

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 28th September, 2023

*The House met at the County Assembly of Turkana,
Turkana County, at 2.30 p.m.*

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

PRAYER

DETERMINATION OF QUORUM
AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

(The Clerk-at-the-Table consulted the Speaker)

Proceed to call the first Order, please.

QUESTIONS AND STATEMENTS

STATEMENTS

The Speaker (Hon. Kingi): Hon. Senators, we will start with Statement pursuant to Standing Order 57(1), that is, the Statement by the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 3RD OCTOBER, 2023

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, this is a Statement by the Senate Majority Leader on the Business of the Senate for the week commencing Tuesday, 3rd October, 2023, pursuant to Standing Order No.57(1).

Mr. Speaker, Sir, pursuant to Standing Order No.57 (1), I hereby present the Business of the Senate for the week commencing Tuesday, 3rd October, 2023.

Before I proceed with the Statement, I take this opportunity to appreciate the hon. Senators for making time to travel to Turkana County for the Senate *Mashinani*. I celebrate all of you that have found time to be with us here in Turkana County.

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I believe that while here, we have interacted with the residents of Turkana County and devised mechanisms to provide solutions to challenges that we have encountered. The interventions that we will make will go a long way to have a positive impact on the devolution and the great people of this County.

I would like to also take this opportunity to thank the hon. Senators for their contributions to the business that had been lined up for consideration at this Senate *Mashinani* week. Particularly, I thank the hon. Senators for their contributions on The Facilities Improvement Financing Bill (Senate Bills No.43 of 2023). It is now being transmitted to the National Assembly.

As indicated in today's Order Paper, we still have a lot to do. At Order No.8 and No.9, we have Bills that are in the Committee of the Whole stage. I would like to acknowledge significant progress that has been made in dispensing with this business. I urge that we continue to uphold the same spirit.

Mr. Speaker, Sir, I celebrate even further that in the last two or three days, we have closed ranks on matters of national importance and agreed on virtually every vote that we have taken as a House and moved forward. I urge that we carry on with this spirit even as we return to our normal Chamber; that we shall consult, agree and respect each other's opinion.

In terms of other legislative business, there are businesses that are pending consideration in the Senate. There are 20 Bills that are at the Second Reading stage, while seven, including the two that are listed in the today's Order Paper, are at the Committee of the Whole stage. Twenty five Motions are pending conclusion, while 18 Petitions are due for reporting by respective standing Committees.

Additionally, 213 Statements that are under Standing Order Nos.52 (1) and 53 (1) are pending conclusion by the relevant committees, while 14 Questions are pending, four of which have been scheduled for response by respective Cabinet Secretaries on Wednesday, 4th October, 2023.

As we are all aware, our work as legislators has an impact on the people we represent. I, therefore, continue to emphasize the need to timelessly dispense with the business before the Senate. I urge the committee chairpersons to rally Members of their respective committees and table reports within the timelines set in the Standing Orders.

On the other hand, party whips are encouraged to continue ensuring that Senators are available in the House to consider and pass legislative business when due. This collective effort will enable us to realize our mandate as a Senate.

Mr. Speaker, Sir, at its meeting held on Tuesday, 26th September, 2023, the Senate Business Committee (SBC) approved the next set of Questions to be scheduled in the Order for Wednesday, 4th October, 2023.

The summary of the Questions and the Cabinet Secretaries to appear is as follows:

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Question No.001 to the Cabinet Secretary for Public Service, Gender and Affirmative Action by Sen. (Dr.) Murango on categorization of Mwea as a hardship area;

Question No.051 to the Cabinet Secretary for Youth, Sports and Arts by Sen. Chute on the status of construction of Marsabit Stadium;

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Question No.053 to the Cabinet Secretary for Youth, Sports and Arts by Sen. Cherarkey on Team Kenya's participation in the World Athletic Championship in Budapest; and,

Question No.055 to the Cabinet Secretary for Defence by Sen. Chute on participation of Kenya in the African Union Mission to Somalia (AMISOM).

I am aware that there are some challenges in the implementation of Question Time, particularly availability of Cabinet Secretary. My office together with the Senate leadership in general, is addressing this matter together with the Executive, to ensure that the Questions are responded to as scheduled.

It has been a taxing week for all of us and I believe we have all taken advantage of the week in the great County of Turkana, the cradle of mankind, to learn and make positive impact in various areas of our work.

I believe that, as a Senate, we have appreciated unique challenges that Turkana County and other counties in the arid and semi-arid areas face and we will develop legislative interventions to address their plight. This is something that I believe colleagues have noted and do appreciate the unique challenges.

It is one thing to sit in Nairobi and argue on division of revenue, population and land size and a different ballgame altogether when you sit here in Turkana and appreciate the challenges that face the people of Turkana. I believe that Senators will return to Nairobi fully aware of the challenges that many of our arid and semi-arid regions continue to face.

Finally, when we went to Kitui County for the second edition of Senate *Mashinani*, one of the greatest impacts that we left was that our Justice and Legal Affairs and Human Rights Committee was able to visit Kitui Prison and engaged with the people that had pending bail hearings and rulings. Eventually, they were able to secure the release of those citizens. That is a lasting impact that has remained with the people of Kitui County.

As we leave Turkana, it will be important for the various committees to ask themselves what it is that is of impact to the people of Turkana and Kenya as a whole that they leave while they depart from this particular county.

I am aware that the committees have noted the challenges that are faced by the people of Turkana. I have appreciated the comments that I have seen from them. I have seen, for example, comments from Members of the Committee on Agriculture, Livestock and Fisheries, who are scheduling to invite the Cabinet Secretary for Agriculture, Livestock and Fisheries to respond on why the nationally celebrated fertilizer subsidy programme has not yet commenced in Turkana County. Turkana is part of Kenya and they deserve to get the fertilizer subsidy programme.

Mr. Speaker, Sir, we interacted with the Cabinet Secretary for Energy yesterday morning. It cannot be that one of the greatest sources of energy that is used across the country is energy deficient and the citizens of this county have to survive without the supply of the national grid in many of their homes and even institutions such as the county assembly.

I hope that as the Cabinet Minister promised this House, he is going to ensure that that question is resolved and the people of Turkana will have the Senate of the Republic

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to thank for speaking up on the issue of energy crisis in this county and ensuring that it is resolved.

I know that colleagues have noted various things that they will seek to address in their various committees as we return to Nairobi, to ensure that the meaningful impact of our visit is felt for years down the line and people will appreciate that it was not just in vain that we came to the County of Turkana.

Finally, I take this opportunity to thank the Turkana County Government led by Governor Jeremiah Lomorukai and the Speaker of this Great County Assembly, the Hon. Christopher Nakuleu; the Members of the Turkana County Assemblies, the Clerk and the staff of this great County Assembly for their warm hospitality during our stay in Turkana.

We can never say thank you enough. We shall continue to collaborate and work together with you, so that you may realize your aspirations as a people.

I hereby lay the Statement on the Table of the Senate.

I thank you, Mr. Speaker, Sir.

(Sen. Cheruiyot laid the document on the Table)

The Speaker (Hon. Kingi): Thank you. We will now move to the Statements pursuant to Standing Order No.52 (1).

Proceed, Sen. Wafula.

PLIGHT OF KENYANS STRANDED IN MALAYSIA

Sen. Wafula: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52 (1) to make a Statement of a matter of general topical concern, namely, the plight of five Kenyans who are stranded in Malaysia.

The five Kenyans, namely; Sospeter Ngahu from Bungoma County, Dickson Amin and David Nyamanga from Kisumu County, Geoffrey Maina from Kiambu County and Charles Gitonga from Nairobi City County travelled to Malaysia on the promise of well-paying jobs, only for them to become victims of global trafficking in humans. The five are now stranded in Malaysia and are living in very deplorable conditions.

The victims were taken to Malaysia in the name of getting well-paying jobs by an agent working for Elite Job Hub21 Agency, who organised for everything concerning the travel and other fees for the victims.

