

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 12th June, 2001**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## PAPERS LAID

The following Papers were laid on the Table:-

Estimates of Recurrent Expenditure of the Parliamentary Service Commission for the Financial Year ending 30th June, 2002.

*(By the Vice-Chairman of the Parliamentary Service Commission (Mr. Oloo-Aringo), on behalf of the Chairman of the Parliamentary Service Commission)*

The 2001/2002 Estimates of Recurrent Expenditure of the Government of Kenya for the year ending 30th June, 2002.

The 2001/2002 Estimates of Development Expenditure of the Government of Kenya for the year ending 30th June, 2002.

The Economic Survey 2001.

*(By the Minister for Finance)*

The Report of the Departmental Committee on Education, Research and Technology on the Industrial Property Bill for the year 2001.

*(By Mr. Achola)*

## ORAL ANSWERS TO QUESTIONS

*Question No.365*

### PAYMENTS TO MBOONI COFFEE FARMERS

**Mr. Kalulu** alimuuliza Waziri wa Kilimo:-

(a) ikiwa anaelewa kuwa wakulima wa kahawa wa Mbooni, kata ya Tulimani hawajalipwa pesa zao kwa muda wa miaka miwili; na,

(b) ni kwa nini malipo hayo hayakutekelezwa.

**The Assistant Minister for Agriculture and Rural Development** (Mr. Sumbeiywo): Bw. Spika, ninaomba kujibu.

Wakulima wa Tarafa ya Mbooni, Kata ya Tulimani, wanatumikiwa na Kikima Farmers Co-operative Society.

Kwa kipindi cha miaka miwili iliyopita, mazao ya kahawa ambayo yaliuzwa kupitia Shirika la Kikima ni kama ifuatayo:-

1998/1999	-	Kshs25,685,399.00
-----------	---	-------------------

1999/2000 - Kshs13,034,259.00  
 Jumla Kshs38,719,658.00

Pesa hizi zote zimelipwa Shirika la Kikima kupitia Benki ya Ushirika, tawi la Machakos.

**Mr. Kalulu:** Bw. Spika, ninafikiri tarakimu ambazo Waziri Msaidizi anasoma katika Bunge hii si za kweli. Kama inavyojulikana, mmea wa kahawa ni mmea ambao unahitajika Kenya na watu wa tarafa za Mbooni na Kisau hutegemea mmea huu. Kwa wakati huu wakulima wa kahawa katika tarafa hizo zote mbili hupata senti kumi na tano na wala siyo vile Waziri Msaidizi anavyosema mambo yasiyo ya haki. Kwa hivyo, tunaomba uchunguzi ufanywe ili tujue ni kwa nini malipo ya mmea wa kahawa yameteremshwa.

Bw. Spika, watoto wengi wamerudi nyumbani kwa sababu wazazi wao wameshindwa kuwalipia karo za shule, kwa kukosa malipo ya kahawa. Kwa hivyo, ninaliomba Bunge hili lifanye uchunguzi ili kutambua ni kwa nini malipo ya zao la kahawa yameteremka.

**Mr. Sumbeiywo:** Bw. Spika, malipo ya zao la kahawa yameteremka kwa sababu ya kiangazi. Hii ndiyo sababu, mwaka wa 1999 na 2000 pesa ambazo zililipwa zilikuwa kidogo kuliko pesa ambazo zililipwa mwaka uliotangulia. Kwa hivyo, kwa sababu mvua inanyesha, tunaamini kwamba wakulima wameweka juhudi kubwa ili kuongeza ubora wa mazao yao.

Bw. Spika, ningependa kumsihi Bw. Kalulu awasiliane na kusaidiana na maofisa wa Wizara yangu ili wafanye uchunguzi wa hesabu ya malipo hayo katika Shirika la Kikima.

**Mr. Speaker:** Very well! The next Question is no Question!

*Question No.283*

#### DEPLOYMENT OF TEACHERS IN KARACHUONYO

*(Question withdrawn)*

**Mr. Kiunjuri:** On a point of order, Mr. Speaker, Sir. As you can see, I am very lonely where I am; my friends have crossed to the other side of the House. Could you take the responsibility and give us some "KANU rebels" from that side to come and sit close to me?

**Mr. Speaker:** You can join them if you wish!

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Since this Question is on the Floor of the House. Could I, on behalf of Dr. Awiti, ask the Question?

**Mr. Speaker:** Order! You cannot ask a non-existent Question! A Minister cannot ask a Question and, therefore, this is no Question at all!

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. Going by what happened yesterday, and now that all the National Development Party Members have crossed to the opposite side of the House, all Kenyans and ourselves, expected some communication from the Chair. We would like to know whether the NDP is still a party or it has just gone the way KADU went and now it is in Government. At least we expected something from the Chair!

**Mr. Speaker:** Order! Order! Mr. Ndicho, has it got anything to do with this Question? There is absolutely no confusion in this matter. I think you all know the Constitution. We amended the Constitution last time to remove the words "The President to appoint Ministers from his party", and now he can appoint any Member of Parliament including Mr. Ndicho. But once you are in Government, you must go to my side. Is that clear?

**An hon. Member:** It has been dissolved!

**Mr. Speaker:** Order! Have you read anywhere that NDP has been dissolved? Certainly, it is a party, but it is one of the parties forming the Government of Kenya.

**Mr. Murathe:** On a point of order, Mr. Speaker, Sir. There is no provision in the Kenyan Constitution for a coalition Government. It is, therefore, not in order for two parties to claim to form Government. The President can pick from among the Members of the House, Ministers and Assistant Ministers of his Government. But the parties can only do so in a situation of a coalition. We need your guidance!

**Mr. Speaker:** Order! It would have helped the Chair if Mr. Murathe could point out to the Chair a particular provision in the Constitution that says that there cannot be a coalition Government. Where is your authority for that statement?

**Mr. Murathe:** Mr. Speaker, Sir, could I respond?

**Mr. Speaker:** Order! We will not continue discussing this issue! I probably will have to make a communication on the same lines as I have told you. But as far as I am concerned, I think it is perfectly lawful for

the Members of the NDP, now in Government, to sit on the Government side.

**Mr. Kathangu:** Bw. Spika, ni rahisi sana kutumia maneno kama vile unavyoyatumia. Lakini pia ni vigumu kwa Wakenya kuelewa bila wewe kuwaeleza kikamilifu. Jambo moja ambalo ni lazima ueleze ni kwamba, Wabunge wanne kutoka chama cha NDP wameteuliwa kikatiba kuwa katika Serikali. Je, hivyo ni kusema kwamba wale watu wanne wanawapatia uwezo Wabunge wote wa NDP kuhamia upande wa Serikali?

**Mr. Speaker:** Order! Order! I think I will talk about this for the last time! We have an adversarial system of Government; Parliament is adversarial. "Adversarial" means that there can only be two sides; those for and those against. The ones on my left are against the policies of the present Government. The ones to my right are for the policies of the Government, or supposed to be, anyway!

I think the NDP, by choosing to sit on the ruling side of this House, therefore, they sit with the Government and to rule.

**Mr. Murathe:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Members! We will not exercise--- How many parties are to my left? Are you all merged? The mere fact that you are sitting to my left does not mean you all belong to one party!

*(Applause)*

Next Question!

*(Several hon. Members stood up in their places)*

Order, hon. Members! As I said earlier, I am going to deliver a considered ruling in this matter. You all know that for a long time--- For as long as I can remember, we have always had a Government of one party. We now have a new arrangement and the Speaker will consider and give a detailed ruling, not only for our consumption here but also for the consumption of history. So, give me the time to do that.

