planning and budgeting. Was there any planning at all within the TSC or within the Ministry or TSC? Was there any budget? If there was no budget, how can they be expected to foot such a proposal? If the ministry is very clear in what they want to do with CBC, we should have a structured way of capturing some of these issues. Things have just been handled improperly. If there are standards operating procedures for this CBC to be implemented, why are we hurrying it? Let us not pass the cost to teachers. Teachers have so many obligations. Their salary is committed. They have bills to pay, loans to pay and children to feed, they cannot be budgeted for. We cannot allow the TSC to start taking money from the teachers.

On the other hand, I think the Committee should look at how the TSC conducts its discipline cases. I have a case in point from my constituency where a teacher has been sacked for having been transferred by the same TSC. You get a request to go to TSC, they offer you a letter; they call you for a disciplinary action and then sack you. There is a problem in TSC. We need to investigate TSC.

I support this petition.

Hon. Speaker: Member for Ugenya.

Hon. David Ochieng' (Ugenya, MDG): Thank you so much, Hon. Speaker. I want to support the Petition by Hon. Omboko. As the Committee goes to look at this Petition, could they ask the TSC whether they have finished training and retooling teachers for CBC? You cannot be coming with a programme and before you implement it, you come up with another one that has no relevance to what you had planned earlier. The focus now should be on retraining and retooling teachers to be able to implement CBC effectively.

Secondly, sometime back, the Kenya School of Law was denied the chance to train lawyers who wanted to join the Kenya School of Law and their training was given to one university called Riara, without procurement or anything. Riara University came and added more courses and it was difficult for anybody who came from out of the country to join Kenya School of Law, even after having a master's degree. There are so many teachers' colleges in this country. These teachers are trained by teachers' colleges, why can they not go back to the same colleges for the CPD? Why would they now go to universities, if the training was done at Tambach Teachers Training College? If your training was done at Eregi, why would they force you to go to the university for CPD which takes only two weeks?

Finally, whenever teachers suffer, our children suffer. When teachers' welfare is not handled very well, they will just go to school and do nothing. The TSC is messing up here. They should put their act together, promote more consultations, but above all avoid hubris. I want to request the Committee because TSC believes they can always get their way into that Committee, to put its feet down and decide that on this matter, they would not listen to hubris.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Taita Taveta.

Hon. Haika Mizighi (Taita Taveta CWR, JP): I thank you, Hon. Speaker. At the outset I also want to support the Petition. I want to say that I have heard this outcry by the teachers. Our teachers are suffering. For us to be here, we have all passed through the hands of teachers and it is unfortunate that teachers are suffering.

In my county, Taita Taveta County, there are teachers who are working in hardship areas and they do not even receive hardship allowance. Therefore, I want to support this Petition and say, enough consultation would have been done before this decision was made.

So, I thank you, Hon. Speaker and I appreciate Hon. Milemba for coming up with this Petition. Thank you.

Hon. Speaker: Finally, Hon. Sossion.

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker, I support this Petition and wish to bring to light a number of issues. The United Nations Educational, Scientific and Cultural Organisation (UNESCO); the Sustainable Development Goals (SDG) framework of action that was adopted on 3rd November 2015, is very clear about support for teachers through continuous capacity building,; proper recruitment and proper payment, but what TSC is doing is not continuous capacity building. This is a business flagship programme that is meant to regulate and renew the licences of teachers. It is not at all supporting the SDG framework, if anything, it is going against it.

I also wish to bring to the attention of the House a court ruling on a dispute between the Teachers Service Commission and the Kenya National Union of Teachers (KNUT) under Case No. 151 of 2018 rendered by Justice Byram Ongaya. He stated very clearly that TSC is not Parliament to make laws and implement them. Therefore, there ought to be regulations developed to specifically guide this programme so that it can give room for public participation. It can determine who shoulders the payment of the courses, which institutions and how to accredit them and how other courses like diplomas, bachelors and master's degrees shall be protected. This programme goes against the rule of law, the Constitution and the Statutory Instruments Act, 2013. The Committee should put its feet down and stop TSC from progressing with the programme.

Finally, Hon. Speaker, there is need...

Hon. Speaker: The Petition stands committed to the Departmental Committee on Education and Research to deal with it as appropriate.

Next Order!

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor General and Financial Statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

- a) The Tourism Finance Corporation;
- b) The Non-Governmental Organisations Coordination Board; and,
- c) The Kenya Institute of Public Policy, Research and Analysis (KIPPRA).

The Reports of the Auditor General and Financial Statements in respect of the following constituencies for the year ended 30th June 2019 and the certificates therein:

- (a) Borabu Constituency;
- (b) Mukurweini Constituency;

- (c) Kasipul Constituency;
- (d) Kandara Constituency;
- (e) Kiambu Constituency;
- (f) Limuru Constituency;
- (g) Laikipia North Constituency; and,
- (h) Tetu Constituency.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairman or the Vice Chairman of the Constitutional Implementation Oversight Committee.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 28th September 2021:

Report of the Constitutional Implementation Oversight Committee on its consideration of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 40 of 2020).

I thank you.

Hon. Speaker: Hon. Peter Kaluma, did you have another Paper on the Kenya National Commission on Human Rights?

Chairman of the Departmental Committee on Transport, Public Works and Housing, Hon. David Pkosing.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Transport, Public Works and Housing on the ratification of:

- (a) Bilateral Air Service Agreement between the Republic of Kenya and the Republic of South Africa; and,
- (b) Bilateral Air Service Agreement between the Republic of Kenya and the Republic of Botswana.

Thank you, Hon. Speaker.

Hon. Speaker: Chairlady of the Departmental Committee on Health.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

The Report of the Departmental Committee on Health on its consideration of:

- (a) The Health (Amendment) Bill (National Assembly Bill No. 28 of 2020); and,
- (b) The Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021).

Thank you, Hon. Speaker.

Hon. Speaker: The Vice Chairman of the Departmental Committee on Labour and Social Welfare, Hon. Gideon Koske.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Institute of Social Work Professionals Bill (National Assembly Bill No. 31 of 2020).

Hon. Speaker: The Chairman of the Select Committee on Implementation, Hon. Richard ole Kenta. Do you have a card? Just press the intervention button.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

The Third Report of the Select Committee on Implementation on its consideration of the Submissions from Stakeholders Regarding Implementation Status of Inquiries, Petitions and Resolutions passed by the House.

Thank you, Hon. Speaker.

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

Hon. Speaker: Hon. Ichung'wah, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, nothing is really out of order. I am seeking your guidance because I have just heard Hon. Peter Kaluma on behalf the Chairman of Constitutional Implementation Oversight Committee, table the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 40 of 2020). You will recall that during the Special Sitting that we had last month, the Member for Garissa Township, on a point of order, sought for your considered opinion on the issue of the basic structure of our Constitution. In view of what Hon. Kaluma has done this afternoon, I beseech you, before we proceed to the substantive work regarding this Amendment Bill, that in your wisdom, we be guided as a House on the question of basic structure.

Hon. Speaker, I know that some of the provisions that are proposed in this Amendment Bill may touch on that issue of the basic structure. It will be good for the House to get your guidance before we consider anything substantive on this Bill. It has been quite a while and I know that the issues that we raised were weighty and it may take you some time to give us your considered view. I am appealing that you do guide the House before we get to consider what Hon. Peter Kaluma and his Committee may want the House to consider.

Hon. Speaker: That is coming soon. Whatever is happening, the Report and the others, let the processes continue. If it is determined that they should be taken to sender, it will be an easy exercise of Real-Time Strategy (RTS).

For the time being, all the Committees are at liberty to continue considering all the legislative proposals before them. Very soon, most likely in the course of next week, we will make a determination on that.

Next Order!

NOTICES OF MOTIONS

RATIFICATION OF BILATERAL AIR SERVICE AGREEMENT BETWEEN THE REPUBLICS OF KENYA, SOUTH AFRICA AND BOTSWANA

Hon. David Pkosing (Pokot South, JP): Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the ratification of the Bilateral Air Service Agreement between the Republic of Kenya and the Republic of South Africa and between the Republic of Kenya and the Republic of Botswana, laid on the Table of the House on 28th September 2021, and pursuant to the provisions of Section 8 (4) of the Treaty Making and Ratification Act 2012 approves the ratification of:

- (a) The Bilateral Air Service Agreement between the Republic of Kenya and the Republic of South Africa; and,
- (b) The Bilateral Air Service Agreement between the Republic of Kenya and the Republic of Botswana.

I thank you.

Hon. Speaker: Very well. Hon. Richard ole Kenta.

ADOPTION OF THIRD REPORT OF COMMITTEE ON IMPLEMENTATION

Hon. Richard ole Kenta (Narok North, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Third Report of the Select Committee on Implementation on its consideration of the Submissions from Stakeholders Regarding Implementation Status of Inquiries, Petitions and Resolutions passed by the House, laid on the Table of the House on Tuesday, 28th September 2021.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wangwe, the Whip of the Majority Party.

INTRODUCTION OF VOTE HEAD FOR SCHOOL FEEDING PROGRAMME

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that the Basic Education Act adopted in 2013 guarantees the implementation of the right to free and compulsory education as provided for in Article 35 of the Constitution; appreciating that pupils shall be given appropriate incentives to learn and complete basic education; deeply concerned that the funding of free primary and secondary education does not provide for food feeding programme thus undermining the children's socio-economic right to be free from hunger and to have adequate food of acceptable quality as well as education; further concerned that this fundamental omission in capitation exposes hundreds of thousands of school-going orphans and other vulnerable groups of learners to the adverse effect of hunger leading to death, early marriages, school dropouts and high rates of truancy; considering that with the outbreak of the COVID-19 pandemic the income of households has gone down through massive loss of jobs and opportunities and the virus will still be in existence for a long time as infection rates continue to rise the world over; noting that the Ministry of Education continues to take positive measures aimed at combating the pandemic within institutions of basic learning; further noting that the primary school capitation of Kshs2,500 per child, secondary school capitation of Kshs22,244 being Ksh4,144 for tuition, Kshs2,000 for medical insurance, Kshs1,500 for activity, Kshs200 for Centre for Mathematics, Science and Technology Education in Africa (CEMASTEIA), Kshs5,000 for maintenance and improvement and Kshs9,400 for Local Transport and Travelling (LT&T) administration does not include a Vote Head for School Feeding Programme, this House urges the Government to enhance the primary and secondary capitation per learner in order to cater for feeding programme for learners across the country.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Hon. Speaker: The first Question is by the Member for Dagoretti North, Hon. Simba Arati, "King James". Hon. Simba Arati occasionally refers to himself as "King James".

*Question No. 343/2021*OWNERSHIP DETAILS OF PARCELS OF LAND OCCUPIED
BY PUBLIC INSTITUTIONS IN NAIROBI CITY COUNTY

Hon. Simba Arati (Dagoretti North, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary provide the ownership details of parcels of land occupied by Kilimani, Milimani and Kileleshwa primary schools in Nairobi City County?
- (ii) Could the Cabinet Secretary also provide the status of ownership of parcels of land occupied by Kilimani, Kileleshwa and Muthangari police stations in Nairobi City County?
- (iii) Could the Cabinet Secretary indicate when the Ministry plans to resolve land disputes on the parcels of land occupied by the said public institutions?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Lands.

The next Question is by the Member for Masinga, Hon. Mwalyo.

Question No .367/2021

RESOLUTION OF HUMAN-WILDLIFE CONFLICT IN MASINGA CONSTITUENCY

Hon. John Mwalyo (Masinga, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Tourism and Wildlife the following Question:

- (i) What action is the Ministry taking to permanently address the constant human-wildlife conflict in Kyangosi, Masaku-Ite DC area to Nunguni region near Kamburu Dam in Masinga Constituency, where wild animals have been crossing over from Mwea Game Reserve into private farms causing harm to people, destroying crops and causing massive losses to the small-scale farmers along Tana River?
- (ii) Could the Cabinet Secretary provide a detailed list of the number of reported cases in the area for the last 10 years, including deaths and the status of compensation of claims?
- (iii) Could the Ministry ensure that claims for compensation as a result of human-wildlife conflict in the said area are settled promptly?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Kasipul, Hon. Charles Were.

*Question No.368/2021*MEASURES TO ADDRESS ADVERSE EFFECTS OF
QUARRY MINING IN KASIPUL CONSTITUENCY

Hon. Charles Ong'ondo (Kasipul, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Petroleum and Mining the following Question:

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.*

- (i) Could the Cabinet Secretary confirm whether Environmental Impact Assessment was carried out prior to the licensing of quarry mining activities by M/s. China City Construction Company with respect to the quarry activities taking place at Akech Village in Kasipul Constituency, and if so, indicate whether the company has been operating within the National Environment Management Authority's guidelines?
- (i) What action is the Ministry taking against the said company for using heavy blasting equipment which has destroyed houses and caused structural weaknesses in others including at Katangá Village where many houses have developed cracks on floors and walls?
- (ii) What action is the Ministry taking against the company for the resultant noise pollution and tremors particularly at Akech and Katanga villages?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Environment and Natural Resources.

Hon. Speaker: Next Question is by nominated Member, Wilson Sossion.

Question No. 370/2021

DELAYED PAYMENT OF DEATH GRATUITY TO THE
ESTATE OF LATE RICHARD CHEPKWONY KOROS

Hon. Wilson Sossion (Nominated, JP): Hon. Speaker, I rise to ask Question No.370/2021 directed to the Cabinet Secretary for National Treasury and Planning:

- (i) Could the Cabinet Secretary provide the status report regarding the payment of death gratuity due to the estate of the late Mr. Richard Chepkwony Koros, Personal Number 54171 who served as a teacher under Teachers Service Commission and whose next of kin is one Ms. Grace Chepkirui Koros and state when the dues will be paid?
- (ii) Could the Cabinet Secretary explain why the next of kin is yet to be paid the gratuity despite assurance from the Director of Pensions to the Office of the Public Trustee in Eldoret on 28th February 2020, indicating that a cheque of Kshs335,597.15 had been released?
- (iii) Could the Cabinet Secretary give an update regarding the payment of pensions for teachers who retired between 1997 and 2021 and payment of death gratuity to the next of kin for those who passed on?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Finance and National Planning.

The last Question is by the Member for Tigania West, Hon. Mutunga.

Question No.373/2021

ACTION TAKEN AGAINST SALE OF ILLICIT BREW IN TIGANIA WEST

Hon. John Mutunga (Tigania West, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) What action is the Government taking against police and administrative officers in particular, chiefs and assistant chiefs who condone production, sale and consumption of illicit brews in Tigania West Constituency?
- (ii) What steps is the Ministry taking to build confidence in the police service and administrative officers who have been heavily implicated in perpetuating defiance as opposed to containing the production, sale and consumption of illicit brews across the country, and in particular in Tigania West Constituency?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Administration and National Security.

The next segment is about Statements. There is a request for a Statement by Hon. John Mutunga again.

REQUEST FOR STATEMENT

MISREPRESENTATION OF FACTS DURING ISSUANCE OF IDENTITY CARDS TO TIGANIA WEST RESIDENTS

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker. My request for a Statement is in regard to misrepresentation of facts during issuance of identity cards (ID) in Tigania West Constituency.

Pursuant to the provisions of Standing Order No.44(2)(c), I rise to request for a Statement from the Chairman of the Departmental Committee on Administration and National Security regarding misrepresentation of facts during issuance of ID cards to Tigania West residents.

Tigania West Sub-County was hived out of the greater Tigania in 2007. The first Deputy County Commissioner was posted there in the same year. Many other essential changes were to be effected by the Government, including change of the records to reflect the new administrative structure and units.

Nevertheless, currently, whenever Tigania West residents apply for issuance of ID cards, the cards normally indicate Igembe South or Igembe Central as the sub-county. It is important to note that there is no interrelationship between Tigania West and those other sub-counties to occasion such misrepresentation of facts.