They were, thereafter, handed over to another Kenyan in Malaysia, who took them to a Pakistani, who later handed them over again to an Indian, who thereafter, handed them over to a Chinese company, J & T Cargo, where they settled and started working, albeit without any signed contracts. They worked and did several jobs, including loading and offloading heavy cargo such as fridges in the company's warehouse.

Mr. Speaker, Sir, the five worked at J & T Cargo for two months. They worked for a 12-hour shift every day without proper meals. Their lunches comprised five slices of bread with 250 millilitres of milk. They were not provided with proper shelter and worked without pay.

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After the two months, when they decided to ask for payment from their Chinese employer, they were told that they could not be paid because they had been bought and should be ready to work for three years before a decision on whether they should be paid could be made. After another two months while working during a night shift, the five were thrown out by the employer without any compensation for their labour.

Mr. Speaker, Sir, in order for the five to leave Malaysia, they need to pay a fine for overstaying their visa as they were not issued a work permit as earlier communicated to them. They now need money to pay for the overstay fine and flight tickets to come back home. Some of them had taken loans back home in Kenya in order to pay for the relevant agency fees for them to travel to Malaysia. Due to their lack of funds, the five are stuck in Malaysia.

Mr. Speaker, Sir, the five have written to the Kenyan Embassy in Kuala Lumpur, Malaysia, seeking assistance, but have not received a response. They currently stay in a forest during the daytime and sleep in one of the warehouses near the forest at night.

Mr. Speaker, Sir, as a Senator in this House, I am concerned. This situation raises questions:-

(1) Are we still in the era of slave trade?

(2) Is the Ministry of Foreign and Diaspora Affairs aware of the problems that the five Kenyans are going through in Malaysia, and if yes, what steps have they taken to save the Kenyans?

(3) What is the role of the Kenyan Embassy in Malaysia in ensuring that the five Kenyans are facilitated to come back to Kenya?

Mr. Speaker, Sir, I, therefore, urge the Standing Committee on Labour and Social Welfare, in collaboration with the Ministries of Foreign and Diaspora Affairs and that of Interior and National Administration to inquire into this matter and ensure that the people who are involved in human trafficking activities are dealt with.

I thank you.

The Speaker (Hon. Kingi): Thank you, Sen. Wafula. Senator, that Statement could have been raised appropriately under Standing Order No.53(1), so that we can commit it to the relevant committee. However, I will invoke my discretion pursuant to Standing Order No.1 and commit that Statement, so that the situation is probed and the five Kenyans get justice.

I thank you.

(Loud Consultations)

Yes, Sen. Kinyua.

Sen. Kinyua: Mr. Speaker, Sir, I have listened to Sen. Wafula and he has asked whether he can commit to the Standing Committee on Labour and Social Welfare, but that matter is not within Kenya.

I thought it was supposed to be committed to the Standing Committee on National Security and Foreign Relations. Just a point of clarification.

The Speaker (Hon. Kingi): Sure! It shall be committed to the relevant committee. He has listed a number of committees, including that of foreign affairs. The

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lead committee should be the Standing Committee on National Security and Foreign Relations.

I do not see the host Senator here. He had a Statement to make under that Standing Order. We shall defer that Statement.

UNTAPPED POTENTIAL OF LAKE TURKANA'S
BLUE ECONOMY

(Statement deferred)

The Speaker (Hon. Kingi): Nominated Senator, Sen. Mumma is also not present. She left yesterday. Are you holding brief for Sen. Mumma?

Sen. Betty Montet: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed.

SUSTAINABLE EXPLORATION OF NATURAL
RESOURCES IN TURKANA COUNTY

Sen. Betty Montet: Thank you, Mr. Speaker, Sir. I am holding brief for Sen. Mumma.

I rise, pursuant to Standing Order No.52 (1), to make a statement on a matter of county-wide and general topical concern, namely; the sustainable exploitation of natural resources in Turkana County.

Mr. Speaker, Sir, Articles 69(1) (a) and (h) of the Constitution require the State to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits. Furthermore, Article 56 obligates the State to implement affirmative action programmes, to ensure that marginalised groups and minorities are adequately represented in governance and other spheres of life; access special opportunities in employment, educational and economic fields; develop their cultural values, languages and practices; and, have reasonable access to water, health services and infrastructure.

Mr. Speaker, Sir, the historical marginalisation of Turkana County has perpetuated the inability of the local community to fully benefit from its abundant resources and tap into the transformative potential of sustainable resource exploitation.

Mr. Speaker, Sir, Turkana County covers 77,000km² in size and approximately 65,000km² of this is arable landmass, holding immense potential for both the county and the nation at large, if exploited sustainably and equitably. Research conducted by the Kenya Institute for Public Policy Research and Analysis (KIPPRA) established that Turkana's key natural resources include water from Turkwel and Keiyo/Kerio rivers and Lake Turkana, mineral deposits, including oil and gas, limestones, gold, mercury and graphite among others, forests, wildlife and renewable energy, such as geothermal, solar and wind.

Mr. Speaker, Sir, the exploitation of these resources has, however, been hampered by internal and external security issues affecting Turkana County, including conflicts with

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neighbouring communities and cross-border issues with South Sudan, Uganda and Ethiopia. These internal and external security issues have affected activities in Turkana, such as fishing, pastoralism, and mining resulting---

(Several Senators spoke off record)

The Speaker (Hon. Kingi): Order, Senators. Senator for Lamu County, I could hear you yelling. Kindly allow the Senator to make her Statement in silence.

Sen. Betty Montet: These internal and external issues have affected activities in Turkana such as fishing, pastoralism and mining resulting in limited development in the county despite the abundance of resources.

Mr. Speaker, Sir, without affirmative measures and programs to increase investment for sustainable exploitation of these natural resources, Turkana County will remain a marginalised area with limited development and benefits to its people, future generations and the nation at large. It is important that community engagement and participation be incorporated in decision-making processes regarding the sustainable exploitation of natural resources, to ensure that the interests and rights of the local community are protected and promoted.

Mr. Speaker, Sir, it is from the foregoing that I call upon the Standing Committee on Lands, Environment and Natural Resources to seek an audience with the Council of Governors (CoG) and Cabinet Secretaries for Environment, Climate Change and Forestry, Energy and Petroleum, Mining and Interior and National Administration with a view to -

(1) Assess the affirmative actions and programmes put in place, if any, to facilitate the sustainable exploitation of natural resources in Turkana County.

(2) Outline measures taken by both the national Government and Turkana County Government to protect and safeguard Turkana County residents from insecurity.

(3) Explore avenues for international cooperation to address cross-border issues and enhance security in the region.

(4) Finally evaluate the extent of community engagement in decision-making processes regarding the exploitation of natural resources in Turkana County and recommend measures to enhance community participation.

I thank you on behalf of Sen. Mumma.

The Speaker (Hon. Kingi): Statements pursuant to Standing Order No.53(1).

Sen. Wamatinga.

REGULATION OF SCRAP METAL INDUSTRY IN KENYA

Sen. Wamatinga: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to request a Statement on the regulation of the scrap metal industry in Kenya.

In the Statement, the Committee should-

(1) State plans by the Government to enact strict regulations on the scrap metal industry to combat the widespread vandalism of public properties, which threatens the nation's infrastructure and security.

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(2) Outline measures in place, if any, to consider elevating vandalism to the status of an economic crime with more severe penalties and harsh consequences.

CIRCUMSTANCES LEADING TO DEATH OF
MASTER CALEB ODANGA

Sen. Wamatinga: Further, Mr. Speaker, Sir, I rise, pursuant to Standing Order 53(1), to seek a Statement from the Standing Committee on Education concerning the death of Master Caleb Odanga, a 7-year-old student from Green Angels Academy in Kiambu, during a school trip. In the Statement, the Committee should-

(1) Investigate the unfortunate incident where Master Caleb Odanga suffered fatal head injuries after falling from a merry-go-round, disclosing the individuals or entities accountable.