**Mr. Shidiye:** On point of order, Mr. Speaker, Sir. We do not want to be taken in circles. There are some people who are envious because Members of the NDP have joined the Government. If the others want to join the Government, let them move--- They are feeling cold there. They can join us here!

**Mr. Speaker:** Order all of you! We will not have any more of this. I will deliver my considered ruling at an appropriate time.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. It may well be necessary for the Chair to

**[Mr. Anyona]**

consider circumstances in which individual Members

on both sides of the House can, as a matter of right, decide to sit that side, or that side. I think in your ruling you may want to consider that aspect. If there are individual Members who are usually on that side or those who have just joined who wish to sit here, in what circumstances could that happen?

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Would I be in order to welcome some of the progressive forces from the NDP to join the progressive forces in KANU?

**Mr. Speaker:** What are you saying, Mr. Angwenyi?

**Mr. Angwenyi:** Would I be in order to welcome them?

**Mr. N. Nyagah:** On a point of order, Mr. Speaker, Sir. This is in connection with the request made by Mr. Anyona to the Chair. May I also request the Chair to consider taking into consideration what happened in the United Kingdom, when there was a relationship between the Conservative and the Liberal Democrats. The Governing party then, chose a certain corner where the new Members of the Liberal Democrats would sit and that should apply here so that they are congested on that side and we are warm on this side.

**Mr. Speaker:** I think that brings us to the end of that discussion.

**Mr. Katuku:** On a point of order, Mr. Speaker, Sir. In view of your undertaking to make a ruling on this matter, I would like you to put into consideration that we have got some Members of the ruling coalition chairing the Public Investments Committee and other Committees of the House. We would want you to take that into consideration when making your ruling. I am in receipt of a letter, written by hon. Wamunyinyi, who is a Member of the Public Investments Committee to the Clerk of the National Assembly, asking him to convene a meeting of the said Committee to elect a new Chairman. I am asking you to take those issues into consideration when making your ruling.

**Mr. Speaker:** Order, Mr. Katuku! When did you become my Clerk? No more!

*(Laughter)*

**Dr. Omamo:** On a point of order, Mr. Speaker, Sir. As you have cautioned the House, that you are going

to make a detailed statement about this matter, may I appeal to you that when you are doing so, to take into consideration the fine principle that "whenever you are hunting, whatever you have, you hold."

*(Laughter)*

**Mr. Speaker:** Order, all of you! You are overruled! All of you sit down now.  
Next Question, Eng. Toro!

*Question No.117*

RETRENCHMENT OF  
KENYA RAILWAYS ENGINEERS

**Eng. Toro** asked the Minister for Transport and Communications why Messrs M.O. Ndeda, Chief Mechanical Engineer; J.K. Kamau, Chief Civil Engineer and L.D. Achieng, Chief Traffic Manager, were retrenched, by the Management of Kenya Railways Corporation.

**The Minister for Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to reply.

My answer is consistent with what I said earlier. The officers were retrenched among others, from the services of the corporation as part of the on-going staff reduction programme which has been in place since 1994. This particular category of staff were retrenched following the creation of a leaner structure of the corporation which led to the reduction of the number of departments, from the initial 20 to 12. This involved merging some of the departments leading to excess staff in the establishment and, therefore, requiring some to leave. Among those were the Deputy Managing Director, General Manager Finance, the General Manager Human Resources and the Assistant Chief Engineer.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! We are now in business. Could we listen to the Minister? The House is in business!  
Proceed, Mr. Minister!

*(Mr. Raila and Dr. Awiti entered the Chamber accompanied by Messrs. Ojode and Odoyo amidst applause from the Government side and jeers from the Opposition side)*

**Mr. Speaker:** Order, hon. Members! I have never known of a Parliament on this earth that does not congratulate any Member of Parliament who gets elevation and I will not have this as an exception. Members must be honourable and have high regards for their fellow colleagues. Proceed, Mr. Minister.

**The Minister for Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, in responding to this Question last time, I also indicated that I would table the organisational structure of the Kenya Railways for perusal later by the Members of the House.

*(Mr. Mudavadi laid the document on the Table)*

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. If you look at where I sit and the depression created by the movement of my colleagues to the other side, you must make a categorical statement as to whether the NDP Members have defected to the ruling party or not. If there is any defection, then these people should not dare come back to us. They have gone and they should go for ever!

**Mr. Speaker:** Order, Mr. Gatabaki! If you are feeling so lonely, move and sit next to Mr. Galgalo!  
Proceed, Eng. Toro!

**Eng. Toro:** Mr. Speaker, Sir, since you have said we should congratulate our colleagues who have been elevated, I would like to congratulate them for having been "swallowed" by KANU and hope that they do not get digested.

Mr. Speaker, Sir, I think the Minister has given the answer as it was the last time. The reason why the Question was deferred was because he could not explain to the House the issue of retrenchment. The cardinal point I raised was that the chief officers of the three departments were sacked on orders from the Ministry. This is not an issue of restructuring. The three departments are still intact the way they were. So, could the Minister tell the House whether we still have the Chief Mechanical Engineer's Department, headed by a Mechanical Engineer, just

like the one who was sacked; the Traffic Department headed by the Chief Traffic Manager, just like the one who was sacked and the Civil Engineering Department headed by the Chief Civil Engineer, just like the one who was sacked? There have never been any changes to these departments. The Minister is misleading the House!

**Mr. Mudavadi:** Mr. Speaker, Sir, I am not misleading the House. I tabled here the organisational structure and even the names of the people who occupy the posts. Eng. Maurice Otieno Ndeda joined the Kenya Railways Corporation in 1977 as a trainee engineer and was promoted through the ranks and retired at the age of 49 years. Mr. Jacob Njeru Kamau retired at the age of 47 years and Mr. Joe Achieng retired at the age of 50 years through the retrenchment programme. They were not sacked and, as far as I know, their terms of retrenchment are being processed. So, these particular officers were not sacked.

**Mr. Anyona:** Mr. Speaker, Sir, the Minister has used the word "retrenched". Could he explain to this House the legal or administrative meaning of this term with respect to the terms of employment of these officers? When people are employed, there are terms that can be used that is, they are either permanent, probationary or on contract. What is the meaning of the word "retrenchment" here?

**Mr. Mudavadi:** Mr. Speaker, Sir, I am not using a new word here. In many organisations, even right now, there are many other organisations where the retrenchment programme is going on. Normally, when this is going on, there are various options that can be put before somebody that "in this framework of retrenchment, you can either opt for early retirement, or you can be retrenched." That means your services are terminated---

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. I was saying that when a person has been employed, there is a certain terminology which is used, which he knows. He knows that he can either be retired or sacked. But when the Minister uses the word "retrenchment" in the context of an employment contract, what is the legal meaning? This is because if you cannot attach a legal meaning, then that retrenchment is illegal. Could he point out the legal basis that we asked for?

**Mr. Speaker:** Is the Minister for Transport and Communications in charge of linguistics? Mr. Minister, would you like to respond?

**Mr. Mudavadi:** Mr. Speaker, Sir, the whole philosophy of retrenchment is to reduce the number of employees in an organisation. I would like to point out that the Kenya Railways Corporation (KR) has undertaken a protracted programme of reducing the number of employees, part of which is through the down-sizing process. One terminology used here is "retrenchment".

**Mr. Speaker:** Let us move on to the next Question now!

**Eng. Toro:** Mr. Speaker, Sir, allow me to ask the last question.

**Mr. Speaker:** Order! Order, Eng. Toro! Look at the clock!

**Eng. Toro:** But, Mr. Speaker, Sir,---

**Mr. Speaker:** The last time you will be allowed to haggle with the Chair is today! So, ask that question; do not haggle again. This is not a trading organization!