It is against this background that I request the Chairperson of the Departmental Committee on Administration and National Security to address the following questions:

- (i) What is the basis for indicating in the ID cards that Tigania West Sub-County residents are from or belong to Igembe South Sub-County, which is misrepresentation of facts?
- (ii) What action is the Ministry taking to address this anomaly, particularly in occasioning correction of details in the already-issued ID cards?

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson, how soon will you respond to that?

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker. I will endeavour to bring it as soon as possible, within two weeks.

Hon. Speaker: Very well. Hon. Mutunga, is two weeks good enough?

(Hon. John Mutunga nodded in agreement)

Very well. I can see you nodding.
Next Order!

MOTION

ADOPTION OF REPORT ON DRAFT ELECTION CAMPAIGN FINANCING REGULATIONS

(Hon. Charles Njagagua on 23.9.2021)

(Debate concluded on 23.9.2021)

Hon. Speaker: Let us have Hon. Mbadi.

POINT OF ORDER

ALLEGED INTERFERENCE IN THE WORK OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. Before you put the Question on this matter which touches on Regulations that were forwarded to this House by the Independent Electoral and Boundaries Commission (IEBC) and were committed to the Committee, I wish to raise a matter of national importance which touches on the same IEBC.

Over the weekend, it was variously and widely reported that the IEBC, through its Chairman, had expressed fears, went to the extent of accusing Parliament and the National Treasury for interfering with their work and that there was a possibility that the elections next year are likely to be compromised. That is a weighty matter.

When I looked at some of the issues that were raised by the IEBC, one was the issue of funding. They claim that they sought over Kshs40 billion to be able to conduct a fair and credible electoral process next year or leading up to next year but they were only allocated Kshs26 billion in the budget.

The other issue that the IEBC raised had to do with legislation. From the Report, the IEBC, through its Chairperson, told Kenyans that Parliament has been sitting on certain critical and crucial legislative proposals which would undermine the electoral process. That is not a matter that we can just ignore and assume, especially since it is coming from the electoral body and also given the fact that we just have a few months to the elections. We know how important the electoral process is in the calendar of any nation or country.

As one who sits on the House Business Committee, we discussed this matter when you chaired the Committee. It is coming out that apart from what we are just about to vote on, which, again, we have said severally was inordinately delayed by the IEBC itself, there is no other legislative proposal that is supposed to help us have credible elections next year that this House is sitting on.

Looking at the analysis of various opinion leaders, they think that Parliament is probably interfering with the work of the IEBC or making their work difficult.

That is not a matter that we can just let go. Therefore, I stand here to seek your intervention to have the Departmental Committee on Justice and Legal Affairs intervene and invite the leadership of the IEBC. They will therefore, clearly tell us what they think this House has not done to help us have credible elections next year. That is not something we can gamble with. We know the consequences, if we do not properly conduct elections in this country. This country has faced those consequences in every electoral cycle. We cannot, again, sit and wait for the IEBC to make unsubstantiated claims. If at all there are facts that this House is sitting on some legislative proposals which the IEBC considers very critical in conducting elections next year, this House deserves to know and act accordingly.

I request that you ask the Departmental Committee on Justice and Legal Affairs to move with speed and invite the IEBC. Since that is the Committee that oversees the IEBC, if it is an issue of funding, it can be discussed with the National Treasury. Let the Treasury also be invited, so that we are clear that the IEBC has no excuse at all. We do not want excuses. Already I can see that, if we just keep quiet, chances are that the IEBC will again have excuses for conducting sham elections next year, which I am sure this House and this country are not ready for.

Thank you, Hon. Speaker.

Hon. Speaker: Let us get a comment from a very active Member of the Departmental Committee on Justice and Legal Affairs, Hon. Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you very much, Hon. Speaker. I also read the Report and was a bit appalled because from the point of view of the Departmental Committee on Justice and Legal Affairs, I am not aware of any pending piece of legislation touching on the IEBC. We have discussed with them everything that has come up, including legislative proposals, but they have not brought any Bills that have been tabled here and are pending.

From the Select Committee on Delegated Legislation, the last to come is what we are dealing with this afternoon, that is, the Draft Election Campaign Financing Regulations. We have worked on those ones and have our Report ready. In fact, it has been debated and we are voting on it. Therefore, for the IEBC to say that this House is sitting on legislation that is supposed to help next year's elections is not true. However, I agree that we should actually meet them so that they tell us what they are talking about.

With regard to financing, it may be true that they have not received all the money, but I believe that they will get it. If they do not, they should come to this House, which is the budgeting House in Kenya, and we speak with the National Treasury, so that they get the money they need because next year's elections must be credible, verifiable and to the excellent standards that every Kenyan wishes.

Therefore, I agree this is a matter of national importance. The Independent Electoral and Boundaries Commission must come out clearly and let us know what it is they are saying is pending.

Thank you.

Hon. Speaker: I can see Hon. Wamalwa wants to say something. Is it in defence of the IEBC?

(Laughter)

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Hon. Speaker, this is a very fundamental matter for any responsible Kenyan. What Hon. Mbadi has said is true. It was very alarming, but more importantly is the issue of 3G coverage in this country. It is very critical for

purposes of free, fair and credible elections. As we wait for the report, how I wish that the Communications Authority of Kenya (CAK) is also invited to tell the country what the percentage coverage of 3G is. I am saying this because the coverage was about 70 per cent or so last time during the general election. In terms of preparedness because the law is clear on transmission of the results, the CAK also needs to tell Kenyans the extent of 3G coverage.

Lastly is on the aspect of funding. Statistics have shown that the IEBC has registered only about 100,000 or 200,000 new voters since the last general election. When you look at the statistics of issuance of new identity cards, it is showing about seven million people. We thought we are going to have a massive voter registration. We are only disappointed. When I did a follow up, we were told they are only going to have enhanced voter registration but the question they are challenged on and is there is the issue of funding. So, instead of this blame game, it is important that the Departmental Committee on Justice and Legal Affairs, in conjunction with the IEBC, the CAK and the National Treasury comes out clearly to tell us the level of preparedness so that we mitigate against these issues as opposed to giving alarming statements. Kenyans really want free, fair and credible elections in the year 2022.

I thank you, Hon. Speaker.

Hon. Speaker: Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker.

I want to agree with Hon. Mbadi that a lot appears to be happening at the IEBC. Parliament, through its relevant Departmental Committee on Justice and Legal Affairs, should be seized of it. Parliament is also hearing of it like other people. We are talking of voter registration. Polling stations have not been established. We do not know which new ones have been established. We are being told of voter projections. We do not know what they are based on. We do not know the extent to which the IEBC is already interacting with the Civil Registration Bureau so that there will be people to be registered. We only hear the IEBC is meeting the National Treasury, not knowing that whatever is discussed there is ultimately to be ratified or approved by this Parliament, if they are to get any money.

I want to blame ourselves in the Departmental Committee on Justice and Legal Affairs in the first instance. The truth is that we should not be waiting for the IEBC to be lamenting there. We are the Committee of this Parliament which should be taking audit and walking the path with that institution under our charge on behalf of Parliament. So, I want to agree with Hon. Mbadi and the Members who have spoken. I am thinking, now that the IEBC is fully constituted, the Departmental Committee on Justice and Legal Affairs should by now have sat with them and come up with the roadmap in terms of their preparedness around these issues. I am happy to report that I know, from insider information within the Committee, there is an intent to meet the IEBC, possibly within this week, with your permission, Hon. Speaker, so that the House can be duly updated and well guided in terms of the preparations we are having instead of hearing those things we are hearing out there.

Hon. Speaker: Hon. Kisang, do you want to say something about 3G?

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker. I wanted to say something on 3G.

Before 3G, I am wondering why the IEBC must wait for four years to undertake mass voter registration like they are going to begin next week. It is something they should be doing continuously instead of waiting until the last minute.

Also, the chair of the IEBC yesterday said they are going to gazette more than 10,000 new polling stations. Voter registration is beginning on Monday. They have not gazetted those stations.

Kenyans do not know where they are going to take the votes if they do not gazette. I hope they are going to gazette between today and tomorrow.

On 3G, yesterday we were with the CAK. I want to say that there are many parts of the country that do not have 3G. We have told the CAK to give us a report. I believe they will give a comprehensive report in the next one month or so and we will report to the House. That is so that the IEBC does not have an excuse why they cannot undertake fair, transparent and verifiable elections next year.

Hon. Speaker: Hon. Members, other than us lamenting, let the Departmental Committee on Justice and Legal Affairs invite the IEBC to a meeting to discuss, among other things, just like it happened in 2016, their levels of preparedness for the General Election of 2022—whether they have financial means to address technical issues like what has been described as inadequate coverage of 3G and such like. That is so that through the Committee, the House and the country would then get to know and understand where it is that the IEBC is instead of making those alarming statements out there in the villages. Those are the effects of reducing the levels of confidence Kenyans will have in the body. So, Hon. Kaluma, Hon. Gitonga Murugara, Hon. Whip of the Majority Party who is also a Member, schedule a meeting.

(Some Hon. Members raised their hands)

Now, those people raising hands, are you calling? We are not defending the Chairman of the IEBC. Yes, Hon. Kaluma, just for information. Hon. Kevin Wanyonyi, it is not about the villagemate, it is about the institution.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, it is confirmed to me by the leadership of the Committee and the secretariat that the Committee has scheduled a meeting with the IEBC on Tuesday. I am giving this information now so that those Members who are interested can attend that meeting, with your permission, Hon. Speaker. It is at 10.00 a.m.

Hon. Speaker: So, Tuesday it is the IEBC to come and discuss with the Committee, among others, those issues of preparedness and the issues they are talking about inadequate funding and all others. Depending on what they will be told, the Committee will of course be at liberty to further invite the CAK, should you find the need to do so.

(Loud consultations)

Order, Members. Order Members who are excited about themselves. Is it Hon. Tonui or Hon. Gichuki Mugambi? Somebody has whispered that the Member for Othaya looks like the Member for Bomet Central.

Hon. Members, this question obviously is related to some of the issues that Hon. John Mbadi has raised. But this is for you to make a determination. Debate was concluded. What remained was for the question to be put, which I hereby do.

(Question put and agreed to)

Next Order.

BILL*Second Reading*

THE TRUSTEES (PERPETUAL SUCCESSION) (AMENDMENT) BILL

*(Hon. (Ms.) Gladys Wanga on 23.9.2021)**(Debate concluded on 23.9.2021)*

Hon. Speaker: Hon. Members, again debate was concluded for Second Reading and what remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)**(The Bill was accordingly read a Second Time
and committed to a Committee of the whole House)*

Next Order.

COMMITTEE OF THE WHOLE HOUSE*(Order for Committee read)**[The Speaker (Hon. Justin Muturi) left the Chair]***IN THE COMMITTEE***[The Chairman (Hon. Moses Cheboi) in the Chair]*

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

Hon. Chairman: Hon. Members, take your seats. We are now in the Committee of the whole House on the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021). To the best of my knowledge, the Committee and many Members with amendments have tried as much as possible to harmonise their amendments. You need to be very keen because we will be moving pretty fast. It is a heavy Bill. With harmonisation of amendments done, I do not think there will be many Members who need to contribute. Two contributions per amendment will be reasonable.

Clause 3

There are amendments by the Chairperson, Hon. (Ms.) Sabina Chege. Are you ready to move the amendments? I believe you should be moving your amendments in an amended form, therefore you will probably need to move the amendment first. We encourage you to be brief, clear and concise in your presentation so that we are able to move quickly

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

Hon. (Ms.) Sabina Chege (Murang'a, JP): Thank you, Hon. Chairman. I beg to move:
THAT, the Bill be amended by deleting clause 3 and inserting the following new clause—

Amendment of section 2
of No. 9 of 1998.

3. Section 2 of the principal Act is amended—

- (a) in the definition of “Board” by deleting the word “Hospital” and substituting therefor the word “Health”;
- (b) by deleting the definition of “card”;
- (c) by deleting the definition of “child” and substituting therefor the following new definition—

“child” means a child of a contributor including a posthumous child, a stepchild, an adopted child and any child to whom the contributor stands in loco parentis, and who has not attained the age of eighteen years”;

- (d) in the definition of “Fund” by deleting the word “Hospital” and substituting therefor the word “Health”;
- (e) by deleting the definition of “hospital”;
- (f) by deleting the definition of “the Minister”;
- (g) by deleting the definition of “register”;
- (h) by deleting the definition of “stamp”;
- (i) deleting the definition of “inspector” and substituting therefor the following new definition;

“inspector” means a person appointed to carry out an inspection under section 32”;

- (j) by inserting the following new definitions in proper alphabetical sequence;

“accreditation” means the formal recognition of a health care provider by the relevant body”;

“beneficiary” means a person who—

- (a) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;
- (b) has not attained the age of twenty-five years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award;
- (c) is either mentally or physically handicapped and is wholly dependent on and living with the contributor;
- (d) is a spouse; or
- (e) is a contributor;

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

“contracting” means the entering into a formal agreement with an empanelled health care provider for purposes of provision of services;

“empanelment” means enrolment of a health care provider into the list of health care service providers published in the Gazette;

“health care provider” means the whole or part of a public or private institution, building or place, duly registered healthcare professional, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

“indigent” means a person who is poor and needy to the extent that the person cannot meet their basic necessities of life;

“vulnerable person” means a person who is in need of special care, support or protection, including the orphaned and vulnerable children, widows or widowers, person living with disabilities, poor elderly persons or indigent due to a risk of abuse or neglect and who has been identified as such by the relevant government body;

The first part of the amendment is on the name of the Board, by deleting the word ‘hospital’ and substitution therefor the word ‘health’. This is a health insurance fund and not a hospital insurance fund. The second amendment is to delete the definition of ‘card’. The other amendment is on the definition of child. The fourth amendment is deleting the word ‘hospital’ and substituting therefor the word ‘health’. The rest are basically about hospital, minister and stamp. Those are just about definitions.

The other amendment seeks to delete paragraph (c) and inserting the following new paragraph:

‘Beneficiary’ is a person with disability and is wholly dependent and living with a contributor and by deleting the definition of the word ‘vulnerable person’ and inserting the new definition that ‘a vulnerable person’ means a person who is in need of special care, support or protection, including orphan and vulnerable child, widow or widower, person with disability, elderly person or indigent due to risk of abuse or neglect and who has been identified as such by the relevant government body.

Hon. Chairman, I move.

(Question of the amendment proposed)

Hon. Members: Put the Question.

Hon. Chairman: No, we can take a few contributions because we will have other amendments to the same clause. Hon. Ichung’wah.

Hon. Kimani Ichung’wah (Kikuyu, JP): Then I am okay, because I was just wondering because she is defining a “vulnerable person”, which is the same thing Hon. KJ is seeking to do. The difference is only one word.

Hon. Chairman: No, do not come here definitely. Stay where you are. That is okay.

Hon. Kimani Ichung’wah (Kikuyu, JP): But, Hon. Chairman, you know you cannot sit on two seats; you can only sit on one at a go. You are on the Chair’s seat, so the Deputy Speaker’s seat is vacant and any other Member can sit on it.

With your indulgence, I just noticed her amendment on the definition of “vulnerable person” is similar to what Hon. KJ is proposing, with just a difference of one word. So, we could proceed to the other amendments. I was just saying that her amendment on the definition of “vulnerable person” is very similar to that of Hon. John Kiarie. The difference is just one word. However, if you are able to proceed to the other one then...

Hon. Chairman: They could harmonize that one easily but Hon. KJ will be moving the amendment defining “employer” and “contract”. Hon. KJ, what is it that you can say to that because we want to dispense with this one? Would it resolve the issue that you have brought?

