

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 27th September, 2023

Afternoon Sitting

*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)

Yes, indeed, we have quorum.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF PROMINENT LEADERS IN TURKANA COUNTY

Hon. Senators, I would like to acknowledge the presence of two very prominent leaders from this county who are seated in the Speaker's Gallery. We have the former Senators of Turkana County, the hon. Sen. (Prof.) Imana Ekal and hon. John Munyes, who needs no introduction, a former a legislator, a brother and a friend.

On my own behalf and on behalf of the Senate, we welcome you to these proceedings.

I will allow the Senate Majority Leader and Sen. Wambua, the Deputy Senate Minority Leader, to under one-minute welcome the two prominent leaders from this county.

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The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I join you and the rest of my colleagues in welcoming these distinguished colleagues of ours who have joined us this afternoon as we visit their home county.

I know the two men very well. I served with both of them in the House of the Senate, Sen. Munyes in our first term and then Sen. (Prof.) Imana Ekal, the Texan Turkana. That is what he loved to refer to himself. He is Turkana, but also a Texan.

We celebrate them joining us while we are here. I hope they can stay to listen to the debates and compare the experiences back then when they were Senators and what is of this Senate.

Mr. Speaker, Sir, they can appreciate the dynamics. We have more young Senators these days, Sen. Munyes, than we used to have those days. It was quite a lonely path for me back then, being quite the only young one. If you come back now, the young at heart, such as Sen. (Dr.) Oburu are in the minority.

It is good to see all of you in good health. I look forward to interacting with you during the course of our break. Thank you for honouring this invitation.

Sen. Wambua: I equally thank you, Mr. Speaker, Sir, for according me the opportunity to join you and my colleagues in welcoming our friends and our colleagues, Cabinet Secretary (CS) Munyes and Sen. (Prof.) Imana Ekal.

Mr. Speaker, Sir, I served with Prof. Ekal in the last session. As Sen. Cheruiyot has said, he is the Senator of Turkana from Texas. We have had the opportunity to visit this county with him when we came for the Committee on Roads and Transportation engagement. We also came here for the campaigns and we campaigned vigorously with him and with the CS.

I am delighted to see them seated with us this afternoon. I hope that we will find time after this sitting, to interact with them and to show us around. There is a pending date between me and Prof. Ekal to take me to a *manyatta*. I believe it will happen this evening.

With those remarks, I welcome my friends and my colleagues.

The Speaker (Hon. Kingi): Sen. Madzayo please proceed, under one minute.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. I would like to join you in welcoming my senior brother, friend, and close associate, Hon. John Munyes. I would also like to enjoin myself to welcome, Prof. Ekal, this afternoon, to our Chamber where we are sitting.

Sen. John Munyes was one of the distinguished Senators that we had in the second Senate. We were on the same Committee of Labour and Social Welfare and had a close working relationship. I gained a lot of experience from his long experience as a Cabinet Minister.

I am glad that I have seen him. I sent him a message telling him I am in Turkana County when I was in the air. Incidentally, I did not expect to see him. However, I am glad that I have seen him. I hope it is not my message that made him come here. So, I thank you and join you in welcoming them.

I am glad to see that Sen. John Munyes is still keeping his good health. God bless you.

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The Speaker (Hon. Kingi): Next Order, Clerk.

Hon. Senators, pursuant to Standing Order No. 45(2), allow me to rearrange the sequence of today's Order Paper for the convenience of the House.

You will notice from this afternoon's Order Paper, Order No. 8 was interrupted during the morning session. I am referring to the Supplementary Order Paper for today, afternoon. Therefore, we will rearrange this sequence and straight away, pick it up from where we left it when this business was interrupted. Once the debate is concluded on this particular Order, we will now come back and resume the natural flow of today's Order Paper.

(Technical hitch)

BILL

Second Reading

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

(Sen. Cheruiyot on 26.9.2023)

(Resumption of debate interrupted on 27.9.2023-Morning Sitting)

The Speaker (Hon. Kingi): Hon. Senators, if you recall, today in the morning Sitting, we had passed through consensus, a Motion to limit debate. You need not utilize all the 10 minutes, but we said a maximum 10 minutes. So, that still abides. When you are called upon to contribute, kindly bear that in mind.

Hon. Murango, please proceed.

Sen. (Dr.) Murango: Asante sana, Bw. Spika, kwa kunipa nafasi hii. Mswada huu una mambo mengi mazuri. Nitaanza kwanza na yale mazuri.

Jambo la kwanza ni kuhusu wahudumu wa afya wa kujitolea ambao watatumwa katika vijiji na maeneo mengi. Wahudumu wao huenza kutenganisha wale watu ambao wako na magonjwa madogo na wanaofaa kuhudumiwa katika zahanati na wale ambao wanafaa kupelekwa katika hospitali za rufaa.

Kutenganishwa kwa wagonjwa husaidia kupunguza msongamano wa wagonjwa katika hospitali za rufaa. Ni katika zahanati zetu ambapo watoto wagonjwa huhudumiwa na kupewa Panadol na kurudi nyumbani. Zamani wangepelekwa katika hospitali za rufaa kupata hudumu hiyo. Leo hii wanatibiwa katika zahanati na vituo vya afya vya msingi.

Jambo la pili, tunapoitisha Mswada huu pia tuangalie maeneo. Hii ni kwa sababu eneo la Turkana, mhudumu wa afya kama atapewa nyumba mia moja kuhudumia, kuna uwezekano familia mia moja ziwe zimetapakaa kwa umbali karibu wadi nzima. Mhuduma huyu wa afya katika wadi hiyo ya Turkana atakuwa na kazi nyingi, ilhali

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sehemu kama Kirinyaga, watu mia wanaweza kuwa wanaishi katika eneo ambalo halijafika mita mia mbili.

Kwa hivyo, tunafaa tujue kama ni usafiri wa wahudumu wa afya watafaidika namna gani tukizingatia kuwa Serikali hii ni ya kutoka chini kuenda juu. Mahali ambapo usafiri unatajikana, ingekuwa ni vizuri kama pia tungehusisha vijana wa bodaboda ili waweze kupata lishe kwa kusafirisha wahudumu wa afya ambao wakati wanafanya kazi zao.

Bw. Spika, nimeona changamoto zinazowakabili maafisa wa kilimo katika kaunti yanu. Tunapatana pingamizi nyingi katika kaunti ambazo maafisa wa kilimo wanafaa kusafiri kwenda kwa wakulima lakini hawana njia ya usafiri. Kila siku wanaposafiri, wanapiga guu kama siafu. Hata kama wangetaka kuwasaidia wakulima, hawawezi fika sehemu zingine. Tungeomba pia katika Mswada huu jambo hili la usafiri liwe wazi ili wahudumu hawa waweze kufika vijijini na kuwahudumia watu.

Kifungu cha 14(h) cha Mswada huu kinasema atakayeongoza katika kupeana hii afya msingi katika Serikali Kuu, atakuwa katibu wa kudumu. Hii ni kusema yule atakuwa ni kama *Chief Executive Officer* (CEO). Hii ni kusema atakuwa anakaa Nairobi.

Tunaongea kuhusu afya ya msingi kama shule ya msingi ya chekechea. Hapo kuna kinaya. Hii ni kwa sababu tukisema kwamba kiongozi ama yule atakuwa anaangalia masomo ya msingi ya mtoto wa chekechea atakuwa anakaa Nairobi, hapo tumeenda kinyume na ugatuzi ambao tuko nao kwa saa hii.

Kwa hivo, ningepomba ya kwamba, sitasema tuangushe Mswada huu. Mimi sina tabia ya kuchoma nyumba panya akiingia ndani. Tuupige msasa huu Mswada na tuhakikishe uko sahihi ndiposa tuipitishie.

Sitaki kuchukua muda mwingi sana kwa hivyo jambo la mwisho, Waswahili husema shibe ya mganga hutoka kwa mgonjwa. Pasipokuwa na mgonjwa, hakuna aendaye kwa mganga na mganga mpaka alipwe. Tuangalie Mswada ambao tunapitisha leo, usiwe ni wa kushibisha waganga.

Mimi niko hapa na nitauunga mkono Mswada huu ukiwa na marekebisho, ili tuhakikishe tunalinda ugatuzi na pia pesa zifike mashinani. Hii ni kwa sababu tukitoa majukumu yetu kama Seneti, tuko na majukumu machache sana. Ukiangalia baadhi ya mambo ambayo yamegatuliwa, afya na kilimo ndizo za kwanza. Hakuna nyingine. Tukirudisha shughuli za afya katika Serikali Kuu ambayo utendakazi wake unaangaliwa na Bunge la Kitaifa, itakuwa ya kwamba ile keki yetu ndogo tuliyo nayo, bado tunaendelea kupeana huku tukiongezea wale walio na kubwa.

Kama Bunge la Seneti, tunapaswa kulinda majukumu yetu ili katika mambo yote ambayo tunafanya, tuhakikishe tunapeleka fedha ambazo ziko katika magatuzi yote 47. Sisi ndio tunapaswa kufanya kazi hii.

Mhe. wa Kaunti ya Kitui, Sen. Wambua, aligusia jambo fulani katika Kifungu cha 14. Alisema kwamba tunapaswa kuhusishwa katika mambo haya ambayo yanazungumziwa katika Kifungu cha 14(b). Kifungu hicho kinazungumzia kuwa na njia ya kufuatilia na kuhakiki, yaani *review* na kuangalia utekelezaji wa afya msingi. Hiyo kazi ya kuangalia, kutekeleza na kuhakiki ni kazi ya Bunge la Seneti. Kwa hivyo, ninamuunga mkono Seneta wa Kitui katika hilo jambo.

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Asante sana.

The Speaker (Hon. Kingi): Sen. Sifuna, you may have the Floor.

Sen. Sifuna: Thank you, Mr. Speaker, Sir, for the opportunity to contribute. Allow me to start with an observation. Just the other day, I saw the President and the Governor of Nairobi City County inaugurating – essentially, I do not want to say launching – community health promoters in Nairobi City County.

Now, that got me worried because every single time, we ask ourselves; how is it that we are debating a law and yet people are already doing the same thing that is supposed to be done under it? Under which framework were these community health promoters in Nairobi City County, being inaugurated at Uhuru Park?

Clause 9(3) of the Bills says that a community health promoter shall be appointed on such terms and conditions as the respective County Public Service Board shall determine. They are supposed to be appointed under Clause 8(1)(a), which says that community health promoters will be appointed by this Act.

How can we be debating the law that will give a framework to the appointment of community health promoters, yet the President and the Governor of Nairobi City County, have already gone ahead telling us that they have employed community health promoters? Who are those people that were being flagged off at Uhuru Park? What is the purpose of this Senate, if the laws that are supposed to give effect to these things, are being debated when things are already being done? What are we doing here in Lodwar?

The Senate Majority Leader (Sen. Cheruiyot): They are ahead.

Sen. Sifuna: It is illegal. No, Senate Majority Leader, you cannot say that they are ahead of us. What is the purpose of this Senate debating a law that is supposed to provide a framework for the employment or deployment of these people, if you are doing it outside or without the framework? It means that this law is superficial and we do not need it. They are already doing it so, what is the purpose of us debating this Bill?

Having said that, let me also lend my view to some of the proposals here. I cry for this Senate if, indeed, we are here to debate things that are already being done anyway. It means that as a House, we have no role in these things.

Secondly, let me address a provision on the qualification of these community health promoters. If you look at the work that the community health promoters are supposed to be doing, it should inform the qualifications that these people require to have at the very minimum for them to undertake their duties.

Under Clause 10, the functions of community health promoters include very technical things, including advising or guiding the community on matters such as good nutrition and maternal and postnatal care. This includes advice on breastfeeding, immunisation, child health care and family planning.

Clause 9(2) gives all you are required to have to become a community health promoter. It says:

“A person qualifies for selection and appointment as a community health promoter under subsection (1) if the person –

(a) is a citizen of Kenya;

(b) is above the age of 18 and of sound mind;

- (c) is a responsible and respected member of the community;
- (d) understands the role of a community health promoter;
- (e) is a resident of the respective community for a continuous period of not less than five years before the date of appointment;
- (f) is literate and can read and write in at least one of the national languages or the local language.”

These are not even requirements for Senators here or Members of Parliament.

“(g) is not disqualified for appointment to office by the above criteria or by any other law.”

Mr. Speaker, Sir, the problem that I have is that I would expect somebody who is going to advise people on nutrition, immunization, child healthcare and family planning to at the very minimum, have some basic medical background.

(A Senator spoke off record)

At the very minimum, you need a very basic understanding of medical issues. How are you going to advise me on nutrition, when you do not know anything about nutrition? All you are required to have is be a resident of the county and be of sound mind.

The drafters of this Bill need to reconsider the fact that the role that the community health promoters are going to play is critical. You put somebody in this position of trust and then I have seen a provision that says, they should not prescribe medicine because they are not experts. This is the same person who is advising people on post-natal care, nutrition, prevention and transmission and management of communicable diseases.

Under Clause 9, I qualify as a health promoter because I have all those things. However, I cannot be advising Sen. (Dr.) Khalwale on family planning, for instance.

(Laughter)

What do I know about family planning? This is why I am saying that at the very minimum, we should look for some basic understanding of the things that they are supposed to be advising members of the community on, so that it also becomes a requirement.

Now, let me also address something else. Under Clause 14 (4) on the management of primary health care services, there is an established Primary Health Care Advisory Council. I wish the Chairperson of the Committee on Health was here. I can see Sen. Mandago.

We were having a conversation in Mombasa on the Social Insurance Bill, the one that is going to come. One of our concerns that we raised is that if health is truly a devolved function, you should look at the representation of all these institutions that are going to oversee any of the health functions; and see the face of devolution in it.

Now, I have counted out of eight people that are specifically required to be appointed to that council, five can be said to be direct appointees of the national

Government. I will demonstrate that. The first one is the Principal Secretary responsible for Health, an appointee of the central Government. The second one is Director-General for Health, then we have the chairperson of the Council of Governors (CoG). That is the only person from the devolution side. Principal Secretary (PS) responsible for National Treasury. That is an appointee of the national Government. The chairperson of the Vice Chancellor's Caucus. First of all, how do the vice chancellors have a caucus and what do they know about community health promotion?