*(Laughter)*

**Eng. Toro:** Thank you, Mr. Speaker, Sir. I am very concerned about the affairs of the KR because these officers, who rose through the ranks on merit--- The Chair has heard the age at which they were sacked. They were sacked when they were 47, 49 and 50 years old. The Ministry cannot go ahead and sack experienced engineers and officers and replace them with junior officers. Now, could the Minister answer part "a" of my Question because he did not answer it?

Mr. Speaker, Sir, after the restructuring, these three officers were replaced by officers at the same rank. For example, the Chief Civil Engineer, Chief Mechanical Engineer and Chief Traffic Manager were replaced by officers of the same rank. Could he give the House the qualifications of these three officers who replaced them? Could he also tell this House whether those officers were more experienced than the ones who were retrenched?

**Mr. Speaker:** Those are 1,000 questions in one!

**Mr. Mudavadi:** Mr. Speaker, Sir, I have tabled here an organisational structure which contains the list and names of those people who hold key management positions in the KR for your perusal. Maybe, just for the sake of the record, there is a Mr. L. Achieng, who says in a letter addressed to the Managing Director, and I quote:

"It has been brought to my attention that my name has been included in regard to a caption subject in circumstances which I do not understand. In this regard, I would like to make it clear for record that I do not have any problems with the KR and, therefore, hereby disassociate myself from any persons who might wish to involve my name in an antagonistic manner with the

Corporation."

He wrote this letter to the Managing Director of the KR in respect to this Question. So, I have answered it to the best of my ability. I have also put the names there. Maybe, there is something about these three officers that I may not have, and perhaps, Eng. Toro, may have something in addition to the information I have.

*Question No.161*

CLINICAL OFFICER FOR FAZA HEALTH CENTRE

**Mr. Speaker:** Mr. Maitha's Question is deferred to tomorrow afternoon.

*(Question deferred)*

*Question No.290*

MISS NJERI'S TERMINAL BENEFITS

**Mr. Michuki** asked the Minister for Public Health:-

- (a) whether he is aware that Miss Abigael Njeri, P/No.325333, retired from the Ministry's service on 1st July, 1989;
- (b) whether he is further aware that her terminal benefits and pension have not yet been paid; and,
- (c) when the said benefits will be paid.

**The Assistant Minister for Health (Dr. Wako):** Mr. Speaker, Sir, I beg to reply.

- (a) I am aware that Miss Abigael Njeri retired from the Ministry's service on 1st July, 1989.
- (b) I am not aware that her terminal benefits and pension have not yet been paid.
- (c) Miss Abigael Njeri was paid her compassionate gratuity vide cheque No.072163 dated 18th October, 1997.

**Mr. Michuki:** Mr. Speaker, Sir, I have not been supplied with a copy of the written answer to my Question. The date the Assistant Minister has said that her gratuity was paid is when, in fact, this issue arose. How could a permanent and pensionable officer be paid gratuity rather than pension?

**Dr. Wako:** Mr. Speaker, Sir, as far as the records are concerned, Miss Njeri was actually a subordinate staff, who was employed with effect from 1st January, (1990 ?). Therefore, she was not entitled to pension, but to a compassionate gratuity which she has been paid.

**Mr. Speaker:** Ask the last question, Mr. Michuki!

**Mr. Michuki:** Mr. Speaker, Sir, I have some papers here. I brought this Question to this House because I have been writing to the Ministry since May, 2000 without any response at all. I have some papers here which declare Miss Njeri an employee on permanent and pensionable terms of service. The documents further reveal that she was actually retired in 1989 on that basis. Could the Assistant Minister address the issue of terminal benefits and pension, because she was permanent and pensionable as per the letter addressed to her by the Permanent Secretary in the Ministry of Health? This letter further says that she was upgraded from untrained nurse to the position on which she retired. Could the Assistant Minister now clarify this issue? How did he pay gratuity to a person on permanent and pensionable terms, because there is nothing like that?

**Dr. Wako:** Mr. Speaker, Sir, I am not aware of the letter. If the hon. Member can avail it to us, we can countercheck and find out whether it is from the Ministry. But as far as I am concerned, Miss Abigael Njeri was employed as a subordinate staff with effect from 1st January, (1990 ?). She retired from Government service on 1st July, 1989 when she was serving in the ungraded nurse Job Group "C" which is still not permanent and pensionable.

**Mr. Michuki:** Mr. Speaker, Sir, I would like to table these papers and hope that the Assistant Minister will come back, once he has sighted the letters, to tell this House the reason why gratuity should be paid to a permanent and pensionable officer. Here are the papers, which I hope the Assistant Minister will study in due course.

*(Mr. Michuki laid the papers on the Table)*

**Dr. Wako:** Mr. Speaker, Sir, we will study the papers which Mr. Michuki has laid on the Table, come back and inform this House about our findings. This is because, as far as our records are concerned, Miss Njeri is still a subordinate staff. But we will study the papers, come back and inform the House accordingly.

**Mr. Kamanda:** Mr. Speaker, Sir, I have not received a written answer to my Question.

*Question No.296*

JUJA ROAD RECONSTRUCTION

**Mr. Kamanda** asked the Minister for Local Government:-

- (a) whether he is aware that Juja Road, which was repaired in 1998, is almost impassable; and,
- (b) when the reconstruction of the road will commence and how much has been allocated for the repairs.

**The Assistant Minister for Local Government** (Mr. Sirma): Mr. Speaker, Sir, I beg to reply.

It is true that Mr. Kamanda has not received the answer from my Ministry. Having consulted with the Ministry of Roads and Public Works and with my Ministry, we found that the Question could be handled well by the Ministry of Roads and Public Works, which is in the process of commencing construction work on Juja Road. We have made a write-up and sent it to the Minister for Roads and Public Works.

**Mr. Speaker:** Are you asking me to transfer the Question to that Ministry?

**The Assistant Minister for Local Government** (Mr. Sirma): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Kamanda, would you like me to transfer the Question to the Ministry of Roads and Public Works?

**Mr. Kamanda:** Mr. Speaker, Sir, I just want to ask the Assistant Minister to tell me who was handling the construction work and supervising the *El Nino* Emergency Funds during 1998 because the programme was under the Ministry of Local Government.

**The Assistant Minister for Local Government** (Mr. Sirma): Mr. Speaker, Sir, since we would like to get a comprehensive answer to this Question, the Ministry of Roads and Public Works is able to give an answer to the same.

**Mr. Speaker:** But, Mr. Assistant Minister, who executed the job? Who gave out the contract?

**The Minister for Local Government** (Mr. Sirma): The Ministry of Local Government, Mr. Speaker, Sir.

**Mr. Speaker:** So, why are you running away from your responsibility?

**The Assistant Minister for Local Government** (Mr. Sirma): Mr. Speaker, Sir, this is because there are some works which are supposed to be done by the Ministry of Roads and Public Works on the same road.

*(Loud consultations)*

**Mr. Speaker:** Order! Order! I do not think that is good enough. If you wanted advice from the Ministry of Roads and Public Works, you should do it outside the Chamber. But we hold you responsible to this Question. So, I will give you time up to Tuesday next week; get in touch with whoever you want to get in touch with, but you must come and answer this Question by yourself. Is that all right?

**The Assistant Minister** (Mr. Sirma): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. The Question is deferred to Tuesday next week.

*(Question deferred)*

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to evade answering the Question when in the first place, 21 per cent of the fuel levy goes to his Ministry to cater for urban roads?

**Mr. Speaker:** Order! Order! Dr. Ochuodho, I have already deferred the Question. Do you want to go and fish it back? Under whose authority will you do so? Why do you not wait patiently until the Question comes back to the House?