(2) Enumerate the existing safety protocols during school excursions, stating whether learners are insured against such accidents while on school excursions.

(3) Identify the parties responsible for organising and financing counselling for Caleb's devastated mother.

MEASURES TO SAFEGUARD FAMILIES OF
BRAIN STEM DEATH PATIENTS

Sen. Wamatinga: Mr. Speaker, Sir, I rise, pursuant to Standing Order 53 (1), to seek a Statement from the Standing Committee on Health on the institution of measures to safeguard families of patients in brain stem death conditions.

In the Statement, the Committee should -

(1) State plans in place, if any, by the Government to develop policies and institute measures aimed at preventing hospitals from exploiting families of brain stem death patients by unnecessarily prolonging life support services.

(2) Outline measures in place, if any, to safeguard and protect vulnerable families from undue financial and emotional burdens when dealing with brain stem death patients.

(3) Recommend the development of comprehensive guidelines that promote ethical and compassionate treatment of patients in brain stem death conditions, to safeguard the interests of families and the dignity of patients.

The Speaker (Hon. Kingi): Thank you. I will allow limited comments on the three Statements.

Sen. Munyi Mundigi, proceed.

(Sen. Munyi Mundigi spoke off record)

The Speaker (Hon. Kingi): Okay. Sen. Oketch Gicheru, you have the Floor.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I will make few comments on the Statement by the Senator for Bungoma, Sen. Wafula.

It is saddening to learn from the Floor of this House that Kenyans can be treated like slaves. They were taken out of this country and, in whichever manner, shared their

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plight in Malaysia with a Member of this House. It seems like the Cabinet Secretary in charge of this country's foreign affairs is completely unaware.

This is unfortunate because by the time information is shared from Malaysia to this House, I would imagine that numerous efforts would have been made in various places to make sure that those Kenyans are treated like human beings. This shows how lackadaisical the Cabinet Secretary in charge of foreign affairs is, without sounding political, because this is an emotive issue in the sense that these Kenyans left the country innocently in search of greener pastures. This is to the extent that they were gullible and treated in a way that they thought would be better for them at the end.

I urge that even if questions are asked to any other Ministry than the Ministry responsible for foreign affairs, that Ministry treats it as a diplomatic issue; an issue that needs to be escalated with our embassy in Malaysia to liaise with the relevant institutions in the Malaysian Government.

These Kenyans have to be brought back home within specified time without them facing further abuse in Malaysia. This should not happen in a country where we pride ourselves to be a leading economy in East and Central Africa. It is happening when our country is releasing policemen to assist Haiti to fight crime of this nature and these kinds of abuses.

How are we helping another country to fight crimes and abuses, including using taxpayer's money to get the police to Haiti, when our own are suffering in Malaysia. It is a shame we must call out.

This is a shame to the Cabinet Secretary for Foreign and Diaspora Affairs and the Cabinet Secretary for Labour and Social Protection. This must stop. I hope the relevant Committee will ensure there is a timeline and a commitment to make sure that those Kenyans comeback home.

The Speaker (Hon. Kingi): Sen. Kinyua, proceed.

Sen. Kinyua: Asante, Bw. Spika kwa kunipa fursa hii. Ni jambo la kuvunja moyo sana kwamba wakenya wametoka nchini kutafuta ajira kwenye nchi za ng'ambo na wanakumbwa na mashaka. Hata hivyo, Serikali ya Kenya Kwanza tayari inajaribu kuangazia mambo haya.

Kwa mfano, Serikali tayari imeajiri wauguzi wa nyanjani zaidi ya 100,000. Vile vile, Serikali imepeana pembejeo ndiposa wakulima wetu wapate afueni.

Kamati itakayoangazia swala hili, yafaa iiangazie kwa undani ili tupate suluhu la kudumu.

Shule zetu zinapaswa kuwalinda Watoto wanaposafiri. Seneta wa Nyeri, amesoma Kauli na kuashiria kuwa kuna wanafunzi waliosafiri na kupata shida na hatimaye mmoja wao akafa.

Walimu wanaposafiri na watoto wanafaa kuwaangalia ili wasipate madhara. Kamati ya Elimu ambayo inaongozwa na Sen. Joe Nyutu yafaa iiangazie swala hili ili kubaini yaliyotukia; kosa lilitokea wapi? Ikiwa kosa litapatikana, Kamati ipendekeze suluhu la kudumu.

The Speaker (Hon Kingi): Hon. Senators, for the convenience of the House, pursuant to Standing Order 45(2), you will allow me to rearrange the sequence of today's Order Paper. We will prosecute a Bill in the Committee of the Whole in Order No.9.

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Time allowing, we may prosecute the two Bills that are ready to be committed to the Committee of the Whole. We will straightaway move to handle Order Nos.9 and 8. Once we are done with those two, we will come back and flow with the Order Paper as presented today.

(The Clerk-at-the-Table consulted the Speaker)

Proceed to call Order No.9.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Veronica Maina) in the Chair]

THE PRIMARY HEALTH CARE BILL (SENATE BILLS NO.44 OF 2023)

The Temporary Chairperson (Sen. Veronica Maina): Hon. Senators, we are now on the Committee of the Whole on the Primary Health Care Bill (Senate Bills No.44 of 2023).

I request the Clerk to call out the Clauses.

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clause 5

The Temporary Chairperson (Sen. Veronica Maina): I invite the Chairperson of the Standing Committee on Health, represented by Sen. Okenyuri to present the amendment to the House.

Proceed, Sen. Mariam Omar in place of Sen. Okenyuri.

Sen. Mariam Omar: Madam Temporary Chairperson, I beg to move:

THAT Clause 5 of the Bill be amended-

(a) in subclause (2) by deleting the word “and” appearing immediately after the words “of first aid” in paragraph (e) and substituting therefor the word “for”.

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(Question of the amendment proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clauses 6 and 7

(Question, that Clause 6 and 7 be part of the Bill proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clause 8

(Question, that Clause 8 be part of the Bill proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clause 9

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Osotsi to move these amendments. Hon. Senators, we are constrained for time, so, take the minimum time. Sen. Cheptumo will be next after Sen. Osotsi.

Sen. Osotsi: Madam Temporary Chairperson, I had proposed an amendment as per the Order Paper, but I think my colleague Sen. Mungatana has comprehensively covered that Part (1) of Clause 9. Therefore, I will only retain Part (b), which is in subclause (4) by deleting the words “guidelines” appearing immediately after the words “the county legislation” and substituting therefore, the words “and regulations approved by respective county assembly”.

The import of this is so that we do not allow the Chief Executive Committee Member (CECM) just to give guidelines but then, this guideline must be anchored in law.

I am proposing that instead of guidelines, there should be regulations approved by the respective County Assembly, but I am dropping the (a) part of it to adopt Sen. Mungatana’s proposal.

(Proposed amendment by Sen. Osotsi withdrawn)

The Temporary Chairperson (Sen. Veronica Maina): Sen. Cheptumo not Mungatana.

That is okay. The comments and the part that you have dropped is noted.

Sen. Cheptumo: Thank you, Madam Temporary Chairperson. I propose that ---

Sen. Mungatana MGH: On a point of Order, Madam Temporary Chairperson.

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The Temporary Chairperson (Sen. Veronica Maina): What is your point of order, Sen. Mungatana?

Sen. Mungatana: Madam Temporary Chairperson, it is on the issue that my neighbour Sen. Osotsi was talking about. It is a question of public participation. It has not been dealt with by Sen. Cheptumo. So, he is right.

Sen. Cheptumo: Madam Temporary Chairperson, my amendment is different.

The Temporary Chairperson (Sen. Veronica Maina): Just one-minute, Sen. Cheptumo.

Sen. Mungatana, what you are proposing is not under that Clause. It is under the New Clause 9A. So, as far as Clause 9 is concerned, Sen. Osotsi has addressed the issues. We want to hear Sen. Cheptumo. You will address us when we get to the New Clause 9A.