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Chairman. The difference between my definition and what is being defined by the Chairperson is the term “persons living with disabilities”. We are doing this because I want to harmonise it with the terminology used in the Constitution. Hon. Sankok will agree with me that in the Constitution we have nobody defined as “person living with disability”. So, the difference is the word “living”. My definition refers to persons with disabilities (PWDs).

Hon. Chairman: Well, I heard the amendment...

Hon. John Kiarie (Dagoretti South, JP): I am coming to that Hon. Chairman. If she can modify her definition...

Hon. Chairman: I thought she did. Hon. KJ, to the best of my knowledge, Hon. Sabina Chege took care of your suggestion.

Hon. John Kiarie (Dagoretti South, JP): Hon. Chairman, you are doing my work because I was just explaining that to Hon. Kimani Ichung’wah, my neighbour, that the new definition that the Chairperson has given is in line with my definition and hence it becomes an amendment I can support.

Hon. Chairman: So, let us not waste any more time on it.

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

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

Let us now go to Hon. KJ.

(Loud consultations)

No, no, there is something else. Not on that one. We have resolved the issue of the vulnerable persons. We are now going to the employer and contract. Proceed, Hon. KJ. Please, try to be fast with this one. Kindly, press your intervention button.

(Loud consultations)

Hon. John Kiarie (Dagoretti South, JP): Hon. Chair. I beg to move:

THAT, Clause 3 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (f) —

(g) by deleting the definition of the term “employer” and substituting therefore the following new definition in its proper alphabetical sequence—

“employer” includes the national government and national government entities, and county governments and county government entities;

Hon. Chairman, I understand that the mother Bill was actually drafted in 1998, way back before the enactment of the new Constitution. Therefore, aligning it with the principle of devolving healthcare services to the counties is one reason as to why we are pushing for this definition.

Secondly, we are including national government entities, which include parastatals and any other semi-autonomous Government agency. We are also including county government entities like water service providers and the others. So, for those two reasons, I move that we define “employer” as I have described in the Order Paper.

(Question of the amendment proposed)

Hon. Chairman: I will give the first chance to the Chairperson of the Departmental Committee on Health, if she has something to say.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Chairman, I am in support of these amendments.

Hon. Chairman: Nominee 001, Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Chairman. We support this one because the moment we include national government entities and county government entities, it means that even the water service boards in our counties are also identified as employers so that we do not leave out any public servant.

I support.

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

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

Hon. Chairman: Hon. KJ, what is it again?

Hon. John Kiarie (Dagoretti South, JP): Hon. Chair, I beg to move:

THAT, Clause 3 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (f) —

(h) by deleting the definition of the term “contracting” and substituting therefor the following new definition—

“contract” means a formal agreement with an empanelled health care provider for purposes of provision of services and “contracting” and “contracted” shall be construed accordingly in this Act;

Hon. Chairman, you being a lawyer, will understand why I am pushing for this amendment. When we make laws, we define the actual noun which is “contract” not the action of “contracting” or getting “contracted”. For that reason, I move that we define “contract” as I have indicated in the Order Paper.

Hon. Chairman: Before I put the Question, because I have to be very clear, what the Chairperson of the particular Committee has moved is “contracting”. You are now moving “contract.” As far as I am concerned, once she has moved that and she has taken it, you cannot move. That is the position, Hon. KJ She has actually covered it. I do not know if you have an issue there?

Hon. John Kiarie (Dagoretti South, JP): Hon. Chairman, these are not semantics. There is a big difference between “contracting” and “contract”. So, I would want this to be “contract”

Hon. Chairman: Legally, there would be no major difference. One is the Act and the other one is... “Contracting” and “contract” is just the same thing. It covers your position in as far as I am concerned. Maybe, you could check this.

Hon. John Kiarie (Dagoretti South, JP): Hon. Chairman, I would like us to define the word “contract” and not the action of “contracting”

Hon. Chairman: Let us get to see what the Chairperson has to say. In the meantime, I want you to consult.

(Loud consultations)

Hon. (Ms.) Sabina Chege (Murang’a CWR, JP): Hon. Chairman, we are in agreement with KJ. What he is moving and what I moved is the same. I beg him to drop his amendment.

Hon. John Kiarie (Dagoretti South, JP): Hon. Chairman, in the interest of time, I cede for the Chairperson of the Departmental Committee on Health.

Hon. Chairman: It is not in the interest of time. It is because you have agreed as you move, because we have time. The only thing is that you seem to have done the same thing. That one is sorted.

(Proposed amendment by Hon. John Kiarie dropped)

We then go to the amendment by Hon. Wanga. That should be the last one on this clause. Whatever happens to her amendment, we will put the global Question that will cover everything.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Chair, I beg to move:

THAT, the Bill be amended in Clause 3 (f) by inserting the following definition in proper alphabetical sequence-

“risk spreading” means the transfer, sharing or distribution of the risk insured as between one or more insurance companies or other providers with a view to reducing the financial cost in the eventual happening of the insured event hereby referred to as a loss for special, enhanced or negotiated scheme.

Hon. Chairman, the purpose of this definition with NHIF growing in the manner it is going to grow, there is need to provide for risk spreading. That is the reason for my coming up with this amendment.

I beg to move.

(Question of the amendment proposed)

Hon. Chairman: Hon. Barasa, Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Chairman. I support the amendment. It makes sense as it will benefit quite a number of people.

I support.

Hon. Chairman: Hon. Wetangula Wanyonyi.

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Chairman, I wanted to speak to the earlier amendments.

Hon. Chairman: Well, if we are all in agreement, unless you want to oppose, because we really want to move ahead. If you are not opposing then, do not worry.

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

(Clause 3 as amended agreed to)

Is there any other amendment? I do not think so.

Clause 4

Hon. Chairman: Chairperson.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended—

(a) in paragraph (b) by deleting the word “Minister” appearing in the proposed new paragraph (c) and substituting therefor the words “Cabinet Secretary”;

(b) by inserting the following new paragraph immediately after paragraph (c)—

“(d) in paragraph (f) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

This is substituting the word “Minister” with “Cabinet Secretary”. This is just cleaning up.

(Question of the amendment proposed)

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

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

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

Hon. Chairman: There is also another amendment by the Leader of the Minority Party, Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended—

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

(ba) in paragraph (f), by deleting the words “to advise the Minister” and substituting therefor the words “to advise the national government and county governments”;

(b) in paragraph (c) —

(i) by deleting the words “including communication and stakeholder engagement” appearing in the proposed new paragraph (g) and substituting therefor the words “with respect to health insurance”;

(ii) by inserting the following new paragraph immediately after the proposed paragraph (g)

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

Hon. Chairman, apart from what has been carried by the Chairperson, which was also part of my amendment, there are further two amendments, which are basically to create clarity on the functions of the Board. Their function is to advise the national Government and the county governments. Is that what you proposed? No.

If not, then this is another one. This is simply to take care of the current Constitution that recognises both national and county governments as opposed to when the Act was passed in 1998. It is also to provide clarity on the functions of the Board, which is to advise both the national and county governments on matters that relate to health insurance and of course administer the benefits for the employees and on behalf of the employers.

Hon. Chairman, the other one is to delete the words “including communication and stakeholder engagements” and substitute it thereof with “respect to health insurance”.

This is to provide clarity that it is only with respect to insurance and not at the Universal Health Coverage matters (UHC). The Universal Health Coverage is a wider thing, which is basically in the hands of the Ministry. However, in terms of insurance, NHIF comes in.

Finally, the clause is further amended by inserting a new paragraph immediately after the proposed paragraph (g), which is to administer employee benefits as provided under this Act on behalf of employers in respect of their employees.

Hon. Chairman, that is just to provide further clarity.

Hon. Chairman: Okay.

(Question of the amendment proposed)

Hon. Chairman: Leader of the Majority Party, that is Clause 4. Member for Kiminini, what is it? Leader of the Majority Party, sorry, I did not know you were here.

Hon. Amos Kimunya (Kipipiri, JP): Not on this one.

The Chairman: Okay. Hon. Wamalwa, proceed.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Chairman. I was just wondering while listening to the Leader of the Minority Party. He is deleting the words, “advise the Minister” and substituting with the general words, “advise the national and county governments”. We normally have a lot of blame games. This is because this is a generality. When we talk of the national Government, will you be referring to the President? I thought it should be the Minister responsible for that particular docket. When it comes to the issues of the county governments, it should be the County Executive Committee Member who is specific for that

particular function. Otherwise, when we leave it in generality, we are likely to have a blame game. We do not have anyone who is going to be critically responsible and accountable in case of any eventuality. I wish he could stick to the issue of specificity as opposed to generality. This is because when you talk of the county government, it could be the governor or the county secretary. How are we going to cure that?

Thank you.

Hon. Chairman: Hon. Mbadi has already moved his amendment. The position is that we will have to transact and canvass this amendment one way or the other. It is a bit difficult to now propose an amendment when you have not brought any yourself. It really becomes a problem. Therefore, I would rather you were talking to Hon. Mbadi so that he can amend his own. That is the position. Therefore, I sympathise with your situation because you want clarity. I am going to deal with whatever I have here.

(Hon. (Dr.) Pukose spoke in his place)

Hon. Pukose, that should be the last one.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Chairman. The amendment by Hon. Mbadi on Clause 4 (a) which seeks to delete the words “to advise the Minister” and substitute thereof “to advise the national and county governments”, is vague. I want to oppose that part because I think it does not add up. This is because you cannot substitute the words “advise the minister”. I think it should just have been “to advise the Cabinet Secretary”. It is vague to say that you want to advise the county and national governments. It does not make any sense at all.

I oppose.

Hon. Chairman: We normally just give two Members an opportunity to contribute. Since everybody agrees with most of Clause 4 other than the generality of that particular sub-clause, I will allow you to make your decision one way or the other.

Hon. Mbadi, do you have a clarification?

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I think we are just slaves of history. This is because if you are talking about county governments, you will talk about CEC. The CECs are not defined in this Act. Therefore, it is more decent, tidier and neater to leave it that the advice is to the county government. The governor can choose whoever requires the advice. When it comes to the level of the national Government, there is no reason why we have to condition this advice only to the Cabinet Secretary for Health. This is because if you talk about the CS, it definitely means the CS for Health. The advice can go to the CS in charge of National Planning to plan issues of Universal Health Coverage. Therefore, I think we are just becoming slaves of our institutions.

Hon. Chairman: Okay, let us just finish this one. Let us put the Question on this one.

(Hon. Amos Kimunya spoke in his place)

Hon. Chairman: Leader of the Majority Party, what is it?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I think when we make these changes, it is good to look at the parent Bill that we are amending.

(Several Members stood in the gangways)

Hon. Chairman: Order! Who are these Members standing in the gangways? Take your seats. Order! Who is that?

Leader of the Majority Party, proceed.

Hon. Amos Kimunya (Kipipiri, JP): Even as we amend a Bill, we also need to pay reference to the parent Act that the Bill is amending. If you look at it, it initially says, “to advise the Minister on national policy”.

Hon. Mbadi is saying that we remove to “advise the Minister” and say “advise the national government and county governments”. The advice is actually restricted to national policy with regard to national health insurance and to implement all Government policies relating thereto.

The national policy is the preserve of the national Government and that is why the Cabinet Secretary is being advised on the national policy. He can withdraw that bit of the advice of the national Government because it was so specific. It was that the advice is on the national policy and not general advice on matters.

Hon. Chairman: As Hon. Mbadi thinks through that, let me have the Member who was once an adviser in that docket, Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chairman, I think the Leader of the Majority Party has made the point I was to make that the advice was specific. We must know that whenever the CS who has a national function in policy is advised, that policy should go down even to the county governments and so I agree with him.

Hon. Chairman: All right. Hon. Mbadi, is it possible that you have changed to Paul from Saul.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I do not think this is a very controversial thing. I can withdraw it so that we move on.

Hon. Chairman: Therefore, I proceed to put the global Question.

Hon. Mbadi, the only bit that was controversial is (a). Are you withdrawing the entire bit or that particular one which was affected?

Hon. John Mbadi (Suba South, ODM): No, just the first one. The proposed amendment (a).

Hon. Chairman: The rest seems fine with Members. Okay, let Members be clear that on record, Hon. Mbadi is removing that specific bit, that is (a) and remains with (b).

(Proposed amendment by Hon. John Mbadi to part (a) dropped)

*(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 4 as amended agreed to)

Clause 5

Hon. Chairman: We have two amendments: One by the Chairperson and the other one by Hon. Ichung'wah, the Member for Kikuyu. Let us start with the Chairperson.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Chairman, I beg to move:

THAT, clause 5 of the Bill be amended by deleting the words "relevant government agencies" appearing in the proposed new section 9 and substituting therefor the words "Salaries and Remuneration Commission (SRC)".

This is just in line with the Constitution because there is already the SRC which is the Government agency which is meant to deal with salaries. This is for purposes of cleaning up.

(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)*

Hon. Chairman: Hon. Nominee 001. You are warned from conducting a choir. I have seen you putting your hands and doing it in a manner likely to suggest that you are conducting a choir. What we have here is to vote one way or the other.

So let us have Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I beg to move:

THAT, clause 5 of the Bill be amended in the proposed new section 9 by deleting the words "funds of the state corporation" and substituting therefor the words "moneys of the Fund".

This is just a clean up to delete the words "funds of a state corporation" that I find to be archaic that is being used in that clause to "moneys of the fund".

(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 5 as amended agreed to)

Clause 6

Hon. Chairman: Hon. Members, we have three proposals for amendments. One by Hon. Ichung'wah, one by Hon. Omboko Milemba and one by the Chairperson. To guide the House, we will start with Hon. Omboko Milemba for one reason, that he is proposing a deletion. So, if the deletion is carried, Hon. Ichung'wah you will have nothing to amend.

So, let me consult on this particular one.

(Hon. Chairman consulted with the Clerk-at-the-Table)

Hon. Members, the Chairperson's amendment is separate and so it will progress whether Hon. Omboko Milemba's is carried or not, but the one by Hon. Ichung'wah will fall. This is because the specific amendment that is being done is the deletion to what Hon. Ichung'wah intends to propose as an amendment. I am telling you so that Members can be aware and make your decision one way or the other. We will start with Hon. Omboko Milemba which if it is carried, Hon. Ichung'wah's will fail, but that will not affect the Chairperson's proposed amendment. That is why we are starting with Hon. Omboko Milemba's. Please make it clear so that Members can know what you want. Move the amendment so that you can give the explanation.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Chairman, I beg to move:

THAT, clause 6 of the Bill be amended by deleting the words "relevant government agencies" appearing in the proposed new section 10(1) and substituting therefor the words "Salaries and Remuneration Commission".

Every determination of salaries now in this country is determined by the SRC and not by just any relevant Government agency. So, I wanted to be specific. That is why I made such an amendment so that the determination of any payments or allowances be determined by the SRC and avoid generalisations.

(Question of the amendment proposed)

Hon. Chairman: I will give two Members including Hon. Ichung'wah himself. Let us start with the Hon. Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I think there is mix up here. All these amendments to Clause 6 with reference to the board or the SRC actually relate to Clause 5.

Clause 6 of the Bill talks of a totally different thing. It refers to amendments to Section 10. Clause 5 is the one that talks about the remuneration of the members of the board which has already been sorted out, moved and passed by the House. So, basically the reference by Hon. Omboko Milemba to an amendment in Clause 6 of the Bill for this matter is actually non-existent because there is no such matter in Clause 6 of the Bill.

Clause 6 is a totally different thing but I think the most important thing is... Let us be clear so that we do not amend a section in the Bill that is not there. There are two things, there is an amendment in the...