**Mr. Kombo:** On a point of order, Mr Speaker, Sir.

**Mr. Speaker:** What is it, Mr. Kombo?

**Mr. Kombo:** Mr. Speaker, Sir, in view of your earlier ruling and the fact that the NDP is now part of the Government, is it in order for Dr. Ochuodho to contribute from this side of the House?

**Dr. Ochuodho:** I am the new leader of the NDP!

**Mr. Speaker:** Order! Order! First of all, I will evict him from the Front Bench because whether NDP is on the Government side or on the Opposition side, he is not entitled to sit on the Front Bench. So, Dr. Ochuodho, can you move to the nearest Back Bench of your choice?

**Dr. Ochuodho:** I am the new leader of NDP and I can sit in the Front Bench.

**Mr. Speaker:** Order! Order! You have been evicted!

*(Loud consultations)*

Order! Order! Dr. Ochuodho, this is not a place to play!

**Dr. Ochuodho:** Some of us are now in the new NDP and we can sit in the Front Bench!

**Mr. Speaker:** Order! Order! We are not playing! When you have been given instructions by the Chair, you must first obey those instructions and then ask questions later.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Since the slot for my party leader is vacant, I am the new leader of the NDP on the Opposition side. Could I be allowed to sit on my chair?

*(Applause)*

**Mr. Speaker:** Order! Order! Dr. Ochuodho, I am sure you are not serious. You see, everybody leads himself. Since I do not see any Member of the NDP on that side, you are only leading yourself! So, sit there and lead yourself there!

Order! Let us now go to Mr. Ochilo-Ayacko's Question.

*Question No.201*

#### AWENDO COUNCIL PLOT ALLOCATIONS

**Mr. Ochilo-Ayacko** asked the Minister for Lands and Settlement:-

(a) how many plots have been allocated by Awendo Town Council since its inception two years ago; and,

(b) who are the allottees of the said plots.

**The Minister for Lands and Settlement** (Mr. J. Nyagah): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry has no records of plots which have been allocated by Awendo Town Council since its inception, two years ago.

(b) In the absence of such records, it is not possible to know the allottees.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. It is very interesting to hear the Minister say that he does not have the records and, therefore, he does not know who the allottees are although he is in charge of the Ministry of Lands and Settlement. Is he in order to say that he does not know who the allottees are when he is in charge of this Ministry?

**Mr. J. Nyagah:** Mr. Speaker, Sir, I am very much in order to give a statement of fact that since Awendo became a Town Council two years ago, they have not forwarded any records to me. That is a statement of fact!

**Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. The fact that this Question has been approved by the Speaker and forwarded to the Ministry, it means that it is a properly constituted Question. The fact that the Minister does not have information, it should occasion him either to request for deferment of the Question or consult about the way forward. He cannot come here and plead ignorance before the House! Could the Chair oblige him to request for more time so that he brings an adequate answer?

**Mr. Speaker:** Mr. Minister, what are you ignorant of?

**Mr. J. Nyagah:** I am extremely well advised on this one. I know that Awendo Town Council is only two years old. Within those two years, they have not been allocating land. That is all I said.

*(Loud consultations)*

**Mr. Speaker:** Order! Order! Let him give his views.

**Mr. J. Nyagah:** Mr. Speaker, Sir, I have talked directly to my officers at Awendo Town Council and they have assured me that they have not allocated the land. I only receive information via minutes that come through a

particular route to my office. However, the minutes have not arrived on my desk. That is why I said I have no records.

**Mr. Ochilo-Ayacko:** On a point of order, Mr. Speaker, Sir. The Minister is giving two conflicting positions. The first position is that he has no records and, therefore, he cannot give a list of allottees. The second position is that there has been no allocation. Which is which? Is it in order for the Minister to give two conflicting positions?

**Mr. J. Nyagah:** Mr. Speaker, Sir, let me be clear. We have records of Awendo Town council of the old days before it became a town council and we have minutes to support them. But the new town council, which is only two years old, has not done any work.

This morning, I talked directly to the Clerk, Awendo Town Council, and he gave us this information, unless he was cheating! But to the best of my knowledge, after a direct talk with the Clerk of Awendo Town Council, he assured me that he will not and has not allocated the plots. If the hon. Member is aware of allocations, I will be very happy. But as of this morning, when we talked to him, he assured us that he had not done any allocation since Awendo became a town council.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, I got elected to Parliament in 1997 and since that time, there are councillors from Awendo Town Council, who have been giving away public land. I want to tell the Minister that, there is a particular school called Sare High School whose land has been given away. Now that the he is saying that there has never been allocations by Awendo Town Council, could he tell us what he is going to do about these purported allocations?

**Mr. J. Nyagah:** Mr. Speaker, Sir, we will check about the allocations on Sare Secondary School's land and others. I like the use of the term "purported" by the hon. Member. Councillors have a habit of allocating land illegally all over Kenya and they are doing it illegally. So, if they have done it illegally in Awendo Town Council, and in this case, if they have been allocating Sare Secondary School's land, that is illegal and it should not happen. We will follow it up. But we have a problem with councillors in many areas in the country. There is a procedure which they are not following, particularly the DP councillors who control urban areas.

Thank you.

**Mr. Speaker:** Next Question!

*Question No.189*

WITHHOLDING OF PAYMENT BY ADVOCATES

**Mr. Sifuna** asked the Attorney-General:-

(a) whether he is aware that the Kenya National Assurance Co. Ltd (KNAC), paid M/s Khan and Saisi Advocates of P.O. Box 5211, Tel. 62283 Eldoret, an amount of Kshs233,240 as per cheque No.39230 date 9th November, 1995 on behalf of Mr. Lumumba Waniale Makokha of Box 632, Bungoma;

(b) whether he is further aware that Mr. Lumumba W. Makokha reported M/s Khan and Saisi Advocates to the Complaints Commission and was assured by the Commission under Ref.letter DCC 41/98 dated 23rd November, 1998 that disciplinary measures would be taken against those advocates; and,

(c) what steps he is taking to assist Mr. Makokha get his money from the said advocate.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The Attorney-General (AG) is aware of the allegation that the KNAC paid M/s Khan and Saisi Advocates the amount of Kshs233,240 as per cheque No.39230.

(b) The Attorney-General is aware of the assurance given to Mr. Lumumba W. Makokha that disciplinary action would be taken against M/s Khan and Saisi Advocates.

(c) The Complaints Commission, a department under the Attorney-General's office filed a complaint against M/s J.A. Saisi Advocates before the Disciplinary Committee, Disciplinary Cause No.41/98. The case was heard on 12th February, 2001, when M/s J.A. Saisi Advocates entered a plea of not guilty and stated that the cheque from the KNAC had been dishonoured with remarks, "accounts restricted." Mr. Lumumba Makokha apparently agreed to follow up the matter with the liquidator of the KNAC. If Mr. Lumumba is satisfied that the cheque of the KNAC was messed up, he can either report the matter to the police for criminal investigation and/or sue Mr. Saisi for the recovery of the said amount.

**Mr. Sifuna:** Mr. Speaker, Sir, arising from the reply by the Attorney-General, it is not true that the

cheque was returned. I have a letter from the KNAC signed by the official receiver, Mr. S.A. Ambaka, stating that the cheque was honoured and M/s Saisi and Co. Advocates took the money. There is nowhere where it is shown that the cheque was dishonoured. Could the Attorney-General, on the strength of this particular memo which was addressed to M/s Khan and Saisi Advocates in Eldoret, promise to assist Mr. Lumumba get his dues?