(Sen. Sifuna walked in with a Turkana traditional stool)

Sen. Kinyua: On a point of Order, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): What is your point of order?

Sen. Kinyua: Madam Temporary Chairperson, the Senator of Nairobi City County has just come in with some weapon.

(Loud consultations)

No, it is important. This is a House of Order.

The Temporary Chairperson (Sen. Veronica Maina): Senator resume your seat. Sen. Sifuna, can you cede that weapon; seat, to the Serjeant-at-Arms.

Sen. Sifuna: Madam Temporary Chairperson, I do not know what weapon you are referring to.

The Temporary Chairperson (Sen. Veronica Maina): It is the item you came in with; the gift.

Sen. Sifuna: Madam Temporary Chairperson, I have been told I cannot hand it over because it is a symbol of authority.

Madam Temporary Chairperson (Sen. Veronica Maina): Everyone has given out their symbols because all the Senators were given, but we have ceded them to the Serjeant-at-Arms. Let us not waste time. Thank you, Serjeant-at-Arms.

We should proceed.

(Loud consultations)

Sen. Cheptumo, proceed.

Sen. Cheptumo: Madam Temporary Chairperson, I propose that Clause 9(2) (f) be amended by deleting the word “of” appearing immediately after the words “the national languages” and substitute it with the word “and”.

The justification is simple. The two languages are English and Swahili, but we must add the local language for the Community Health Promoters (CHPs). That was the basis of my amendment.

(Question of the amendment proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): Division will be at the end. Next.

Clause 10

(Question, that Clause 10 be part of the Bill, proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): I request Sen. Osotsi to address the House on the proposed amendment.

Sen. Osotsi: Madam Temporary Chairperson, my amendment on Clause 10 (3)(f) is meant to delete the provision on data protection. You will notice that that provision only applies to the CHPs. The intention is to delete that and have a global clause according to my proposed amendment.

This will take care of all data protection issues in this Bill, which is not limited to the CHPs only, but any other person involved in managing data, including the county and the national Government.

(Question of the amendment proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): Division will be at the end. Next.

Clause 11

(Question, that Clause 11 be part of the Bill proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): Division will be at the end. Next.

Clause 12

(Question, that Clause 12 be part of the Bill proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Mungatana to address the House on the amendment.

Sen. Mungatana, MGH: Thank you, Madam Temporary Chairperson. The proposed amendment to Clause 12 is after the word “training”. The justification is that if

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we leave it open, county governors may not take these people for training at all and will always look back and say that they do not have money.

If we make it compulsory that they should at least go once for training, it will ensure that we have quality and trained health promoters.

(Question of the amendment proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): Division will be at the end. Next.

Clause 13

(Question, that Clause 13 be part of the Bill, proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): I invite the Vice Chair of the Standing Committee on Health to present that amendment.

Sen. Mariam Omar: Madam Temporary Chairperson, I propose Clause 13 be amended by deleting the introductory clause and substituting therefor the following new introductory clause -

‘The Cabinet Secretary shall- ‘

Madam Temporary Chairperson (Sen. Veronica Maina): For Clause 13, there are different proposals on amendments by Sen. Osotsi, Sen. Oketch Gicheru and Sen. Mungatana. The amendments proposed by the three Senators are safely captured by the proposed amendments by Sen. Oketch Gicheru.

I will give each Senator half-a-minute to present their amendments and to consider dropping them in favour of those by Sen. Oketch Gicheru which capture and go beyond the proposed amendments.

Sen. Wambua: Madam Temporary Chairperson, you need to clarify something for the record. When the Vice Chair stood up, she proposed that Clause 13 be passed as amended. Which version was she talking about? There is need for clarification on that. Was she supposed to be proposing or moving an amendment?

The Temporary Chairperson (Sen. Veronica Maina): She is moving an amendment which has not been closed. That is why I have informed the House that there are three other Senators who have moved proposals for amendments and further informed the Senators that their amendments could easily be captured by what is being proposed by Sen. Oketch Gicheru because his amendments expand beyond their proposed amendments.

I will give each the time I had earlier stated so as to see whether we can accommodate all of them under one amendment. We will start with Sen. Osotsi then Sen. Mungatana and Sen. Oketch Gicheru.

Sen. Osotsi: Thank you, Madam Temporary Chairperson. I agree that I will drop my amendment because the import was to delete 13(f). I agree that it infringes on the Public Finance Management (PFM) Act and the Constitution as well.

It reads:

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“Coordinate, with the National Treasury and other development partners, for the mobilization and allocation of adequate resources to support the realization of accessible, acceptable and equitable primary health care services.”

That is not the role of either government, but Sen. Oketch Gicheru proposes to amend it thus:

“The national Government shall appropriate and transfer to the County Revenue Fund (CRF) of respective county governments such monies as shall be required for effective performance of the function under this Act.”

That effectively covers it. I, therefore, support it.

Madam Temporary Chairperson (Sen. Veronica Maina): That is the same proposition that was made by Sen. Mariam Omar on behalf of the Chair of the Committee on Health.

Sen. Mungatana!

Sen. Mungatana: Madam Temporary Chairperson, there are two proposed amendments under Clause 13 from my side. The first one is the introductory clause. Instead of having what the committee is saying, we make it clear and say:

“The Cabinet Secretary (CS) shall provide policy direction for the effective provision of primary healthcare services by county governments and shall, for these purposes”.

The way the committee has said, saying ‘CS shall’ is not sufficient but if we put it that ‘the CS shall provide policy direction,’ then that captures the spirit of the Constitution.

On the second bit, I concede that the proposition by Sen. Oketch Gicheru covers my concerns. So, I will drop mine.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru, please proceed.

Sen. Oketch Gicheru: Madam Temporary Chairperson, I start with the concern by Sen. Mungatana. That one appears exactly as you have proposed. If you look at my proposal on that introductory clause, it reads ‘the CS shall provide policy direction for the effective provision of primary healthcare services by county government and shall for this purpose.’

I also do agree that the concerns of (f) by Sen. Osotsi are taken care of. However, I want to separate the issue of management *vis-à-vis* the issue of policy formulation. Therefore, I chose to change Part 4 in terms of the heading so that it does not mix the role of national and county government into a convoluted idea of management. Such that Part 4 will read the role of national Government in primary healthcare policy and therefore, there are consequential clauses that do affect.

I believe they are the consequential clauses that Sen. Osotsi has talked about but then it also touches on subclause 2 that says we delete the word ‘counties’ appearing immediately after the words ‘data from the’ in paragraph (c). This is because that part will only be dealing with national Government’s role. We do not need to have county in that role. Now we remain with counties just at the management.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Mungatana, does that capture part (a) of your amendment?

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Sen. Mungatana, MGH: Yes. It is capturing all the concerns. So, we are good.

The Temporary Chairperson (Sen. Veronica Maina): The proposed amendments by Sen. Osotsi and Sen. Mungatana on Clause 13 are dropped.

*(Proposed amendments by Sen. Osotsi and
Sen. Mungatana withdrawn)*

Chairperson Committee on Health, do you have any concern? The amendment is as per Sen. Oketch Gicheru's proposal.

Sen. Mandago: Madam Temporary Chairperson, I have no concern.

The Temporary Chairperson (Sen. Veronica Maina): The proposal by the Chairperson of the Committee on Health is equally dropped.

(Proposed amendment by the Health Committee dropped)

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clause 14

(Question, that Clause 14 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Osotsi, Sen. Oketch Gicheru and Sen. Mungatana who have proposed amendments to address the House on these Clauses. The Chair will be the last to address the House on that Clause 14. Please proceed in that order.

Sen. Osotsi: I beg to move-

THAT the Bill be amended by deleting Clause 14.