Mr. Speaker, Sir, these are the things that are confusing me. The head of primary healthcare at the national level, who shall be the secretary and any other person co-opted as the council may determine from time to time. Five of those people will be direct appointees of national Government yet this is a devolved function.

Sen. Mandago, I am sure you will bear me witness that, indeed, we will be doing a great disservice if we allow this Bill to pass with the current provisions.

Mr. Speaker, Sir, I have one more comment on the Bill. Let me just find it. At the end on Section 22.

The Senate Majority Leader (Sen. Cheruiyot): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your point of order Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): My apologies, Sen. Sifuna. It is never a good experience when you are interrupted when making a contribution because sometimes it affects the flow of thought. However, there is a concern that I have noted with regard to the Senators contributing. This is that curiously - and this is across the aisle - when Senators are contributing they do not seem to appreciate that there is already a report of the Committee which has guided the House and there is something that they are proposing.

Perhaps even on this particular clause, the one that Sen. Sifuna was just speaking to, there is a proposed amendment by the Committee. Would it not benefit the House better in terms of debate if when Members are contributing, they also critique what our colleagues in the Committee have proposed?

There is a new arrangement that they have proposed - I do not know if that is agreeable - it appears to be one of the most contentious points many Senators have pointed out. However, in the report that the Committee has tabled, they have made a provision for that amendment. Would it not have been better if we hear if Members agree with that proposal or they want to make it even better? Those are just my thoughts. Once again, apologies to Sen. Sifuna.

The Speaker (Hon. Kingi): Very well. Hon. Senators, beyond the Bill that is before you, a report was tabled from the relevant standing committee of the Senate yesterday. Therefore, as you debate the two documents that maybe we should make reference to are the Bill as is and the report that has gone ahead to propose certain amendments.

You may agree with the report or propose further amendments if, indeed, you feel that maybe the Committee did not look into the areas that your concerns are driven to. Kindly make reference to those two documents. It will enrich your contribution.

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Sen. Sifuna proceed.

Sen. Sifuna: Mr. Speaker, Sir, I do not refuse the advice you have given, but I do recall very well that in previous debates we have been encouraged to debate the Bill as is. When the amendments have been brought, then you discuss the amendments. This has happened in the past. I remember very vividly.

The Speaker (Hon. Kingi): Sen. Sifuna proceed to---

Sen. Sifuna: Secondly, let me utilize my time---

(Loud consultations)

The Speaker (Hon. Kingi): Sen. (Dr.) Murango and Sen. Mandago, kindly give the Senator silence as he makes his contribution.

Proceed. Sen. Sifuna. It is your choice. You can now proceed to contribute solely based on the Bill that you have.

Sen. Sifuna: Mr. Speaker, Sir, I also have a very bad experience with waiting for reports and amendments and this is something that I have said on this Floor. We had been assured at some point not to worry about how the Bill looks like and that there were amendments that were coming only for them to be withdrawn. I have a bad experience. You will forgive me for being a bit sceptical, but I will deal with the problem that I am seeing in front of me now. If those amendments come, I will also have views on them.

Mr. Speaker, Sir, allow me to conclude by addressing the proposed Clause 22, which sets out the offences and penalties. You can see there that one of the things that can land a community health promoter in hot soup is conducting deliveries for pregnant women, for instance. Secondly, if you disclose the client's health information to an unauthorized person.

Maybe Sen. (Dr.) Khalwale can assist me on this. There is something that ties you to confidentiality. It is not a law. I think it is an oath that you take. Even for me as a lawyer, I took an oath before the Chief Justice of the Republic then, in 2008, to make sure that I understand the responsibility for confidentiality when I am dealing with my client's issues.

The Hippocratic Oath that doctors take is the same. Now, if you just tell these people not to disclose and you know, the good thing is that in this House, all of us are politicians who have used members of the Community Health Volunteers (CHVs) for political ends to some good success.

That is why many of us are here. There needs to be a requirement that these people will be subjected to some level of oathing, maybe the same one that doctors take, not just a flagging-off ceremony that I saw at Uhuru Park where you tell somebody not to disclose information, especially in this day and age. Seeing that these people are going to be in people's houses and---

(Sen. Sifuna's microphone was switched off)

The Speaker (Hon. Kingi): Your time is up.

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Sen. Sifuna: Mr. Speaker, Sir, I was interrupted.

The Speaker (Hon. Kingi): You were interrupted, yes, but we paused during those interruptions. Now, Sen. Kisang' your name had disappeared, though you are next. So, I will allow you to proceed.

Sen. Kisang': Thank you, Mr. Speaker, Sir. I rise to support this Bill. This Bill is going to help a lot, especially in terms of prevention of diseases. Most of the diseases that our people suffer from are basically lifestyle diseases. If we have primary healthcare promoters in our villages; these are the people who will go around, help, take pressure, temperature and even check blood sugar for our people. This means if anything is detected early, we will reduce the number of people who are going to go to the hospitals to be treated.

As they say, prevention is better than cure. This Bill is timely. It is important that we pass it as Senate. I know it will find its way also to National Assembly so that as soon as October or November, the health promoters can start working.

Currently we have CHVs on the ground who are working. They have worked for a long time. These are people who get maybe just a small stipend from the governors or nothing at all.

We are proposing that it is important that we have a transitional clause to ensure that CHVs are given priority. When health promoters are going to be employed, these people get employed by the county government. They can earn a salary because they have worked for long without being paid.

I know my colleagues have said we need to employ health promoters who have some basic knowledge in health or medical knowledge. However, the CHVs have worked for long without receiving any training. They were trained by the nearest health centre or dispensary.

In this Bill, we have the community health officer who will be a trained medical officer. They will ensure that the health promoters are trained so that they can pass the knowledge to the communities and to the households they are going to take care of.

There is an issue here on data protection. There is a law that we passed in 2019, the Data Protection Act and Clause 10 of the Bill, Section 3 states as follows -

“A community health promoter shall in conduct of the functions stated under subsection (1) and (2), be ethical and inform the household of the use of the information shall be put to ensure confidentiality and ensure accuracy of the information”.

This is the place we need to ensure that the health promoters and also community health officer are registered as data processors or data controllers so that they are subjected to a law instead of taking an oath. People take an oath and then they do not respect it. It is important that they are registered as data processors and controllers, so that when they have information of any patient, they do not diverge it.

The person in charge of the community health promoters works for the county government. They will ensure that the health promoters are trained regularly and disseminate the knowledge properly.

Clause 16 of the Bill establishes the County Primary Health Care Advisory Committee. Across the Bill, Committees have been established consisting of members from the national and county level. There are a lot of bottlenecks that we are putting in. Instead of having one representative in every sub-county, we should have one at the county level. Then, the sub counties should send representatives to the county. Otherwise, the committees will be bloated creating issues.

In the morning, a colleague said that we need representation from faith based hospitals or private hospitals. They also need a representative in the committee. They will bring in private sector knowledge to this Committee.

I did not want to say much. The Bill is good. However, as I said yesterday, if Clauses 13 and 14 have issues, we can remodel Clause 13 and delete Clause 14. The national Government does not have any business in primary health. We should not be targeting global funds.

Thank you, Mr. Speaker, Sir. I support the Bill.

The Speaker (Hon. Kingi): Sen. (Dr.) Oburu, proceed.

Sen. (Dr.) Oburu: Thank you, Mr. Speaker, Sir, for the opportunity. This is an important Bill concerning the health of our people.

From the onset, health is the most abused devolved function. Health funds meant for counties are held at the national level. This has been talked about over and over. We all know that power is sweet and it goes with the resources. When you control resources, you control power.

The people at the top has been trying to introduce whatever available means to retain funds at that level. When I see provisions in a Bill, giving the national Government's Ministry of Health authority to appoint some advisory committees, it creates one way of continuing to withhold funds at the national level for a devolved function. Therefore, this advisory council should not be in the Bill. I do not know whether the Committee recommended this.

We should not be restricted by what the Committee said, but speak our minds because the amendments will come at the Committee stage. When the amendments are moved, there will be time to talk about them. We will either agree or disagree with them. We will have an opportunity to express our feelings because we have to debate and interrogate all the aspects of the Bill properly.

Primary healthcare is the most important aspect of health. It gives opportunity to prevent – prevention is better than cure. I am hurt when you criminalise deliveries at the primary level. Whether we like it or not, most of our women still deliver at home. They deliver at home with the tradition birth attendants who are more experienced than the trained nurses at the hospital.

We need to train them further, so that they can do it hygienically and have some basic equipment to help people to deliver at that level. It is a reality that not everybody will have an opportunity to deliver at the hospital. I have seen it being criminalised.

Advanced societies have birth places where women visit. However, traditional birth attendants are still in place. Maybe, they will be phased out gradually. However, they should not be phased out by the law immediately, because that important activity

will be done ‘underground’. Mothers will be delivering using this means, but fearing that if they are noticed, they will be charged or taken to court for violation of the law. Therefore, when they do it underground, it becomes more dangerous than doing it openly, the way they do it now.

This aspect of community health promoters is promoting what has been there called the community health workers. They were created by the Bamako Protocol which gave a certain cadre and the grassroots level an opportunity to be trained to handle non-prescriptive drugs. Drugs that are not necessarily prescribed like Panadol. They help people then take them to the nearest primary healthcare facilities like dispensaries.

They were given kits which to sell and have a revolving fund to buy the medicine from Government facilities. These people have been suffering because what they get as a margin from the sale of those drugs is so little and cannot sustain them.

They have been doing a great job because they live with the people in communities, have access to every household and know them in detail. There has been an appetite to have that kind of cadre used for political reasons. Their name has now changed to community health promoters. Based on the structure of the Bill, they will not be trained properly. There is suspicion that this cadre might be created for something else other than the health work which they are supposed to do.

We should have an appetite to help our people at that primary level and not create that cadre for any other purpose other than that. Therefore, if we create that cadre, they must be given some basic training so that they have some knowledge and they can advise on issues of primary health care.

Mr. Speaker, Sir, I do not want to say much, but the offending clauses have been over exhausted repeatedly by people. These are Clauses 13 and 14 which take back the functions that should be devolved and retaining them at the national level. We are not going to support us.

If it has been recommended by the Committee, well and good. I will support the recommendation. However, if they have not, then we are going to bring the amendments. This is because personally, I have not seen those amendments by the Committee. If you have not brought them, we are going to bring them.

Thank you, for the opportunity.

The Speaker (Hon. Kingi): Sen. Munyi Mundigi, you may have the Floor.

Sen. Munyi Mundigi: Asante, Bw. Spika. Naunga mkono huu Mswada wa afya kwenda mashinani. Tunataka kuona tajiri na *hustler* wakipata huduma ya afya kabisa. Mswada huu umekuja wakati mzuri. Wakati huu Serikali ya Kenya Kwanza inasema mwananchi wa mashinani afanyiwe kazi inayofaa. Kazi kubwa ya Seneti kama Bunge ya Juu, ni kuangalia masilahi ya kaunti na watu wake.

Tatizo langu kidogo ni kuwa huyu mfanyikazi anachukuliwa kuwa mtu wa mshahara wa chini kabisa. Kwa maoni yangu, huyu sio mfanyikazi wa pale chini. Hii ni kwa sababu najua atakuwa anaungana na wangojwa. Wengine wako na pesa ya kwenda hospitali na wengine hawajiwezi. Atakuwa na shida nyingi sana.

Lazima kuwe na mipangilio maalum vile mhudumu huyu atakuwa anafanya kazi. Pengine huduma zake zitahitijika masaa yote hata usiku. Pale kijijini, kila mtu atamuona

kama daktari. Kwa hivyo, anafaa awe na elimu ya kutosha, pikipiki na pesa kidogo ya kusaidia hata kukodisha gari na kupeleka mgonjwa hospitalini.

Hii ni kwa sababu vijijini kuna shida ya pesa na chakula. Huyu mfanyikazi anafaa pia aelemishwe kuhusu mambo ya kilimo bora ili aweze kuwaelekeza wagonjwa kuhusu vyakula vya afya.

Mambo haya hayafai kuchukuliwa vile yanayochukuliwa wakati huu. Yanafaa kuangaliwa vizuri kabisa.

Pia akiwa kule mashinani, wale madaktari wa kaunti ambao wako kwenye hospitali za kata watakuwa wakimchukua kama mtu ambaye hana kazi. Hata hivyo, atakuwa na kazi nyingi. Ni yeye atakuwa anawapiga simu akipata mgonjwa ili huyo mgonjwa aweze kuhudumiwa haraka iwezekanavyo.

Ni mhudumu ambaye tunamuona kama sio wa maana lakini ni wa maana kuliko mtu ambaye yuko pale juu. Watu wengi kule kijijini watasema wako na 'daktari.' Wengine watasema hawana pesa za kwenda hospitali na hawajui hospitali kubwa ya kaunti iko wapi. Itakuwa jukumu la mhudumu huyu kuwaelekeza. Naunga mkono lakini mambo yote yaangaliwe.

Nikimalizia, yote yanayopendekezwa katika Mswada huu itasaidia kaunti ambazo hazina mambo ya kilimo bora, kwa mfano, Turkana, Embu na kaunti nyingine ambazo hazina maendeleo makubwa.

Embu inaweza kuwa haina shida nyingi kama kaunti zingine. Ninavyojua ni kuwa kaunti zote 47 zina shida mbalimbali. Hakuna kaunti ambayo haina shida. Hata kaunti ya Nairobi City County ina shida nyingi. Kwa mfano, watu wanaoishi katika *slums* wana shida nyingi. Jambo hili linapaswa kuchukuliwa kwa njia inayofaa.

Asante, Bw. Spika, naunga mkono.

The Speaker (Hon. Kingi): Sen. Ogola, you may have the Floor.

Sen. Ogola: Thank you, Mr. Speaker, Sir.

As I begin my presentation, I would like to remind ourselves that it was a choice of the people of Kenya that health be devolved. The Senate is also a creation of the people of Kenya so as to protect the interest of the same people.