**Mr. Wako:** Mr. Speaker, Sir, as I said, if Mr. Sifuna has that information, he should bring it to my attention. We should take either of the following two steps: We should report to the police for M/s Saisi and Co. Advocates to be prosecuted for theft or alternatively, if Mr. Lumumba is more interested in getting the money back--- Unfortunately, I am no longer an advocate in private practice; I could have sued Mr. Saisi for him; for the recovery of the amount. Mr. Lumumba will have to see an advocate in order to recover that amount. But definitely, the cheque can assist in criminal investigations.

**Mr. Speaker:** Mr. Sifuna, could you please lay that letter on the Table? Mr. Attorney-General, I have seen that your office hates crime and when this issue is brought to your attention, that is a criminal offence, and you should investigate.

**Mr. Wako:** Mr. Speaker, Sir, that is exactly why I said that Mr. Sifuna should lay that document on the Table. If he does that, definitely, this will be a criminal case and I will undertake investigations. If Mr. Lumumba wants to recover the money, then that requires a civil remedy and he will have to see a private advocate.

**Mr. Speaker:** Mr. Sifuna, would you like to lay that document on the Table?

**Mr. Sifuna:** Mr. Speaker, Sir, I will lay this particular document on the Table. But while agreeing with the sentiments expressed by the Attorney-General, the Complaints Commission was established to assist the public in recovering money stolen or taken by the unscrupulous advocates in this country. When the Attorney-General tells Mr. Lumumba to go and file a case against this advocate when actually the Complaints Commission is there to assist the less fortunate people, he is not being fair. After I lay this document on the Table, could the Attorney-General assure this House that he will assist Mr. Lumumba, who might not be having enough money to give to another advocate, to recover the money on his behalf?

**Mr. Wako:** Mr. Speaker, Sir, unfortunately, both the Complaints Commission and the Disciplinary Committee do not currently have the power to recover the money. They only have the power to admonish, fine, suspend and to strike off an advocate from the Roll of Advocates. That is why under the Stature Law Miscellaneous (Amendments) Bill which this House will be debating, which was supposed to have been debated last year, you will see we are giving the Complaints Commission and the Disciplinary Committee the powers to order compensation and the refund of funds up to Kshs5 million. So, the Attorney-General is aware of this problem and he is taking steps to correct it.

**Mr. Anyona:** Mr. Speaker, Sir, the legal firm of M/s Khan and Saisi Advocates has offices all over the country. The company has offices in Kisii and all over the place and they are swindling Kenyans. Because the firm is breaking the law, will the Attorney-General institute criminal investigations against M/s Khan and Saisi Advocates in Kisii, Eldoret and other places where they operate? They have swindled a lot of people of money in this manner.

**Mr. Wako:** Mr. Speaker, Sir, if we receive specific complaints from specific persons, those matters will be investigated and criminal prosecution will ensue where there will be enough evidence.

*Question No.237*

TELEPHONE FACILITY FOR  
PUBLIC TRUSTEE'S OFFICE

**Mr. Otula** asked the Attorney-General:-

- (a) whether he is aware that the Public Trustee Office in Kisumu is inaccessible to area residents as the telephone facility has been disconnected; and,
- (b) when the facility will be restored.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The Attorney-General is aware that the telephone facility has been disconnected in the recent past to the office of the Attorney-General's Chambers in Kisumu.

(b) I am very glad to report that the misunderstanding has been sorted out and the telephone service has been reinstated.

**Mr. Otula:** Mr. Speaker, Sir, could the Attorney-General tell this House that, what led to the telephone

facility being disconnected is what made the office inaccessible to the public? **Mr. Wako:** Mr. Speaker, Sir, the telephone facility can be disconnected for mainly one reason; none-payment of bills. But there was a dispute as to the amount due. I would like to say that at the end of the day, the Treasury gave us the amount, we have paid and the telephone facility has been reconnected to the office.

**Mr. Murathe:** Mr. Speaker, Sir, could the Attorney-General assure this House that, that will not happen again so that members of the public are not inconvenienced?

**Mr. Wako:** Mr. Speaker, Sir, I can assure this House that for as long as the Attorney-General Chambers has adequate funds, that will not happen again.

**Mr. Otula:** Mr. Speaker, Sir, could the Attorney-General tell this House how much money has been allocated to that particular office in Kisumu for the year 2001?

**Mr. Wako:** Mr. Speaker, Sir, I do not have a ready answer for that particular question, but normally money is allocated to an office from the Headquarters.

### QUESTIONS BY PRIVATE NOTICE

#### ABOLITION OF TENDER BOARDS

**Eng. Muriuki:** Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Does the Government intend to abolish the Central Tender Board (CTB) and the District Tender Boards (DTBs) through Legal Notice No.51 dated 30th March, 2001?

(b) Who will be performing the functions of those Boards if they are abolished?

Mr. Speaker, Sir, please permit me to mention that this Question has been deferred five times because of unsatisfactory answers!

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, I think the last time that this Question was answered, the written answer that was given was found to be lacking. I do not think it is accurate that the Question has been deferred five times. I think that Members wanted more information on the Question. The deferment of the Question would imply that there was no answer available.

I think the written answer gave the reason why the CTB is not in existence, and why the DTBs have been replaced by District Tender Committees (DTCs). As far as the CTB is concerned, it was purely an administrative mechanism for award of tenders and it was actually recommending its findings to the Accounting Officers. So, in changing the regulations, we did not find that role vital to warrant its existence. As far as the DTBs are concerned, the DTCs have now been restructured to exclude councillors and elected Members of Parliament with the exception of the Chairmen of the County Council and Town Council. The others are all administrators.

The main reason is because we want to make sure that the implementing officials are accountable. As far as Ministries are concerned, the Accounting Officers are accountable. As far as the districts are concerned, the DCs and their Departmental Heads are accountable because they are the ones who actually spend the money that is voted for in this House.

**Eng. Muriuki:** Mr. Speaker, Sir, first of all, I would like to clarify that, it is true the Question was deferred for unsatisfactory answer the last time. But for the previous four times, the Minister was scared to come and say anything in this House!

Mr. Speaker, Sir, the effect of this small book here is to completely repeal the Exchequer and Audit Act and the Public Procurement Act, which clearly stipulate the method of public procurement by the Government and other public bodies.

For example, if it is the State Corporations, Boards of Directors are removed completely and replaced by the Managing Directors and one or two officers. If it is a Ministry, the CTB is removed and the Permanent Secretary is left alone with two people. Even in other institutions like universities, you remove the university councils, the senates and everybody else and leave only the chief executives with two officers below them. This country is looking for checks and balances.

**Mr. Speaker:** What is your question?

**Eng. Muriuki:** Mr. Speaker, Sir, is it in order for the Minister to bring a repeal of the Act through the back door, to change an Act that has been working very well?

**Mr. Okemo:** Mr. Speaker, Sir, in fact, the rules and regulations reinforce the Exchequer and Audit Act. The Exchequer and Audit Act is very specific in saying that the Permanent Secretaries in charge of the Ministries

are the Accounting Officers and they are fully accountable for all the expenditure in the Ministries.

**Mr. Muite:** On a point of order, Mr. Speaker, Sir. The Question is on whether the Government intends to abolish the CTB. Is it in order for the Minister to be equivocal? Could he answer categorically and tell us whether that is the intention? It is yes or no! Are you abolishing the CTB?

**Mr. Okemo:** Mr. Speaker, Sir, it is not an intention because it has already happened through Legal Notice No.51! So, the CTB is abolished. So, it is not an intention. It has already happened.

