

Second Reading

**THE HUMAN TISSUE (REMOVAL, PRESERVATION AND TRANSPLANT)
(AMENDMENT) BILL
(NO. XIV OF 2013)**

Order for Second Reading read.

The Minister for Health and Quality of Life (Mr L. Bundhoo): Mr Deputy Speaker, Sir, I move that the Human Tissue (Removal, Preservation and Transplant) (Amendment) Bill (No. XIV of 2013) be read a second time.

Mr Deputy Speaker, Sir, the Human Tissue (Removal, Preservation and Transplant) Act promulgated in 2006 makes provision for a legal framework to carry out the removal, preservation and transplant of human tissues under appropriate medical supervision.

However, only section 16 of the Act, dealing with the constitution of the Board, has been proclaimed so far. This was done to enable the Board amongst others, to come up with proposals for regulations for the removal, preservation and transplant of human tissues for live donors locally.

However, Mr Deputy Speaker, Sir, the Board made little progress for the following technical reasons -

- (i) difficulties to both tap and materialise foreign expertise in this highly specialised field to prepare regulations, and
- (ii) lack of capacity in the medical sector in terms of infrastructure and specialised human resources which were not available until recently.

However, I wish to highlight that even in the absence of appropriate regulations, renal and corneal transplants have been undertaken regularly in Government Hospitals in accordance with a set of guidelines. In fact, over the period 2008 to 2012, 144 corneal transplants and 66 renal transplants have been carried out.

Mr Deputy Speaker, Sir, as we all know, this Government has put a lot of emphasis in creating a conducive environment for Mauritius to emerge as a medical hub in this region. During the recent years, we have witnessed the emergence of medical institutions with high-

tech infrastructure and facilities capable of providing high-tech medical care. Both infrastructure and capacity building have also evolved in a significant manner in the public and private sectors recently. It is, therefore, now the opportune moment to consolidate the legislative framework and to come up with appropriate regulations, in order, to allow transplant surgery to be carried out with all necessary safeguards. Given the complexity of ensuring all necessary safeguards in the provision of this service, it is fundamental that we proceed in a careful and phased manner as it was originally planned.

Mr Deputy Speaker, Sir, soon after I assumed office, I took the initiative to tap foreign expertise with a view to assisting us in the formulation of regulations to enable renal transplants to be undertaken in our medical institution within a legal framework.

It is in this context that, in January 2012, a team from “*Centre de Nephrologie de la Transplantation Renale*”, Marseille, France visited Mauritius and had working sessions with officials of my Ministry.

Since then, further discussions were held between officials of my Ministry and other relevant stakeholders for the preparation of regulations. During these discussions, it became evident that some important amendments to the Human Tissue (Removal, Preservation and Transplant) Act 2006 had to be brought to make it more robust and functional.

Mr Deputy Speaker, Sir, it is in this context that this draft Bill has been introduced in this House. It provides for -

- (a) an authorised specialist in surgery having at least 5 years’ experience in the field of transplant surgery and authorised by the Board to issue a certificate before a donation of non-regenerative tissue, instead of an authorised consultant. This amendment is necessary in view of the fact that doctors are registered as general practitioners or specialists in the Medical Council of Mauritius. Furthermore, the term ‘consultant’ is not commonly used in the private sector;
- (b) immunity from civil or criminal proceedings to be conferred on members of the Board or of any committee set up under the Act, or other persons or bodies, with respect to the execution of their duties, or the exercise of their powers, in good faith under the Act. This is a major amendment as it will provide immunity to the following -

- (i) the Chairman and members of the Organ and Tissue Transplant Board;
- (ii) the Chairperson and members of the Authorisation Committee which will be set up under forthcoming Regulations, and
- (iii) any other person who may be required to assist the Board or the Authorisation Committee.

Here, I would like to inform the House, Mr Deputy Speaker, Sir, that some members of the previous Board submitted their resignation in November 2012 as they were expected to assume wider and enhanced responsibilities without immunity.

Immunity from civil and criminal proceedings will enable all those involved with the enforcement of the Act to take decisions without any fear or fervor. Furthermore, it is well-known that provisions for immunity clauses are made in various pieces of legislations locally and worldwide.

(c) a higher penalty for breach of Regulations made under the Act.

At present, any person contravening regulations made under section 21 of the Act is liable upon conviction to a fine not exceeding Rs10,000 and to imprisonment to a term not exceeding 2 years.

However, Mr Deputy Speaker, Sir, I wish to remind the House that regulations to be made under the Act, include, among others, the designation of Health Institutions for transplantation and affidavits for consent as donors and recipients. With a view to providing further safeguards, under regulations to be made under section 21 of the Act, against racketing and commercialisation of transplantation services, the penalty is being increased to a fine of Rs100,000 and to 5 years imprisonment.