I remember, just a few weeks ago at the Devolution Conference, the Head of State was very clear about unbundling of all functions of county Governments. I thought as a House, we would be more interested in following up these functions to be unbundled so that we get devolution of services fully to our counties.

Mr. Speaker, Sir, with the unbundling of the functions, it meant that funds would also follow those functions. Year in and out, in our budgets, we continuously see a lot of money still being held in health at the national level.

It is the of spirit of Kenyans that in devolving health, Kenyans have the aspirations that however low as they are, health facilities will be able to attract the more skilled doctors in the Republic. It was not in the spirit of devolution that we still be keeping the highest skilled doctors in some offices in Afya House in Nairobi, doing administrative duties rather than giving Kenyans the services they require.

Mr. Speaker, Sir, the counties can only attract these skilled doctors if they are able to pay them. That is why we are saying that functions need to be unbundled and funds need to follow those functions.

It is also worth noticing that it is because of the retention of these funds at the national level that we continue to attract skilled doctors doing some work at Afya House, instead of offering service to our people. Therefore, we have the best doctors in Nairobi because there is some money they can earn at Afya House. Also, there are hospitals all over such as Aga Khan Hospital and Nairobi Hospital where they can offer services.

It is our wish that the doctors would go down and offer these services. With the good pay we will be able to offer them, those big hospitals will emerge in all those counties.

Mr. Speaker, Sir, as we struggle with the CHP at the counties, I wish each elected or nominated Senator would visit their health centres and dispensaries to see the kind of skills that are filed up in those institutions to serve our people. A number of counties continue to employ non-health professionals and fill the hospitals at the expense of the skilled professionals that our people are looking to.

You will be surprised that 50 clerks are posted to a health centre with no work to do and yet, the health centres have no nurses, clinical offices and doctors. That is what should interest this Senate so that our people are served.

As I talk about this Bill, it is my prayer that constitutionally, the national Government should remain with the issue of standards and policy setting so that the counties are able to offer services.

I, therefore, support this Bill. However, it is my prayer that we are going to have the necessary amendments that we are proposing.

Mr. Speaker, Sir, if you look at Clause 22, you will see what a CHP shall not do. It says-

“conduct any procedure that is beyond their training”.

If you are talking about trained personnel, what is this training that this clause is referring to?

Mr. Speaker, Sir, if you go to Clause 22(1)(b), it states that-

“a community health promoter shall not-

administer to a person medication that is not authorized by clinical standards and guidelines under this Act or any other applicable law”.

Which other medication are they authorized to give?

I remember just a few weeks ago, the President was at Uhuru Park and he spelt out that the community health promoters will be paid Kshs5,000. However, it is worth noticing that Nairobi County was already paying the community health workers Kshs7,500. So, I find these inconsistencies at all the counties that are also paying them. My proposal is that the community health promoters pay should be uniform because their services are also uniform across the counties.

Mr. Speaker, Sir, as I support this Bill, my prayer is that as a Senate, we intensely follow up on the unbundling of functions in health and that funds follow functions once they are unbundled.

We must also ensure as a Senate that health facilities, dispensaries, health centres or referral hospitals, must have the adequate skilled labour that we require. The counties are not only filling up the health centres with drivers who do not even have cars to drive and clerks who do not have offices to sit in.

When you go to health centres, you will see a number of people and work is ongoing, but the professionals required in these health centres are not there. That should concern the Senate more than creating a replica of services that are already there.

Mr. Speaker, Sir, thank you for the opportunity.

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

Sen. Kinyua: Asante, Bw. Spika. Nasimama kuunga mkono Mswada huu wa huduma wa msingi ya afya.

Nimesikiza wenzangu na kinachojitokeza katika mazungumzo yote ni kwamba tayari tumeadhiwa na ukoloni mamboleo. Nimesikia ikisemekana ikiwa mtu haelewi Kingereza hawezi kuwa mhudumu wa afya wa nyanjani.

Nimemsikia Sen. (Dr.) Oburu akisema kuwa kuna wakunga ambao wameboba katika kazi yao na wanaifahamu vyema.

Ikumbukwe vizuri kuwa watu wengi wanatoka katika nchi yetu wakienda katika nchi ya Japani na Uchina ilhali wale wanaotutibu hawaelewi Kingereza. Ikiwa Kingereza ndicho kitakachofanya mtu akutibu, naona kuna nukshi.

Bw. Spika, wewe mwenyewe nakumbuka tukiwa katika Seneti, Nairobi, ulisema hata mavazi mengine tunayovaa ni ukoloni mamboleo. Hakuna tofauti ya mimi nikiwa nimevaa suti nikiongea na vile nilivyovaa leo.

Nikiangalia sana ni kwamba wauguzi tunaowaita wauguzi wa nyanjani wamekuwa wakisaidia sana. Hata mahakama zetu wameenda na kusema kwamba kesi nyingi ziendelee katika mahakama zetu, zipelekwe kwa wazee ili wasuluhishe. Wale wazee hawapaswi kuwa na elimu ya sheria. Wanapaswa kufahamu ni lipi nzuri au mbaya.

Bw. Spika, kama vile Sen. (Dr.) Oburu alivyosema, ukitembea sehemu nyingi, unapata wale wakunga wanazalisha bila kuongea Kingereza. Hii ni kwa sababu kuzalisha au kujua ni chakula kipi kizuri haitaji kuwa unajuwa Kingereza. Wauguzi wa nyanjani wamekuwa wakitusaidia kwa miaka mingi.

Nimemsikia Seneta wa Nairobi akisema kwamba walitumika na wanasisia na wakaweza kuwasaidia kufikia marengo yao ya kisiasa. Wanakejeliwa na kudhihakiwa.

Ninakubaliana na Mswada huu. Pengine mahali kuna nukshi kidogo ni Kifungu 14 ambapo inasemekana kwamba nguvu nyingi zinaenda katika Serikali Kuu. Marekebisha ambavo napendekeza ni kuwa tuongeze waakilishi katika ugatuzi zetu.

(Loud Consultations)

Bw. Spika, Maseneta walioketi karibu na mimi wananikanganya.

The Speaker (Hon. Kingi): Just concentrate and conclude, please.

(Laughter)

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May the Senator be heard in silence?

Sen. Kinyua: Asante, Bw. Spika.

Marekebisho ambayo ningependekeza ni kuusu Kifungu 14. Wengi wametaja kwamba nguvu nyingi zinapelekwa kwa Serikali Kuu. Ningesema kwamba tuongeze wakilishi wa gatuji zetu. Hii ni kwa sababu huduma ya afya tayari imeletwa katika gatuji zetu. Kisa na maana ya kuwa na baraza la ushauri ni kuwe na usawa wa afya. Usiende ukapata mambo ni tofauti katika kaunti za Laikipia, Lamu au Kwale.

Sioni ubaya wa hili jopo. Nimesikia wenzangu wakisema tuliondoe moja kwa moja. Lakini, ninapendekeza tuongeze wakilishi wa kaunti zetu kwa sababu tayari mambo ya afya imepelekwa katika gatuji zetu.

Bw. Spika, ukitembea katika nchi ya Cuba, utaona kwamba wauguzi wa nyanjani ndio wameboba katika kazi yao. Ni watu wa kwanza wanaojua shida ya wananchi ambao wako nao. Wanaweza kuwashauri wagonjwa juu ya matibabu na zahanati au hospitali ya rufaa ambapo wanaweza kupata huduma.

Mswada huu utasaidia sana. Ningependa kuomba wenzangu tuiunge mkono na marekebisho.

Hata wimbo mzuri unapaswa kuwa na *guitar*, kayamba na ngoma. Kwa hivyo, hata ndio tuwe na afya bora, tunapaswa kuwa na madaktari wa nyanjani na walio hospitalini zetu. Hii ni kwa sababu umoja ni nguvu, utengano ni udhaifu.

Jambo lingine ninapaswa kusema ni kwamba kuna ile msisimuko. Nilimsikiza Sen. (Dr.) Khalwale akisema kwamba wauguzi wa nyanjani ni watu ambao huweza kuwa hawaelewi vizuri.

Ninamkumbusha Sen. (Dr.) Khalwale, kuwa wakunga kule nyanjani wanafanya kazi nzuri pengine hata kuwashinda madaktari kamili.

Ninajua Kamati inaongozwa na Sen. Mandago wamekuwa wakisema hata ukipelekwa hospitalini, pengine unapata madaktari wenyewe wanakosea. Badala ya kutibu ugonjwa ambao mtu amekuja nao pale hospitalini, wanakupa madawa ambazo hazifai. Mtu akifanywa upasuaji, unapata kuwa waliacha makasi kwenye tumbo. Kwa hivyo, hakuna mtu asiyekosa ila Mungu pekee.

The Speaker (Hon. Kingi): Proceed, Sen. Faki.

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia Mswada huu wa sheria ya nyanjani. Ni masikitiko kwamba Sen. Kinyua ameweza kusema kuwa wakunga wanafanya kazi nzuri kuliko madaktari kama Sen. (Dr.) Khalwale.

(Loud Consultations)

Amesema!

The Speaker (Hon. Kingi): Sen. Faki, just stick to your contributions.

I am very alert here. I did not hear Sen. Kinyua mention Sen. (Dr.) Khalwale. So, kindly stick to your contribution.

Sen. Faki: Mheshimiwa Spika, nimefurahi kupata fursa hii kuchangia Mswada huu. Kwa kitangulizi ni kwamba Mswada huu ni mzuri sana, lakini ukizamia kuangalia

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ndani, unapata unarejesha nyuma kazi inayofanywa na kaunti zetu katika afya ya nyanjani.

Kwanza kabisa, ni ufisadi gani sheria hii inajaribu kutatua? Kwa Kiingereza ufisadi ni *mischief*. Kwa muda mrefu tumekua na wafanyikazi wa afya ya nyanjani na walifanya kazi kubwa sana. Walianza tulipopata janga la ukimwi. Walikua wakienda majumbani mwa watu waliokua na ugonjwa ule, wakiwasaidia na wakiwapa madawa---

(There was a technical hitch)

Mheshimiwa Spika, wafanyikazi hawa wa afya ya nyanjani hawajalipwa kwa muda mrefu. Hawakulipwa na Serikali kuu na hawajalipwa na serikali za kaunti, miaka kumi ya ugatuzi. Ingekua ni wakati mwafaka kuwe na njia ya kuwaruzuku wafanyikazi hawa wa nyanjani. Miaka miwili iliyopita tulipokua na janga la Covid-19, wafanyikazi hawa ndio waliotoka na kufanya kazi kubwa ya kuweza kuhamasisha watu juu ya ugonjwa huo na mambo mengine, ilivyo kawaida yao. Vile vile, hawakulipwa.

Hata wale wahudumu wa afya yenyewe hawakulipwa. Bunge la Seneti lilipiga kelele lakini hakuna malipo yaliyolipwa. Kwa hivyo, lengo lilikua kutafuta njia mwafaka ya kuweza kuwalipa na kuendeleza afya ya nyanjani bila kuwa na matatizo.

Mheshimiwa Spika, ukiangalia Mswada huu kwa Kifungu cha Tatu, kuna mapendekezo ambayo yameletwa na Kamati, tuondoe ‘*Minister*’ tulate ‘*Cabinet Secretary for Health*.’ Hayo si yale maelezo Waheshimiwa wengi wamechangia hapa. Kifungu hiki kinaingilia majukumu ya serikali za kaunti katika huduma ya afya.

Tukiangalia Kifungu cha Nne ambacho pia kimezungumziwa, marekebisho yanayopendekezwa ni kuongezea tu *Director* wa medical colleges zinazofundisha wauguzi na wengineo. Haya hayaingilii yale mambo ya kimsingi ambayo yamezungumziwa katika mapendekezo yaliotolewa katika Bunge hili kuhusiana na Mswada huu.

Mheshimiwa Spika, huu Mswada ni mzuri lakini unahitaji marekebisho mengi. Yale mapendekezo yaliozungumziwa hapa itabidi tukae chini yaangaliwe kwa undani zaidi kuliko ilivyopendekeza hapa na yule aliyeleta Mswada huu, ili tuweze kupata mwafaka. Tunakubali ipo haja ya kuwa na sheria ya afya ya msingi, lakini sheria iliyoletwa hapa haitaweza kutatua matatizo yale yako. Tumeona tutakua tunawalipa wale wauguzi mishahara na zile kanuni za kufanya kazi hii zimebadilishwa.

Kwa hivyo, ninapinga Mswada huu na yale mapendekezo yaliyopendekezwa na Kamati ya Afya hayangeweza kutosheleza yale mahitaji tunayotaka kwa Mswada huu.

Asante, Mheshimiwa Spika.

The Speaker (Hon. Kingi): Sen. Kinyua, you are late.

Sen. Korir.

Sen. Korir: Thank you, Mr. Speaker, Sir, for giving me this chance to speak on this Bill. I thank the Committee on Health for coming up with this Bill and for the Report they came up with, although some of us are not privy to it.

Going by the sentiments by my colleagues, there are a number of issues that have been raised that need to be relooked at. I believe this is a House that is between the

national Government and the county government, and it is supposed to protect the county governments. We, therefore, cannot infringe on the rights of county governments in terms of the formulation of this Bill.

Mr. Speaker, Sir, I support this Bill but not in totality because there are a number of changes that have to be done so that this Bill can be acceptable and workable within the county governments.

The Speaker (Hon. Kingi): Sen. Joe Nyutu.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir, for this opportunity. I rise to make my contribution to this Bill, which I support. At Independence, the Government identified three enemies it wanted to fight. They were, poverty, disease and ignorance. I believe that you can live with ignorance and poverty because if you went to someone's house and needed a meal, they could still share a meal with you.

However, health is an important aspect of the human life and that is why I support this Bill, especially when I look at Part II, Clause 6, where we have a recommendation to have comprehensive healthcare to our people and households. If we adopt this Bill, we will take health comprehensively, promote it, prevent what needs to be prevented, cure what needs to be cured, rehabilitate and offer palliative care. This means that this Bill needs support from all of us.