**Eng. Toro:** Mr. Speaker, Sir, the Minister has put the issue of tenders in jeopardy! Although he has said that he wants to emphasise the issue of the Accounting Officers, it is, in effect, telling this House that he can give all the powers to the Accounting Officers and nobody else should be involved in the awarding of tenders. I would like to appeal to the Minister to tell the House whether he could withdraw that Legal Notice. The way it is, is that, instead of having checks and balances, we will have chaos. If you look at the issue of County Councils, the Clerks and the Chairmen of Finance Committees can do anything that they want with the money. Even in schools, the principals and one other officer can do whatever they want with the money belonging to the parents. That is a very dangerous Legal Notice and we would like the Minister to tell us whether he could withdraw and replace it with a more appropriate gazettelement.

**Mr. Okemo:** Mr. Speaker, Sir, as I said, the intention of this regulation is actually to reinforce accountability among the Accounting Officers at the ministerial level, and by those who spend the money at the district and county council level. I do not really believe that--- Maybe, hon. Members have not looked clearly at the composition of those who sit on the Ministerial Tender Boards and DTCs. If they have looked at the composition, some of the comments that are being made are totally inaccurate. The composition of the Members of those Committees cover a wide spectrum. If it is the Ministries, various Departmental Heads sit in those Committees. If it is the County Councils or the districts, we have various District Departmental Heads sitting on those Committees. I want to emphasise one thing; that, we have now streamlined the question of district treasuries. The whole idea is to bring them in line with these new regulations and rules whereby, it will not be the DCs who will control votes for various district departments. The various Departmental Heads at the district level will be accountable for all the money. The DCs will only be accountable for money from the Office of the President. I think those rules and changes are reinforcing accountability. The main thing is to improve accountability.

**Mr. Mbela:** Mr. Speaker, Sir, that change is extremely dangerous! At the district level, we have been able to ensure that there is no nepotism by civil servants who bring contractors from their homes to rob the districts of businesses. Is the Minister actually sure that, the new arrangement will protect the money; or is he opening the flood gates for the money to be stolen without any brakes?

**Mr. Okemo:** Mr. Speaker, Sir, I mentioned that we have an Appeals Board. Any aggrieved parties are free to send their complaints to the Appeals Board, whether they are from the DTCs or the Ministerial Tender Committees. The aggrieved parties are free to take their grievances to the Appeals Board which is in place.

**Eng. Muriuki:** Mr. Speaker, Sir, I think the answer is most unsatisfactory. Through the Chair, could I request the Minister to do the most honourable thing, if he intends to repeal the Public Procurement Procedure under the Exchequer and Audit Act, bring a Motion to Parliament so that Members could debate and make an appropriate decision on which way to go? The country wants checks and balances! But saying that you are streamlining while, for example, if it is a county council, you remove everybody and leave only the Government officer called the clerk and two officers; is that in order?

**Mr. Okemo:** Mr. Speaker, Sir, I think we need to give time to these new regulations to see if they are going to work well or not. But we will leave room for revision in the near future, if they do not work satisfactorily.

**Mr. Speaker:** Next Question, Mr. Munyao!

**Mr. Munyao:** Mr. Speaker, Sir, before I ask my Question, the written answer I have here is not signed. Is it official or not? I understand there has been a lot of reshuffle.

#### MALARIA OUTBREAK IN MBOONI

**Mr. Munyao:** Mr. Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

(a) Is the Minister aware of an outbreak of malaria and typhoid in Kiteta and Tulimani Locations in Mbooni?

(b) Is he further aware that Kiteta Health Centre, where all patients from the above areas are referred to, does not have enough drugs and that it lacks beds, mattresses, blankets and

moreover, the generator is not operational?

(c) What urgent measures is the Minister taking to ensure that the above facilities are provided?

**The Assistant Minister for Health (Dr. Galgalo):** Mr. Speaker, Sir, I wish to assure the hon. Member that, that is the official answer. I think it was an oversight that it was not signed but it is official.

Having said that, Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of an outbreak of malaria and typhoid in Kiteta and Tulimani Locations in Mbooni.

(b) The Ministry does not have a health centre by the name of "Kiteta" in Mbooni Division. However, we have Tawa Health Centre which serves the area. Tawa Health Centre has sufficient drugs, beds, mattresses and blankets for its operations. However, it is true that the generator is not operational.

(c) As indicated above, Tawa Health Centre that serves the area in question has sufficient drugs to cater for any outbreak and efforts will be made to repair the generator in the coming financial year.

**Mr. Munyao:** Mr. Speaker, Sir, I am surprised by that answer. Sometime back, if a Question was not satisfactorily answered, the Minister would visit the area to get proper information. It appears that nobody has been to this area or even telephoned there to find out what is happening, because the answer that has been given is not even relevant. What do we do under these circumstances?

**Dr. Galgalo:** Mr. Speaker, Sir, as the Assistant Minister I do not need to go to Mbooni to find out the truth. We have officers at the district and divisional levels who give us the information. The information I have given here is correct.

**Mr. Muturi:** On a point of order, Mr. Speaker, Sir. Mr. Munyao did address you! He said that the answer he has been given is not relevant to the Question. He has asked the Chair what he should do. Instead, the Assistant Minister has purported to give an answer and yet, the question was addressed to the Chair.

**Mr. Speaker:** Members never ask the Speaker questions. They ask the Ministers through me. In any case, I have not even seen the answer. So, how do I get involved?

**Mr. Munyao:** Mr. Speaker, Sir, at one time an unsatisfactory answer was given by the Minister for Roads and Public Works concerning a road in Mbooni. We were given time to go down with the Minister to see that road and then report back to the House. The answer I have, says there are beddings when they are not there. Can we go there with the Assistant Minister because he does not know what he is saying? He was even given an answer which is not signed!

**Mr. Speaker:** Order! Order! If you seek my permission, I have granted it. You can proceed and go to check that facility. Mr. Assistant Minister, you have been invited and I have given you leave of absence. Would you like to take the invitation?

**Dr. Galgalo:** Mr. Speaker, Sir, to begin with, Mr. Munyao asked about a health centre which does not exist. I gave the name of a health centre which serves the area he was talking about and I have clearly stated that all the facilities which Mr. Munyao is asking for are already in place. I do not know what I need to go and find out.

**Mr. Munyao:** Mr. Speaker, Sir, I need the indulgence of the Chair. I remember at one time, when Mr. Magugu was the Minister for Public Works, an argument arose here on whether a road had been done or not. He said it was done and the then Speaker ordered that we go to check and then report back to the House. We went to the ground and found out that the road had not been done and Mr. Magugu apologised to the House. All these facilities are not there. There are no beddings or medicine. It costs the House nothing. I will give the Assistant Minister a lift. Could you defer this Question to Tuesday next week and allow us to go and check and then report to the House? I need not ask any other supplementary question because there is no truth in all the answers he has given.

**Dr. Galgalo:** Mr. Speaker, Sir, I do not know which health centre he wants me to go and see. Kiteta Health Centre does not exist.

**Mr. Munyao:** Mr. Speaker, Sir, this was a typographical error. I want us to visit Tawa Health Centre in Mbooni Division, Makueni District in Kenya.

**Dr. Galgalo:** Mr. Speaker, Sir, Tawa Health Centre has the facilities as I had stated. We have been supplying them with drugs regularly, for example, on 18th March, 24th March, 4th April, 12th April, 23rd April, 3rd May, 17th May and 7th June, 2001. We are constantly in touch with that health facility. We know what is happening there and I do not need to waste time going there.

**Mr. Gatabaki:** Mr. Speaker, Sir, I happen to belong to the Health, Housing, Labour and Social Welfare Departmental Committee with Dr. Kulundu and Eng. Toro among others. We have travelled throughout the country and, hospital after hospital is faced with cases of outbreak of diarrhoeal diseases including typhoid. We have got two Ministers there, I do not know who else from the NDP is in the Ministry of Health. Could this

Government own up? They do not have the capacity and the capability. They do not have the drugs, the initiative or the commitment of providing health services. Could he own up to that fact instead of dilly-dallying on this and giving haphazard answers?