Mr Deputy Speaker, Sir, once these amendments have been brought in the main Act, regulations which are being finalised presently will be promulgated to facilitate renal transplantation.

Critical inputs from the Marseille Team based on best clinical practice and experience have been fundamental in the elaboration of these regulations. Prevention of unethical practices and in particular prevention of coercion from donors and commercialisation of kidney transplants are core elements in the formulation of these regulations.

It is envisaged that the proposed regulations will, among others, provide for -

- the setting up of an Authorisation Committee which will verify that all procedures for the transplant have been followed and that no duress or commercial transaction is involved in the proposed transplant;
- the granting or cancellation of a certificate for registration of a health institution other than a public hospital to perform renal transplants; and
- an affidavit for consent as a donor and as a recipient of such donation.

Mr Deputy Speaker, Sir, it goes without saying that the removal or transplant of an organ in a human body is a very complex and sensitive issue especially in the Mauritian context. Thus, we have to tread carefully. This is why we are planning to proceed in a phased manner. Following these amendments, regulations will be finalised to enable renal transplantation from live donors only.

My Ministry is working on a Memorandum of Understanding with “*L’Assistance Publique – Hôpitaux de Marseilles* and *Aix Marseilles Université*”. Our collaboration with the latter will enable us in the future to develop capacity and the regulatory framework for transplantation of other organs.

Mr Deputy Speaker, Sir, with these words, I commend the Bill to the House.

Dr. A. Boolell rose and seconded.

(4.53 p.m.)

Dr. S. Boolell (Second Member for Curepipe & Midlands): Mr Deputy Speaker, Sir, it is with great pleasure that I heard the hon. Minister finally coming up with some form of amendments to be able to promote what I have considered a piece of law which is only a museum of good intentions. There is nothing that has happened in this country except the regular transplants - about 10, 15, 20; the figures are vague - done by no less than two surgeons in our Government hospitals and I fail to understand why we had to wait for so long before coming up with regulations.

The amendments seek to redress apparently a few misnomers in the law and we are going to change words, for example, ‘authorised consultant’ getting to be ‘authorised specialist’ with five years’ experience. I am glad we are not relying on the authorised consultant because he could be a consultant in psychiatry or public health. Those words were always vague. They were not defined in the law. I have it in my hand and it was proclaimed on 15 July 2006 where only the words ‘authorised consultant’ existed. But this, having been

said, when we change from the words ‘authorised consultant’ and we get to the words ‘authorised specialist’ with five years’ experience, again, I have to say that I am quite surprised. Five years’ experience could be bad experience, could be no experience, could be two transplants per year and then, you end up having people with supposedly experience and who are going to authorise, who are going to sign up and allow a transplantation to take place.

So, when I look at the modifications in the law, I start asking myself: what is the purpose of these modifications. If we are going to deal - the Minister has mentioned corneal transplant - I am sure we are not going to take corneal transplant from a live donor, but we are going to restrict ourselves to the renal donor and in a country where so far we have failed to implement harvesting from dead bodies, where for a long while we had to import corneas from Sri Lanka, for instance, with specimens of unknown origin, I don’t know who was shot to make way for these specimens to come up in these museums.

While I do understand that the Minister is changing the word ‘authorised consultant’ into ‘authorised specialist’, as I said, I doubt about the actual experience of the person as to whom are we trying to please. Are we, again, trying to please the medical hub? Are we going to, again, please the private sector eternally? Doctors who will appear in Mauritius, have their papers cleared by the Board of Investment over three days with their origin and experience being of doubtful capacity? We don’t even know who are those clearing these people. They will be appearing with their expertise when we have not invested enough in our own doctors in the service.

So, I wonder whether we are just clearing a few words or we are just changing some regulations. But, again, there are words which are used in the original law which do not change repeatedly; the words are ‘medical practitioner’ which appear in the original Bill. We are changing ‘authorised consultant’ to ‘authorised specialist’ but the word ‘practitioner’ stays there. So, I am still wondering having looked at all the areas where the word ‘practitioner’ is being used. If I refer to the actual Bill, that’s under clause 12 (3). For instance, I think I’ll put a note there. In clause 12 (3), it is said twice -

“No medical practitioner (...)”

Is that practitioner somebody who is a specialist? Because a specialist, being a medical practitioner, is not necessarily a specialist! A medical practitioner is not necessarily a

specialist, but a specialist is a medical practitioner. These words should have been defined. We do not wish that this country becomes a country like a medical hub where people disappear and reappear with one kidney and the other one having been agreed to and supposedly transplanted into someone else. We have the experience of India; we have the experience of the third world; we do have this experience and this foreign expertise leaves me baffled sometimes. Our obsession of relying on a foreign expertise when we do have the capacity, we have to build our own capacity, and going on, on the law as well, I would be most grateful if somewhere on the line, the Minister could redefine for my illumination, the ways that the capacity of the foreign experts will be assessed, because already in this House we have asked repeatedly about the capacity of doctors who turn up to operate, to treat, and the weekend doctors - those who keep appearing in private clinics over the weekend, independent of MRA action and take off on Monday having left a lot of damage in their wake.