Hon. Chairman: No, Leader of the Majority Party, please look at the Bill. If you look at the Bill, the issue of the Chief Executive Officer, is the title. If you read it, at the end, there are the relevant Government agencies. Now, what Hon. Omboko Milemba is proposing to amend is to change the relevant government agencies and replace it...

Hon. Omboko Milemba (Emuhaya, ANC): With Salaries and Remuneration Commission.

Hon. Chairman: I did not understand if you were actually proposing a deletion or an amendment to put the salaries... You probably are deleting to allow what was carried in Clause 5.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Chairman, even the Leader of the Majority Party has understood. There is no way this amendment would be on the Floor if it was just an error. Thank you.

Hon. Chairman: The Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I think you got it right. The Leader of the Majority Party missed something. I have no issue because the relevant agencies should be SRC and also Treasury. For you to determine remuneration, the board will consult not only with the SRC but with other government agencies. That is where I have a problem. Are we satisfied that SRC is the only institution that needs to be consulted? That is where I have a problem.

Hon. Chairman: Hon. Sankok. As I look at it, I will give two more Members

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Chairman. Are salaries of CEOs of parastatals determined by the board or SRC? We have to be careful on this. It should be all agencies that can be consulted. It is the board that determines the salaries of CEOs but in consultation.

Hon. Chairman: Member for North Imenti. As we give Members chances to contribute, Hon. Milemba, you should be clear. You are proposing a deletion. What is it that you are proposing so that Members can know? Let us have the specific thing that Hon. Milemba wants to do. Do you have an amendment or you want to delete that clause?

Hon. Omboko Milemba (Emuhaya, ANC): I am not deleting the clause; it was just a simple amendment. I was only deleting the small bit of relevance. It is quite clear here; relevant Government agencies and replacing it with SRC.

Hon. Chairman: Is that the position?

Hon. Omboko Milemba (Emuhaya, ANC): Yes. It is.

Hon. Chairman: If that be the position, then it definitely will not affect Hon. Ichung'wah's proposal. Just allow me an opportunity to also look at it.

Now, Hon. Members, we will reorganise. We will have to start with Hon. Ichung'wah's amendment. So, we will suspend yours, Hon. Milemba, for the time being because, what Hon. Ichung'wah is doing is, he is getting an amendment that will include what you are having a problem with. If it goes through, then yours will not be necessary.

(An Hon. Member spoke off-record)

I would not know how you would vote. I would not want us to go that direction. What I want us to do is to hold it, please. Hon. Member for North Imenti, I will give you the Floor shortly. Just allow this proposal to be moved then I will give you the first shot. Looking at the way it is, we really need to reorganise and give Hon. Ichung'wah an opportunity to see if it will sail through.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Chairman. I beg to move:

THAT, Clause 6 of the Bill be amended in the proposed new section 10 by deleting subsection (1) and substituting therefor the following new subsection—

(1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the Board, through a competitive process, on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

Hon. Chairman, let me just draw attention of Members to what I am doing. If you go to the Bill in Clause 10 (1), it states that there shall be a CEO whose terms and conditions of service shall be determined by the board in consultation with the relevant Government agencies. That is the bit that Hon. Omboko wanted to amend. What I am amending is to say that there shall be a CEO of the Fund, who shall be appointed by the board, therefore qualifying that the appointment will be done by the board. When you say there shall be, tomorrow, Hon. John Mbadi or Hon.

Kimani Ichung'wah can walk into NHIF and say, 'I am the CEO'. The CEO shall therefore be appointed by the board through a competitive process on such terms and conditions as the board may, with the advice of the SRC, determine.

I beg to move. I think it is clearer and it covers what Hon. Omboko was trying to do.

(Question of the amendment proposed)

Hon. Chairman: Member for Imenti North, allow me to give the Member because I had given him an opportunity, then I will...

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Chairman. I agree. That is what I wanted to point out. Hon. Ichung'wah is covering both the CEO and the SRC. So, I agree.

Hon. Chairman: Before I put the Question, let me have Hon. Omboko Milemba have his say.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, it is Ichung'wah not Ichungwa. You said Ichungwa and it sounds very ODMish. It is Ichung'wah with a Ng'wa.

(Laughter)

Hon. Chairman: Well.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Chairman. Allow me to have my take. It is just about making a good law. He has covered it very well. So, mine is equally covered and I support.

Hon. Chairman: Okay. That is on record.

*(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. Kimani Ichung'wah (Kikuyu, JP): If you call me Ichungwa again, I will withdraw the amendment.

Hon. Chairman: Order, Hon. Ichung'wah. Let us have the Chairperson progressing with her proposed amendment. Hon. Sabina Chege.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Chairman. I beg to move:

THAT, Clause 6 of the Bill be amended by inserting the following new subsection immediately after the proposed new subsection (4)—

“(5) The Chief Executive Officer shall be an *ex officio* member of the Board.”

This amendment seeks to expressly provide that the CEO shall be an *ex officio* member of the board which is necessary for the effective implementation of the CEO's decision at the board.

Thank you, Hon. Chairman. I beg to move.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted,

put and agreed to)

(Clause 6 as amended agreed to)

(Clauses 7 and 8 agreed to)

Clause 9

Hon. Chairman: Hon. *Machungwa*. Ichung'wah, sorry.

(Laughter)

Let us have Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Chairman, for that correction. That is the good thing with you having gone to the Kabarak High School...

Hon. Chairman: Please proceed with your amendment because there is no Kabarak High School; there is only Moi High School, Kabarak. Proceed.

(Laughter)

You will be told that by your neighbour, the Member for Tharaka.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, just like they know Alliance Boys High School; it is the Alliance High School.

Hon. Chairman: Proceed.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I beg to move:

THAT, Clause 9 of the Bill be amended in the proposed new Section 12, by deleting Sub-Section (2) and substituting therefore the following new subsections —

- (1) The affixing of the common seal of the Board shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer.
- (2) The Board shall, in the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the Chairperson or the Chief Executive Officer.

This is just creating provisions on the common seal of the Fund that are normally contained in the main Act as a substantive provision and not in the schedules to the Act as was done here.

Two, the amendment is also necessary to create clarity on who will authenticate the affixing of a common seal. Ordinarily, the Company Secretary affixes the seal but it needs to be authenticated. I propose that either the Chairperson or the Chief Executive Officer authenticates by signature. In their absence, the Board can nominate a member who will authenticate. This will go a long way in promoting accountability and good governance in the management of this Fund that is likely to be very liquid.

Hon. Chairman: Okay. There will be three other amendments after Hon. Kimani Ichung'wah's. Sorry, on this one, it is only Hon. Ichung'wah's amendment.

(Question of the amendment proposed)

Hon. Members: Put the Question!

Hon. Chairman: Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, what Hon. Ichung'wah is proposing is already covered in the Bill. In fact, the new Section 12(1) states that there shall be a common seal of the Board which shall be kept in the custody of the Corporation Secretary and shall not be used except on direction of the Board.

New Section 12(2) states that the affixing of the common seal shall be authenticated by the signature of the Chairperson or the Chief Executive Officer or any other person authorised in that behalf by a resolution of the Board. That is exactly what he has paraphrased.

His amendment states that the affixing of the common seal shall be authenticated by the signatures of the Chairperson and the CEO and any document required by law to be made under the seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the CEO. That is exactly what is in the Bill.

Part (2) of his amendment states that the Board shall, in the absence of the Chairperson or the CEO, nominate any other person, which is already provided for in the Bill.

It is also important for Members to know that the amendments that were made to the Companies Act, 2015, actually removed the necessity of seals. It is already here but in a provision.

Hon. Chairman: Okay. Let us have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I beg to differ. I see a difference in the amendment by Hon. Ichung'wah *vis-à-vis* what is in the law.

The Bill proposes that the authentication be done by the signature of the Chairperson, the CEO or any other persons authorised in that behalf by a resolution of the Board. There is a requirement for the resolution of the Board.

Kimani Ichung'wah's amendment states that the authentication should be done by the Chairperson and the CEO. You do not require a resolution of the Board for someone to authenticate. That is the how I understand it.

Secondly, Hon. Chairman...

Hon. Chairman: I think you have made your point. Let us have Hon. Caleb Kositany.

Hon. John Mbadi (Suba South, ODM): No. There is something else. If you look at new Section 12(1) in the Bill, there is nothing else apart from the seal. Hon. Ichung'wah's amendment widens the scope to include the authentication of the decisions of the Board. That was not in the original Bill. Those are the two differences. We need to agree on whether the amendments are good or bad based on those two differences.

Hon. Chairman: I will have to put it to the Floor for... Let us hear what you have to say, Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, if you also look at what is provided for in the Bill, the affixing of the common seal is authenticated by the signature of the Chairperson or the CEO. My amendment gives the responsibility to authenticate to both the Chairperson and the CEO. There is a whole world of difference because the Bill makes provision for either to authenticate, but my amendment makes it compulsory for the CEO to authenticate. That is why I said it is to enhance accountability and good governance.

Hon. Chairman: Hon. Members, this is something that you can quickly make a decision on because it is fairly straightforward. Hon. Nyikal, we probably would not need the technical... Okay. Let us have Hon. Nyikal. He is the last one.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Chairman, I would actually go with what is in the Bill. If you say “and”, remember the Chairperson is not executive. So, for any decision being made where the CEO has to sign, they will still have to wait for the Chairperson as well. I think that will make the Chairperson executive.

Hon. Chairman: Hon. Kisang’, did you want to say something? Okay, Hon. Members, make your decision now. One way or the other, you will be making laws. Who is the Member standing up there? Is that Hon. Richard Tong’i? Okay, proceed, Hon. Tong’i, so that Members can internalise. I can see there are consultations here and there.

Hon. Richard Tong’i (Nyaribari Chache, JP): Thank you, Hon. Chairman. Having listened to all of them, if we go the way we are with the amendment, we will make the Chairman of the Board an executive chairman. That is not envisaged in this proposal. We want to separate powers by having an executive CEO, but not an executive Chairman.

Hon. Chairman: Okay. Let us have the Member for Nyakach. What is your point of order, Hon. Mbadi?

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, the original Bill already made the Chairperson an executive chairperson. I will explain. It states in part, “...authenticated by the signature of the Chairperson or...” which means that the Chairperson can authenticate alone without the CEO. He is already an executive chairperson. In fact, this amendment is making it even much better by reducing his powers because the CEO can do it. If you get a rogue Chairperson, he will just be authenticating alone.

Hon. Chairman: Hon. Members, I cannot open the Floor beyond that. I will put the Question. I am sure you have made up your mind on which way to vote.

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

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Chairman: In Clause 10, we will have several amendments. One is by the Leader of the Majority Party, but we will start with Hon. Kimani Ichung’wah. After the Leader of the Majority Party, we will have the amendment by the Chairperson and then the one by Hon. Ojiambo Oundo. So, you can be prepared. If the proposal by Hon... Let us see how it goes. I will tell you what will happen in due course. Let us start with Hon. Kimani Ichung’wah.

Hon. Kimani Ichung’wah (Kikuyu, JP): Hon. Chairman, I would like to give guidance because as you have said, there are numerous amendments. I had a lengthy discussion this morning with the Chairman, Hon. John Mbadi and the Leader of the Majority Party. I will move the amendment as it is on the Order Paper, but I will move (c) in an amended format. I will cede moving (b)(ii)(e) in favour of the one by the Leader of the Majority Party.

Therefore, I beg to move...

Hon. Chairman: Let us be very clear, so that everybody is on board. Which ones are you moving? Are you withdrawing Part (e) of your amendment?

Hon. Kimani Ichung’wah (Kikuyu, JP): I will withdraw (e) in favour of the one by the Leader of the Majority Party, Hon. Kimunya, and (f) in favour of what the Chair of the Committee has. I will move (1A)(c) in an amended format.

Hon. Chairman: Read the amendment on record. What will be the amended format?

Hon. Kimani Ichung’wah (Kikuyu, JP): Hon. Chairman, I beg to move:

THAT, Clause 10 of the Bill be amended—

(a) in paragraph (a) by deleting the proposed new subsection (1A) and substituting therefor the following new subsection—

(1A) Subject to this Act —

(a) the national government shall be liable as a contributor to the Fund in respect of all public officers, state officers and employees working in the national government and national government entities;

(b) each county government shall be liable as a contributor to the Fund in respect of all public officers, state officers and employees working in the county government and county entities; and

(c) any other employer shall be liable as a contributor to the Fund in respect of its employees subject to Clause (ca)

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

(b) in subsection (2) —

(i) by inserting the words “Except as provided in paragraph (f)(ii) and (iii)” immediately before the words “in the case of a person” appearing in paragraph (b);

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

(c) in the case of an employer who is the national government or national government entity, a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c);

(d) in the case of an employer who is the county governments or county government entity, a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c);

(e) in the case of other employers, a matching contribution, equal to that which their employee is liable to contribute under subsection (1)(c):

Hon. Chair, I cede 2(e) in favour of that one by the Leader of the Majority Party. I also cede (f), as I indicated earlier, to the Committee’s proposal.

Hon. Chairman: Hon. Ichung’wah, I have a problem with your reference to (ca), which is going to be moved by the Leader of the Majority Party because I do not know whether it is going to be taken or not. I cannot know that at the moment. In any case, it is not there. We can resolve that when the matter comes up. There is b(i) that you probably need to withdraw. You need to withdraw b(i).

Hon. Kimani Ichung’wah (Kikuyu, JP): It refers to paragraph (f), which I have ceded to the Committee’s proposal. I cede b (i) so that we move to b (ii). In b (ii), (a) is withdrawn in favour of the amendment by the Leader of the Majority Party.

Hon. Chairman: Say you have withdrawn it. Forget in favour of anybody.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I withdraw (e).

Hon. Chairman: Say it on record. What are you raising, Leader of the Majority Party? We can still work on it without a problem.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chair, I would like to make it clear so that we do not have confusion. For the record, I ask that Hon. Ichung'wah moves his amendment in paragraph (a). When we get to (b)...

Hon. Chairman: Leader of the Majority Party, do not worry. Once we have done our work here, the drafters will sort out the problem. Actually, Hon. Ichung'wah has moved well. He has withdrawn some two bits. Well, it is in anticipation or not. They have been withdrawn anyway. So, we can proceed.

(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)

We will now go to the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, my amendment is that (ac) has been taken care of. So, it has been overtaken by events.

THAT, Clause 10 of the Bill be amended-

(a) in paragraph (b), by deleting the proposed new paragraph (c) and substituting therefor the following new paragraph –

“(ca) in the case of an employer, such amount as will be required to top up the employee’s contribution at such rate as maybe determined under sub-section (3);

Provided that the amount contributed by an employer under this paragraph shall not exceed the highest rate of special contribution prescribed for any of the categories of contributors under sub-section (2)(b).

(b) by inserting the following new paragraph immediately after paragraph (a) –

“(aa) in subsection (2), by –

(i) deleting paragraph (b) and substituting therefor the following new paragraph –

“(b) for persons whose income is derived from self-employment –

(i) in the case of a contributor who is a sole beneficiary; and

(ii) in the case of a contributor who is not a sole beneficiary,

a special contribution at such rates as may be determined under subsection (3)’’;

(ii) inserting the following new paragraph immediately after paragraph (b) –

“(c) in the case of an unemployed person, such rate as may be determined under subsection (3)’’.

Hon. Chair, we have already decided that the national Government and county governments will do a matching contribution. However, private employers will not do a matching contribution, but they will top up the minimum contribution to bring it at par with what self-employed people are doing. So, the base rate will be for self-employed persons. Currently, the base

for self-employed is Kshs500, but there are some employees whose contribution is Kshs150 or Kshs200. The employer will be obligated to top up that contribution, so that all people at the base are equalised. That is the essence of this amendment. The amount will be determined in the regulations. So, we cannot put a figure here. That is on (a).