Mr. Speaker, Sir, in our villages where most of us grew up, people did not have information on many aspects. That is why until some years back, we used to have agricultural extension officers, so that the professional information out there reaches the people at the grassroots. That is why I support this recommendation on Community Health Promoters (CHPs).

The CHPs interact with our people on the ground, in the homesteads and all the time. Our people will need information the CHPs will have as assigned by the county government because health is devolved. People will know what they need to do in order for them to prevent themselves from diseases that may affect them, especially from the environment they live in.

Mr. Speaker, Sir, they will teach our people about hygiene because some of the problems we have with health in our communities come from poor hygiene practices. We have leading killer diseases brought by lifestyle, even though I am not sure about data. High blood pressure and diabetes are diseases our people would avoid if they have information on better lifestyles. Considering these CHPs will be equipped with this information, I believe they are going to educate out people at the grassroots, so that they prevent these diseases. The recent COVID-19 Pandemic taught us hygiene. When people started wearing masks and washing their hands, most common diseases including diarrhoea, colds, flues and others disappeared.

I also support it because these Community Health Promoters will give information on hygiene. According to Clause 10 (f), the Community Health Promoters will provide health advice to households in a language that the members of the household understand. Not all of our people are able to communicate in English. This is important because people will be given information in a language they understand.

In Clause 10 (3), the household will be informed about the use of information they have. The Community Health Promoters will ensure confidentiality. I do not want somebody to go telling people what ails me. Therefore, we need to regulate these Community Health Promoters and these recommendations. We shall have a register of the Community Health Promoters in order for everyone to know who has been given these duties.

Mr. Speaker, Sir, I do not know what happens in your county. When you go to a funeral and people are making church offerings, those who are collecting it are always identified. You will not find some other people collecting offerings even if they are going to take it to the church leaders. As such, it is good that Community Health Promoters are identified, so that people know that they are dealing with the right people. This is how we will avoid problems that may arise from unregistered people. These are the reasons that make me support this Bill. They will now be remunerated.

I hope I am talking about these Health Community Promoters because they are very important. Sen. Sifuna said that they helped most of the people here in getting elected. So, these are people who need remuneration because they do a very important duty for the people. In my County, previously, there was no defined way of remunerating them. However, in Clause 12, we see that they will be trained and paid a stipend that will be specified. This then becomes a very beautiful recommendation and idea.

Going to Part IV, Clause 13, this liaison between the Ministry of Health (MoH) and county governments, is very important for us to enhance coordination and uniformity of primary healthcare in our facilities and in our communities.

Finally, as I sit down, I am excited by Clause 20, where we are told that each Community Health Unit shall have a Community Health Committee. The Community Health Unit will be comprised of members from all the spheres of interest groups, and they are listed there. I do not want to read, but health must have representation from everyone. Every group must be represented in matters of health because health is central.

Now that I see the yellow light, let me finish up. With reference to Clause 22, some colleagues have identified things that may need to be amended. In Clause 22 (f), Community Health Promoters will not be allowed to solicit financial or other rewards for personal gain. That is very exciting because this is what the chiefs in our villages have been doing. If you need them to sign your application form or an identification card – a job that they are supposed to do – they use that privilege to solicit funds from those seeking their services. Therefore, when we control these Community Health Promoters in this way, then they will offer good service.

I support this Bill with any reasonable amendment that will be forwarded by Members.

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

Sen. Abass: Thank you, Mr. Speaker, Sir.

*(Sen. Chesang entered the Chamber
without bowing to the Speaker)*

The Speaker (Hon. Kingi): Sen. Chesang, go back to the Bar and do what is required of you according to the Standing Orders.

*(Sen. Chesang walked to the Bar
and bowed to the Speaker)*

Sen. Abass: Mr. Speaker, Sir, this is a good Bill, but there are many unanswered questions. First, primary health care is totally a devolved function. As the Chairperson of the Committee on Devolution, I am getting worried now because my Committee is pushing many devolved functions that are still with the national Government to be taken to counties.

Today, I do not know which issues will be taken care of by the national Government. I know there are driven issues. There are funds. The Bill is good for this country because we need to reach everybody and take care of the health of people. However, we have to be very cautious,

We used to have Community Health Workers. They were driven, given money and even trained, but there was a concern from the World Health Organization (WHO). We kept saying health was for the public. So, today, someone is advancing the same issues. We have so many trained nurses and health technicians who are not employed. We need to relook at these things so that we do not end up having a kind of mass movement.

When recruiting these people, let us know that we have so many Kenyans who are not employed. We could have around 300 or 500 people to employ, but we have no members who have been trained. The Governor does not have the resources to train these people. Therefore, we need to look at training issues.

Secondly, today, we also have challenges of devolved functions such as the library services. Money has not been devolved and the people working there have not gotten any salary. They are just there. Governors have refused to pay them anything because they say they do not have any money.

We also have Early Childhood Education (ECD) centres. We have not taken care of the education of our children. We have classrooms and teachers who have not been paid because money has not been devolved.

How come, today, we care about healthcare and health promoters? This thing will end up the same way. The health workers were there. They were not paid. We have trained people but, today, they are not paid. They are paid peanuts. We need to come up with an appropriate approach that is actually going to be an acceptable thing.

Equally, one thing is that healthcare is a good issue. The problem is that in the county management team, we have only one person from the county. Therefore, I think we need to increase the number of people from the county who will represent the interest of the counties because that is where we taking the people for training.

I will support the Bill with amendments. We need to look at it and give it time without rushing. I think we are rushing because I have heard Sen. Sifuna say that healthcare issues in Nairobi City need to be rushed. So, we need to be very cautious.

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With those few remarks, I beg to support this Bill

The Speaker (Hon. Kingi): Sen. Tobiko, please, proceed.

Sen. Tobiko: Mr. Speaker, Sir, thank you for this opportunity. I stand to support the Bill because I believe the spirit of the Bill is positive and it is welcome in the devolution of health services. From the word go - and I am not opposing the Bill - I believe there are quite a number of issues that we need to handle. I have seen in Part III, Clause 9, where a community health promoter shall be selected by the community through a public participation forum and appointed by the county government.

I have trouble with that because at the community level, small issues will be made to look very big. In such a public forum, it will look like it is an election of some sort. Therefore, when we look like we are just going to do an election, you wonder whether we will be able to achieve the exact purpose of what we wanted with these health promoters.

I was wondering whether instead of that kind of public participation forum, which looks more like an election of some kind, we can propose to adopt the already existing Community Health Volunteers (CHVs) because they are already there. The CHVs have been working without a salary and they have volunteered because it is in them. Sometimes, you find people who are ready to help society and they have been there for long.

Mr. Speaker, Sir, if the CHVs can be adopted, in this case, instead of going into a whole process of public participation or election, I believe we will have rewarded those who have already worked for the community and picked people who have their heart to serve the community. There is another whole lot of people that I believe can be utilized in this case. There are those people we call village elders or *balozis*; not the village administrators that the counties have. They are not under any remuneration or allowance of some kind, but have been serving the community.

I was wondering whether that lot of people, *wazee wa vijiji*, can be adopted also for this purpose, instead of creating another lot. We already have village administrators, then the CHVs and *wazee wa vijiji*, who are serving the community but are not remunerated. If this Bill was proposing adoption of that group of people to work for the community because they have already been working and at least work for the community with some allowance, for me, it will make much sense.

I also have a bit of trouble with the kind of work these people will be doing. The health promoting, services and advising the community is okay. However, because of security issues, Kenyans have become very sensitive on who visits their homes, what information they will be picking from them and what they are going to do with this information. I am certain many people may want to close their doors to these people because not many people will want their home situation to be advertised out there.

I do not know whether these people are going to work under some oath of some kind, so that they do not divulge information, which also will somehow affect the privacy, respect of families on whatever they have and what they do not have.

Mr. Speaker, Sir, you can imagine a health promoter coming to tell people, 'this is what you should do and eat.' Then he is told 'okay, because we cannot afford, give it to us. You are telling us to have proteins, but we do not have meat. Maybe you should

provide.’ I do not know whether we will be putting these people in a very awkward situation because we must also accept that there is poverty and dire need in our communities. We may be putting these people in a precarious situation to chew more than they can bite.

Mr. Speaker, Sir, the other issue that I saw, and I do agree with the earlier speakers, was on Clause 14, where we have a whole lot of national officers, the Principal Secretaries, Director General of this department and all that; a whole lot from the national level. Since health is a devolved issue, I believe it should be kept to be a county issue. Maybe only the County Executive Committee Members (CECMs) will be picking the policy issues and directions from the Ministry of Health in terms of standardisation and all that, and communicate it down instead of a creation of so many committees.

One other item that I have that is of concern to me is that it is high time we create laws that will help, instead of creating one committee that will handle a number of devolved issues. In the same breath, we may now want to do a Bill to have agricultural extension services, then you would again want to create a committee for agricultural advice, to visit homes, to know how they are planting, what season they are planting and all that. So, if we must create such committees, then let us create a committee that will be able to handle health and agricultural issues because food security is still an issue of health. That way, we stop a creation of so many committees.

There are already bursary, security, peace and *Nyumba Kumi* committees existing. With all these committees, I do not know whether we will be overloading people and *wananchi* with too many committees that they do not even know who to approach for what issue. I wish there was a one-stop shop kind of thing or committee at the village level that you know where your agricultural issues will be handled, your health advises will be gotten and security situation will be handled, instead of so many committees handling health, agriculture, peace, and I do not know what.

I wish we can do legislation that adds value, but also helps *wananchi* to go to one place and get all the services. I also would imagine that there can be digitization of this information that these health promoters will be collecting, so that from a glance, one can refer to that information and be able to tell the health situation of the citizen of a particular county.

The Speaker (Hon. Kingi): Sen. Veronica Maina, please, proceed.

Sen. Veronica Maina: Mr. Speaker, Sir, thank you for the opportunity to contribute to this important debate. It is very well stated by the hon. Senators that health is an important right that requires to be attained by every citizen from every county. To me, this Bill looks like a game changer. If we get it right, we will then be dealing with an important right that can now be accessed by all citizens in a structured manner.

The legislative step answers the question of socioeconomic rights that are spelt out in Article 43 of the Constitution. When I look at Clause 3 (a), the purpose of this Bill is to promote and fulfil the right of all persons in Kenya towards the progressive realisation of their rights to the highest attainable standard of healthcare.

Just looking at that right, it talks about a high standard of healthcare. Therefore, this Bill presents an opportunity for setting the standard of healthcare that is envisaged by the Primary Health Care Bill, 2023.

When I look at the objectives that are set out from (a) to (e) and listen to the concerns raised by many Senators here, then I propose that there is an (f) that deals with data and research because the purpose of setting up a foundation for higher standards of attainable healthcare would mean that we will understand the kind of diseases that are ailing different counties.

The only way that can be achieved is by way of collating data. Like Sen. Tobiko has proposed, digitisation of this data will help, but if we will not put that as an object in this Bill, then it means that we cannot stem data, research or information from the Bill.

My first proposed amendment will be to introduce a sub-clause (f) under Clause 3 that deals with data, research, and information because, based on that data, we can say that we can advance research into certain aspects of health and attainment of the highest standards.

When I look at Clause 5, it appears that the drafter of this Bill intends to introduce the services that will be included under the community healthcare services. I am talking about health education and promotion.

My question is this: Right now, we are supposed to be setting the standards of the kind of healthcare that should be given to Kenyans and the education. How then do we standardise so that whatever is taught in Turkana is the same as what will be taught in Lamu, Meru, and Narok?

I see a provision there that if it is coached and properly amended, then we will be stating that the healthcare education and promotion is based on the WHO or the Ministry of Health standards.

We must cross-reference the standard, so that the materials that are being used here in Turkana--- because we are dealing with community health promoters who may not have gone through medical training like your ordinary doctor. So that standardisation runs from County No.1 up to County No.47.

Therefore, I believe that we should set a standard against every clause that purports to dispense information or exchange information with *wananchi*, so that we do not have the community health promoters using material that is not certified to be proper medical information.

Clause 9 of the Bill speaks to the qualifications of these community health promoters, who shall be selected from the community. These are ordinary *wananchi* who come together to improve the health status of the people living within the community.

The qualifications are; be a citizen of Kenya and above the age of 18. This is a very basic qualification. It is okay but then, to supplement this basic qualification, there must be defined training, so that if you have had community health volunteers who have been dealing with *wananchi* without specific training, then at least, we can put in basic training for this community health promoters, so that we know the quality of the people we are working with. We could even say that we need two weeks of this kind of training or three weeks of that kind of training.

Therefore, I find that there is a gap there. This health promoter should be trained and there should be a basic form of certification. Therefore, we introduce an amendment there to allow for certification.

I know many Kenyans who would want to overstretch that responsibility, take advantage and even purport to be doctors – *watajiita madaktari wakienda huko ushago*.

To curb that, we have clauses that have been introduced, like Clause 10 of this Bill. To me, it appears that the intention of the drafter of this Bill--- It is not Clause 10. It is the Code of Conduct; that they should abide by and Clause 22.

When I look at the ramifications of somebody purporting to be a doctor, yet they know that they are community health promoters, then I see as though the Bill has shied away from putting actual penal sanctions to stop anybody from attempting to deliver services, when they are not even traditional birth attendants, or trying to treat somebody when they know that they are not supposed to be administering any kind of treatment.

We should introduce more sanctions, as we look at Clause 22 of this Bill. Clause 22 indicates what will happen to a person who defaults or defies the provision of the Code of Conduct that is spelt here.

Clause 22(2) states: -

“Any community health promoter who contravenes the provisions of this section shall be subject to disciplinary action as prescribed by law.”

From the reading of this Bill, it means that you cannot even tell what would happen to a person who is in breach of this Bill when it turns into law. So, we could introduce a sanction that shows that if you do this, you will be made to pay a fine of Kshs50,000 or you go to jail for six months if you cause somebody to die in the course of purporting to treat them, when you know that you are not a doctor.