Then, I look at the constitution of the Board. Very nice! I am impressed in the sense that we are giving the Chairperson of the Board, who is the Chief Medical Officer, the right title of Director of Medicine or something to that effect, but when I look again at the composition of the Board, a representative of the Attorney General's Office, seemingly that it's a good nomination. And the reason why I am referring to the Board is because this is the Board that will be granted immunity from civil or criminal action. This is the super Board according to the changes in the law which are being brought and which shall be beyond reproach, beyond civil action, and while we are dealing, these are words generally used, statements used generally in the civil service to exonerate all public servants from prosecution.

In this case, we are dealing with people, - like somebody said on the other side 'putting people first'. I am trying to rely on that - the representatives of the Attorney General's office. Again, I see that not more than three medical practitioners, not below the status of Specialists, one who shall be a Medical Consultant. I suppose one who shall be a Specialist in medicine to be appointed by the Minister. Such other persons not exceeding three, as the hon. Minister thinks fit. Of course, you need the quorum for this Board to meet, and in case of emergency, the Chairperson has a right to decide as per the law. The Chairperson may decide the matter himself and seek the covering approval of the Board at a subsequent meeting. Great example of democracy, of Medical democracy! Nobody there is

to be blamed. Everybody is free from any possibility of civil or criminal litigation. So, we are just going on.

Mr Deputy Speaker, Sir, I have to remind the hon. Minister the meaning of the words “medical negligence”. “Medical negligence” is the dereliction of the duty of care doctors have towards patients with direct causation of damage where people seek redress in courts of law these days a bit too often. They seek redress - I was going to say through the MSPCA, but I should say through the media to be able to get some form of compensation and attention from the Government before getting to our Courts of Justice where, eventually, the case gets heard after five years to ten years before you get any form of financial redress. Medical negligence does exist, and everybody associated to the Board, everybody delegated from that Board will be exempted from civil or criminal liability.

Mr Deputy Speaker, Sir, we try to impress ourselves. For people who do not follow the regulations, the fine which was Rs10,000 becomes, with inflation, Rs100,000 and the sentence from two years to five years. I have yet to see anybody being sentenced. Since, we are working within the framework where almost everybody is exempted from civil and criminal liability, so it is going to be very safe for a Board to decide when to meet for any Specialist who has the theoretical experience of transplant, to give permission to anyone to donate his kidney. There is something in the law preventing this kind of commercial exploitation of the kidneys as if somebody who takes money to donate his kidney is going to go round and say: “I sold my kidney for Rs100,000”. Mauritius, already afflicted by poverty, I fail to see how many people will not sell their kidneys. You are getting to the stage where we already have people selling blood, Mr Deputy Speaker, Sir. When we need donors, it is nice to have a blood donor programme. But you have to think when you desperately need donors, people are still selling organs. I am willing, on the behalf of the Opposition, to cooperate with the hon. Minister feeling that if we agree to the changes which are being requested, the authorised Specialist to issue a certificate before a donation is given, I have no great quarrel with that, Mr Deputy Speaker. But I am just requesting the hon. Minister to be careful in deciding who are the authorised Specialists. According to the law, the authorised Specialist is somebody who is registered as such with the Medical Council of Mauritius. He has promised, I think, a couple of weeks ago that this will be revisited by a Board of Doctors from the Government side who shall decide what shall be the qualifications of Specialists. Far too often, in this country, being the kind of Tower of Babel where people turn up from almost everywhere and claim to be Specialists and they are Specialists; they are appointed

maybe in mysterious ways or the law allows them. This is a country where people turn up as Specialists and then do their internship and become appointed Specialists the year after. It is a matter of the cart before the horse or the horse before the cart, I don't know. I don't even wish to know. This is a country where when you go to hospital, you have to show care as to who you meet. You have to know someone. Being a doctor for 30 years, I know what I am talking about. I notice the hon. Deputy Prime Minister smiling. These are not the days when he was a consultant. Times have changed and we have to show a lot of care because we are going, at the end of the day, to take a kidney from someone and place it in another. Do we have the statistics required? I do not wish to have the number of transplants conducted. I wish to know how many successful operations were conducted concerning renal transplantation in Mauritius.

It is far too easy at the altar of medical progress to come up with modifications to amendments. But at the end of the day, we have to think of patients. We do not wish Mauritius to become a kind of a holiday camp for doctors who turn up for holidays and use this opportunity to start operating and transferring kidneys from one person to the other. Far often, as my colleague on my right was telling me, without any post operative care.