Part (b) seeks to break the categories of contributions, so that we have employed persons, self-employed persons and the self-employed persons' category will have two sub-categories. One is a sole contributor. People who do not have families should have a different rate, and one who contributes on behalf of a family would have a different rate. People who are unemployed but not necessarily indigent, will have their own category. Because it is a compulsory Fund, we want to accommodate all the different categories of people, namely, employed, self-employed with family or without family, and the unemployed, whether youth or older persons.

I recognise that there are several amendments which had also been proposed by Hon. KJ. and Hon. Koske. We have harmonised them and agreed that this one covers the bigger issue. Theirs have figures, but we want to have the figures in the Regulations, and not in the statute.

(Question of the amendment proposed)

There seems to be interest in this one. Let us start with the Member for Nyakach. I will then look out for a Member who probably has not said much this afternoon.

Hon. Jared Okelo (Nyando, ODM): Thank you very much, Hon. Chairman. I come from Nyando, and not Nyakach. Nyakach is my immediate neighbour.

It makes a lot of sense for both the county governments and the national Government to do the top up as proposed by the Leader of the Majority Party, but I am at pains to reconcile the private sector. How do you insulate employees against mischief by employers who may at the end of the day take the entire sum of Kshs500, for instance, without necessarily doing any top up? How do we protect employees in the private sector? Some of them are quite gullible. Some of them are illiterate to the extent that they may not be able to understand the inner details. I am disturbed. I want to understand how they will be insulated against mischief.

Hon. Chairman: Let us be as brief as we can. Who is the Member with a hand up there? I thought it was Hon. Didmus or "Titimus".

Hon. Silvanus Onyiego (South Mugirango, KNC): Hon. Chairman, I oppose the proposal by the Leader of the Majority Party entirely, especially on the element of matching contributions. We are seeking to capitalise the NHIF to make it a bit more massive so that it can meet the needs of our people. My submission is that if we go the direction of trying to match contributions of employees by employer, we will miss the point. It should be a shilling to a shilling. If an employee contributes Kshs500, the employer should give Kshs500 and not a top up of the balance.

Hon. Chairman: Sometimes, people make agreements elsewhere, but when they come here, they do not realise that the harmonisation has done some magic.

I can see there are two Members here who are very agitated. We will have to see one of them now.

(Loud consultations)

Order, Hon. Members! Please, take your seats. Let us relax completely. Hon. Sankok, you have a right to say something, although you have said too much this afternoon. I wanted to give someone else a chance. Anyway, Hon. Sankok, let us hear what you have to say.

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

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Chairman. We support this amendment because most of the “hustlers” will be contributing around Kshs150. So, when it is topped up to Kshs500, it means the employer will be contributing around Kshs350 while those at the bottom of the pyramid will be contributing Kshs150. That is why we agree with this particular amendment.

Hon. Chairman: You said that you were not interested in the meeting that took place, but when you contribute, kindly, specify that you are the one saying it. When I give the Floor to a Member, he or she makes his or her decision. The rest of the Members will also do the same.

This is something we can dispense with. It does not seem to be having a major issue. Hon. Ichung’wah, allow us to proceed. It will be easier. I am sure you have the same...

Let us proceed. Order, Members! There should not be any confusion. Hon. Sabina, please, take your seat.

*(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)*

Members, take your seats. Now, let me go to the Chairperson, Hon. Sabina.

Hon. (Ms.) Sabina Chege (Murang’a CWR, JP): Thank you, Hon. Chairman. I will drop several of my amendments because they have already been overtaken by events, having been moved by the Leader of the Majority Party and Hon. Kimani Ichung’wah. However, I will move Clause 10(b).

I beg to move:

THAT, Clause 10 of the Bill be amended—

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

“(aa) in subsection (1), by deleting the word “Minister” appearing in paragraph (c) and substituting therefor the words “Cabinet Secretary”

(d) by deleting paragraph (c) and inserting the following new paragraph—

“(c) by deleting subsection (3) and inserting the following new subsection—

“(3) A contribution under subsection (2) (a) and (b) shall be at such rate, depending on the person’s total income, as the Board, in consultation with the Cabinet Secretary, may determine.”

(e) by inserting the following new paragraph immediately after paragraph (d)—

“(da) in subsection (4) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;

(f) in paragraph (f) by deleting the word “Minister” appearing in the proposed new subsection (6) and substituting therefor the words “Cabinet Secretary”

Hon. Chairman, this is just tidying up.

(Question of the amendment proposed)

(An Hon. Member spoke off-record)

Hon. Chairman: Hon. Sabina Chege has indicated the particular bits which she is dropping and those ones which they have harmonised.

*(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 word to be inserted be inserted,
put and agreed to)*

We have a proposal for amendment by Hon. Ojiambo Oundo. I am told he is represented by the Member for Gatanga. I am unable to see your card here. So, we have to locate you manually. When you represent somebody, please, come with your card.

Hon. Joseph Nduati (Gatanga, JP): I have it, Hon. Chairman.

Hon. Chairman: Do you have it here now?

(Hon. John Kiarie spoke off-record)

Hon. Joseph Nduati (Gatanga, JP): Hon. Chairman, please, protect me from Hon. KJ. He is calling me the Member for Mugithi, even though music is our cash crop in Gatanga.

Hon. Chairman, I am holding brief for Hon. Ojiambo Oundo, who is not in the country. He is proposing to amend Clause 10.

I beg to move:

THAT, Clause 10 of the Bill be amended in paragraph (a)–

(a) by deleting the proposed new subsection (1B) and inserting the following new subsection–

“(1B) Subject to this Act, the national Government shall be liable as a contributor to the Fund on behalf of the indigent and vulnerable persons identified as such as provided for under subsection (1C).”

(b) by inserting the following new subsections immediately after the proposed new subsection (1B)–

“(1C) For purposes of subsection (1B), the Cabinet Secretary shall establish a committee in each constituency which shall identify the indigent and vulnerable persons.

(1D) The committee established under subsection (1C) shall consist of–

- (a) the national government official responsible for coordinating national Government functions in the constituency;
- (b) four persons nominated by the National Constituencies Development Fund Committee, of whom–
 - i. one shall be a youth;
 - ii. one shall be a female;
 - iii. one shall be a male; and
 - iv. one shall be a person with disability; and

(c) the county government official responsible for coordinating county government functions in the constituency.”

Hon. Chairman: I do not want you to move in that direction because it will take a long time. I believe that Members have your proposed amendments.

Hon. Joseph Nduati (Gatanga, JP): Yes, they do.

Hon. Chairman: So, if they do, just say: “As per the Order Paper.” You can then give the justification.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Chairman, for your guidance.

Basically, Hon. Oundo was just trying to identify the person who will be responsible for identifying the indigent and vulnerable people. If you look at 1B, he has said who will be responsible and it has been clearly defined.

Thank you, Hon. Chairman.

(Question of the amendment proposed)

(An Hon. Member spoke off-record)

Hon. Chairman: Do you want to contribute, or are you on a point of order? This is because I want to give the Chairperson, Departmental Committee on Health, the first chance.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Chairman. On this one, I beg to differ with the amendments. This is the stand of the Committee. We already have the Government agencies that are doing this work, namely, the social services. If we go by the proposals that have been given by the Member, we are going to do a job that is already being done. There are already structures to establish the indigents as we speak. So, on this one, I beg to differ and oppose. That was also my Committee's stand.

Hon. Chairman: What is it, Hon. Millie Odhiambo?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. We need some clarity on what Hon. Sabina Chege is saying because when I listened to the proposed amendment by Hon. Oundo, it is seeking, in the first part, to entrench provision for the indigents and vulnerable people. The last part is the one that is setting a different system. She is actually opposing in general. So, can she be clear whether she is opposing in general or is she supporting the issue of the indigent and vulnerable, which is a good idea and, therefore, seeking a different way?

Thank you.

Hon. Chairman: Actually, from what I heard, and mine is not part of your arguments, I thought she is having a problem specifically with the creation of this committee that is doing the vetting.

(Loud consultations)

Okay. The Leader of the Majority Party, you should be last one on this matter. Let me give the chance to Hon. Kangogo. My sight is not good enough. I cannot see very far.

Hon. Kangogo Bowen (Marakwet East, JP): Thank you, Hon. Chairman. I oppose the amendments by Hon. Oundo because from what I heard, it is like he is trying to introduce a National Government Constituencies Development Fund (NG-CDF) kind of a system to enable us identify the vulnerable in the community. However, if we go by that amendment, it is going to

necessitate amendments on other Acts, including amendments on the Social Assistance Act, which already exists and has a provision of identifying those people.

I oppose.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): But we are opposing wholesome. Why do we not leave the others?

The Chairman: Hon. Millie Odhiambo has asked. Hon. Sabina Chege seems to be having a problem with the committee. Is it not so? But in terms of the other one, it is already in the Bill and it is not affected.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Okay.

The Chairman: If that is the position, I could give a chance to Hon. Rasso.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Chairman. I oppose that amendment because it increases the bureaucracy in this system. What is there has already been covered in law. Like Hon. Kangogo has said, there is enough infrastructure to look at who the vulnerable are and who in the society is needy.

The Chairman: Members, I think we can continue. Hon. Tonui, I am sure you can wait. If you cannot, then just say it quickly. It is difficult to get you. Well, Hon. Tonui, you do not seem to be very lucky. So, we probably can move on. I will be very patient.

Hon. Joseph Kipkosgei (Kuresoi South, JP): Thank you, Hon. Chairman. I support the first part because we need to take care of the vulnerable. On the second part about the committees, that one is already taken care of by the ministry in charge of social protection. We already have that list.

The Chairman: Then you are actually opposing. It should be clear.

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

(Clause 10 as amended agreed to)

Clause 11

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Chairman. I beg to move: THAT, the Bill be amended by deleting Clause 11.

It is deleting just to create order. It is not a new amendment as such. It is just moving this amendment on registration of members to the Fund to be immediately before Section 15. I think there is another Member with an amendment that will create that good chronology.

Actually, it is Hon. John Mbadi.

The Chairman: Order, Hon. *Machungwa*; Hon. Ichung'wah, sorry. We will proceed. In Clause 11, I think yours is the only amendment. I will not put any global Question since everything was deleted. We go to the next one.

(Question of the amendment proposed)

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

(Clause 11 deleted)

Okay.

Clause 12

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, further to the intense deliberations we had this morning, I beg to drop this amendment. The Chair has a similar and better amendment to this one.

(Proposed amendment by Hon. Kimani Ichung'wah dropped)

The Chairman: Okay. Hon. Chair, do you have one on this one? I did not think so. You do not have an amendment. It is probably coming in another one. We will go to the next one. Hon. Milemba, you seem to be having one. I do not think so. Hon. Omboko Milemba, it seems you had a proposed amendment which probably you are dropping. It is better when you go on record as you drop it.

Hon. Omboko Milemba (Emuhaya, ANC): Let me go on record. I drop it. I shared with the Chair.

The Chairman: Thank you. We go to the next one.

(Proposed amendment by Hon. Omboko Milemba dropped)

(Clause 12 agreed to)

Clause 13

The Chairman: We have proposals by Hon. Oundo and Hon. Duale.

Hon. David ole Sankok (Nominated, JP) *(spoke off-record)*

The Chairman: Hold on, Hon. Sankok. You are not the master of ceremonies here. This is the National Assembly. It can only have one Chair at a time.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Chairman. I am still holding brief for Hon. (Dr.) Ojiambo Oundo.

I beg to move:

THAT, Clause 13 of the Bill be amended in paragraph (b) by deleting the proposed new subsection (1) and inserting the following new subsection—

“(1) If a standard or matching contribution which a person is liable to remit under section 16, has not been remitted by the day on which the payment of the standard or matching contribution is due, the person shall be liable to pay a penalty equal to the lending rate of interest, of the amount of the contribution, as may published by the Central Bank of Kenya from time to time;

Provided that such penalty shall not be imposed on State agencies if the delay or non-remittance is caused by delay in disbursement from the National Treasury or delay in disbursement of any funds appropriated by the National Assembly.”

I think that is a good one, Members, because it is supporting our course. You know we have been paying a lot of money when the NG-CDF delays. So, I am proposing that we all support the two amendments.

(Question of the amendment proposed)

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): I support this one. Just for Members to understand, when salaries of our staff are delayed, there are penalties that come afterwards. So, this proposal will cure that problem. If the Government does not disburse payment on time, the penalties are not given to our members of staff. This is just an example. So we support that one.

*(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 Chairman: Hon. Duale. In future, it is better that I know in advance just like I got to know that Hon. Oundo will be represented by the Member for Gatanga.

Hon. Kimani Ichung'wah (Kikuyu, JP): Sorry, Hon. Chairman. I forgot to remit that letter earlier. The Leader of the Majority Party emeritus had asked me to move his amendments, but I am constrained on Clause 17.

Hon. (Dr.) Robert Pukose (Endebess, JP): We are at Clause 13.

Hon. Kimani Ichung'wah (Kikuyu, JP): Okay. We are at Clause 13.

Hon. Chairman: We are at Clause 13. Unless you want to drop this first one, we can wait for the next one.

Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I can hear Hon. Millie Odhiambo shouting that I have no formal instruction and yet I have just tabled the letter.

I beg to move:

THAT, Clause 13 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

(ba) by inserting the following new subsection immediately after subsection (1) —

(1A) Subsection (1) shall not apply to a contributor who is a natural person.

This is to exempt a natural person from paying penalties for not submitting their contribution. An institution that does not top up may be penalised, but a natural person making a standard contribution, which is largely voluntary, should not be penalised. This is a good amendment.

(Question of the amendment proposed)

Hon. Chairman: Leader of the Majority Party, do you want to say something to this amendment?

Hon. Amos Kimunya (Kipipiri, JP): I think the amendment by Dr. Oundo covers employers. We are talking about employers. Now, when we start saying a natural person who is an employer is exempted, but a legal person who is an employer is not exempted, then you start practising discrimination among employers. I think we should just do away with this amendment. There is no definition. We have defined the terms, “self-employed”, “indigent”, and “unemployed”. We have not defined what contribution by a natural person is. It is like we are now

including in law matters that are not defined within the same law. It will just make it murky for implementation.

As a Member of Parliament for Kipipiri, I am an employer of people in my constituency and I am natural. Remember, under the Companies Act, you can register a company as a sole proprietor. You are a natural person. How does that person work on issues in terms of covering their employees? We may be well-intentioned, but we are making it murky. I would rather we exclude this proposal.

Hon. Chairman: If you are making a decision on whether to have it or not, that is okay, but if you want to contribute, then let me give the opportunity to Hon. Rasso.

Kimani Ichung'wah (Kikuyu, JP): It is a point of order. Maybe because I did not explain and the Leader of the Majority Party did not go to Alliance High School, maybe, he did not get the point. Hon. Chairman, you are able to grasp the point very fast like I was able to, earlier. The whole intention, which is related to what Hon. Nduati has moved on behalf of Hon. Oundo, is to cushion the ordinary Wanjiku from paying penalties. Remember we have set very high penalties for non-remittance of contributions. I think the penalty is 25 per cent of the amount you should contribute.

Therefore, we are just seeking to cushion individuals who are late in submitting their contributions. Employers, public bodies, and corporations of the national Government are not individual persons. So, they will pay penalties. That is the corporate proviso that Hon. Oundo was making to excuse those that get money from the National Treasury for no fault of their own. An ordinary citizen, and considering the hard economic times that we live in... We are making every adult Kenyan become a compulsory contributor to the Fund. If someone who is voluntarily making contributions defaults on a certain date, do not penalise them. That is the exemption that Hon. Duale is trying to make with this amendment. It is meant to protect ordinary citizens and the hustling *Wanjikus*.

Hon. Chairman: I am trying to wonder: if a contributor does not pay at all, do they still not get penalised?