The importance of this amendment is to do away with the National Advisory Council that has been proposed in Clause 14. From the contribution of many Members, I thought that this was going to violate the Constitution and be a quiet takeover of the functions of counties. This is because primary healthcare is devolved. As a substitute to this, Clause 16 talks about a similar council at the county level. We would rather maintain the advisory council at the county level but do away with the national one.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru, please proceed followed by Sen. Mungatana.

Sen. Oketch Gicheru: Madam Temporary Chairperson, I also had proposed---

(Sen. Methu consulted loudly)

May I be heard in silence. Some people are excited to be Chairpersons of something.

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The Temporary Chairperson (Sen. Veronica Maina): Can the Hon. Member be heard in silence? Sen. Methu, please maintain silence.

Sen. Oketch Gicheru: Madam Temporary Chairperson, this is one of the Clauses that we had conversations on this Floor and even outside. We have had a number of back and forth with the majority on this particular clause. I have also had an opportunity to have a side conversation with the Senate Majority Whip.

One thing I wanted to persuade is that as a House, we must stand for devolution. In the sense that even if you are to vary the membership of this council to the extent that the ministry has got one or two people then the rest are coming from different departments and functions of the county, the ultimate power of that council lies with the ministry. To the extent that reporting, correspondences and any other responsibility of that committee, they are answerable to the Ministry.

The moment we do that, we completely plough on devolution, and we take the primary healthcare to the ministry. That is why I strongly believe that this clause should not be part of this Bill and we do away with the---

I would want to hear what the two leaders of the House think. Sen. (Dr.) Khalwale and the Majority Leader can also chime in on that.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Mungatana, let us hear your views.

Sen. Mungatana, MGH: Madam Temporary Chairperson, I had also filed an amendment. My proposal was that we delete the entire Clause 14 just like the two previous Hon. Senators have said. My reasons are, when you look at Schedule 4 of the Constitution, there is a separation between the national and county duties. When it comes to health, at No. 23 in the allocation of duty, the national Government is given national referral hospitals.

At duty No. 28, the national Government is given health policy and that is it. When it comes to county government at Part 2 of that schedule, it says-

“The functions and powers of the county are -

(2) County health services, including, in particular -

(a) county health facilities and pharmacies;

(b) ambulance services;

(c) promotion of primary health care.”

So, healthcare is only for referral and health policy. It would be unconstitutional for us to purport to create a primary health care advisory council at the national level which is not there in the Constitution. So, I propose that we totally delete this. I hope that the Chairperson of the Senate Standing Committee on Health is listening to me. If we do not, this will be subject to litigation.

I also want to add that the duties and functions that are given to the primary health care advisory board, at the national level, can be done by one of the directors in the Ministry but the real duties must be carried out at the county level.

The Temporary Chairperson (Sen. Veronica Maina): Hon. Members, I request that we make our submissions short because of time. Chairperson, I want you to address yourself to that question while understanding that the proposal by the other Members is to delete.

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Sen. Mandago: Madam Temporary Chairperson and Hon. Members, I have heard from my colleagues on that matter. However, allow me to persuade them that we retain that Clause.

If you look at the composition, we have proposed, as a Committee, to remove the caucus of the Vice Chancellors and put there the Director of Kenya Medical Training College (KMTC) for purposes of training.

However, the work of that body is basically to advise the Cabinet Secretary on policy matters. If you look at Sub-Clause 4, it states-

“In the execution of its function, the primary health care advisory council shall be guided by the principles under the Constitution, health laws, policies, guidelines and relevant international instruments applicable to Kenya.”

Secondly, there is an aspect of inter-county. Primary health care is about prevention of some of these diseases that can easily spread within a very short time. There will be a need for some certain coordination. It will be almost impossible to ask counties how they are going to sit. They need an anchor kind of place to centralize.

Clause 15 provides for the implementation bit which will be handled by the county. Finally, the health of the nation is the aggregation of the sum of the efforts of all counties which now makes a national position.

Madam Temporary Chairperson, I would like to persuade my colleagues that I do not think that this will offend the Constitution unless there are specific things that take away the county.

However, this body will just advise the Cabinet Secretary. We all understand that you can be a Cabinet Secretary, but you will not have all the information. You need a team to work with.

There is a deliberate effort this time round between the national Government and county governments to make sure that the rollout of Universal Health Coverage (UHC) is successful. Therefore, let us give a chance to this advisory body to support county governments at the county level and national Government at the national level so that this can be rolled out.

I would also like to persuade them because if there is an issue, we have a chance to amend it. I would like to persuade Sen. Oketch Gicheru. For purposes of coordination, the implementation of UHC has failed three times. We are trying to look at all the things that are going to make it work. Part of it is that critical coordination and proper advice, both at the county and at the national level.

The Temporary Chairperson (Sen. Veronica Maina): Sen. (Dr.) Khalwale, I will give you half a minute.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Chairperson. Allow me to persuade the Chairperson of the Committee. We have put a lot of thought into this. The amendment by Sen. Mungatana is supported by many of us.

What you are saying is not going to help the Bill. We are curing the mischief of our Bill being rendered unconstitutional. If you care to look at Clause 14, it starts by saying that the Cabinet Secretary shall appoint the members of the advisory council. The Cabinet Secretary has no business going into matters of primary health care.

Secondly, the people who have been appointed in (a), (b), (d), and in (h), are all national. So, it makes this advisory council a national function. Let us drop it. We are doing it in good faith.

The Temporary Chairperson (Sen. Veronica Maina): Chairperson, are you convinced by this?

Sen. Mandago: Madam Temporary Chairperson, I ---

(Loud consultations)

The Temporary Chairperson (Sen. Veronica Maina): Allow the Chair to work without coercion.

Sen. Mandago: Madam Temporary Chairperson, Sen. Sifuna said that he was waiting for advice from the senior Sen. (Dr.) Khalwale. He has since advised that that Clause is going to cure the mischief that is there in the Bill. I agree that we drop that Clause.

(Applause)

The Temporary Chairperson (Sen. Veronica Maina): Thank you, Chairperson. That is leadership.

*(Question that Clause 14 be deleted,
as proposed by Sen. Mungatana, proposed)*

The proposals by Sen. Oketch Gicheru and Sen. Osotsi are dropped.

*(Proposed amendments by Sen. Oketch Gicheru
and Sen. Osotsi withdrawn)*

The proposal for amendment by the Chairperson of the Committee on Health is also dropped.

*(Proposed amendment by the Health Committee
Chairman withdrawn)*

(Question of the amendment proposed)

Clause 15

The Temporary Chairperson (Sen. Veronica Maina): I request the Chairperson of the Standing Committee on Health, Sen. Mandago to move the amendments. There is also an amendment by Sen. Oketch Gicheru.

Sen. Mandago: Mr. Temporary Chairperson I beg to move-

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THAT, Clause 15 of the Bill be amended in paragraph (c) by deleting the words ‘and remuneration’ appearing immediately after the words ‘for the facilitation’.

Hon. Members, when we looked at this as a committee, we realized that the moment we begin talking about remuneration, we are going to put counties in a very precarious position. Community Health Promoters (CHPs) might then want to be confirmed and put on payroll in terms specified by the Salaries and Remuneration Commission (SRC) and the labour laws.

Since CHPs, are not going to be paid a salary but a stipend, we thought that we need to delete that word ‘remuneration’.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Okech Gicheru, you have a half a minute. Please, proceed.

Sen. Oketch Gicheru: Madam Temporary Chairperson, I beg to move that- Clause 15 of the Bill be amended by inserting the following new heading immediately after clause 14-

PART IVA-MANAGEMENT OF PRIMARY HEALTH CARE SERVICES

The amendment is just a consequential amendment to the previous amendment in Clause 13. It changes the title so that management is purely on the county government.

(Question for the amendments proposed)

Division will be at the end

Clause 16

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Osotsi and Sen. Oketch Gicheru to address us on the amendments

Sen. Osotsi: Madam Temporary Chairperson, I beg to move-

THAT, Clause 16 of the Bill be amended in sub-clause (3) by-

(a) by deleting the words “promote oversight” appearing before the words “monitor and evaluate” in paragraph (a); and,

(b) by deleting paragraph (m).