(Interruptions)

The surgeon knows exactly the word. Thank God, we are now looking at people with experience. If we choose the right person, this law will be valid. If we choose the wrong ones, this law will only be the gateway to a mortuary. I refuse to grant, Mr Deputy Speaker, Sir, the immunity to public servants, people who are appointed by Ministers, Senior Doctors, people who will decide. Sometimes even in their absence when the Chief Medical Officer or Director of Medical Studies will be deciding for them. I refuse to grant immunity. People have to show responsibility. If you have to decide, you have to ensure even to the spirit of the original law that nobody who is deceased is donating any form of organ towards transplantation.

The importance of transplantation in this Bill, Mr Deputy Speaker, Sir, is to invite all our MPs here to reflect that tomorrow we might be the ones in need of a kidney or we might be the ones to donate. The art of medicine is: you apply it to yourself and then you can see whether you want it applied to others.

This having been said, Mr Deputy Speaker, Sir, I will not take the time of the House and I thank you for your attention.

(5.08 p.m)

The Minister of Housing and Lands (Dr. A. Kasenally): Mr Deputy Speaker, Sir, I find this burst of adrenaline in the vein of my hon. colleague and he has let all the steam down, and I think his pulse must have settled down now with a smile. I will answer each point which he has raised afterwards, but I will make some general comments on transplantation.

Transplantation has undergone a revolutionary change over the last decade brought about by tissue culture in the laboratory through bio-engineering techniques and genetic engineering. These new techniques of tissue culture coupled with micro and robotic surgical techniques have pushed to the limit human endurance. Nowadays, almost any tissue can be cultured in the lab. In its weight, it has also aroused ethical issues which modern societies find difficult to grapple with. Only recently, a few months ago, lab grown kidney has successfully been carried out and shown to work when implanted into a living animal. It is only a matter of time when this novel procedure could be extended to humans. Human transplantation involves numerous issues, the most important and pivotal one is the interest of the patient. We are not allowing any Tom, Dick and Harry to change into a surgeon suit and start cutting away. Mauritius has made a lot of progress from the time when we were using chloroform. Sometimes in life a surgeon is faced with a problem which he may never have thought, but with his experience he tries to salvage the situation.

These amendments, as have been discussed and put forward by my colleague, are fairly straightforward and I don't intend to go over it. I'll make a few remarks. This question of immunity is being given to the Board but a surgeon who is going to do the transplantation will assume full responsibility and is responsible for what happens and is liable to prosecution if he has committed an act which wilfully or by accident has caused some surgical mishap. Therefore, don't think that it will be any guy who will be allowed to do any transplantation surgery. When we talk about consultant, you know I don't want to use the word ridiculous; in my wildest dream, I would not choose a consultant psychiatrist or a skin specialist or a consultant in metabolic disease to be able to take a decision about who to transplant or not. This is very important as the hon. Member mentioned it. You know, we will probably have a team of doctors those treating the patients and those who are not surgeons. It

may not be a surgeon who is treating it but a team of doctors taking this decision. It certainly is not a consultant psychiatrist. Perhaps it has not been underlined, but we cannot underline everything. In medicine, we do what is best for the patients. You know we have chosen the specialists of five years experience. If somebody has got five years experience in transplantation surgery, I think he should be able to start performing a transplantation with the help of senior colleagues, this is how surgery started. This is on the hand training. It is an apprenticeship. Do you think I could have opened any abdomen the day I got my fellowship, it took me long years. It takes long years to learn. Sometimes you make mistakes, but you are not allowed to make a monstrous mistake that puts the life of the patient in danger. If you make a mistake you learn by it, you don't call it experience and make the same bloody mistake afterwards.

Cornea from life donor, I laugh when I see it. My good friend should know that we never take cornea from live patients.

(Interruptions)

The Deputy Speaker: Hon. Boolell, please!

Dr. Kasenally: this is fallacy; this is criminal and I don't think, you know, we are indulging into criminal activities. Cornea is taken from a cadaveric donor. Now there is a question regarding medical hub. I can assure you Government is not here to please Tom, Dick and Harry. What medical hub? People are not going to come here and medical tourism with sidetrack of illicit cadaveric or life donor transplant. This will not be tolerated. In fact, we do have specialists and super specialists who come sometimes over the week-end or a few days and perform operations in conjunction with a local colleague who assures the follow up. We have done many of these instances where we can quote. For example, laparoscopic surgery: we have a senior consultant who came here and I was involved. He showed us and he trained us even for one week. If you are a good surgeon, you would know how to perform these operations and not to tread where there is tiger country. This is surgical connotation. Well, we need foreign expertise apart from laparoscopic surgery. A few of our top surgeons have been trained in Germany and they have come up here together with a professor and are doing *Transurethral Prostatectomy*. This is you remove the prostate without having to cut the tummy, but even this apparatus has to be used very cautiously and I can say that those people are now really very good surgeons and are sometimes better than the surgery performed abroad at a lot of costs. We do have our talents here. We have to use them. We have to