Kimani Ichung'wah (Kikuyu, JP): It is about late payment.

Hon. Chairman: Okay. I want to hear what the rest of the membership thinks. Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Chairman, I agree with what Hon. Ichung'wah is saying. The part that I do not agree with is that you need to have gone to Alliance High School to understand what a natural person is. I think that part should be excluded from the *Hansard*, because he is referring to the Leader of the Majority Party, who is a holder of a PhD. He understands what a natural person is. I am a doctor, a consultant surgeon, and I understand what a natural person is. I do not need to have gone to Alliance to understand. That Alliance part should be excluded.

Hon. Chairman: I think next time you should include St. Joseph's Kitale, so that Hon. Pukose is happy.

(Laughter)

Hon. Members, please, allow me to also consider Members on this other side. Hon. Wamalwa, then Hon. Bunyasi.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Chairman. As you talk of Alliance, I went to a local school, Friend's School Kamusinga, which I am proud of anyway.

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.*

Whatever that takes, all of us are here. When you go to university, you find that the people who went to Alliance are behind and those who went to local schools are ahead. So, let us be proud of our backgrounds. That is on a light note.

What Hon. Ichung'wah has said is very critical. For us to motivate the people who are not employed and the hustlers to contribute, it is important that we give the law a human face. In case of default, we need to find a way of harmonising if at all a person gives proper justification. I know in the long run, if we encourage this, the Fund is likely to collapse. If, indeed, there is real justification, we need to treat it with a human face.

I thank you.

Hon. Chairman: Hon. Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Chairman. I have great sympathy for Hon. Ichung'wah's line of thinking, but I think the Leader of the Majority Party has a point on this occasion that we need to listen to. There are risks of interpretation. There are natural persons who have employees and may need this relief or not, depending on how many people they have employed. So, there is a risk there unless we go back to definitions.

Hon. Chairman: Okay. Let me dispense with this one. And I hope you will be clear enough in your decision.

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

(Clause 13 as amended agreed to)

Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, on a point of order.

Hon. Chairman: What is your point of order, Hon. Ichung'wah?

Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I was just complaining to Hon. Pukose that the Chamber is very hot. I know because of the COVID-19 protocols, at times the AC has had to be reduced. I would request, through you, Hon. Chairman, that they put the AC on.

Most significantly, I noted some element of rigging in the vote that we have just taken. Those who voted 'Nay' removed their masks to amplify their voices thus putting us in a lot of danger. They were led by none other than the Leader of the Majority Party and the Chair of the Departmental Committee on Health. You can imagine the Chair of the Departmental Committee on Health, who should be at the forefront in the fight against the COVID-19 pandemic removing her mask to rig a vote that the Leader of the Majority Party emeritus had brought to protect the *Wanjikus* and the hustling majorities of this country.

Hon. Chairman: I did not notice that, but there is one Member I also saw. She is from the far-flung area of Bomet. I will not mention her name. Her mask was also off. Unfortunately, the vote has been taken. So, let us proceed to the next one.

Hon. Chair of Departmental Committee on Health, I am very strict with masks. Member for Tharaka Nithi, your mask is off. Even when you are taking water, please, do so with the mask on. Hon. Ichung'wah has raised a very serious issue. It is getting extremely hot and we need to reorganise ourselves. Unfortunately, because of the COVID-19 protocols, we may need to open the doors wide enough.

(Loud consultations)

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Chair, Hon. Ichung'wah needs to withdraw the statement to the effect that "you rigged the vote."

Hon. Chairman: I do not think Hon. Ichung'wah said the Chair rigged. He said the ones who voted "Nay" used extra- parliamentary means.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): I said so in reference to his proposal of "...to amplify the voices".

Clause 14

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Chair, I beg to move:

THAT, the Bill be amended by deleting Clause 14 and inserting the following new

Clause 14 –

Amendment of
Section 19 of
No. 9 of 1998

14. Section 19 of the principal Act is amended–

(a) in subsection (2) by deleting the words "five times" appearing immediately after the words "penalty equal to" and substituting therefor the words "ten per cent of"; and,

(b) by deleting subsection (3).

Hon. Chair, I now want to tell Hon. Ichung'wah to be comfortable because this amendment seeks to reduce the penalty for non-remittance of special contributions by self-employed persons from five times the contribution to only 10 per cent of the amount of contribution due. This is necessary to ensure a realistic payment of penalty as non-remittance by contributors may be occasioned by lack of funds or income. The amendment further seeks to eliminate double-penalty for non-remittance as contained in sub-section 3.

Therefore, Hon. Ichung'wah should be very happy that whatever he was trying to propose earlier has already been taken care of.

Hon. Chairman: I will give a chance to only one person, Hon. Millie Odhiambo, the natural person and then I will proceed to put the Question.

(Laughter)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Chairman. Other than being a natural person, I went to St. Paul's Nursery School, the current Homa Bay Primary School, so that the Alliance ones do not think that it is the only school on earth. Having said so, I wish to support.

I was trying to indicate to Hon. Ichung'wah earlier on that when you leave a blanket provision the way he was suggesting, it becomes subject to abuse. We want to cushion the vulnerable and poor people by making sure that even when a person does not have provision, a reason is given.

I support what the Chair has moved.

[The Chairman (Hon. Moses Cheboi) left the Chair]

[The Temporary Deputy Chairman (Hon. Christopher Omulele) took the Chair]

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

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

(Clause 14 as amended agreed to)

Clause 15

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 15 and inserting the following new

Clause 15—
Amendment of
section 20 of
No. 9 of 1998

15. Section 20 of the principal Act is amended by inserting the words “by the youth” immediately after the words “voluntary contributions”.

Hon. Temporary Deputy Chairman, this amendment seeks to allow for a provision of voluntary contribution to be made by the youth so as to ensure that any youth who may not have a stable source of income, but wishes to make contributions to the Fund, is allowed to do so. On this one, I would like to move a further amendment saying, “...as per the Board”. The Board will make provisions on how the youth are going to make their contributions and the amounts they will contribute. We did not want to put any amount. We agreed with Hon. Ichung'wah to drop the other amendment he had on (f), so that we can take care of the youth at this point.

I beg to move.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I would want the Chair of the Departmental Committee to listen.

Within the Bill, we have already provided in Section 10 that subject to such guidelines, the Board may, from time to time, allow a person who may wish to receive enhanced benefits to make additional voluntary contributions to the scheme. So, we have already provided for additional contributions. What Members have already passed is that this is a mandatory contribution. There is no option. It is now mandatory that everyone must contribute. That is why we created those categories for indigents, on whose behalf the State will contribute, and for unemployed categories. We have already said it is mandatory for everyone. So, we have removed the voluntary contributions that were in the old law of 1988. So, by the amendment of Section 15, the Departmental Committee Chair was saying that the scheme is mandatory for everyone. There is no issue of voluntary contributions by anyone except for those who opt for voluntary contributions to top up their benefits. We have already provided for unemployed, self-employed, the indigents and the employed. So, there is no other category that was there before.

(Loud consultations)

Hon. Temporary Deputy Chairman, I wish Members could read the Bill. If you do, you will understand that it is mandatory for everyone. So long as it is mandatory, the issue of voluntary contributions does not arise except for what is provided in Section 10 on voluntary contributions to top up your benefits. So, what the Chair is trying to do is reversing the mandatory to create a position where youths can do voluntary yet it is mandatory, anyway. It is a contradiction: It is an oxymoron of sort. We had already discussed this with the Departmental Committee Chair. I am surprised that it has come back. There is no way you can offer a mandatory scheme and have voluntary contributions at the same time.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of Majority Party, you have made your point. Hon. Millie Odhiambo, Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. When the Chair of the Departmental Committee was moving, I was initially persuaded. However, listening to the Leader of the Majority Party, if we are seeking to make this Fund compulsory to ensure that we cushion certain categories of people, we need to ensure that Hon. Sabina feels that the youth are sufficiently cushioned. We can recommit the right clause, so that we can provide for them. Otherwise, this would be a contradiction of the Bill in terms of policy.

I also encourage the Chair of the Departmental Committee on Health and the Leader of the Majority Party that it is not nice to have discord, especially if you are from the same party.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairman. There will be no contradiction because you can voluntarily decide that instead of going for private insurance, you increase your NHIF contributions, so that it caters for you depending on how much you contribute. That is there, is it not? That is what it is. Although it is compulsory, even the youth can decide to top-up.

For the record, I went to Kericho High School. These guys should not think that Alliance High School is the best school. Kericho High School is the best school in the country.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. Section 3(a) that the Leader of the Majority Party was referring to relates to enhanced benefits under Section 223. It is important to mention that the (f) that I dropped was informed by the engagement I had with the Chair of the Committee in relation to the amendment she is currently moving. She is currently amending Section 20 of the principal Act which is on voluntary contributions. She is bringing in a provision for the Board to make Regulations in respect of voluntary contributions by the youth.

If you look at the (f) that I dropped from the Order Paper, it had classified the various categories of the youth, namely, those who are sole beneficiaries, unemployed, employed and have dependents. That is why we are saying that following Regulations that will be prescribed by the Board - which is the further amendment she was moving - that will now be done at the Board level rather than classifying them in actual legislation.

It is important because we want to encourage many of our youth to register voluntarily for the NHIF and not be punished for not doing so. I beg the House to support the amendment by the Chair of the Departmental Committee on Health.

I begin to take great offence after I have sat with chairs of committees and agree. We spent close to three hours this morning. The Leader of the Majority Party should abide by what we agreed on. Hon. Millie is also saying that it is important for the Leader of the Majority Party to treat chairs of committees who are working below or under him with a bit of dignity, so that when Members of Parliament meet with committee chairs and agree on substantive issues like this, we must not come and start deleting proposals on the Floor of the House.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah, can you make your point on the matter that is before us? Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Although I am a Member of the Committee and I was generally convinced, I appreciate that this is a very complex Bill. If we remove the voluntary aspect and then introduce it again and give the Board the authority to work on those voluntary contributions, the implementation of that will be extremely complex. Remember that in other places you have defined who the contributors are. We should protect the contributions by defining the contributors. I would go by what the Leader of the Majority Party is saying.

Let me demystify something about Alliance High School. If you go to a poor rural school and do as well as someone who...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nyikal, you will have an opportunity to... Hon. Nyikal, resume your seat! Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): For avoidance of doubt, I am the Mover of this Bill, and I have gone through it clause by clause. For avoidance of doubt, I would like to ask Members to look at Clause 10, which we passed. The new Subsection (5) under Clause 10(e) states that the contributions made to the Fund under Subsection (2) shall be mandatory. Because of that, we move to Clause 15 to remove the voluntary aspect which was provided for in the parent Act under Section 20. Making it mandatory in Clause 10 killed the voluntary aspect in Section 20 of the parent Act.

I know we want to cater for the youth. The amendment that I brought on all the people and the different categories has already taken care of that. The Board will determine the rates for the different categories. It is very clear and no one has amended that. New subsection (5) in Clause 10(e) states very clearly that the contributions made to the Fund shall be mandatory. That meant that we had to delete Section 20 of the principal Act, which provided for the voluntary aspect.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I support the Leader of the Majority Party. We need to understand what we have done. As a Parliament, we have agreed to make contributions to this Fund mandatory. That is why Section 20 in the parent Act has been deleted. It does not exist. If you refer to voluntary contributions under Section 20, you are referring to something that we were attempting to delete through this Bill. There are no voluntary contributions. Therefore, we now need to move.

Something that needs to be done or observed by Members is that if you want to demonstrate the value of your education, you do it here and not with the history of where you come from. From what you say here, we can determine whether you went through vigorous training.

(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 Deputy Chairman (Hon. Christopher Omulele): The next one is by Hon. Koske. Is Hon. Koske in the House? Hon. Koske, you have the microphone. Proceed.

(Loud consultations)

Order Members! Hon. Sankok and the Leader of the Majority Party, Hon. Koske is behind you and needs to speak. Hon. Koske, proceed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): *(Spoke off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Is there a stranger in the House? Hon. Millie, are you on a point of order? Prosecute it.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I wanted to seek your clarification because the person you are saying is Hon. Koske is not Hon. Koske.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Who is he?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I do not know. He is a stranger in the House. Look at his head. This is a stranger in the House. He is not Hon. Koske.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, that is Hon. Koske. I know him. Proceed Hon. Koske. Member for Chepalungu, proceed. Let us make progress. Before the Member for Chepalungu makes his point, the issue on this matter that has passed is not for the Chairperson to like it or not, but for the Members to vote one way or another. You know what to do if you are not happy with it.

Hon. Member for Chepalungu, proceed.

(Loud consultations)

Hon. Gideon Koske (Chepalungu, CCM): Thank you, Hon. Deputy Chairman. Hon. Millie Odhiambo normally changes her hairstyle every now and then. I think she should also allow men to change their hairstyles whenever they want. I know I am looking handsome and that is why she had to mention it, but age is a limit on my side and her side.

Hon. Temporary Deputy Chairman, my amendment was on Clause 15 where it talks of the Bill proposing to repeal Section 20 of the Act to remove the voluntary contribution provision since contributions towards the Fund shall be mandatory. So, I thought of the youth in this country who are experiencing high unemployment rates than the rest of the population.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske, before you do that, just move your proposed amendment.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 15 and inserting the following new clause—

Amendment of section 20
of No. 9 of 1998.

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.*

15. Section 20 of the principal Act is amended by—

- (a) renumbering the current provision as subsection (1); and
- (b) inserting the following new subsections immediately after subsection (1)

“(2) Without prejudice to the generality of subsection (1), Regulations made under this section shall provide for—

- (a) the minimum amount payable to the Fund, which shall not be less than one hundred shillings; and
- (b) the procedure of reviewing the amounts of contribution payable to the Fund, which shall not exceed five years.”

I want to drop the amendment as per the Order Paper, the reason being that the figure that we wanted to bring down from Kshs500 to Kshs300 will be done by the regulator. That will help many Kenyans who are jobless and this will help the many Kenyans who are not in the formal sector.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Koske, let us just move together. Have I heard you say that you wish to drop your amendment?

Hon. Gideon Koske (Chepalungu, CCM): I wish to drop, so that it is covered by the regulator.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. That is enough

(Proposed amendment by Hon. Gideon Koske withdrawn)

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Milemba, you have something on this?

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Deputy Chairman, I beg to drop it.

(Proposed amendment by Hon. Omboko Milemba dropped)

(Clause 16 agreed to)

Clause 17

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gladys Wanga, you had proposed to delete this one and substitute with a new one, proceed.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 17 -

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph-

(1) The Board shall pay from the Fund, a benefit to an empanelled or contracted health care provider for an expense incurred by the provider, for the provision of health care services through the centralized healthcare provider management, to the number of beneficiaries determined by the Board.

(b) in paragraph (c) by inserting the following new subsections immediately after subsection (3)-

(3A) The Board shall determine and approve the applicable tariffs payable to the Fund under section 15(3A) and payable out of the Fund under subsection (1), to empanelled contracted health care providers for an expense incurred by the provider for the provision of healthcare services to the number of beneficiaries determined by the Board.

(3B) The Board shall use the approved risk spreading mechanism on benefits of outpatient, inpatient and work injury benefits as provided under section 15, Section 22 and Section 43.

There is a clause that later on, when the new clauses come, I will be introducing. It is on introduction of a centralised healthcare provider management system. Clause 17 is talking about the Board paying, from the Fund, an empanelled or contracted health care provider. It will be paying for an expense incurred by the provider with regard to the provision of health care services through the centralised healthcare provider management system.

The biggest challenge that the NHIF has faced is fraud. People at the NHIF collude with healthcare service providers and hospitals to make fake claims. So, the idea here is to introduce a centralised healthcare management system such that if I am treated, say, at a hospital in Homa Bay and biometrically, I am identified, then, immediately my record should be reflected in the centralised healthcare management system. That way, I cannot sit under a tree at the end of the month as the hospital manager and fill in forms of imaginary patients that I did not see.