This is because they will be dealing with health matters, and health matters are very sensitive. We know how close a person will come to the end of their life courtesy of being cheated by another that they are doctors, while they know that they are not doctors and they are not supposed to be prescribing.

We should equally outlaw prescriptions from being given by community health volunteers, so that the public knows that they are not allowed to give any prescriptions; they are not allowed to perform the role of a doctor, but can only dispense the information that they have to promote community health.

With those remarks, I will support this Bill, but would urge that we consider making several amendments. I am also in agreement that we should not devolve powers backward towards the national Government. They should stay with the county because this is a devolved function; the health function is devolved to the counties.

Mr. Speaker, Sir, I beg to support and hope there will be amendments at an appropriate moment.

The Speaker (Hon. Kingi): Sen. Thang'wa, you may proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir, for the opportunity to support this Bill. There is an issue that has been raised here by several Senators on public participation. That issue is very important and we require public participation.

It is not an election; it is for the people to manage their affairs. This is to stop governors or anybody who is appointive from appointing their campaigners to be community health promoters.

We are allowing the people to say that this is a person that we respect in this community; this is a person who respects other people and so, we all agree that this will be the best person to take care of them when it comes to health matters. Therefore, I do not see why we are shying away from public participation. It is not an election but rather presenting yourself before people. If they have faith in you, why would anybody be worried?

Mr. Speaker, Sir, some of us are Christians courtesy of Jehovah's Witnesses. They used to go to every home to preach the gospel. What we are looking for are health witnesses; somebody who goes to every home and finds out if whoever is in that home is okay, whether they are taking medicine, eating well, waking up, working or walking. These people are very important.

Just the other day, the President launched the kits they are going to use. They have to take your blood pressure and sugar levels. The Senator for Kirinyaga is telling me about fertility, but I am not talking about that.

(Laughter)

He is saying they should check on that, but I do not believe they will be able to do it. When they visit these homes, they will be able to take care of and report back on the status of our people. Employing 100,000 health promoters, yet we are 50 million Kenyans means that one health promoter will be allocated around 500 people. That is a few households. Their work is to wake up every morning and walk around to monitor people in their areas.

This will help the counties to plan better for their health strategic plans and budgets. They will know which area has this kind of sickness. Just the other day, the people of Karimenu Dam in Kiambu County started complaining of high blood pressure and heart attacks. After doing research, they discovered it was not an issue of water. It was because water was eating into their lands and they had not been compensated by the Government. That means they are worried that their houses will be submerged. There is panic in that area.

It is not necessarily a disease, but a scenario where the water is flooding their farms and houses, and they do not have anywhere else to go. That was causing them to have those kinds of conditions. The Government will then be able to plan very well with that kind of reporting.

The other day, somebody went to the hospital with a very severe headache. He took a *boda boda*, *matatu* and then queued in the hospital. When the doctor checked him, he was told to remove his hat because it was very tight. The problem was the hat he was wearing. If they had probably just seen that health promoter at home, we could have saved him from traveling and using a lot of money. It is important to have these people.

I do not see where this Bill is taking the role of the counties. Counties have been mentioned several times. All this Bill is doing is coming up with a policy and framework that counties are supposed to use. There are some places, especially in Kitui and Makueni Counties where, I can be corrected if I am wrong, people always talk about snakebites.

It is an issue that needs to be addressed. After a snakebite, before somebody gets to the nearest dispensary, it takes too long; maybe because there is no *boda boda* or a way of getting them there. However, if they knew of a health community promoter, they would be given anti-venom. If something like that happens, they only need to call somebody and get the service.

Mr. Speaker, Sir, I do not know if you know, but there are no cattle hospitals. This is because veterinary doctors visit them where they are. The farmers report to these veterinaries and they always go to where they are. It is almost the same thing. We want to reduce traffic in the hospitals. We need to bring about these community health promoters.

Kiambu is one of the counties that are known to have young people suffering from drug and alcohol addiction. The health promoters will enable us to know by data the kind of rehabilitation needed. The Government will know where this drug and alcohol abuse is rampant and enable the county to plan accordingly. One of the Sustainable Development Goals (SDGs) requires counties to have health centers every five kilometers.

In our developing country, we might not be able to have dispensaries all over. Some of the people go to hospitals, like in the example of the man with the hat, because of something that could have been advised on. Since we cannot build dispensaries every five kilometers, this is the right time to have these mobile doctors. The reason we are talking about their qualifications is because we do not have as many doctors as required.

However, going forward, after a few years, our children, brothers and sisters shall be at Kenya Medical Training College (KMTC), and this may be the work they will be applying for, so that we can have somebody to treat people at home. We also have people who go for therapy. When somebody wants to be seen by a nurse every other minute for physical medicine.

We have so many old people who require therapy, but they cannot afford somebody to travel from Nairobi City County or any other area to administer it. For example, they may require it on their hands for arthritis or even their body because of stroke. Once these health promoters are given the proper training, we are going to save many people and prevent illnesses. We can prevent mobility, disability, and mortality.

I thank you.

The Speaker (Hon. Kingi): Proceed Sen. Githuku.

Sen. Githuku: Asante Bw. Spika kwa kunipa fursa ya kuchangia Mswada ambao ni wa umuhimu sana ambao unahusu maswala ya afya ya jamii zetu. Ningependa kujumuika na wenzangu ambao wamechangia Mswada huu ambao utatuletea wahudumu ambao watahughulikia jamii zetu nyanjani.

Watu hawa watasaidia sana kuwaelimisha wananchi walio kule mashinani kwa njia ambazo watalinda afya zao kibinafsi. Kuna kiwango fulani cha elimu ambacho kinahitajika ili kuwachagua hawa wahudumu husika. Mswada huu unajumuisha jamuhuri yote ya Kenya. Inazingatia kuwa watu kutoka sehemu zingine mbalimbali hawakupata elimu. Mtu yeyote ambaye atahusika katika kupeana huduma lazima awe na elimu kiwango fulani.

Kwa mfano, nimetoka Kaunti ya Lamu kule mashariki, mwisho wa sehemu ya Pwani. Katika sehemu ile, kuna jamii ndogo ya Waboni. Mahali pale kuna watu ambao hawakupata elimu, lakini wanazungumza lugha moja. Tusiweke kiwango cha elimu kwenye huu Mswada kitakacho wanyima nafasi watu ambao hawakupata fursa ya kusoma. Tuko na wahudumu wa afya kwenye kaunti. Wahudumu wa afya wahusike kwenye kuwapa wahudumu wa kijamii mafunzo. Haya mafunzo itawasaidia kuhudumia jamii zao katika lugha ambazo wanajamii wanaelewa.

Napendekeza kuwa mhudumu wa afya kwenye kaunti awe ni mtu atakayekusanya wahudumu wa kijamii ili kuwapa mafunzo. Ningependa kuzungumzia kuhusu malipo ya wahudumu wa afya. Tumetoka kwenye kaunti mbalimbali zenye hali ya maisha tofauti. Napendekeza kuwa malipo kwa wahudumu yaamuliwe kulingana na uwezo wa kaunti. Kaunti ya Nairobi haiko kwenye kiwango kimoja na Kaunti ya Lamu; hali ya Maisha na mgao wa pesa ni tofauti kwenye kaunti hizi mbili.

Napendekeza kuongeza *qualifications* kwenye Mswada huu ili kueleza athari za kufanya makosa kazini. Wahudumu hawa wanaweza kujiingiza kwenye maswala yasiyostahili kama kuitisha wananchi pesa – *misconduct* kwa lugha ya kimombo. Atakapopatikana na utovu wa nidhamu, inafaa asimamishwe kazi.

Huu Mswada utasaidia watu mashinani. Tumetoka Nairobi Kaunti na kukuja Kaunti ya Turkana na tumeona watu wengi wakiumia. Ukifika hapa, unapata mtu anaumwa na kichwa bila sababu. Hii ni kwa sababu ya baridi ya Nairobi. Akifika Turkana Kaunti, kwenye uwanja wa ndege, utasikia watu wanaolia kwa sababu ya maumivu ya kichwa. Anapoenda hospitalini, daktari anamwambia kuwa hana ugonjwa wowote, anastahili kunywa maji mengi tu. Anapokunywa maji, anapona na maisha kuendelea. Angelipata mhudumu wa kijamii, angemsaidia na hangekuwa na haja ya kwenda hospitali.

Ninaunga mkono Mswada huu ili tupate wahudumu watakaosaidia watu wetu.

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

Sen. Lemaletian: Thank you, Mr. Speaker, Sir. I rise to support this Bill, although there should be amendments to ensure there is confidentiality in access and storage of the medical records. There is a gap that the Bill should further elaborate on what should be done.

This Bill seeks to ensure that there is real devolution of health and realising the right to the highest standards of health. People from the marginalized communities do not understand what their rights are as far as health is concerned. People back at home have no access to hospitals. Most of the times, they end up using herbs, which are effective. However, we need to move at the same rate with the rest of the world.

The Bill seeks to bring 11 departments to work together through the formulation of an advisory committee. It will ensure there is ripple effect in development of infrastructure, education, environment and agriculture. When you devolve health to the villages, you must put in place proper infrastructure. This means that roads and education will be developed. As much as my colleague said that people do not understand this language, they will be forced to understand it through access to education within the community.

In a bid to ensure we live in a healthy and clean environment by having proper hygiene proposed in the Bill, there will be development in the agricultural and environmental sector because cleanliness is second to godliness. As such, we must protect the environment that God gave us. Cleanliness begins with our environment. The cleaner our environment, the healthier we become.

I support the remuneration of the already existing officers as suggested by my colleague and great leader, Sen. Tobiko. The Bill should seek to compensate the community health volunteers who are already working. I have friends who volunteer in some parts of Marsabit towards North Horr, Samburu North towards South Horr and around Ngurumit areas, and no one is compensating them despite having ward admins and the rest of the county structure.

Clause 15(f) states that –

“Each county government shall, in the management of primary health care services, facilitate access to information regarding appropriate behaviour including basic information on prevention, promotion and treatment of communicable and non-communicable diseases.”

This Clause should also include the healthy behaviour of the medical practitioners or the people who will be trained to do this. This should not just apply to the healthy behaviour of the patient.

I support the Bill.

The Speaker (Hon. Kingi): Senate Majority Leader, proceed to reply.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I appreciate colleagues who have taken time to make contributions to this Bill. I intend to respond to issues that have been raised by colleagues. The Committee had already addressed themselves to most of the concerns raised.

I will begin by responding to housekeeping and basic issues, which, as legislators, we need to keep on appreciating. I have explained this, but I do not mind repeating that the legislative process is an interesting exercise. I want to urge colleague Senators to take time to read through, appreciate and understand better. There are many things that I have listened to colleagues saying, which are already covered either by proposed amendments of the report of the Committee or to the Bill. However, many Senators made their contribution based on what is the primary provision as stated out in the Bill.

Mr. Speaker, Sir, nothing is wrong with that, save for the fact that how parliamentary business is transacted is such that we will never have close attention to detail like that of a committee, unless you have very keen interest. Maybe, you are the sponsor of a Bill or it is something that radically affects your constituents, so then you

pay close attention and read clauses, word for word. Many of us get to do that over this Bill.

We work through our committees because of that reason. Committees are the channels through which we run and transact business as a House. I have noted that many times Members forget the fact that our committees actually have composition of both sides of the House.

When you have a Committee that has considered a Bill and returned a verdict to either reject or approve, many are the times that we respect that particular position. There have been one or two occasions because of a reason or the other because we are not bound as in the strict sense of it, to follow and agree with everything the Committee has proposed. However, at least, they serve as a guiding principle to the direction that we want to take on a particular Bill.

Therefore, on a Bill such as this, where the Committee has said we approve the passage of this Bill with the following recommendations, I feel that many a times, it is important for Members to really take time and understand what informed the wisdom of the Committee.

I explained yesterday that perhaps Members might be complaining and saying that the Committee has not guided them sufficiently. I have told you on authority because I know for a fact that from as early as January of this year, our Committee on Health has engaged with various stakeholders in different meetings.

In fact, I was speaking to Members of that Committee over lunch and they were explaining to me that some of the comments that they are making--- Actually, even before they were provided for in the Bill during the drafting phase, they had raised the same concerns with the Ministry and many such people. However, for one reason or another, they were either carried or not. For those that were not carried, they have gone further as a Committee, because the beauty of a legislative process is that everybody can speak. The Cabinet Secretary can say what they want and the President can say what he wishes, but the eventual power to legislate lies in the hands of the legislature. That decision is with this House.

Mr. Speaker, Sir, therefore, I appreciate and want to guide colleagues that take time. Even on this particular Bill, take advantage of the comfort that Turkana has accorded us. Yesterday, I said that this is an opportunity for us because we are working in an environment of the least distraction that you can even get. Therefore, you have record attendance. Perhaps, you have seen this is one of the most contributed to Bills that this House has ever processed. Virtually, almost everybody has spoken to this Bill because of the atmosphere that I have explained. Therefore, I appreciate the comments.

Just to delve into one or two things that I listened to colleagues raise and perhaps, I want to respond to. Of course, I appreciate and this has been greatly highlighted in the Report of the Committee on the Primary Health Care Bill, that is, the scope of Community Healthcare Promoters (CHPs). The proposals that have been made on handling the issue of nomenclature and the difference of words between “and” and “from,” so that at no given time do you find these CHPs transforming themselves into the fears that people have.

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I heard people earlier say things such as ‘you may find that some of them might even try to operate on people.’ That is properly covered in the Bill on their scope. For the part that was not as clear or elaborate to Members as should be, I have seen the proposed amendment that the Committee has recommended. Members, listen clearly. If you feel that the scope has not been properly covered, no problem. Let us complete the Second Reading this afternoon then begin the process of filing your amendments.

Mr. Speaker, Sir, while I am saying that, I want to celebrate our colleagues who took time to file their amendments from yesterday’s Bill on Facilities Improvement Finance Bill. I have seen about eight or 10 colleagues that have filed their amendments, which we shall be considering later on. I find that the issue of scope has been addressed.