encourage them. You know so far in Mauritius as I would agree and my friend would agree - perhaps I would agree to a certain extent with my colleague whom I respect he has worked with me as a junior doctor and we see eye-to-eye sometimes, but sometimes we go in the opposite direction. As we can say, it has been carried out to a limited extent because we have been doing it on life donors, it cannot in any way tackle the increasing number of patients who need it. Currently, there are over one thousand patients with end stage renal failure who need a transplantation. With the rationalisation of procedures laid down in the Bill and in the amendment, today, we will provide more opportunities to our patients. Eventually, it is not covered now. We will have to move to cadaveric human donors but under very strict conditions. First, of all, we will have to sensitise the population. We need to have a register where people come, but this is not going to come soon because of our culture and the situation in our society. Other organs can also be harvested from donors such as bone and I said cornea; veins, heart valves in the second instance. In fact, we have been using in this country very limited fashion but certainly abroad long veins from the legs of cadavers soon after death are harvested and stored, you know, in appropriate medium and can be used to save legs when the arteries are blocked and cannot be repaired as such. The policy of Government has always been to improve the standard of health care to the nation. As a privileged witness, over 25 years as a surgeon, I am proud of my country. Mauritius is perhaps one of the very few countries in the world where anybody be it a Mauritian or a foreigner who steps in the Accident and Emergency Department with a simple disease which is called appendicitis is taken free of charge; operated upon promptly and discharged within forty-eight hours most of the time. People with appendicitis - but let me tell you of a catastrophe which happened in one of the teaching hospitals recently in London. A young surgeon was supposed to be operating a pregnant lady diagnosed as acute appendicitis. Guess what happened! These operations happen always in the middle of the night. He removed what he thought to be an appendix; did not bother to look at it, sent it for histology. You would think it does not happen but it happens in a teaching hospital in London. Nobody saw the histology report and the patient was admitted in a toxic state with peritonitis and died because the appendix was not removed. This happens in a teaching hospital. I think in Mauritius it has never happened and I don't think it will happen. Therefore, we have to be cautious you know. We cannot cast aspersion on a service which has served one million people. I know there are some people who do not perform. We have to take care of them. We are in the process, together with my colleague, to look at the whole system of registration and also of continuous

professional development. You learn in medicine or surgery until you close your eyes or you retire. You keep on adding on the experience, but I can tell you, we are trying to improve.

Mauritius has got a record. We may not all be pleased about it. There are certain people who have come and put pressure. Let me tell you, the hon. Prime Minister himself is overseeing it; he is a doctor, he is a cardiologist and he knows exactly what he wants. We are all, in this country, in this Cabinet and in this Government, trying to put our heads together. We don't claim we have a solution to all the problems. We have to start somewhere and we have to be able to perform some very surgical procedures to ensure that the people of this country get a better health than they are getting. Every day we have to improve on what we have achieved and we will achieve a better service. We will win. Yes, we can!

(5.21 p.m.)

Mrs L. D. Dookun-Luchoomun (Second Member for Quartier Militaire & Moka): Mr Deputy Speaker, Sir, when the Bill was first presented to the House in 2008, we, in the Opposition, had supported it, thinking that an enactment of this Bill, would lead to an increase in the supply of tissues and organs for transplantation, thereby giving a new hope to hundreds of people suffering and awaiting their availability of organs for transplant surgery.

However, Mr Deputy Speaker, Sir, it seems that we have hardly achieved what we expected. As the hon. Minister himself said, we have not done much. I am not surprised, Mr Deputy Speaker, Sir, because it seems that we have a tendency here to rush through things and not wait the adequate, the proper time, the optimal moment to start it. It is worth noting that in Wales, the discussion about the Bill for transplantation went on for years and, then in 2013, further elaborate, extensive discussion was carried out with the population, with MPs and the Minister of Health himself came and discussed the matter with Members of the Parliament and they decided that until and unless, they have the resources required to launch this Bill, they would not go ahead with that. They decided that they have, first of all, to discuss the matter of financing for campaigning, for proper information giving to the population.

Further, the discussion did not stop there. They realised that a lot had to be done to educate people about the need for tissue donation and the proper procedures for procurement of organs. All this went on and on. Now, in Wales, they are saying that they would come with the Bill and they will be ready with the Bill by 2015. Look at the cautiousness, Mr Deputy

Speaker, Sir! In our case, we rush through it in 2006. I must say, we, in the opposition, were very much for it, because we believe that we should come up with the legal framework to allow a proper environment for tissue transplantation.