That way, we will be saving money for the NHIF and for Kenyans. That is the gist of this amendment and the upcoming ones for purposes of dealing with that new clause that we will be introducing later on the centralised management system.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Bowen.

Hon. Kangogo Bowen (Marakwet East, JP): Thank you, Hon. Deputy Chairman. I support the amendment. If this part is implemented, especially the bit on putting an integrated system at the NHIF and the central system linked to every other health facility in the country, then we are going to do away with fraud and the big losses, which are massive in the NHIF. So, I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I fully support this amendment. I realise that when NHIF decided... The Member for Kesses likes distracting people. Fortunately, he is not the one making that decision.

Anyway, let me just put my thoughts to this that before the NHIF introduced biometrics, I am told the Fund was really struggling. In the last four months, the Fund has been making surpluses. That just demonstrates to you that without controls, we have been losing a lot of money to fraudsters. So, if we can centralise the system and computerise it, the better.

This is a well thought out amendment. I support it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kones Cheron, Member for Bomet East. He is not in the House. Let us have Hon. (Dr.) Pukose, and then we can proceed.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Chairman. I support the amendment by Hon. Wang, who is also the incoming governor for Homa Bay County. It is a very good amendment considering that for a long time, the NHIF has experienced a lot of fraud. There was a time when people established non-existent hospitals and started charging. We have such cases within the EACC. So, this is a good amendment and everybody should support it.

I thank you.

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

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

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

Hon. Kimani Ichung’wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, this is mine, not Hon. Duale’s. I am standing on my own behalf and on behalf of Hon. Duale. We have amendments to that clause, but I will begin with mine.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended—

- (a) in paragraph (c), by deleting the words “prescribe and” appearing in the proposed new subsection (3) and substituting therefor the word “prescribe”;
- (b) in paragraph (e), by deleting paragraph (c) appearing in the proposed new Section 5 and substituting the following —
- (c) the Fund shall cover the outstanding bill where private insurance cover’s limits for various benefits have been exhausted subject to the Fund’s applicable limits with respect to each benefit.

Besides the small ordering or deleting the words “prescribe and”, substituting just the word “prescribe”, the second bit is on Part (c) that states that the Fund shall cover the outstanding bill where private insurance cover’s limits for various benefits have been exhausted subject to the Fund’s applicable limits with respect to each benefit. This amendment is necessary to create the clarity that the NHIF or the Fund shall cover the outstanding bill where private insurance cover limits for various benefits have been exhausted, of course, subject to the Fund’s applicable limits with respect to each benefit. The amendment already exists in the Bill and has just been slightly amended for clarity. This is good because many Kenyans have both private insurance covers and the NHIF, that is now coming in as a universal cover for everybody. It is important that it is clear that when you exhaust, save for dialysis, for instance... Kenyans will bear me witness that only this week, people on dialysis treatment have expressed their concerns because of the challenges the NHIF has had in covering the benefit for dialysis. If your insurance cover covers Kshs10,000 and you exhaust it, and you need dialysis of about Kshs50,000, then if the NHIF can cover for you another additional Kshs30,000, you will benefit from the additional benefit from the Fund.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you have something to say. Proceed.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. As I rise to support, it is true that the two will complement each other. However, there is a concern. When it comes to matters of dialysis, the cost has been extremely high. Some of those inputs

in dialysis have been subjected to taxation. I think at a later stage, we must go further and exempt the consumables under dialysis. I am happy the Chair of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, is here because this has been a concern for many patients. Why do we exempt other issues, but when it comes to consumables under dialysis, they are subjected to taxation? I support, but we should do further amendments in the Finance Bill, so that the dialysis consumables are exempt from tax.

I thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele); Hon. Members, I just want to give this direction that if this particular amendment is carried, then the one that is proposed by Hon. Duale will fall.

*(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. Milemba, you had a proposed amendment to this clause.

(Proposed amendment by Hon. Aden Duale withdrawn)

(Proposed amendment by Hon. Omboko Milemba withdrawn)

(Clause 17 as amended agreed to)

Clause 18

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 18 of the Bill be amended in the proposed new Section 23 by inserting the words "upon request" immediately after the words "board shall".

The amendment is just to create clarity that the Fund shall pay for expenses incurred by the beneficiaries to the healthcare providers upon request to the board.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are several amendments to this clause. We will start with the one by the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): I can drop mine in favour of the Chair's. I do not know whether she covered all. Did you have Clause 20(c) and (d)? Do you have declared hospital healthcare provider?

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): I can move mine, and then if there is anything you need to add, you can add.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 20 of the Bill be amended—

(a) in paragraph (a) by deleting the word “ten” and substituting therefore the word “one”; and;

(b) in paragraph (b), by deleting the word “ten” and substituting therefor the word “one”.

The amendment seeks to reduce the penalty for the offences of making false statements or impersonation to Kshs 1 million so as to ensure that there is a difference in the penalty prescribed for individuals and for health facilities. Initially, individuals in health facilities were also being charged Kshs 10 million.

I beg to move.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Obviously, the first one falls once the one by Hon. Sabina Chege has been carried by the House.

However, I beg to move:

THAT, Clause 20 of the Bill be amended—

(c) in paragraph (d) by deleting subparagraph (i) and substituting therefor the following new subparagraphs –

(i) by deleting the words “any declared hospital” and substituting therefor the words “a health care provider”.

Hon. Temporary Deputy Chairman, the term that is used in the Bill is “healthcare provider”. Therefore, to be consistent with what is used in the Bill, we need to use the word “healthcare provider” as opposed to “declared hospital”.

(Question of amendment proposed)

(Hon. (Ms.) Odhiambo-Mabona consulted loudly)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. (Ms.) Odhiambo-Mabona, I have heard you.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, do you want me to go all the way?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, take care of your business on this clause, so that we can deal with it.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I will drop part (c)(ia).

I beg to move:

THAT, Clause 20 of the Bill be amended:

(d) in paragraph (e), by deleting the words “and at least three newspapers with nationwide circulation” in the proposed new subsection (5) and substituting therefor the words “at least two newspapers of national circulation and at the official website of the Fund.”

The amendment is necessary so as to have wide publication of the information on who the NHIF engages as healthcare providers so that the public can be aware of where to seek healthcare services. The website is just to recognise that we have really gone digital and many Kenyans get information through the website as opposed to newspapers. That is what I am intending to achieve with this amendment.

I thank you.

(Question of 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 20 as amended agreed to)

Clause 21

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments to this. We will start with the one by the Chairlady.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 21 of the Bill be amended—

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

“(aa) by deleting the word “Minister” appearing in the opening sentence and substituting therefor the words “Cabinet Secretary”;

(b) in paragraph (b) by deleting the words “under this Act”.

The amendment is necessary to retain the words “under this Act” so as to ensure that contributions referred to in this section are only the contributions made under this Act. The amendment on Cabinet Secretary is just to clean up.

(Question of amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): We will now move to the amendment by Hon. John Kiarie, Member for Dagoretti South.

Leader of the Minority Party, just hold on. You also have something on this, but let us deal with the one by Hon. Kiarie and then we shall come back to you.

Proceed, Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Chairman, so that I can go on record, I appreciate that I am now quite audible.

I beg to move:

THAT, Clause 21 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) —

- (ba) by inserting the following new paragraph immediately after paragraph (a)-
- (aa) the amount and rates of contributions payable by contributors into the Fund.

Hon. Temporary Deputy Chairman, we have to acknowledge the regulation-making power of this board when it comes to rates and contribution. This is also in line with how it is provided in Section 26 with specificity. So, if I move this and we as a House agree to this, we shall be fully recognising the regulation-making power of the board and allow it to make regulations on rates and contributions.

Thank you, Hon. Temporary Deputy Chairman.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, there is a similar amendment that is proposed to the clause by the Leader of the Minority Party.

Hon. John Kiarie (Dagoretti South, JP): Great minds think alike.

The Temporary Deputy Chairman (Hon. Christopher Omulele): So, if this one passes, then definitely the one by the Leader of the Minority Party will have been carried along.

Hon. Chairlady, do you have anything to say to this? I think it is proper that the Leader of the Minority Party says something on this.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, actually it is the same amendment. This is to make it very clear on the regulatory powers of the NHIF on contributions and the rates of contributions into the Fund. That it is the work that is going to be done by the board.

Section 26 on the responsibilities and powers of the board is not so clear. So, we are just providing specificity as to who determines the contribution and the rates of the amount to be contributed into the Fund. I support and so my amendment would fall. I wonder why he came ahead of me anyway.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mbadi, I did not see your amendment because you would have taken priority. Now that we are speaking the same language, there is no harm to it. The proper procedure would have been that you take priority.

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

Hon. Members, the effect is that the proposed amendment by the Leader of the Minority Party and the one by Hon. Rahim Dawood are carried along with the one by the Member for Dagoretti South.

(Clause 21 as amended agreed to)

Clause 22

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 22 of the Bill be amended—

- (a) in paragraph (b) by deleting the words “healthcare care” appearing in the new subsection (1) and substituting therefor the words “health care”;
- (b) in paragraph (c)—
 - (i) by deleting the words “considers fit” appearing in the opening statement of subsection (2) and substituting therefore the words “considers it necessary”;
 - (ii) by deleting the words “as it thinks fit” appearing in the new subsection (2)(a) and substituting therefore the words “considers it necessary”;
- (c) by deleting paragraph (e) and substituting therefore the following new paragraph—
 - “(e) inserting the following new subsection immediately after subsection (3) —
 - “(4) A health provider whose empanelment has been revoked under this section may apply to the Board for the review of the revocation in the first instance and, if dissatisfied by the decision of the Board upon review, appeal to the High Court against the revocation.”

The first one is just correcting typographical errors and ambiguous words. The amendment is just a clean-up. The second amendment deletes paragraph (e) on the regulation-making powers of the board, which is already provided in Section 29 of the Act.

Under the third amendment on paragraph (e) (4), we are saying that a health provider whose empanelment has been revoked under this section may apply to the Board for the review of

revocation in the first instance and, if dissatisfied by the decision of the Board upon review, appeal to the High Court against the revocation.

As the wording on the Order Paper says, it provides a review mechanism for a healthcare provider whose empanelment has been revoked by the Fund to have, in the first instance, a review mechanism within the Board, but if they are dissatisfied with the Board, they can move to court.

Hon. Temporary Deputy Chairman, as you are aware, and as has been alluded to by other Members, there is a lot of corruption within the NHIF. People are enlisted to join the panel of health service providers and a few unscrupulous members of staff at the NHIF revoke a hospital's empanelment without subjecting the hospital's management for review by whatever mechanism and the Board's approval of the same. In such instances, the only recourse for the hospital's management is going to court. Some rogue officers at the NHIF use that window to extort money from the service providers. We are, therefore, creating a mechanism within the Board, so that people can seek redress from the court. If they are not satisfied with the Board's decision, they can move to the High Court for a review of the revocation.

I beg to move and request that you put the Question.

(Laughter)

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, there are two other proposed amendments to this clause by Hon. Kiarie and Hon. Duale. They are similar. If this one is carried, the two other amendments will also have been carried along with it.

(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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Departmental Committee Chair.

Hon. (Ms.) Sabina Chege (Murang'a CWR): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 23 of the Bill be amended –

- (a) by deleting paragraph (c) and inserting the following new paragraph –
“(c) in subsection (3) by deleting the words “ten thousand shillings” and substituting therefor the words “one million shillings or to imprisonment for a term not exceeding twenty-four months” appearing in the closing statement.”

Hon. Temporary Deputy Chairman, this amendment seeks to correct a grammatical error caused by the amendment as contained in the Bill.

(Question of the amendment proposed)

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

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

(Clause 23 as amended agreed to)

Clause 24

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon Chair, you understand that if the amendment by Hon. Kimani passes, yours will fall. Hon. Ichung'wah, proceed.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 24 of the Bill be deleted and replaced with the following new clause—

Amendment of
Section 34 of
No. 9 of 1998

24. Section 34(1) of the principal Act is amended—

- (a) by inserting the following new paragraph immediately after paragraph (a) —
- (b) Government securities as may be approved by the National Treasury;
- (b) by deleting paragraph (b);
- (c) by deleting the proviso.

Hon. Temporary Deputy Chairman, part of the amendment is to have the NHIF Board invest any surplus funds they may have in Government securities as may be approved by the National Treasury. This is a standard provision in most State Corporations Acts and is also quite critical, especially for a Fund like the NHIF that comes in as a social security or social insurance Fund to protect Kenyans on healthcare matters. Previously, the NHIF and the NSSF lost so much of their surplus funds which were invested in the collapsed Euro Bank. It is necessary that whenever they have surplus funds, they are not left to invest in Ponzi schemes and merry-go-rounds, but in Treasury Bills and other Government securities so that the money helps to keep the cost of borrowing by the Government low.

The other amendment is to remove the provision allowing the Board to use the Fund's surplus funds to procure medical equipment for healthcare providers and advance money to the same. The Bill has such provisions, but during Second Reading debate, some expressed reservations. We also agreed that the Board can advance some money to public sector healthcare providers or even allow healthcare providers that are empaneled by the Board to procure equipment that will help the Fund.

Also importantly, the amendment seeks to restrict the use of the Fund's surplus funds in public healthcare providers in underserved or marginalised areas. Many of us in Nairobi and the surrounding areas are fortunate. There are far-flung parts of this country that are underserved by healthcare providers. The only facilities people can find in such areas are public health facilities. If we fund such facilities for them to purchase medical equipment, it would help. It will also help the Fund to bring down the cost of healthcare. The Members of the Departmental Committee on Health who have engaged with the NHIF will give the example of the Moi Teaching and Referral Hospital (MRTH), where people from Kapenguria all the way from Turkana and the larger North Rift access CT scan services. Previously, they would have to come to Nairobi or go to Nakuru and other places for such services. It makes healthcare provision for the Fund easier and it saves money for the Fund.

Further, the amendment is trying to ensure that the Board is not the one directly procuring, so that we avoid the situation we were in with Managed Equipment Services (MES) or the mess that was in the MES scandal. I say this having served as the Vice-Chair of the Public Investments Committee. The NHIF invested on land in Karen to build a referral hospital. The Fund paid out close to Kshs5 billion and it still has claims to consultants to develop the hospital. As of now, the NHIF has spent billions of shillings paying consultants, yet there is no hospital. Even the ownership of the land in respect of which the NHIF has been paying for consultancy services is in itself controversial. The Fund cannot tell that they truly own the land. We, therefore, want to avoid such a situation by ensuring that the NHIF is not involved in procurement of medical equipment. We want to allow a public hospital that needs a CT scan or a dialysis machine in an underserved area to use money advanced to it by the NHIF to procure such equipment. Of course, this is not free money. It is an advance that the NHIF would recover.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah, you have made your point.

(Question of the amendment proposed)

I see interest from Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I agree with the first bit, that they invest as indicated. However, the second bit of providing or buying equipment is not clear to me. It has to go. If it is deleted, it will be fine.

*(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 Deputy Chairman (Hon. Christopher Omulele): Hon. Chairlady, I had indicated that if this passes, your proposals would fall.

(Proposed amendment by Hon. (Ms.) Sabina Chege withdrawn)

(Clause 24 as amended agreed to)

(Clauses 25, 26 and 27 agreed to)

Clause 28

Let us have the Chairperson.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 28 and inserting the following new Clause—

Amendment of the
Second Schedule to
No. 9 of 1998.