One of the functions of the county primary health care advisory committee will be to promote oversight.

Hon. Members, the use of the word “oversight” here is misplaced because we know that the role of oversight is by the county assembly in this case.

I, therefore, proposed to remove that part ‘promote oversight’ and retain the other parts ‘monitor and evaluate the implementation of primary health care’.

Additionally, (m) function talks about-

“Submitting quarterly reports to the primary health care advisory council”

The one that we have just deleted. So, in that case, that function is not applicable.

I request hon. Members to support.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru, as you address us on the amendment, just know your amendment is covered by the proposal by Sen. Osotsi and it goes wider than your proposal.

Sen. Oketch Gicheru: Thank you, Madam Temporary Chairperson. I think it is the same. So, I will drop my amendment in favour of Sen. Osotsi's amendment on Clause 16(m).

The Temporary Chairperson (Sen. Veronica Maina): Thank you. The proposal for amendment by Sen. Oketch Gicheru is dropped.

(Proposed amendment by Sen. Oketch Gicheru withdrawn)

(Question of the amendment proposed)

Clause 17

(Question, that Clause 17 be part of the Bill, proposed)

Division will be at the end.

Clause 18

(Question, that Clause 18 be part of the Bill, proposed)

Division will be at the end.

Clause 19

Sen. Mandago: The Temporary Chairperson and Hon. Members, I beg to move:
THAT clause 19 of the Bill be amended in subclause (1) by deleting the words "in accordance with the Kenya Community Health Policy" appearing at the end of the subclause.

Hon. Members, if you read that, each county government has established and operationalised a community health unit in accordance with the Kenya Community Health Policy. So, we are proposing to delete the words "in accordance with the Kenya Community Health Policy" appearing at the end of the clause.

(Question of the amendment proposed)

Clause 20

Sen. Mandago: Madam Temporary Chairperson, I beg to move:
THAT Clause 20 of the Bill be amended -

(a) in subclause (1) by deleting the words “special interest” appearing immediately after the words “a representative of” in paragraph (c) and substituting therefor the word “vulnerable”; and

(b) in subclause (3) by inserting the words “renewable once” at the end of the subclause.

Hon. Members, as a Committee, we thought to amend the word “special interest” and to be consistent with other provisions in the law that use the word “vulnerable”.

We also proposed change the term of the Committee, so that a Committee can have a chance to renew once.

The Temporary Chairperson (Sen. Veronica Maina): Proceed, Sen. Osotsi.

Sen. Osotsi: Madam Temporary Chairperson, I beg to move:

THAT Clause 20 of the Bill be amended-

(a) in subclause (1) by deleting the words “special interest” appearing immediately after the words “a representative of” in paragraph (c) and substituting therefor the word “vulnerable”; and

(b) in subclause (3) by inserting the words “renewable once” at the end of the subclause.

Madam Temporary Chairperson, the essence of this amendment is to amend Clause 20(3) ---

(Loud consultations)

The Temporary Chairperson (Sen. Veronica Maina): Hon. Members, let us maintain silence so that the Senator may be heard.

Sen. Osotsi: Madam Temporary Chairperson, the essence of this amendment is to amend Clause 20(3) that says that “the Committee members in subclause (1) shall be appointed in writing by the County Executive Committee Member (CECM) and shall serve for a period of three years.”

Madam Temporary Chairperson, this is a very important Committee that should not be left in the hands of one person; the CECM for Health.

The import of my amendment is to amend so that the county assembly has a role in approving the list that has been proposed by the county executive member. That is the first part.

The Second part, subclause (4), which talks about the functions of the Community Health Committee, I am again removing the reference to oversight which is in subclause 4 (a) -

That they will provide leadership and oversight in the implementation of health and other related community services. You know as well that it is the function of the county assembly to oversight.

So, I am proposing to delete that word “oversight” and leave “provide leadership in the implementation of health and other related community services.”

The Temporary Chairperson (Sen. Veronica Maina): The Chair of the Committee on Health, do you have a comment?

Sen. Mandago: Madam Temporary Chairperson, I agree with the amendments for the deletion of the word “oversight” and introduction of the role of the county assembly in that, so that it is clear when we go to voting.

Sen. Mungatana, MGH: On a point of order, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): Proceed, Sen. Mungatana.

Sen. Mungatana, MGH: Madam Temporary Chairperson, I have no problem with the second bit of the amendment. However, when you look at the kind of committees that are approved through the county assembly, it is the County Public Service Board that normally goes through that process.

If you take these small committees like the one for health, I see like we will be creating very high expectations because they will be like the Public Service Board. Therefore, the process of getting those people through the county assembly as many of you know, it is a very hectic process. This might take longer than we anticipate and this might delay the implementation of Universal Health Care (UHC).

I was asking if the hon. Senator does not feel very strongly about it, we can just leave it so that the CECM for Health can appoint. These people are also not remunerated. So, I would want to convince my colleague that if possible, if you do not feel very strongly about it, we can just leave the process to be as simple as that.

Thank you.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Osotsi, I think it is important you respond to that.

Sen. Osotsi: I fully agree with Sen. Mungatana and maybe I can consider dropping that. The basis is that in his amendment, he has proposed that the county assemblies will come up with the county legislation. So, that may be covered there.

The Temporary Chairperson (Sen. Veronica Maina): Thank you, Sen. Osotsi for that consideration.

(Proposed amendment by Sen. Osotsi withdrawn)

(Question of the amendment proposed)

Division will be at the end.

Clause 21

Sen. Osotsi: Madam Temporary Chairperson, I beg to move:

THAT Clause 21 of the Bill be amended by inserting the following new subclause immediately after subclause (2) –

(3) Despite section 9, a person appointed as a community health volunteer or community health worker at the commencement of this Act shall be deemed to be appointed as a community health promoter under this Act.

The import of this is that, Clause 21 talks about miscellaneous provisions. The line that talks about the process of selecting these promoters. “A person appointed as a Community Health Volunteer (CHV) or community health worker at the commencement

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of this Act shall be deemed to be appointed as a community health promoter under this Act.”

The import of this amendment is so that we do not sack the people called the CHVs, who currently perform this role in our villages.

If we do not amend it this way and pass this Bill as it is, these people will not have jobs because they will be required to go through the elaborate process that is in this Bill to be appointed again. It will be very unfair. Some of them are yet to be paid. They are owed a lot of money. It is proper that besides the whole process defined in Section 9, these people be allowed to transition as community health promoters.

The Temporary Chairperson (Sen. Veronica Maina): Hon. Members, can we consult in low tones? The Chairperson Standing Committee on Health, do you agree that is the same amendment you have proposed?

Sen. Mandago: Thank you Madam Temporary Chairperson. In fact, the proposal by Sen. Osotsi is similar to that of the Committee. We had also proposed to amend Section 9 which states -

“A person appointed as a CHV at the commencement of this Act shall be deemed to be appointed as a community health promoter under this Act.”

We agree with that amendment.

The Temporary Chairperson (Sen. Veronica Maina): Who will drop their amendment? Do we take the Chairperson’s proposal for amendment or we drop Sen. Osotsi’s? Sen. Osotsi, do you accept to drop yours so that we go with the Committee’s?

Sen. Osotsi: Yes, Madam Temporary Chairperson. I will go with the Committee’s position.

(Proposed amendment by Sen. Osotsi withdrawn)

The Temporary Chairperson (Sen. Veronica Maina): Thank you.

(Question of the amendment proposed)

Division will be at the end.

Clause 22

Sen. Osotsi: Madam Temporary Chairperson, I beg to move -

THAT Clause 22 of the Bill be amended in subclause (1) by inserting the words “political or any” immediately after the words “engage in” appearing in paragraph (i)

If you look at Clause 22, it talks about the offenses, penalties and things that the community health promoter should not do. In part (i), it proposes that community health promoters shall not engage in other activities that may conflict with their duty. I am improving this by inserting the word “political or any other activity” so that these particular people are not misused for political gain by any individual.