Mr Deputy Speaker, Sir, we have also to consider that if we did not manage to do what we intended, if we did not achieve much, it is also because we did not give proper attention to the information that had to be given to the public, to the education of people. I can see in the main law, Mr Deputy Speaker, Sir, that the responsibility of the Minister was to give information and to ensure proper mass information and education of the people. This, I am afraid, has not been done. It is worth noting also that, in the United States of America, in various States, in Ohio, if I am not mistaken and even in Ontario, the law, the legislation itself made provision for the review of the education curriculum to ensure that students in schools following health courses be given a module on the importance of organ donation, on the impact of organ donation on quality of life and on procedures for organ procurement.

Mr Deputy Speaker, Sir, the Minister rightly says that we have to go phase-wise, step by step. When we came up with this Bill in 2006, we rushed through it. Mr Deputy Speaker, Sir, hon. Dr. Boolell rightly mentioned that the amendments being brought have their importance, as the Minister said it, but we have to be careful. I note that in the amendments presented today, the definition for 'Consultant' has been deleted from the main Act and has been replaced by the definition for 'Specialist'. Yet, on the board, we still have the Consultant. I would like the Minister to clarify, to state: what are we expecting as definition for the term 'consultant', since the definition has already been deleted from the main Act. This is one thing, Mr Deputy Speaker, Sir.

Further, as I mentioned earlier, since we note that the number of organ donation and transplant has not markedly increased, shouldn't we through this new Bill, the amendments, try to come up with means to ensure that organs are made available? Mr Deputy Speaker, Sir, in Wales, even today, I am informed that every month three persons die, because of lack of organs, awaiting organ for transplant surgery. They are going about it in a very systematic manner, to ensure that when they come up with the Bill, the country is ready and has adequate infrastructure and capacity to do it.

There is another very important factor. When we talk about an increase in the number of organs donated, do we have the capacity of accepting it? Can we go about with preservation? I think I heard the Minister saying that we are going to go phase-wise and,

initially, we are going to consider only live donation, but even for live donation, there are procedures. How are we going to do that? We talk about critical bed availability. Do we have it? Are we capable of doing it? Are we equipped? Do we have the capacity of doing that? Before coming up with all this, we have to consider these points, Mr Deputy Speaker, Sir.

I would like, here, to mention that in Europe, even in the States, this question of critical bed still arises. In Mauritius, I do agree we have very higher missions, that we intend to become a medical hub and that we intend to have people around. Fine! But, we should, first of all, build up our capacity, prepare ourselves, equip ourselves and come up with the proper infrastructure before launching into it.

Mr Deputy Speaker, Sir, I would also like to talk about the issue of immunity. Fair enough! As hon. Dr. Kasenally put it, the immunity applies solely to the Board Members, but they have a huge responsibility. The responsibility of determining whether an individual is capable of offering his organ, the responsibility of determining whether that person was previously registered, the responsibility of maintaining the register, the responsibility of maintaining the register of recipients awaiting donation and the priority list of recipients awaiting donation. All these are very important issues, Mr Deputy Speaker, Sir. Furthermore, the fact that we are ready to give so much of immunity to these Board Members, have we considered the high risks that we are facing? Because although we are stating today that we intend to have only live donation, local live donation, there are always chances because it is given in the Bill that the Board can also authorise the import of organs.

What do we do in case we have an individual who is desperately requiring an organ and it is not available in our country, but the family has managed to get it from abroad? The import of the organ will be carried out and the authority for that will be given by this Authorising Committee, which, I am sure, will be a subcommittee of the Board. All this has to be taken care of and considered, Mr Deputy Speaker, Sir.

Furthermore, I would like to draw the attention of the Minister on certain issues. There has been a lot of discussion going around at the World Health Organisation in the Commonwealth countries regarding the large number of organ transplants being carried out in certain countries which do not even have the framework for organ donation. I am told that in these countries up to 7,000 transplants are carried out yearly and that over the past five years the number has reached 41,500 transplants! This is quite enormous! How do we ensure that our Mauritian patients will not go out and get this done? What is the legal framework

that we want to provide to ensure their safety? Because we have heard of cases of people going outside, getting their transplant done and coming back with a surgery which fails! All this has to be taken care of and it is extremely important to consider these minor things - which appear to be minor - but, which in fact will have very heavy implications, Mr Deputy Speaker, Sir. We can go on and on and we can see that there are various things that need to be carefully monitored.

I would like to mention here the need to carry out a proper campaigning. I think that if we have not managed to attain our objectives it is simply because we have not also informed the population. Information of population, preparation of our medical personnel, capacity building – I have heard hon. Dr. Kasenally saying: “okay, no one learns overnight, we have to start off somewhere!” But then, we have to ensure at the same time that the patients are given the right care and that we do not put at risk their lives and their well-being, Mr Deputy Speaker, Sir.