28. The Second Schedule to the principal Act is amended—

(a) in paragraph 2—

(i) by deleting the word “Minister” appearing in sub-paragraph (a) and substituting therefor the words “Cabinet Secretary”;

(ii) by deleting the word “Minister” appearing in sub-paragraph (b) and substituting therefor the words “Cabinet Secretary”;

(b) in paragraph 3 by deleting the word “nine” appearing in sub-paragraph (4) and substituting therefor the word “five”.

The amendment seeks to ensure that the quorum for a meeting of the Board shall be five members since it shall be composed of nine members. The amendment also seeks to ensure the use of the term “cabinet secretary” as provided in the Constitution.

(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 be
inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is another proposed amendment to Clause 28 by Hon. Kimani Ichung'wah.

Proceed, Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 28 and substituting therefor the following—

Amendment of the
Second Schedule to
No. 9 of 1998.

28. The Second Schedule to the principal Act is amended—

(a) by deleting paragraph 2 and substituting therefor the following new paragraph—

Vacation of
office.

2. The office of a member of the Board, other than an *ex-officio* member,

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.*

shall become vacant if the member—

- (a) at any time resigns from office by notice in writing to the Cabinet Secretary;
- (b) has been absent from three consecutive meetings of the Board without permission from the Chairperson;
- (c) is adjudged bankrupt or enters into a composition scheme or arrangement with creditors;
- (d) is convicted of an offence involving dishonesty or fraud;
- (e) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shilling; or,
- (f) is incapacitated by prolonged physical or mental illness.

(b) in paragraph 3—

- (i) by deleting the words “and an honorary treasurer” appearing in sub-paragraph (2) and substituting therefor the words “from among members of the Board except *ex-officio* members of the Board”.
- (ii) by deleting sub-paragraph (3);
- (iii) by deleting the word “nine” appearing in sub-paragraph (4) and substituting therefor the word “five”;
- (iv) by deleting the word “standing orders” appearing in sub-paragraph (8) and substituting therefor the word “guidelines”.

(c) by deleting paragraph 5.

This is basically to create some clarity on the grounds upon which the offices of the members of the Board can become vacant. These amendments also ensure that vacation from office is on justifiable grounds. They also ensure that there is no deadlock in the decision-making by ensuring that the quorum is five out of the nine members of the Board, such that you are not left with a dysfunctional board as was the case with the Independent Electoral and Boundaries Commission at some point before we approved the appointment of the four new nominees.

The amendments also seek to remove the unnecessary bottlenecks on calling for meetings which shall be on notice unlike the current position which requires that at least three-quarters of the members have to request for a meeting. They are also necessary to remove archaic words such as “honorary treasurer” which only applied to societies and not a board.

The amendments have also removed reference to the common seal as that should be contained in the main Act and has hence been moved into the substance of the Bill as contained in Clause 9(a).

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I support the amendments, but I encourage Hon. Ichung’wah to move a further amendment to sub clause (b), because it states that one way you can lose your seat is when you have been absent from three consecutive meetings without permission from the chairperson.

(Hon. Kimani Ichung’wah consulted with Hon. (Ms.) Sabina Chege)

The Chairperson of the Committee is taking away the attention of Hon. Ichung'wah and I am referring to his amendment.

Hon. Kimani Ichung'wah (Kikuyu, JP): *(Spoke off-record)*

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): No. Men cannot multitask. I know that. I request Hon. Ichung'wah to move a further amendment to remove the words "without permission from the chairperson" and replace them with "without a written notice". These members are adults. Why should they get permission from the chairperson like they are in high school? That is not the standard. We have changed the standard on the Floor. Leader of the Majority Party, I have noticed that you like misleading people in the House. You need to provide standards which are constitutional.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, you may have a valid point, but you know that the Chairperson has no power to order Hon. Ichung'wah to make that amendment. You should have approached him so that...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): *(Spoke off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes. It is directly between you and him. However, the Chairman cannot intervene.

Hon. Members, let us just follow the procedure as it is.

*(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 28 as amended agreed to)

New Clauses 2A, 2B, 2C and 2D

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Chairperson of the Departmental Committee on Health to move the New Clauses 2A, 2B, 2C and 2D.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): *(Spoke off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): We are at the new clauses and are considering New Clauses 2A, 2B, 2C and 2D by the Chairperson.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): One minute, Hon. Chairperson.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 2—

Amendment of the
title to No. 9 of
1998.

2A. The principal Act is amended in the title by deleting the word "Hospital" and substituting therefor the word "Health".

Amendment of
Section 1 to No. 9

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.*

of 1998. 2B. The principal Act is amended in section 1 by deleting the word “Hospital” and substituting therefor the word “Health”.

Amendment of
Section 3 to No. 9
Of 1998.

2C. The principal Act is amended in section 3 by deleting the word “Hospital” appearing in subsection (1) and substituting therefor the word “Health”.

Amendment of
Section 4 to No. 9
Of 1998.

2D. The principal Act is amended in section 4 by deleting the word “Hospital” appearing in subsection (1) and substituting therefor the word “Health”.

(Question of the new clauses proposed)

(New clauses read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chair, you will have to move that they be read a Second Time, then you can make your explanation.

Hon. (Ms.) Sabina Chege (Murang’a CWR, JP): Hon. Temporary Deputy Chairman, I beg to move that the New Clauses 2A, 2B, 2C and 2D be read a Second Time.

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

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

(The new clauses were read a Second Time)

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

New Clause 3A

Hon. John Mbadi (Suba South, ODM): I beg to move, of course, in an amended form:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 3—

Amendment of
section 3 of No. 9
of 1998

3A. Section 3 of the principal Act is amended—

(a) in subsection (1), by deleting the word “Hospital” and substituting therefor the word “Health”;

(b) in subsection (2), by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) into the Fund—

(i) contributions under section 15;

(ii) such monies as may be appropriated by the National Assembly, for indigent and vulnerable persons;

(iii) gifts, grants or donations;

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.*

(iv) funds from the national government, county governments and their respective entities, or employers for the administration of employee benefits; and

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

Hon. Chairman, I beg to move that the New Clause 3A be read a Second Time, as proposed in the Order Paper. Of course, in an amended form. If you look at it, there is the “hospital” change to “health” that we have dealt with. But there is a further (b) down there which is clearly specifying what funds should go into this Fund.

If you look at what is provided there, there are contributions under Section 15 which if you go to Clause 10 of the Bill, it specifies and is very clear on what the contributions are. We are now adding “such monies as appropriated by the National Assembly for indigent and vulnerable persons”. So, we are making it clear that the National Assembly will contribute money to this Fund, to take care of the vulnerable. It is what we have been discussing the whole of this afternoon, that vulnerable people will be taken care of through specific funding from the Government. Of course, the National Assembly has to appropriate it.

Gifts, grants and donations is a standard practice. I do not have to dwell on that. Then, of course, we are adding funds from the national Government, county governments and their respective entities or employers for the administration of employee benefits, and funds from the post-retirement funds for provision of medical cover to retired employees where the contributor has elected to do so.

That is what I wanted to talk about a little. Currently, there is an arrangement where former Members of Parliament have with the NHIF where you can use even your pension to contribute to the NHIF and get an enhanced medical cover. So, we are providing for someone who has already retired. You need a lot of medical attention when you retire than when you are in employment. So, you can use your retirement funds for provision of medical cover through an arrangement with the NHIF. It is just putting into practice what we have already seen the former MPs doing through the former MP of Gatanga, who is leading that team. *Roho Safi* is his nickname.

I beg to move in an amended form. I do not know whether to go to 3B? I have moved it in an amended form, which now clearly specifies “indigent”. I know we added it in the Bill.

Hon. Amos Kimunya (Kipipiri, JP): *(Off-record)*

Hon. John Mbadi (Suba South, ODM): Exactly. Actually, I read it in full like that. That is the amendment. It is now in an amended form which has now included “indigent” which was not there in my earlier proposed amendment. So, I move it in an amended form.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Minority Party, you have done well.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 3B

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, again, so that Members do not get confused, we held some small *Kamukunji* with the Chair and we agreed that her amendment that is appearing on the Order Paper as New Clause 3A, is collapsed into my New Clause 3B. So, my New Clause 3B will take care of what Hon. Sabina Chege had proposed as New Clause 3A. So, the New Clause 3A for Sabina Chege is not there. My New Clause 3B is what I want to move in an amended form, although I do not know how we are going to go about this. They have left out something that we had agreed with Hon. Sabina Chege. But let me move it as it is.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 3 -

3B. Section 4 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsections—

Amendment of section 4 of No. 9 of 1998.

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

- (a) a Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, economics, health or business administration;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to health or his or her representative, appointed in writing;
- (c) the Principal Secretary for the time being responsible for matters relating to finance or his or her representative, appointed in writing;
- (d) one person nominated by the umbrella body representing the employers;
- (e) one person nominated by the umbrella body representing the trade unions;
- (f) two persons, not being governors nominated by the Council of County Governors, one representing the county public service boards and the other representing the county assembly public service boards;
- (g) one person, not being a public officer appointed by the Cabinet Secretary; and
- (h) the Chief-Executive Officer, who shall be an ex-officio member of the Board.

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

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

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

This is basically to spell out the composition of the Board. I am proposing that we have a chairperson appointed by the President. Of course, the qualification is put there. The second one is the PS in the Ministry of Health or a representative appointed by him or her. Part (c) is the Principal Secretary in the ministry for the time being responsible for matters relating to finance or his or her representative, reason being this being a Fund, certainly, you need representation from the National Treasury or the Ministry of Finance. Then (g) is one person nominated by the Federation of Kenya Employers to represent employers' interests because they are a major contributor - one person nominated by Atwoli, basically. Anyway, the Central Organisation of Trade Unions (COTU). Then, there will be one person not being a governor nominated by the Council of Governors (CoG). Again, county governments are going to make contributions. You need to take care of that interest. Then, two persons, not being public officers, appointed by the Cabinet Secretary, and of course, the *ex-officio* member who is the Chief-Executive Officer.

I remember we agreed, unfortunately the clerks have just given me this, with the Chair that we would include health professional oversight. There was a debate. I do not know how we are going to capture that, that we need to include doctors or health providers. The Chair can move that specific amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, the Leader of the Minority Party, there can be a further amendment.

Hon. John Mbadia (Suba South, ODM): That would be great. So, I think that is it. Of course, I have also specified that these other amendments are clearly specifying that the CS will have to gazette. We have also seen a lot of mischief of COTU, the FKE nominating their members and the CS, in his own unilateral decision, refusing to gazette them. So, this one is carried, obviously, there will be no other option. He or she has to gazette. Of course, we have also stated that the nominating body shall afford equal opportunity to men and women, the youth and persons with disabilities. I am sure Sankok will be happy with this; the minorities and marginalised groups and ensure regional balance.

Thank you, Hon. Temporary Deputy Chairman. I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): I just want to give this direction that having listened to the Leader of the Minority Party and his submission that they had agreed with Hon. Sabina Chege, if this passes, then the one by the Chair of the Departmental Committee on Health, namely, the New Clause 3A, would be taken care of. Therefore, if this passes, that New Clause 3A by the Chair of the Departmental Committee on Health will fall. The further amendment will be taken care of as we have agreed.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, there are nine members, and that is according to *Mwongozo*. I am talking about the further amendment to include health professionals. The Board will have 10 members. That is not viable. An *ex-officio*

member does not vote. Eight members are not acceptable. In case of a tie, they will not agree. So, a further amendment will be okay.

Again, according to *Mwongozo* Code of Conduct, there must be nine to 11 members. If the further amendment will bring the number to nine, then we will support it. But if the number will be 10, it will be against the *Mwongozo* Code of Conduct. In case of a tie in the vote, they will not make any decision. I have been told by Hon. John Mbadia, the Chairman of ODM, that the number will be nine. You know he is very intelligent.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Omboko Milemba, just hold on. I will give you an opportunity. I propose that we take the further amendment, so that we can move in an orderly way. Hon. Omboko, what is out of order?

Hon. Omboko Milemba (Emuhaya, ANC): I am appealing that we do not take the further amendment, so that if we have a gap and we are in agreement, it can be included in the second amendment. That is my proposal.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Chair may proceed.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I just wanted to confirm to Hon. Mbadia first that there is one person being nominated by the Council of Governors. That is confirmed.

Hon. Temporary Deputy Chairman, I beg to move that Clause 3B be further amended by inserting the following new paragraph immediately after paragraph (c)—

(ca) one person nominated by the Kenya Health Professional Oversight Authority.

I move.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Sabina, you will have to say that 'the proposed amendment by the Leader of the Minority Party be further amended'. That the proposed new clause by the Leader of the Minority Party be further amended.

Hon. (Ms.) Sabina Chege (Murang'a, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move that the proposed new clause by the Leader of the Minority Party be further amended by inserting the following new paragraph immediately after paragraph (c)—

(ca) one person nominated by the Kenya Health Professionals Oversight Authority.

I move.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): The first bite will be taken by Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman. I would like to kindly appeal to the Chair to consider the inclusion of teachers in this Board. They have been on the Board. They form a total of 400,000 members, and this amendment excludes them. Later on, it is likely to be a business that will come to this House. I know how teachers will feel about this. I am not speaking in order to look like I am greater, but I am appealing that this is a group of people that were represented on this Board and they are the only group of people whose representation is being removed. Therefore, they will miss representation. Originally, we had proposed that these kinds of boards in other jurisdictions can even be two, but we also abandoned our thinking, so that we do not have a specific board for workers and another one for the entire organisation. Our only request is that we give teachers a slot to be represented on the Board.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I really want to sympathise with Hon. Omboko. But it is also not true that it is only teachers who are being removed because even faith-based organisations had representatives and they have lost their representation on the Board. The fact that we have an umbrella body of employers, the FKE, on which the TSC qualifies to sit in, and the umbrella body representing unions, COTU, that teachers can join, I think they are well represented. In principle, because I had an amendment similar to that of Hon. Mbadī, we had an extensive engagement with the Chair and the Leader of the Majority Party and we agreed *kuongozwa na Mwongozo*. The *Mwongozo* policy is to have a lean board of nine members. The practice is consistent in most State corporations. This Fund being a State corporation, it is only fair that we leave it as it is.

I was also very uncomfortable with health professionals sitting on this Board. What if tomorrow actuaries also demand a slot, because this is now an insurance Fund? There is a case for actuaries to sit on the Board. There could also be a very strong case for *matatu* drivers and touts being contributors through their association, to also demand for a seat on the Board. Therefore, let us allow the amendment as proposed by the Chair. I support the further amendment by the Chair.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Let me start by supporting the further amendment. If we include the Kenya Health Professionals Oversight Authority, then, at least, you take care of a lot of the health providers that will be serving the Fund. However, in the original Clause 3A, there was the inclusion of the Director-General for Health or a representative. I have noticed that this has been left out. I really do not understand why we do this because eventually, this Fund pays for health services.

Hon. (Dr.) Robert Pukose (Endebess, JP): (*Spoke off-record*)

Hon. (Dr.) James Nyikal (Seme, ODM): I can hear Dr. Pukose saying that the PS for Health is included. I have been in these boards, and if you sit in a meeting with the PS and without the Director-General for Health, there are many technical issues that cannot be answered. I accept that the PS is included, but I really think the inclusion of the Director-General should be considered. We can move a further amendment. What is the insurance going to serve?

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

(New Clause 3B as amended agreed to)

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

(The new clause was read a Second Time)

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

PROGRESS REPORT

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) up to New Clause 3B and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Christopher Omulele) in the Chair]

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the Whole House has considered the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) up to New Clause 3B and approved the same with amendments and seeks leave to sit again tomorrow.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mover?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I also request Hon. Maoka Maore to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Maore?

Hon. Maoka Maore (Igembe North, JP): I second.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.02 p.m., the House stands adjourned until tomorrow, Wednesday, 29th September 2021 at 9.30 a.m.

The House rose at 7.02 p.m.