**Dr. Galgalo:** Mr. Speaker, Sir, I would consider that to be Mr. Gatabaki's usual style of bashing the Government. But the reality is that, as a Ministry, we are doing our best to supply all Government facilities with drugs. We have managed, over the years, to provide drug kits to all our hospitals, health centres and dispensaries every month.

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. My point of order is addressed to the Chair and I beg the hon. Member to give the Speaker a chance to listen to me.

*(Mr. Katuku consulted with the Speaker)*

**Mr. Speaker:** How can you do that?

**Mr. Munyao:** Mr. Speaker, Sir, the country will hear what the Assistant Minister is saying. I am begging the Chair to save the name of this Government because they will hear him say that there are drugs and beds when they are not there. There is nothing in that facility. I want to assure him that there are no bandits in Mbooni. He will be safe! The Government will be taken very badly if we accepted this answer. Could you allow us to go down to check and then he reports back to this House?

**Mr. Speaker:** I will never refuse you people to go but you must convince him. I cannot force the Assistant Minister to go where he does not want to go.

**Mr. Munyao:** Mr. Speaker, Sir, you are on the Chair and the Chair can order. You have got the authority to do that.

**Mr. Speaker:** Order! Order! I beg Members not to drag the Chair into everything. I cannot keep on ordering Members to go where they do not want to go. But as to the judgement by the public, as a result of his Question, I think the Assistant Minister should know that he is addressing actually not the House but Kenyans. If he is giving a wrong answer, then, of course, he knows how to expect the people of this particular place to judge him and his Government. It is entirely up to you to decide what picture you want to give; of the Government; a good picture or a bad one. It is not my job!

**Mr. Munyao:** Save the name of the Government!

**Dr. Galgalo:** Mr. Speaker, Sir, Mr. Munyao has no reputation of defending the good image of this Government. However, I would like to assure you that my conscience is clear. I am convinced that these facilities are available. If I had any doubt - you can see that I am young and energetic - I would have driven to Mbooni. My Minister was there recently. He has assured me that he has not received any complaints of shortages of drugs or any other medical facilities from that area. So, I do not know why I should drive to Mbooni, apart from wasting Government resources.

**Mr. Speaker:** Mr. Musila's Question!

#### SETTLEMENT OF MWINGI COUNCIL WRANGLES

**(Mr. Musila)** to ask the Minister for Local Government:-

(a) What has been the cause of wrangles between Mwingi Town Council and Mwingi County Council, necessitating a series of court cases against each other?

(b) What urgent measures is the Minister taking to ensure that the two local authorities stop these wrangles and instead direct their resources to providing services to the people of Mwingi District?

**Mr. Speaker:** Mr. Musila is not here. So, the Question is dropped.

*(Question dropped)*

#### PUBLICATION OF UNREGISTERED MAGAZINES

**Mr. Ndicho:** Mr. Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

(a) Why has the Government allowed illegal publication, printing, circulation, distribution and vendoring of unregistered newsletters and magazines?

(b) Since these publications are scandalising and extorting money from Kenyans, what punitive action is the Attorney-General taking against the publishers?

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The Government has not allowed illegal publication, printing, circulation, distribution and vendoring of unregistered newsletters and magazines.

(b) Firstly, the Government has prosecuted the editors and publishers of the said publications. Secondly, the Government has, under the Statute Law Miscellaneous (Amendments) Bill, proposed to enhance the security bond in respect of the printing and publication of newspapers in Kenya and also to enhance penalties under the said Act. Thirdly, the people of Kenya, in particular the political leaders, are advised not to give in to extortion or blackmail to such publishers, because the practice encourages such magazines or publications to proliferate.

**Mr. Ndicho:** Mr. Speaker, Sir, I am surprised that the Attorney-General has given this answer in this manner. I disagree with the Attorney-General that the Government has not allowed illegal publication, printing, circulation, distribution and vendoring of unregistered newsletters and magazines. Really, this is not a matter of the Government allowing the production of such publications but rather a matter of it being inadequate or unable to control the illegal publication and vendoring of these publications. The culprits of the said pink journalism are Government Ministers themselves. So, we expected the Attorney-General to be firm and take punitive measures against the authors of such publications.

Mr. Speaker, Sir, the Attorney-General said that he has prosecuted editors and publishers of such publications. Could he give us the number of editors he has prosecuted, their names and the names of the publications?

**Mr. Wako:** Mr. Speaker, Sir, first of all, in replying to the Question, I used the word "allowed" because the Question seeks to know why the Government has "allowed" the production and sale of unregistered publications. I would like to state categorically that the Government has not allowed the production and sale of unregistered publications.

Since last year todate, the Government has prosecuted 19 such cases. The problem in dealing with the problem effectively has been the inadequacy in the current provisions of the law. So, I hope that, that inadequacy will be addressed when the Statute law Miscellaneous (Amendments) Bill comes here for debate and enactment into law. The Bill seeks, among other things, to enhance the penalties under the Books and Newspapers Act. Therefore, I hope that this House, including hon. Ndicho, will support the Bill.

**Mr. Kariuki:** Mr. Speaker, Sir, in view of the fact that some of the literature in question was proscribed in the 1960s and 1970s, could the Attorney-General, on routine basis, gazette the proscribed literature, so that youngsters countrywide can know all that literature that was proscribed 30 years ago?

**Mr. Wako:** Mr. Speaker, Sir, I believe that, that is a different Question. However, I can tell the hon. Member that we have in place the Prohibited Publications Review Board under the chairmanship of the Director of Public Prosecutions, who is now going through that list.

**Mr. Kariuki:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Whom do you want to inform, Mr. Kariuki?

**Mr. Kariuki:** I would like to inform the Attorney-General, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Wako, would you like to be informed?

**Mr. Kariuki:** I am sorry, Mr. Speaker, Sir. It is Mr. Ndicho, the hon. Questioner, whom I want to inform and not the Attorney-General.

**Mr. Wako:** Mr. Speaker, Sir, on my part, I am adequately informed on all issues.

**Mr. Ndicho:** Permission granted!

**Mr. Kariuki:** Mr. Speaker, Sir, the Attorney-General did not reply to my question. I asked him about the list of proscribed literature, which Kenyans would like to know. Most young Kenyans do not know about that list. Because they do not know about that list, young Kenyans have published such proscribed literature and are now being prosecuted. The Attorney-General has the responsibility of informing Kenyans on what literature is proscribed and what literature is not proscribed. So, could he table that list so that every Kenyan can know the publications that are proscribed?

**Mr. Wako:** Mr. Speaker, Sir, first of all, that is a different Question from the one that has been asked by Mr. Ndicho. So, I am under no obligation whatsoever to answer that Question. However, I can say that the said list of proscribed publications is common knowledge since it has been published in various Kenya Gazette Notices, which every Kenyan is presumed to have read.

**Mr. Speaker:** Hon. Members, Question Time is up. So, let us proceed to the next Order.

**POINT OF ORDER**

## RESUMPTION OF TAVETA PASSENGER TRAIN SERVICE

**Mr. Mbela:** Mr. Speaker, Sir, I rise to request the Minister for Transport and Communications to issue a Ministerial Statement on the resumption of services for the Taveta passenger train. That passenger train is crucial for the survival of the people of Taveta as well as the survival of Taveta Town. Since the Voi-Taveta Road is impassable, the people of Taveta are stranded and cannot market their agricultural produce. Therefore, it has become necessary for the said passenger train service to be resumed in that area. So, as a matter of urgency, could the Minister issue that Ministerial Statement tomorrow?