I heard him saying that some of the Board members had resigned because they were scared of taking certain measures and certain decisions. May I ask the hon. Minister whether we do have a register of potential donors, a register of awaiting recipients? All this has to be taken care of. Has all this been done properly? Because we are ready to give immunity to these Board members, but we have also to ensure that they do the work properly, Mr Deputy Speaker, Sir.

I would, therefore, ask the hon. Minister to ensure that other changes are also brought about simultaneously to ensure that this particular amended Bill achieves the objectives that are being set today. We have seen that there has been certain *manquements*, if I can put it this way, as far as capacity building is concerned, as far as information given is concerned and as far as campaigning is concerned. I would think that with the Bill and with the proper monitoring of the Ministry, I hope that we may this time come up with the expected objectives, and as the former interveners have said, provided that at the centre of our action remains the well-being of the patients.

Thank you, Mr Deputy Speaker, Sir.

(5.35 p.m.)

Mr Bundhoo: Mr Deputy Speaker, Sir, allow me to thank all hon. Members who have participated in the deliberation of this Bill. I would like to place on record my thanks to

hon. Faugoo who, in 2006, presented the Bill in the House and to which amendments are being brought here today.

Allow me, Mr Deputy Speaker, Sir, to make a few comments on the points raised earlier by my colleagues, hon. Dr. Boolell and hon. Mrs Dookun-Luchoomun. First of all, I would like to reassure hon. Dr. Boolell that section 2 of the principal Act provides for the definition of relative section 4 of the Act only permits the donation of non-regenerative tissues between relatives. Donations between non-relatives are not permitted. Medical Practitioner is already defined in section 2 of the principal Act as meaning 'a person registered as a General Practitioner or a Specialist with the Medical Council' and I will come to that in a minute.

The Proposed Immunity at Clause 19 only applies to the designated person act in good faith, it is not a blanket provision, as was affirmed or reaffirmed by hon. Dr. Kasenally who spoke just after the hon. Member.

Secondly, Mr Deputy Speaker, Sir, I would like to say that in the Act the definition of 'near relative' is made clear and that will be further made clear with the Authorisation Committee. It is illegal, according to the Act, to have a non-related donor even in the case of an emergency. There is nothing like emergency transplant. So, the issue of having weekenders coming to Mauritius, operating transplant does not even arise because there is no such thing as an emergency transplant. Because, Mr Deputy Speaker, Sir, all these are planned very much in advance, because we would need to have an Authorisation Committee verifying all the documents and also an affidavit has to be sworn between the two parties: the donor and the recipient. So, the issue of having commercial trafficking will be minimised to the least possible by virtue of the Authorising Committee.

With regard to the point that was raised by hon. Mrs Dookun-Luchoomun - I think she may have a point – I must say, Mr Deputy Speaker, Sir, that we are treading very cautiously. I must also add that when hon. Ashok Jugnauth was a Member of the Opposition, he did make the case when the Bill was presented that the Bill was prepared already and in the Government coffer somewhere, in the Prime Minister's Office. But then, because they lost the election and we won it hon. Faugoo came in and presented the Bill. We did not have a quarrel over that, nor did hon. Bérenger who was the Leader of the Opposition then. We all agreed that the Bill initially started in 1999 and even the historic Leader of the MMM

recognised that when he congratulated hon. Dr. Kasenally - who was then the RHD in the hospital - to have contributed in the formulation of the Bill.

Just to make a point, Mr Deputy Speaker, Sir, the Bill started in 1999. It was formulated apparently before 2005. It was the second Government of Dr. the hon. Navinchandra Ramgoolam that introduced the Bill in Parliament and it is now the third Government of Dr. the hon. Navinchandra Ramgoolam that is bringing the amendment to the Bill to make it workable and possible! Just to assure you, we are not going at this moment in time to proclaim those clauses that concern the cadaveric with regard to donation and transplant. It is only going to be practised and allowed with live donors.

With regard to the issue raised by my hon. friend Dr. S. Boolell, I would like, for his benefit, to read what I have said earlier, Mr Deputy Speaker, Sir. Number of renal transplant cases carried out in Mauritius. There have been 329 renal transplants that have been carried out from 1992 to 2012. 19 persons passed away within the first three months of date of operation, thus representing 94% of success. That is what happened in Mauritius and has been happening in Mauritius between 1992 and 2012, over the last 20 years. This figure was given to me.

With regard to the other points raised by hon. Mrs Dookun-Luchoomun and hon. Dr. S. Boolell about immunity, let me quote, Mr Deputy Speaker, Sir, from the law in India. Paragraph 23, chapter 7 says –

“(1) No suit, prosecution or other legal proceeding shall be against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act. (2) No suit or other legal proceeding shall lie against the Central Government or the State Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.”