That is important because these people are involved in health matters in our villages. If they engage in partisan politics, it will derail their agenda. That is the basis.

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(Question of the amendment proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Clause 23

Sen. Mandago: Madam Temporary Chairperson, I beg to move-
 THAT Clause 23 of the Bill be amended by inserting the words “in consultation with county governments” immediately after the words “Cabinet Secretary shall.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

New Clause 9 A

The Temporary Chairperson (Sen. Veronica Maina): I invite the Mover, Sen. Mungatana, to move the second reading on the New Clause 9A.

Sen. Mungatana, MGH: Thank you, Madam Temporary Chairperson. The purpose of introducing Clause 9A, I was advised by the legal department.

The Temporary Chairperson (Sen. Veronica Maina): First, move the Question that Clause 9A be now read a Second time.

Sen. Mungatana, MGH: Thank you, Madam Temporary Chairperson. I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 9 –

Public participation in the selection of community health promoters.

9A. (1) In conducting the public participation forum under section 9, the county executive committee member shall –

(a) publish and publicize, through the mechanisms established by a county government under section 95(1) of the County Governments Act, a notice of the proposed selection process, at least seven days before the conduct of the process;

(b) avail to the residents of the county, information regarding the –

(i) agenda with respect to the selection process and any other issue connected to the selection process;

(ii) criteria for selection as a community health promoter;

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- (iii) the process of submitting their nomination for selection; and
- (iv) such other information as the committee member may consider necessary for the effective participation and conduct of the selection process;
- (c) ensure that the information circulated under paragraph (b) is provided in format that is simple to understand and is also available in the prevailing local language;

- (d) take measures to ensure the participation of all persons required to participate in the process including persons with disabilities and marginalized communities within the county;
- (e) provide, where necessary, interpretation services for persons who are not conversant with the national language, where the national language is the principle language of communication during the conduct of the public participation forum;
- (f) keep and maintain an attendance register of all persons attending the selection process;
- (g) ensure that all persons attending the public participation forum signify their attendance by signing the attendance register;
- (h) keep a record of the minutes of the selection process; and
- (i) publicise the decision regarding the persons selected during the public participation forum through the mechanism established under section 95(1) of the County Governments Act.
- (2) The conduct of public participation forum shall be guided by the following principles –
 - (a) principles of citizen participation in counties under section 87 of the County Governments Act;
 - (b) provision of effective mechanisms for the involvement of the public including special interest groups who would be affected by or be interested in a decision;
 - (c) participants' equitable access to the information they need to participate in a meaningful manner;
 - (d) establishment of an appropriate feedback mechanism;
 - (e) adherence to the national values under Article 10 of the Constitution;
 - (f) adherence to the principles of public participation as may be prescribed by any written law; and

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- (g) ensuring that the needs and interests of all persons participating in the process are taken into account.
- (3) The county executive committee member shall prescribe, in county legislation, provisions regarding-
 - (a) the quorum required for the holding of the public participation which shall not be less than seventy adults residents within the respective county;
 - (b) the keeping of records prepared with respect to a public participation forum conducted under this Act;
 - (c) the process of the conduct of the selection process including the voting, decision making, quorum and recording of information with respect to the process; and
 - (d) such other guidelines as may be necessary for the effective conduct of the public participation forum.

The purpose of the new Clause 9A---

(Sen. (Dr.) Khalwale consulted loudly)

The Temporary Chairperson (Sen. Veronica Maina): Sen. (Dr.) Khalwale, I can hear you laughing. Reduce the excitement.

Sen. Mungatana, MGH: Madam Temporary Chairperson, the purpose of the New Clause 9A was to cover and explain what public participation in the selection of the community health promoters will be carried out. We have provided for the publication of the notice for seven days. We have also provided that the CECM in charge will make sure information reaches to everybody including those who have disabilities and marginalized communities. We have provided that a register and a record of minutes will be maintained. Also, there is a provision on the publication of the decision of who has been selected as the public health promoter. We have also provided for the principles to be observed and the role of the CECM. This answers part of the concerns raised by Sen. Cheptumo and myself.

(Question of the New Clause 9A proposed)

(New Clause 9A was read the First Time)

(Question, that the New Clause 9A be read a Second Time, proposed)

(Question, that the New Clause 9A be part of the Bill, proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

New Clause 13A

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Osotsi to Move the new Clause 13A.

Sen. Osotsi: Madam Temporary Chairperson, I beg to Move that the amendments on New Clause 13A be taken. The essence ---

The Temporary Chairperson (Sen. Veronica Maina): First move that the New Clause 13A be now read a second time.

Sen. Osotsi: Madam Temporary Chairperson, I beg to move -
THAT the Bill be amended by inserting the following new clause immediately after clause 13 -

Financing primary health care functions.	of 13A. (1) The National Government may, in accordance with the law relating to county governments additional allocations, provide such resources as may be necessary for the effective performance of the functions of county governments under this Act. (2) The additional resources allocated under subsection (1) shall be a supplement, and not a substitute, to the resources allocated by the respective county government in respect to the delivery of primary health care services in the county.
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This amendment is simply improving on what Sen. Oketch Gicheru had proposed on the financing of this Bill. The national Government may, in accordance with the law relating to county governments additional allocations, provide such resources as may be necessary for the effective performance of the functions of county governments under this Act.

The additional resources allocated under subclause (1) shall be a supplement, and not a substitute, to the resources allocated by the respective county government in respect to the delivery of primary health care services in the county.

This is to acknowledge that there will be instances when the national Government may want to fund primary health care, especially in the payment of the community health promoters. This should be done through additional allocation.

I beg Senators to support this.

(Question of the New Clause 13A proposed)

(New Clause 13A was read the First Time)

*(Question, that the New Clause 13A be read a
Second Time, proposed)*

(Question, that the New Clause 13A be part of the

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Bill, proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

New Clause 22A

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Osotsi to move the New Clause 22A.

Sen. Osotsi: Madam Temporary Chairperson, I beg to move that the Bill be amended by inserting the following New Clause 22A immediately after Clause 22-

Adherence to data protection. No. 24 of 2019.	22A. Every person shall, in the implementation of this Act, adhere to the provisions of the Data Protection Act in the collection, processing and transmission of personal data under this Act.
--	--

As I had previously alluded to, we deleted the data protection requirement for the Community Health Promoters (CHPs) and said that we would come up with a global one. So, this is a global clause on data protection that requires that---

This will ensure that the implementation of this Act adheres to the provision of the Data Protection Act in the collection, processing, and transmission of personal data under this Act.

The Temporary Speaker (Sen. Veronica Maina): Thank you.

(Question of the New Clause 22A proposed)

(New Clause 22A read the First Time)

(Question, that the New Clause 22A be read a Second Time, proposed)

(Question, that the New Clause 22A be part of the Bill, proposed)

Division at the end.

Clause 2

The Temporary Speaker (Sen. Veronica Maina): I request Sen. Osotsi to prosecute that amendment, followed quickly by Sen. Oketch Gicheru.

Sen. Osotsi: Madam Temporary Speaker, I beg to move-

THAT the Bill be amended by deleting the word "community health promoter" wherever it appears and substituting therefor the word "community health volunteer".

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This is basically to improve on the definition of a community health promoter. Considering what has been amended:

- (1) The transition of Community Health Volunteers (CHVs) to CHPs.
- (2) The procedure that Sen. Mungatana has defined under ---

(Technical hitch)

So, the definition of a CHP will be “a member of a community who is selected and appointed in accordance with Clause 9 of this Bill or Community health volunteer or community health worker who is deemed to be a community health promoter under Clause 21(3) of this Bill and is trained to provide community health services to defined household”.

That improves that definition to take into account the transition of CHVs to promoters as well as the process.