On this issue of registration of CHPs, I wish Sen. Sifuna and so many others were here because I have heard them confuse and speak of CHPs as if they are new people that are being hired. There is nobody that is being hired. Members, already in your counties, there are people who are called Community Health Volunteers (CHVs). They are in existence and they are working; they live amongst you. Perhaps you have stayed in Nairobi long enough that you have forgotten that such people exist. Those are the people that we are now anchoring in law, only that we are referring to them in a different name; calling them CHPs.

To respond to Sen. Sifuna again, that is why the President did the launch that he did. What was being launched were the kits. Remember, right now, they move around with absolutely no kit. If they want to check your temperature, they use the elbow; the traditional way of checking people’s temperature. If they want to count your heartbeat, sometimes they just use their normal hand to feel it.

That tool that was being launched the other day has most of the equipment that they need in going about their duties. Those kits were launched because these people are already in existence. They live amongst us. There is nothing new that this Bill is introducing. We are only anchoring them in statute and law. This is so that, one, they can even be appreciated and remunerated. We can observe standards and they can be trained. Various counties can maintain their register.

That is why even in this second part of the proposal that is being made, the Committee, and I agree with them, have proposed that instead of referring to the owner of the register of the CHPs as just the Director for public health in the county, we change it to read the “office of the director,” so that it is not just an individual holding on to it and saying that they are the ones who can employ, especially now that we have issues of remuneration.

In fact, I hear people saying now that this Bill claws back on devolution. I know that between us and the CoG, while we love devolution with pure natural instincts, as the Senate, the CoG are even more vicious in their love.

Of course, the motivation is known and the things that they haggle and fight about with the national Government. The CoG has actually written an agreement on the remuneration of CHPs on a matching grant between what the county will pay and the national Government will pay. I think it is 50 per cent each. I am not sure; I have not read the exact details of the agreement. Where the national Government pays 50 per cent and

the county government pays 50 per cent, there are elaborate discussions about what they need to do. Therefore, this Clause is on registration.

I hear people speak on the issue of funding. I want to agree with them that Clause 13(f) is not as elaborate because it says “in collaboration with the National Treasury.” This Committee is speaking out to the advisory committee. It shall resource mobilise and do the following. I think that is why people were a bit jittery and saying that you are still retaining serious resources at the national level.

My proposal that I request members that were here and keen on that particular point is, let us make that revision on Clause 13(f) a little bit more elaborate. This is so that it is agreed that all resources that are raised principally for the purpose of primary health; I think it was Sen. (Dr.) Khalwale who spoke on the interest that public health generates, especially with all these global funds, you are sure that all those funds are directed to the counties the way it should be.

With proper wording, Clause 13 (f) should be able to solve that particular problem. The people that spoke to this; they are quite a number, make sure you file your amendments in that regard. This is so that it is elaborate and clear that if, for whatever reason, those funds are sent to our counties to the proportion of which is necessary; this is despite the fact that it is the duty of the Government of Kenya, and they are the ones that negotiate and sign on these global collaborations with other countries. If it is medicine being sent, let it be agreed. If it is payment of these CHPs, let it be sorted out.

The animal in the room is Clause 14. I listened to you Sen. (Dr.) Oburu on where you have difficulties on Clause 14 because of the composition of the Advisory Committee and I agree with you.

Many of the times, I have done Bills in this House, now as the Senate Majority Leader and even previously. The challenge we have is that even our own staffs here in Parliament - quite a good number of them, especially the senior ones, save for the young ones - are ex-State law officers.

The language and the standard of practice in State Law office is that any time any board is being formed, it is as if somebody sits in front of the computer and does the copy paste. In any law or board being formed, you will have a Permanent Secretary or nominee representing National Treasury and another representing agriculture, *etcetera*. The same is just being duplicated.

I urge our committees to be keener when considering this. I agree with those that are saying that this Committee as recently constituted is heavily tilted towards national Government such that you do not have the views of county government carried on board when this board sits, yet you have given it an enormous task or responsibility.

I expect colleagues, either you, Sen. Oketch Gicheru - because you spoke at length about this and I appreciate your thoughts about it - to file an amendment tonight as we rest before we consider the Committee of the Whole tomorrow. Let us see how you can reduce this number so that you tilt the Committee at least in favour of the counties or at worst, let them be at par, so that you have almost an equal number between representatives of the national Government and those of the county government.

I agree with your concerns that this committee plays an important role, so that we do not need to have all those nominees representing. Those are just people who earn allowances. What does a nominee of Treasury; a Permanent Secretary, have to do with health? Their duty ends at Treasury. Perhaps that fellow will just come to a meeting, demolish the *mandazi* and tea that is on the Table, sign an allowance sheet and leave.

What if we were to replace him with either a caucus member or a nominee or caucus for County Executive Committees (CECs) for Health in the counties? Think about it. There is a standard that we can set as a House.

In fact, I request that we borrow that practice in all the boards that we pass because unless we become dedicated on that aspect of drafting, State Law Office will never change. Any Bill or board that is being set up is a copy paste practice. That is all I can conclude in the length of time that I have been here and seen in the Bills or Clauses that they sent to us.

Finally, on the issue of facilitation, I have heard Senators speak to it and seen the proposed amendment. As I have mentioned, all our 47 counties, I saw Council of Governors (COG) sign an agreement on what will be the remuneration for all these County Healthcare Practitioners (CHPs). This is because as I have mentioned to you, the volunteers already exist.

If you check the budget of all your counties, these people are already being remunerated depending on the agreement that was signed between your county and the national Government. I suspect and think I am right if what I read is accurate, that they signed a 50-50 agreement. If a CHP is earning Kshs5000 the county Government does Kshs2500, and national Government tops up the other Kshs2500 which is extremely important.

As is it now, this is one of the reasons I wanted those colleagues that have challenges in distinguishing between community health promoters and community health volunteers. They should understand that the volunteers are volunteers. He is just a fellow you call and say, “so and so, I feel as if I am unwell, and you know something about medicine; come check on me. There is a difference between that volunteer and the health promoter.

Apart from all the other things that we have listed on training and standards, CHPs will be facilitated and remunerated after the passage of this Bill.

Mr. Speaker, Sir, in concluding, I urge colleagues that we complete the work that is before us, do the Second Reading and move the Bill to the Committee of the Whole. Unlike yesterday, there is insufficient time to file your amendments. It is between now and late afternoon.

In fact, I must say that the office of the Clerk has been very facilitative in this exercise and I must appreciate them. Up to as late as an hour ago, there were people who were still requesting and filing additional amendments on the Facilities Improvement Bill. You know it takes a lot of time to consolidate and cluster them as is expected.

However, because many Members spoke on this Bill and had different ideas about how they want to convince us to work on it, that has been carried and I appreciate. We shall be looking at it once we conclude this exercise.

With those many remarks, I beg to reply and call on colleagues that we conclude the exercise of Second Reading of this Bill so that we move it to the next stage.

The Speaker (Hon. Kingi): Senate Majority Leader, approach the Chair.

(Sen. Cheruiyot approached the Chair)

Hon. Senators, we are now moving to Division. I will, therefore, ask the Serjeant-At-Arms to ring the Division Bell for 5 minutes.

(The Division Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, kindly settle down. Order, Senate Majority Leader and Sen. (Dr.) Lelegwe Ltumbesi.

Serjeant-at-Arms, please close the Doors and draw the Bars. Why is Sen. Wafula and Sen. Oketch Gicheru still pacing up and about?

(The Bars were drawn and doors closed)

Hon. Senators, we will not vote electronically, we will vote manually through the Roll Call vote and, therefore, we need to nominate the Tellers; one for the 'Nays' and the other for the 'Ayes'. Sen. Nyamu for the 'Ayes' and Sen. Lemaltian for the 'Nays'.

Hon. Senators, I will now proceed to put the Question.

(Question put)

Sen. Methu, when the Chair is speaking, you should pay attention. We do not want you to spoil your vote. Once your name is called out, you will proceed to vote. Clerk, proceed with the Roll Call.

(Roll Call voting in progress)

Sen. Kavindu Muthama: I vote yes, with amendments.

The Speaker (Hon. Kingi): Sen. Kavindu Muthama, you do not qualify your vote. It is either a 'no' or a 'yes'. Proceed to vote again.

Sen. Kavindu Muthama: Mr. Speaker, Sir, I vote yes.

DIVISION

ROLL CALL VOTING

*(Question that, the Primary Healthcare Bill
(Senate Bills No. 44 of 2023) be read a Second Time put, and the*

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Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeiyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomemen, Turkana County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mundigi, Embu County; Sen. Mungatana, MGH, Tana River County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Thang'wa, Kiambu County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; Sen. Wambua, Kitui County and, Sen. Wafula, Bungoma County.

Teller of the Ayes: Sen. Nyamu

NOES: Nil.

Teller of the Noes: Sen. Lemaletian

The Speaker (Hon. Kingi): Senate Majority Leader, kindly take your seat.

Hon. Senators, the results of the Division are as follows-

AYES: 36.

NOES: Nil.

ABSTENTIONS: Nil.

The Ayes have it.

(Question carried by 36 Votes to Nil)

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

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly proceed to open the Doors and withdraw the Bar.

(The Doors were opened and the Bar withdrawn)

Next Order.

Hon. Senators, for the convenience of the House and pursuant to Standing Order No. 45(2), I will rearrange the sequence of today's Order Paper.

We will proceed to the Committee of the Whole. If you look at the Order Paper, we are supposed to prosecute Order Nos. 9, 10 and 11. However, Order No. 11 is what has just been concluded, therefore, it is not right to proceed to the Committee of the

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Whole, as many Senators would wish to file their amendments and we need to give them time to do so. Therefore, the Committee of the Whole on Order No. 11 will be done tomorrow.

We will also suspend prosecution of Order No. 9 at the Committee of the Whole and only prosecute Order No. 10 as we go to the Committee of the Whole. Kindly stand guided.

Clerk, please proceed.

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 FACILITIES IMPROVEMENT FINANCING BILL (SENATE BILLS NO.43 OF 2023)

The Temporary Chairperson (Sen. Veronica Maina): Hon. Senators, we are proceeding to the Committee of the Whole on the Facilities Improvement Financing Bill.

I now invite the mover, the Chairperson of the Standing Committee on Health, so that we navigate through the amendments. We will call out the Clauses and move one by one.

Clause 3

(Question, that Clause 3 be part of the Bill, proposed)

Division at the end.

The Temporary Chairperson (Sen. Veronica Maina): I invite the Chairperson of Committee on Health to make the amendments. Are you ready?

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

THAT Clause 3 of the Bill be amended in paragraph (c) by deleting the word “retained” appearing immediately after the words “and use of” and substituting therefor the word “budgeted”.

(Question of the amendment proposed)

Clause 4

(Question, that Clause 4 be part of the Bill, proposed)

Division at the end.

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

THAT Clause 4 of the Bill be amended by deleting the word “up” appearing immediately after the words “shall apply to” and substituting therefore the words “level 1”.

(Question of the amendment proposed)

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Chairperson.

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

Sen. (Dr.) Khalwale: On a point of procedure, because we will vote at the end of what we are doing, I would encourage the Chair that when he proposes an amendment, he speaks to it so that the House can know what they will be voting on. He should speak at least two lines or statements in the usual manner.

The Temporary Chairperson (Sen. Veronica Maina): Chairperson Committee on Health, that is a good proposition. Give the rationale for that amendment, so that Members can understand what you are proposing to amend.

Sen. Mandago: Madam Temporary Chairperson, the original Bill was reading-
‘Subject to Section 5, the Act shall apply up to Level 5 public health facilities in Kenya.’

As a committee, we thought it would be proper for us to define from Level 1 to Level 5 instead of saying ‘up to Level 5.’ It was not coming out very clearly. We thought if we put it from Level 1 to Level 5, those are the facilities that the counties have responsibilities for.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Wambua, you have an amendment to the same Clause and I want to give you an opportunity to give your rationale for that amendment.

Sen. Wambua: Madam Temporary Chairperson, I initially proposed an amendment to Clause 4 by deleting the words “up to Level 5”, appearing immediately after the words “shall apply to” and substituting therefore the word “all”.

However, after consultation with the Chairperson and the leadership, we have agreed that because Level 1 to Level 5 are the ones that are under county governments; but the other Levels which are the Teaching and Referral Hospitals are national Government functions, we do not need to move that amendment. I drop the amendment.

(Proposed amendment by Sen. Wambua withdrawn)

(Question of the Amendment proposed)

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

Clause 5

The Temporary Chairperson (Sen. Veronica Maina): Sen. Wambua, Sen. Osotsi and Sen. Sifuna had propositions and they are given an opportunity to present.

Sen. Wambua: Madam Temporary Chairperson, we have also deliberated on that proposed amendment to Clause 5 with the leadership and the Chairperson of the Committee on Health and we have agreed that we delete Clause 5.

It is for the simple reason that this is an ordinary legislation. It is a law that is an Act of Parliament but by making the provision that this law will be superior to any other law, we will be elevating this ordinary legislation to the level of the Constitution. It is only the Constitution that is above all other legislations. So, we have agreed that we delete Clause 5, that is the proposed amendment that we were pushing to delete Clause 5.

The Temporary Chairperson (Sen. Veronica Maina): So, the amendment is dropped. Sen. Sifuna, can you confirm that?

Sen. Sifuna: Madam Temporary Chairperson, that is the position.

(Proposed amendment by Sen. Osotsi withdrawn)

(Question of the amendment proposed)

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

Clauses 6 and 7

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

Division will be at the end.

Clause 8

The Temporary Chairperson (Sen. Veronica Maina): This amendment was to be moved by Sen. Mungatana.

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

THAT, Clause 8 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)–

(h) Fund ambulance services for the transfer of patients from one health facility to another.

Hon. Members, amongst the uses of the finances retained by public health facilities, we have (h) that is specific about ambulances. Normally, when people go to some of these local hospitals and there are ambulances there, many times patients are asked for money. When they do not have the money, they are denied the service.

If we do not make it very clear, then it will mean that the monies that are being retained within the public utilities may not be used for ambulatory services. I propose that this amendment be included.