Therefore, what the hon. Member is telling me does not happen only in Mauritius, but, in fact, it is already happening, it happens and it exists in other jurisdictions. I am just quoting one of them and that is from India.

Mr Deputy Speaker, Sir, allow me to proceed further. I think both of my hon. colleagues here wanted to know about the composition of the Board, especially my colleague, hon. Dr. S. Boolell. I have not, as a matter of precaution, despite the fact that I am given the

power within the law to do that, I have decided, in my deliberate judgement, with the approval and insistence of the hon. Prime Minister that all professionals would sit on the Board. Let me give you the names of those who are sitting on the Board –

- (i) as the law provides, the Chairperson, Dr. Pauvaday, Ag. Director, General Health Services;
- (ii) the members are –
 - (a) Mrs Green-Jokhoo – Principal State Counsel, Attorney General's Office;
 - (b) Dr. S. Manraj – Consultant in charge, Pathology;
 - (c) Dr. A. Fakim – Consultant in charge, General Surgery;
 - (d) Dr. L.T.K. Lam Thuon Mine – Consultant in charge, General Medecine;
 - (e) Dr. S. Mareechallee – Consultant in charge, Anaesthesia;
 - (f) Dr. L. Dhunnoo – Retired Consultant , Ophthalmologist (who is still serving in the hospital), and, of course,
 - (g) the civil servant from my office – Mrs Moorghen, Principal Assistant Secretary.

Therefore, we have, as rightly requested by both Members of the Opposition, taken all the precautions that the Board is made up of competent and highly qualified people. Despite the fact that I am empowered to appoint three members in my own deliberate judgment, I have chosen not to do that in view of the seriousness of this Bill and in view of the delicate matter of issues to be addressed, once this Bill is proclaimed and is being put into action, Mr Deputy Speaker, Sir.

To the issues raised at the very beginning by hon. Dr. S. Boolell, Mr Deputy Speaker, Sir, I would like to read this again just in case there is any misunderstanding. Here, I wish to highlight that even in the absence of appropriate regulation, renal and corneal transplants have been undertaken regularly in Government hospitals in accordance with a set of guidelines. I did not say that it is being done over dead bodies. I think the hon. Member is having a dream, he is still in the hospital doing *autopsy*. I apologise, Sir.

With regard to the other issues raised by my good friend, hon. Dr. S. Boolell, I and hon. Dr. Kasenally have covered them.

With regard to the Medical Council Board, I have just explained that earlier how it is made of, how it is composed of. I have to say here ‘*chapeau*’ to the hon. Prime Minister because he insisted despite the fact that the Board must be composed and made up of professionals of high calibre.

Mr Deputy Speaker, Sir, there was one point raised by hon. Mrs Dookun-Luchoomun. I have already answered to that. It is related to cadaveric donation. I can assure the hon. Member, Mr Deputy Speaker, Sir, we are not going to proclaim this part of the law, as you rightly said - I must say that - we have to move in a phase manner and in this particular phase, with regard to cadaveric, we will come there and we will cross the bridge when this country is ready for that. I do not think that at this moment in time, we are ready for that.

Lastly, with regard to the Medical Consultant, I would kindly refer the hon. Member to the definition given with regard to consultant in clause 2 of the Bill.

Before concluding, Mr Deputy Speaker, Sir, I would like also here to make a special mention to one of the issues raised by hon. Dr. S. Boolell with regard to specialists coming from – I think he mentioned a few countries, but I would not mention any country here, but I can assure the House that in November last year, when the Finance Bill was presented, we did make amendment with regard to the provisions of the Medical Council whereby we – Government - have decided to constitute a Post-Graduate Medical Examination Board for the registration of specialists. This Board will take into account not only the specialist qualification of the applicant, but also his knowledge, skill and experience prior to registration as a specialist. So, this is already being taken care of since November of last year. I remember quite well, hon. Dr. S. Boolell did intervene and made a few comments. Maybe he has forgotten that this has already gone through the House.

Mr Deputy Speaker, Sir, the proposed amendment in the Human Tissue (Removal, Preservation and Transplant) (Amendment) Bill (No. XIV of 2013) would definitely go a long way in our endeavour to make Mauritius a medical hub in order to move forward in another phase and step with regard to the Bill.

With these words, Mr Deputy Speaker, Sir, I commend the Bill to the House.

Question put and agreed to.

Bill read a second time and committed.

COMMITTEE STAGE

(The Deputy Speaker in the Chair)

The Human Tissue (Removal, Preservation and Transplant) (Amendment) Bill (No. XIV of 2013) was considered and agreed to.

On the Assembly resuming with the Deputy Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

On motion made and seconded, the Human Tissue (Removal, Preservation and Transplant) (Amendment) Bill (No. XIV of 2013) was read the third time and passed.