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Madam Temporary Speaker, I beg to move-

THAT the Bill be amended by deleting the word “community health promoter” wherever it appears and substituting thereof the word “community health volunteer”.

I would say mine was similar but not exact to what Sen. Osotsi has said. As a consequential clause, having engaged the other side of the House and realised that they were going to amend Clause 15C, I had sought to indicate that we were going to have remuneration to CHPs. That basically meant that you were going to employ them under our labour laws.

The bare minimum that I could get is what is required as a minimum wage which is not the exact truth. The exact truth is that the community health promoters are going to be given stipends which I do not think will be over Kshs5,000.

I was trying to ask the House to avoid issues of litigation by just maintaining them as volunteers who are just getting stipends. If you do anything that cannot be maintained as volunteers, then it means somebody would go to court that they need to be employed in a standard employment procedure in the country. That is why I was proposing that we maintain these people as community health volunteers just to avoid legislation.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Oketch Gicheru.

Sen. Osotsi, your concerns about these amendments are addressed by the amendment that was moved by the Chairperson of the Health Committee. In Clause 21, would you consider dropping that amendment in that circumstance?

Sen. Osotsi: Madam Temporary Speaker, the amendment by the Chairperson of the Committee is similar to my earlier amendment on the transitioning of community health volunteers to promoters. However, the amendment I am proposing to Clause 2 is to just improve on the definition.

It is not affecting the amendment by the Chair which is on transition like the one I had put. The one on Clause 2 is to improve on the definition so that it can capture the process under Clause 9 as defined by Sen. Mungatana and also to bring in the element of

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transition from Community Health Volunteers (CHVs) to Community Health Promoters (CHPs).

Therefore, it is not doing any damage to the amendment by the Committee Chairperson but is enhancing it.

Madam Temporary Chairperson (Sen. Veronica Maina): Thank you, Sen. Osotsi. That is well understood.

(Question of the amendment proposed)

Division will be at the end.

Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

Madam Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

We are now at the Division stage. I request the division bell to be rung for three minutes and the doors to be closed after that.

(The Division bell was rung)

Sen. Oketch Gicheru: On a point of order, Madam Temporary Chairperson.

Madam Temporary Chairperson (Sen. Veronica Maina): What is your point of order, Sen. Oketch Gicheru?

Sen. Oketch Gicheru: *In lieu* of what my colleague, Sen. Osotsi, indicated that he was moving some amendments with regards to the definitions in Clause 2, we should accommodate the aspect of referring the Community Health Promoters as volunteers. I therefore drop my amendment.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru, you have now withdrawn your proposed amendment on Clause 2. So, it stands as withdrawn.

(Proposed amendment by Sen. Oketch Gicheru withdrawn)

Can you close the Door and draw the Bar.

(The Door was closed and Bar drawn)

Can we have the tellers? Sen. Miraj is the teller for 'ayes' and Sen. Montet Betty for 'noes.'

Clerk, please can we move faster.

Hon. Senators, we will have one division and four questions. We have little time. We request that once you are called, please do not waste time. Run straight and give us your response and it will be taken. I will put four questions.

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(The four Questions for Division were put)

The Temporary Chairperson (Sen. Veronica Maina): Clerk, please call out the names.

Hon. Senators, when you vote, please indicate the question you are voting for. You can also state you are voting “yes” for three questions or four and indicate the question you are voting against.

(Voting in progress)

DIVISION

ROLL CALL VOTING

1. *(Question, that Clause 14 be deleted as proposed put, and the Senate proceeded to vote by County Delegations)*
2. *(Question, that New Clauses 9A, 13A and 22A be now read a second time put, and the Senate proceeded to vote by County Delegations)*
3. *(Question, that Clauses 5, 9, 10, 13, 15, 16, 19, 20, 21, 22, 23 and Clause 2 be amended as proposed put, and the Senate proceeded to vote by County Delegations)*
4. *(Question, that Clauses 3, 4, 5 (as amended), 6, 7, 8, 9 (as amended), 10, 11, 12 (as amended), 13 (as amended), 14, 15 (as amended), 16 (as amended), 17, 18, 19 (as amended), 20 (as amended), 21 (as amended), 22, (as amended) 23 (as amended), New Clause 9A, New Clause 13A, New 22A, Clause 2 (as amended), the Title and Clause 1 be part of the Bill put, and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang’a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang’, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County, Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County;

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Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. Miraj

NOES: Nil

Teller of the Noes: Sen. Betty Montet.

ABSTENTIONS: Nil.

The Temporary Chairperson (Sen. Veronica Maina): Hon. Senators, these are the results of the division -

AYES: 32

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it!

(Question was carried by 32 votes to Nil)

I now call upon the Mover.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Chairperson, I beg to move that Committee do report to the Senate its consideration of the Primary Health Care Bill (Senate Bills No.44 of 2023) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Abdul Haji) in the Chair]

CONSIDERATION OF REPORT

THE PRIMARY HEALTH CARE BILL (SENATE BILLS NO. 44 OF 2023)

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, I call upon the Chairperson of the Committee to report.

Sen. Veronica Maina: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Primary Health Care Bill (Senate Bills No. 44 of 2023) and its approval thereof with amendments.

The Temporary Speaker (Sen. Abdul Haji): Mover, kindly proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request Sen. Oketch Gicheru to second.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I second.

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(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Abdul Haji): Mover, kindly proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the Primary Health Care Bill (Senate Bills No.44 of 2023) be now read a Third Time.

I request the Senator for Kitui County, the Senate Deputy Minority Leader, Sen. Wambua, to second.

Sen. Wambua: Mr. Temporary Speaker, Sir, I second.

(Question proposed)

The Temporary Speaker (Sen. Abdul Haji): Serjeant-at-Arms, lock the doors and draw the bars.

(The Doors were closed and Bars drawn)

Sen. Miraj is the teller for the 'Ayes'. Let us proceed and vote.

(Roll call voting in progress)

THIRD READING

THE PRIMARY HEALTH CARE BILL
(SENATE BILLS NO. 44 OF 2023)

DIVISION

ROLL CALL VOTING

*(Question, that the Primary Health Care Bill
(Senate Bills No.44 of 2023) be now read a Third
Time put, and the Senate proceeded to vote by
County Delegations)*

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen,

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Turkana County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Omar, Mandera County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. Miraj

NOES: Nil.

Teller of the Noes: Sen. Montet

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, the results of the Division are as follow:-

AYES: 32

NOES: Nil.

ABSENTIONS: Nil.

The Ayes have it.

(Question carried by 32 voted to nil)

(The Bill was accordingly read a Third Time and passed)

The Temporary Speaker (Sen. Abdul Haji): I now order that the Doors be opened and the Bars undrawn.

(The doors were opened and bars drawn)

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, we are going to defer the following Orders. Order No.8, 10, 11, 12, 13 and 14.

COMMITTEE OF THE WHOLE

THE COUNTY LICENSING (UNIFORM PROCEDURE) BILL
(SENATE BILLS NO.9 OF 2022)

(Committee of the Whole deferred)

BILLS*Second Reading*

THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL
(NATIONAL ASSEMBLY BILLS NO.23 OF 2023)

(Bill deferred)

Second Reading

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO.6 OF 2023)

(Bill deferred)

Second Reading

THE AGRICULTURE AND FOOD AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO.13 OF 2023)

(Bill deferred)

Second Reading

THE COMMUNITY HEALTH SERVICES BILL
(SENATE BILLS NO.24 OF 2023)

(Bill deferred)

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO.18 OF 2023)

(Bill deferred)

Sen. Oketch Gicheru: On a point of Order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): What is your point of order?

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I rise under Standing Order No.41. Noticing that there is no quorum, I seek your indulgence whether indeed the House sitting is as should be constituted.

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ADJOURNMENT

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourned until Tuesday, 3rd October, 2023 at 2.30 p.m. at the Senate Chambers, Parliament Buildings, Nairobi.

The Senate rose at 4.49 p.m.