(Question of the amendment proposed)

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

Clause 9

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Mandago to move the amendment.

Sen. Mandago: Madam Temporary Speaker, part of Clause 9 of the Bill which we are seeking to amend currently reads as follows:-

“The National Government, through the Ministry responsible for health, shall provide policy and regulatory direction in the administration of the Facility Improvement Financing”.

Hon. Members, we propose an amendment; that, that be amended by deleting that section of the Clause, the introductory Clause and substituting therefore with a new Clause that-

“The Cabinet Secretary responsible for matters relating to health shall provide a policy framework for the administration of facility improvement financing.

Hon. Members, we thought we have to be definitive and put in the Cabinet Secretary responsible for health because if we leave it just open to, say, national Government, then it means any other Ministry can interfere with the operation of the Facilities Improvement Financing Bill.

The Temporary Speaker (Sen. Veronica Maina): Thank you Senator. There is also another amendment on the same Clause 9 by Sen. Wambua. You can proceed and then followed by Sen. Sifuna. There is a third amendment proposal by Sen. Oketch Gicheru, which is being circulated to Members, just for your information. We will take them in that order.

Sen. Wambua: Thank you, Madam Temporary Speaker. I had proposed that we amend Clause 9 of the Bill by deleting the words –

“The National Government, through the Ministry responsible for health” appearing immediately after the word “the” and substituting therefore the words “Cabinet Secretary responsible for matters related to health, in consultation with the Council of County Governors (CoG)”.

However, I have since consulted with the Chairman of the Committee and the leadership, and we have agreed that since the CoG are not responsible for matters of

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policy then we should not include them in this and we have dropped the amendment part of the Clause.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Proposal to amend part of that Clause is dropped. Sen. Sifuna and Sen. Oketch Gicheru.

Sen. Sifuna: Madam Temporary Speaker, the proposal we had was to make it clear that under the Constitution, the national Government is only responsible for policy. That is the reasoning behind the amendment to limit the wording to-

“The Cabinet Secretary responsible for matters relating to health shall provide a policy framework for the administration of Facility Improvement Financing”.

My proposed amendment is similar to the one that has been moved by the Chair. I do not know if I drop it after it has passed, or I drop it now.

(Several Hon. Members spoke off record)

Sen. Sifuna: Okay, I will drop it now.

(Proposed amendment by Sen. Sifuna withdrawn)

The Temporary Speaker (Sen. Veronica Maina): Thank you, Senator. What is your point of order Sen. Thang’wa?

Sen. Thang’wa: Thank you, Madam Temporary Chairperson, because of time, the Senators who have dropped their amendments should not take time explaining them. They should just state that they have dropped them.

The Temporary Chairperson (Sen. Veronica Maina): For record purposes, it is important for them to explain why they are dropping the amendments. Sen. Oketch Gicheru, your amendment is different, give the rationale.

Sen. Oketch Gicheru: Madam Temporary Chairperson, for the purposes of regulation and management, it would be important that we separate policy formulation from management of these facilities. The amendment is to split Clause 9, so that it forms Part III of the Bill that is purely dealing with policy issues at the national Government level. Then you have Clause 10 which will form Part III(b) which allows the management and administration to be a county function, hence separating the two.

In that case, I beg to move –

THAT Clause 9(b) be amended by deleting the words “regulatory direction” which appears after words “shall provide policy”, so that policy remains as is.

Also, amend Clause 9(e)-

by deleting the words “coordinating of other relevant entities prescribe, and assist.”

Then there will be no opportunity for the national Government to perform management functions.

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I will not come back on the Floor because I have read it together with the proposal for Clause 10.

The Temporary Chairperson (Sen. Veronica Maina): At the moment, we are only dealing with Clause 9. I propose the question that Clause 9 be amended as proposed by the Chairperson, Sen. Oketch Gicheru and Sen. Wambua.

I propose the question that Clause 9 be amended as proposed by Sen. Oketch Gicheru.

(Question of the amendment proposed)

I propose the question that Clause 9 be amended as proposed by Sen. Wambua.

(Question of the amendment proposed)

Division at the end.

Clause 10

The Temporary Chairperson (Sen. Veronica Maina): Chairperson Committee on Health, proceed to Move the amendment on Clause 10.

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

THAT Clause 10 of the Bill be amended by deleting the words “respective county government shall in accordance with health functions set out under the Fourth Schedule to the Constitution and other written law” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “county executive committee member shall”.

If we leave the Clause plainly to state ‘county government’, it means everyone in the county government can interfere with the function. We wanted to define it the same way we have put responsibility of the Cabinet Secretary for health at the national level. We put responsibility of its implementation to the County Executive Committee Member for Health so that all those things are domiciled within the department of health.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru has also an amendment on Clause 10. Let us listen to the amendment.

Clause 10(b) and (c)

Sen. Oketch Gicheru: Madam Temporary Chairperson, these are two simple ones. Initially the Bill was proposing that we have a repository for financial information systems only at the national level. I am proposing that we need to have that resource

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centre in each respective county because that is where the resources information is needed to be utilised.

I am passionate about the next proposal which is that since the national Government is holding so much nationally it must be able to provide such resources that are needed to be able to effectively perform the functions under Clause 2(a) which is the management functions that are not budgeted for in the counties. This basically allows the national Government to bring additional revenue to the county Governments.

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

Sen. (Dr.) Khalwale: Madam Temporary Chairperson, before you put the question, when you propose the question, it is possible that a Member can say something about the proposed amendment.

I wanted to appeal to the Senator for Migori County; you have heard the proposed amendment by the Chairperson. It cleans up. We need to avoid having confusion during voting where one is either rejected and one is accepted and then there is bad blood coming in Plenary.

As a result of the consultations we did, unfortunately, in your absence, I request you accept to drop your amendment so that we carry the amendment by the Chairperson alone as the position of the House. That is just my appeal.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Oketch Gicheru, you can respond.

Sen. Oketch Gicheru: Madam Temporary Chairperson, I think it is in order to drop part (b) of the amendments. I think that is what Sen. (Dr.) Khalwale is referring to because it is more about mainstreaming resources and adding additional resources to the counties.

Part (c) can remain because it is more about establishing the resource centres in counties and nationally. In that case, I drop (b) but (c) remains. Is that okay?

(Proposed amendment to Clause 10(b) by Sen. Oketch Gicheru withdrawn)

(Question of the amendment proposed)

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

Clause 11

The Temporary Chairperson (Sen. Veronica Maina): I invite the Chairperson of the Committee, Sen. Mandago to move the Amendment.

Sen. Mandago: Madam Chairperson, I beg to move the following Amendment-
THAT Clause 11 of the Bill be amended in sub clause (2) by deleting the word “all” appearing immediately after the words “medical superintendents of” in paragraph (d) and substituting therefor the word “the”.

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Hon. Members, if you read (d), on the medical superintendents of all county hospitals. We are amending to define that it is the medical superintendent of the county hospital.

That was just to make it clearer. Since it is a committee of representation for not all facilities in the county. The Clause we are amending was suggesting that if you have 100 medical superintendents, then all of them should attend. However, we are talking of the county medical superintendent who is the head of the county.

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Mungatana. You had a proposal for amendments on Clause 11.

Clause 11

Sen. Mungatana MGH: I beg to move that-

Clause 11 be amended by inserting the following paragraphs immediately after paragraph (d)-

(e) one man and one woman representing the local community;

(f) one youth representing the local community;

(b), by inserting the following new sub-clause after sub-clause 2-

“the county executive committee member shall ensure that at least one of the persons appointed under sub-section 2(e) and (f) has knowledge or experience in matters relating to health.”

Hon. Members, when you look at the county health management team and the functions that they are carrying, which the Chairperson has already discussed here, there are a lot of things that involve that county hospital.

However, the membership of that committee is only talking about the county director of health, the administrative officer, all section heads, the medical superintendent of the county as amended just now by the chair. However, you see there is no ownership of anything within that county hospital to the local community.

I ask that we amend so that there is a local ownership to this. While Sen. (Prof.) Kamar was making her contribution, she had the same thought process. We thought to create ownership. I put the proposed amendment so that there is local ownership.

Hon. Senators, you see sometimes all these people; the medical superintendents, medical officers, and so on, are not from the local community. They have no connection. In fact, they just come to work, for some of them, at least, in these far-off counties, they are always looking for a way to get out. However, if there is local representation, it helps in terms of ownership of the whole process.

I submit.

Sen. Mandago: Madam Temporary Chairperson, I just want to provide some information on that Clause of the Bill. The Committee we are talking about in that Bill is the technical health team of the county. These are just to deal with the technical matters of health like policy and all those things we have stated there for the purposes of running this programme.

At the facility level, if you follow the Bill as we progress, you will find the members of the community are now involved in the total management of the facility. That is where the members of the public and the community come in. I thought that clarification would be good for hon. Members to have.

The Chairperson (Sen. Veronica Maina): Thank you for the clarification.

(Question of the amendment proposed)

Sen. Mungatana, do you want to say something?

Sen. Mungatana MGH: Madam Temporary Chairperson, I want assurance from the Chairperson if the local communities will be taken care of with the other one. If that is so, I would be willing to yield this one. We drop it and go with yours.

The Chairperson (Sen. Veronica Maina): Proceed, Sen. Mandago.

Sen. Mandago: Madam Temporary Chairperson, that is the position. At the facility level, members of the community will be involved. In fact, we had proposals of giving them a little bit more powers in the amendment suggested by Members so that they can take decisions.

That is why in some of the discussed proposals by hon. Members and which we have also discussed and agreed with, that will be the point where we want the community to be very strong and remove the Ministry of Health (MoH) from going all the way to the facility level.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Mungatana?

Sen. Mungatana, MGH: Madam Temporary Chairperson, I will yield that one in view of that information. Thank you.

(Proposed amendment by Sen. Mungatana withdrawn)

The Temporary Chairperson (Sen. Veronica Maina): Please, note that the amendments being carried through are the ones from the Chairperson.

(Question of the amendment proposed)

Division will be at the end.

Clause 12

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

Division will be at the end.

Clause 13

The Temporary Chairperson (Sen. Veronica Maina): I invite the Chairperson of the Committee on Health, Sen. Mandago, to move that amendment, followed by Sen. Mungatana who had a proposal and an amendment.

Sen. Mandago: I beg to move-

THAT clause 13 of the Bill be amended in subclause (2) by deleting the word “Medical” appearing immediately after the word “the” in paragraph (a) and substituting therefor the word “health”.

Hon. Members, we are moving that amendment in view of the fact that health management is not a preserve of doctors only. We have other cadres of medical personnel and you will realize that in counties, there are situations where we have other cadres like nurses, clinical officer and public health officers who have been given the opportunity to serve in those capacities.

We looked at that in relation to the Health Act. If you use the word “medical officer”, you are denoting the doctor in the facility. We, therefore, propose the amendment that it should be a health officer in charge of a sub-county, so that they can become part of the members of that committee even if there is another cadre involved and are designated to be in charge of the sub-county.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Mungatana, move your amendment.

Sen. Mungatana: Madam Temporary Chairperson, this is a similar amendment to expand the membership. We have agreed that its already taken care of so I will drop that amendment.

(Proposed amendment by Sen. Mungatana withdrawn)

(Question, that Clause 13 be part of the Bill, 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): Division will be at the end.

Sen. Faki, do you have something to raise?

Sen. Faki: Madam Temporary Chairperson, we might be caught up in time in view of the amendments that are going on.

The Temporary Chairperson (Sen. Veronica Maina): We do not need to extend time at this point, maybe later.

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Clause 15

(Question, that Clause 15 be part of the Bill, proposed)

I invite Sen. Mungatana to move the amendment.

Sen. Mungata, MGH: Madam Temporary Chairperson, this was again expanding the management teams. So, we withdraw the proposed amendment.

Thank you, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): The amendment is now withdrawn.

(Proposed amendment by Sen. Mungatana withdrawn)

(Question, that Clause 15 be part of the Bill, proposed)

The division will be at the end.

Hon. Senators, as you notice, we have a lot of amendments that we have to canvass. So, we will ask all the Movers of the amendments to be very fast as they move the amendments.

Clauses 16 and 17

(Question, that Clause 16 and 17 be part of the Bill, proposed)

The division will be at the end.

Clauses 18

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Mbugua to move the amendments.

Sen. Mbugua: Hon. Temporary Deputy Chairperson, I beg to move-

THAT Clause 18 of the Bill be amended -

(a) in subclause (1) by inserting the words “one of whom shall be a person with disability” immediately after the words “and marginalized communities.” appearing in paragraph (g); and

(b) by deleting subclause (3) and substituting therefor the following new subclause –

(3) In constituting the Committee, the county executive committee member shall ensure that –

Madam Temporary Chairperson, this amendment proposes to provide clarity in the composition of the Health Facility Management Committee specifically as it relates to the inclusion of a Person Living with Disability as a member of the Committee.

The clause as currently drafted does not provide for the specific appointment of a PWD to represent the interests of PWDs. Further Clause 18 (3) as drafted causes ambiguity and lacks clarity.

The Temporary Chairperson (Sen. Veronica Maina): Chair of the Health Committee, you might not comment on this one because it appears to be similar to the one that was proposed by Sen. Mungatana.

Sen. Mandago: Madam Temporary Chairperson, this is slightly different from what Sen. Mungatana was proposing. This is where the members of the public will now be part of the Committee. I think that if there are no provisions for PWD, we can go by that amendment. I will also ask Sen. Mungatana to look at it. It is the proposal where we want to carry members of the public at the facility management.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Mungatana?

Sen. Mungata, MGH: If you look at (e), (d) and (c), there is a village representative, there is a person from the Women's forum, and there is one person from the Youth Organisation, and one person from a faith-based organisation. So, I think that the concerns I have will have been accommodated in this one. So, I am comfortable as the Chairperson of the Standing Committee on Health.

The Temporary Chairperson (Sen. Veronica Maina): So, that means we go by amendment from Sen. Mbugua.

Sen. (Dr.) Khalwale, do you have a question?

Sen. (Dr) Khalwale: Not a question. I wanted to comment on the proposed amendment by Sen. Mbugua. I was worried that since Sen. Mungatana's proposal is catered for, it might be detrimental to the proposed amendment by Sen. Mbugua. Sen. Mbugua's amendment is an improvement on the Bill because PWD, as you know, do not have a big voice. So, it is good that we put it in writing. I will appeal to colleagues that we support the amendment by Sen. Mbugua.

(Question of the amendment proposed)

Division will be at the end.

The Temporary Chairperson (Sen. Veronica Maina): Next?

Clause 19

This amendment will be moved by Sen. Sifuna. We also have an amendment proposed by Sen. Osotsi. You need to look at the similarities of the amendments and align them.

Sen. Sifuna: I propose to amend:

THAT Clause 19 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (h) -

(ha) implement the recommendations of the Auditor-General made pursuant to section 31(3)(a) of the Public Audit Act;

(hb) implement the recommendations of the Senate and the respective

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county assembly on the relevant report of the Auditor-General; and
(hc) implement the relevant recommendations of the Controller of Budget on the facility.

Madam Temporary Chairperson, the amendment is meant to bring in the accountability institutions in the law over these retained funds. It is word for word similar to the proposal by Sen. Osotsi. Since you have given me to go first, maybe he can drop his because it is the same thing.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Osotsi, what is your take?

Sen. Osotsi: I confirm the amendment is the same. Therefore, I drop mine.

(Proposed amendment by Sen. Osotsi withdrawn)

(Question of the amendment proposed)

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

Clause 20

(Question, that Clause 20 be part of the Bill, proposed)

Division at the end.

Clause 21

Sen. Mandago: I beg to move:

THAT clause 21 of the Bill be amended in subclause (1) by deleting the words “special purpose” appearing immediately after the words “and operated a” and substituting thereof the word “bank”.

Hon. Members, if you read that section-

“There shall be opened and operated a special purpose account for every entity into which all monies received by and on behalf of the entities of the facility improvement financing shall be paid into.”

We are proposing an amendment to remove ‘special purpose’ and replace it with ‘there shall be opened and operated a bank account for every entity.’ The reason we are doing that is special purpose account was opened at the county level where you would require the chief officer to be the one sending the money to facilities creating layers of bureaucracy in terms of the first management. This is meant to allow the facilities to open a bank account.

(Question of the amendment proposed)

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

Clause 22

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

Division at the end.

Clause 23

Sen. Sifuna: Madam Temporary Chairperson, I propose:

THAT Clause 23 of the Bill be amended in subclause (9) by deleting the words “returns/accounts in the prescribed format” appearing immediately after the words “expected to file” and substituting therefore the words “returns and financial accounts in the format prescribed by county legislation”.

(Question of the amendment proposed)

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

Clauses 24,25, 26, 27 and 28

*(Question, that Clause 24,25,26,27 and 28
be part of the Bill, proposed)*

Division at the end.

Clause 29

The Temporary Chairperson (Sen. Veronica Maina): I invite Sen. Sifuna to move the amendment.

Sen. Sifuna: Madam Temporary Chairperson, I beg to propose-

THAT the Bill be amended by deleting clause 29 and substituting therefor the following new clause –

County 29. A county government may enact legislation to give further
legislation. effect to the provisions of this Act in the respective county.

Madam Temporary Chairperson, briefly, if you look at the current Clause 29, it says -

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“the County Executive Committee Member for Health shall make regulation for the better carrying out of the provisions of the Act”

We thought that instead of just making regulations or mandating the County Executive Committee Member (CECM) for Health to make regulations, it is better if the counties themselves pass legislation to give effect to this.

Some of the counties have already passed some legislation, for instance, on the one that we were discussing in the morning on the Community Health Volunteers.

(Question of amendment proposed)

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

New Clause 23A

The Temporary Chairperson (Sen. Veronica Maina): I will invite the movers of this Clause, Sen. Osotsi and Sen. Sifuna in that order to move their amendments. This will be to 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 23-

Annual reporting. 23A. Within three months after the end of each financial year, the accounting officer for a county health facility shall—

- (a) submit the facility’s financial statements to the Auditor-General in accordance with the Public Audit Act; and
- (b) submit a copy of the facility’s financial statements to the Controller of Budget and the Commission on Revenue Allocation.

(Question of the New Clause 23A proposed)

Madam Temporary Chairperson, the essence of this amendment is to ensure that the Committees are obligated to make annual reporting on financial matters. I checked all over the Bill but that is not provided for.

Since they will be dealing with the money issues, it is more accountable for them to do financial reporting as provided for in law at least three months after the end of the financial year and also provide the same information to the Controller of Budget (CoB) and Commission on Revenue Allocation (CRA).

They should report to the CRA to align to Article 205 of the Constitution and to the CoB because they will be dealing with matters of budget as per that section of the law.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Sifuna, this amendment is similar. I think you were sitting together when you were doing proposals.

Sen. Sifuna: Yes, it is, Madam Temporary Chairperson.

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The Temporary Chairperson (Sen. Veronica Maina): Do you want to withdraw it?

Sen. Sifuna: Madam Temporary Chairperson I want to withdraw mine.

(Proposed amendment by Sen. Sifuna withdrawn)

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

(Question, that the New Clause 23A be now read a second time, proposed)

(Question, that the New Clause 23A be part of the Bill, proposed)

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

Clause 2, the Title and Clause 1

(Question that Clause 2, the Title and Clause 1 be part of the Bill, proposed)

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

The Temporary Chairperson (Sen. Veronica Maina): Hon Members, we are now proceeding to the Divisions. I request that the Division Bell be rung for five minutes.

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

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

Sen. Osotsi: Madam Temporary Chairperson, I have an amendment to Clause 2

The Temporary Chairperson (Sen. Veronica Maina): Did you file your amendments, Sen. Osotsi?

Sen. Osotsi: Madam Temporary Chairperson, it is even on the Order Paper.

The Temporary Chairperson (Sen. Veronica Maina): Is it?

The Chairperson of the Senate Standing Committee on the Health, kindly, approach the Chair, we see what you have.

(Sen. Mandago approached the Chair)

The Temporary Chairperson (Sen. Veronica Maina): Sen. Osotsi, I have confirmed it is in the Order Paper. We shall go to Clause 2 to accommodate Sen. Osotsi.

I invite Sen. Osotsi to move the amendment.

Clause 2

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

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THAT Clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence-

“receivables” means monies raised by a county health facility, monies appropriated by a county government, conditional grants, donations, and gifts.

This is important to avoid ambiguity in the implementation of this Bill and provide clarity on the sources of funds for the health facility.

(Question of the amendment proposed)

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

Sen. Oketch Gicheru you should be faster than the Chair if you want to add something to a clause before we do the proposal.

Sen. Oketch Gicheru: Madam Temporary Chairperson, I think you are in higher demand because of time. I am not sure if that amendment sits well with the purpose of this Bill. I understand that this Bill takes receivables purely in business terms which is those cash flow resources that come as a function of running a profit and loss account.

The moment you open up the term receivables to include any other sources other than sources that are regarded with the cost of doing business, you then put those facilities at risk. Some of the grants or other finances that are given by the Government to these facilities are mainstreamed together with the County Integrated Development Plans (CIDPs) of counties.

It will be appropriate to define receivables in pure business terms as it is in accounting. It is just money that they have done business with regard to offering their healthcare services.

I do not support that amendment.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Osotsi, do you want to put any word on that comment from the Senator?

Sen. Osotsi: I understand his explanation. However, when you make reference to Clause 6 particularly parts 3(a), (4) and (7), you realize it is an ambiguity.

In Part 4, they make reference to income and other receivables. In Part 7, they make reference to sources of revenue and other receivables. I wanted to clarify that so that it is clear what other receivables are.

This Bill is going to deal with money issues. It must be aligned to the Public Finance Management Act which is very specific that all the funds that an entity gets must be accounted for.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Osotsi and Sen. Oketch Gicheru, I believe this can be put to Division.

The Title and Clause 1

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

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

We are moving to division. Serjeant-at-Arms, ring the division bell for five minutes.

(The Division bell was rung)

The Temporary Chairperson (Sen. Veronica Maina): Serjeant-at-Arms, close the door and draw bar.

(The Door was closed and the Bar was drawn)

I will need tellers for the “Ayes” and “Noes”. Senate Majority Leader, who is the Teller for the “Ayes” and Senate Minority Leader, who is the teller for the “Noes”?

*(The Temporary Chairperson (Sen. Veronica Maina)
consulted the clerk-at-the-table)*

The tellers are Sen. Sifuna for the “Noes” and Sen. (Dr.) Murango for the “Ayes”. Hon. Members, we will have one vote for the four questions. I will read the four questions clearly and then we will vote and take the tally.

(Question that, Clause 5 be deleted, put)

(Question, that New Clause 23A be now read a second time, put)

*(Question, that Clauses 2,3,4,8,9,10,11,13,15,18,19,21
and 23 be amended as proposed, put)*

(Question that Clause 3 (as amended), Clause 4 (as amended), clause 6,7, Clause 8 (as amended), Clause 9 (as amended), Clause 10, (as amended), Clause 11 (as amended), Clause 12, Clause 13 (as amended), Clause 14, Clause 15 (as amended), Clause 16, Clause 17, Clause 18 (as amended), Clause 19 (as amended), Clause 20, Clause 21 (as amended), Clause 22, Clause 23 (as amended), Clause 24, Clause 25, Clause 26, Clause 27, Clause 28 and Clause 29 (as amended), New Clause 23A, Clause 2 (as amended), the Title and Clause 1 be part of the Bill, put)

We will proceed to vote. Clerk, read out the names.

(Roll call voting in progress)

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The Temporary Chairperson (Sen. Veronica Maina): Sen. Cheruiyot, you have to indicate that it is yes to all the questions not to amendments. Some do not have amendments.

(Voting in progress)

The Temporary Chairperson (Sen. Veronica Maina): For record purposes, the Clerk will read out all the names of those Senators who are not here so that we are sure. Sen. Abbas, you can repeat your vote.

(Sen. Abbas voted)

DIVISION

ROLL CALL VOTING

(i) (Question, that Clause 5 be deleted put, and the Senate proceeded to vote by County Delegations)

(ii) (Question, that New Clauses 23A be now read a second time put, and the Senate proceeded to vote by County Delegations)

(iii) (Question, that Clauses 2, 3, 4, 8, 9, 10, 11, 13, 15, 18, 19, 21 and 23 be amended as proposed put, and the Senate proceeded to vote by County Delegations)

(iv) (Question, that Clause 3 (as amended), Clause 4 (as amended), clauses 6, 7, 8 (as amended), Clause 9 (as amended), Clause 10 (as amended), Clause 11 (as amended), Clause 12, Clause 13 (as amended), Clauses 14, 15 (as amended), Clauses 16, 17, 18 (as amended), Clause 19 (as amended), Clauses 20, 21 (as amended), Clauses 22, 23 (as amended), Clauses 24, 25, 26, 27, 28, 29 (as amended), New Clause 23A, 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. Abbas, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo-Marakwet County; Sen. Korir, Bomet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. M. Kajwang', Homa Bay County; Sen. Mandago, Uasin Gishu

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County; Sen. Madzayo, Kilifi 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. Oketch Gicheru, Migori 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; Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. (Dr.) Murango.

NOES: Nil.

Teller of the Noes: Sen. Sifuna.

The Temporary Chairperson (Sen. Veronica Maina): The results of the Division are as follows:

AYES: 31

NOES: Nil.

ABSENTIOINS: Nil.

The "Ayes" have it.

(Question carried by 31 votes to Nil)

The Temporary Chairperson (Sen. Veronica Maina): Mover of the Bill? Chairperson? Or who is it?

The Senate Majority Leader (Sen. Cheruiyot): It is me!

The Temporary Chairperson (Sen. Veronica Maina): Oh! It is the Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the Facilities Improvement Financing Bill (Senate Bills No. 43 of 2023) and its approval thereof with amendments.

(Question Proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Sen. Kathuri) in the Chair]

The Deputy Speaker (Sen. Kathuri): Order, hon. Senators. Before we vote or conclude this Bill, if you look at the time, you will realize that we are short of time by almost 15 minutes. So, I am going to use my discretion and direct that we proceed for 15 minutes, then we can adjourn.

Yes, Chairperson?

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CONSIDERATION OF REPORT**THE FACILITIES IMPROVEMENT FINANCING BILL
(SENATE BILLS NO. 43 OF 2023)**

Sen. Veronica Maina: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the Facilities Improvement Financing Bill (Senate Bills No.43 of 2023) and its approval thereof with amendments.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I ask Sen. Wambua to second.

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

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to move that the Facilities Improvement Financing Bill (Senate Bills No.43 of 2023) be now read a Third Time. I request Sen. Oketch Gicheru to second.

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

(Question proposed)

The Deputy Speaker (Sen. Kathuri): Let us go to the Division. Serjeant-at-Arms? One minute is enough. I can see the lost sheep, Sen. Gataya Mo Fire is back

(Laughter)

Close the door and draw the Bar.

(The Door was closed and the Bar drawn)

Let us get the tellers. Sen. Gataya Mo Fire and Sen. Sifuna.

(Roll call voting in progress)

THIRD READING

THE FACILITY IMPROVEMENT FINANCING BILL
(SENATE BILLS NO.43 OF 2023)

DIVISION**ROLL CALL VOTING**

(Question, that the Facility Improvement Financing Bill (Senate Bills No.43 of 2023) be now read a Third Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass Sheikh Mohamed, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeyo Markwet; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu 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. Oketch Gicheru, Migori County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. Gataya Mo Fire.

NOES: Nil

Teller of the Noes: Sen. Sifuna.

The Deputy Speaker (Sen. Kathuri): Hon. Members, these are the results of the last Division.

AYES: 31

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 31 votes to Nil)

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

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ADJOURNMENT

The Deputy Speaker (Sen. Kathuri): Hon. Senators, it is now 6:55 p.m., time to adjourn the Senate. The Senate therefore stands adjourned until tomorrow, Thursday, 28th September, 2023 at 2:30 p.m.

The Senate rose at 6:55 p.m.