**The Minister for Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, I will issue the Ministerial Statement sought next Tuesday.

**BILLS***First Reading*

## THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(Order for First Reading read - Read the First Time -  
Ordered to be the Second Time tomorrow)*

*Second Reading*

## THE INDUSTRIAL PROPERTY BILL

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Speaker, Sir, I beg to move that the Industrial Property Bill be now read a Second Time.

Mr. Speaker, Sir, this Bill deals with intellectual property which, as hon. Members know, is an intangible property that results from the creation of human intellect. Industrial property comprises of mainly two branches. The first branch covers patents, trade and services, industrial designs, utility models, geographical indications, layout designs of integrated circuits and technovations, while the second branch covers copyrights. The second branch of industrial property is excluded from the Bill before the House.

Matters relating to copyrights are governed by the Copyrights Act, Cap 130, Laws of Kenya. As hon. Members know, this Act is administered by the Department of the Registrar-General, which falls under the Office of the Attorney-General.

**Mr. N. Nyagah:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it, Mr. N. Nyagah?

**Mr. N. Nyagah:** Mr. Speaker, Sir, I have no intention whatsoever to interrupt the Minister. I would only like to, kindly, request him to come forward to the microphone, so that we can hear him. We are totally unable to hear what he is saying.

**Mr. Speaker:** The whole idea of him talking is to communicate to you. Could you move closer to the microphone, Mr. Minister?

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Speaker, Sir, I think the hon. Member wants to attract my attention, so that I can look at him.

I was saying that the Bill before the House now, deals with the aspects which I have just enumerated, but the other one deals with the copyrights and enabling rights. Those matters relating to Copyright are governed by the Copyrights Act Cap. 130, and that Act is administered by the Attorney-General, in particular by the Department of Registrar-General in the Attorney-General's office. The other aspect is the Plant Breeders Rights which are governed by the Seeds and Plants Varieties Act Cap. 326 and, as you know, plant breeders rights are administered by the Kenya Plant Health Inspectorate Service, which is commonly known as KEPHIS. The Ministry of Agriculture and Rural Development administers the Seeds and Plant Varieties Act.

The Industrial Property Act, Cap. 509, and the Trades Marks Act, Cap. 506, are administered by the Kenya Industrial Property Office, which is in my Ministry. Although some of those separate Acts might in future be found necessary to be amalgamated and administered by one institution, at the moment, it is necessary that we

continue with the two separate administrations for ease of administration. The Bill actually contains incentives to innovators, whom we expect, will engage in innovative activities, bearing in mind the fact that Kenya is a country with a high number of human resource with the necessary intellect to invent certain innovations. Going by the current state of affairs in the world, where globalisation is taking place and rights which were protected in the past are becoming increasingly at risk, it was found necessary that we should update the existing Act in order to bring it into conformity with what is necessary.

To this end, the following clauses have been introduced in the Industrial Property Bill, to take into account the overriding public interest. One, which is current at the moment in this country is found in Clause 58(2) where we would like the Act to allow for parallel importations into Kenya of medicines which are required for human life, especially on the HIV/AIDS and the ones the doctors call opportunistic diseases, as well as malaria. Also, Clause 8 of the Bill gives power to the Government in matters of public interest such as national security, national disaster and public health to order use of patented inventions for public benefit. Clause 72 contains provisions that permit compulsory licensing of patent innovations. Also, we have introduced Bolar Exception which allows the manufacturers to manufacture products that are currently covered by a patent, but which patent is about to expire because we do not have that provision at the moment. The hon. Members who have read that subject very closely will have discovered that until very recently, Kenya was governed by a guarantee of the United Kingdom's Patent Rights which allowed UK patents to be registered here and that was introduced in 1914 and it was not until our doctors worked on KEMRON, at the Kenya Medical Research Institute, that Kenya found it necessary in 1989 to amend Cap. 509. That enactment was made in 1989. That Act made provisions for promotion of inventive and innovative activities in Kenya and thus, facilitating acquisition of technology through grants and regulation of patents, utility models, rationalisation models and industrial designs. The Act then established an independent patent system in Kenya which is called the Kenya Industrial Property Office and the Industrial Property Tribunal and introduced a comprehensive system of vetting registration of technology, transfer agreements and licences.

Mr. Speaker, Sir, why have we found it necessary to introduce this Bill? The main reasons which have necessitated the publication of this Bill are mainly:-

One, in order to provide for establishment of a body corporate which is to be known as the Kenya Industrial Property Institute;

Two, to modernise and strengthen the protection of Industrial Property Rights after taking into account new developments in the field of industrial property;

Three, in order to conform to new international treaties on industrial property such as the agreement on Trade-related aspects of Intellectual Property Rights which is commonly known as TRIPS in WTO terminology. The WTO agreement, as you know, was reached and signed on 1st January, 1995.

Four, to correct mistakes, typographical and other errors, contained in the Industrial Property Act, Cap. 509.

Five, to make provision relating to utility models, industrial designs and rationalisation models very clear because we think that clarity is much more important for interpretation purposes.

Six, to provide additional incentives to innovators by providing for reasonable remuneration for employees who may have valuable inventions in the course of their employment.

Seven, to provide that for security reasons, all persons resident in Kenya who file patent applications have to file them through the Kenya Industrial Property Institute.

Eight, to provide for recognition of industrial designs that were protected in Kenya prior to coming into force of the Industrial Property Act, Cap. 409, which was omitted.

Nine, to provide for parallel importation of essential and cheap goods especially in medicine.

Mr. Speaker, Sir, it is proposed that the title of the Bill be retained, because it is more appropriate to the kind of the intellectual property rights which fit in clearly with the WTO, which we are using at the moment. This allows us to import the medicines without contravening the patent rights, although it is allowed under the World Trade Organisation (WTO) arrangement. There is no urgency to merge the copyrights office and the Kenya Intellectual Property Institute. We feel that it is advantageous for the two offices to develop separately so that they can render effective services efficiently. The title: "Intellectual Property" would include plant breeders and copyrights.

This practice is employed elsewhere. For example, it is found in Japan and Sweden. We are not the only country with two separate intellectual property rights administrative institutions. Section 11 deals with the utility model, which means an inventive patent that is new and industrially applicable. Unlike in the case for patents for innovations, the criteria of an inventive stage is not required. The invention is a utility model which relates to appliances, utensils and so on, such as the ones which are found in the *Jua Kali* sector. Section 12 defines the term

"technology" to mean new and applicable technology, which is technology contained in patents that are still protected in Kenya. Users of such technology are required to pay royalties to the proprietors of the patents on which the requisite technology is based.

Under Section 10 of the Bill we have contractual licenses that relate to transfer of technology which are required to be screened and registered by the Kenya Industrial Property Institute. This provision is not new since it is contained in the Industrial Property Act, Cap 509.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

We have also introduced, under Section 14, Clause 21(3)(E) which is intended to accommodate the proposals made by the Ministry of Health. I believe that the Minister Public for Health will highlight the reasons why such amendments are necessary when he seconds this Bill. There are other terms which have been defined very clearly and I do not need to bore you. For example the term "resident" which appears in Clause 21(A) means applicants who are Kenyan citizens or residents who file patent applications in the country. We also have Clause 34(2) which defines the phrase: "Admitted to practice before the institute." I do not also need to elaborate on that one because it is already in the clause.

Clause 429(1) touches on the worldwide practice, whereby patent applications are advertised immediately after the expiry of a period of 18 months from the date of filing such patent applications. Section 18 refers to Clause 44 and the proposed amendment of Clause 44(1) by inserting the words: "An internationally recognised" immediately before the word: "industrial." That will also be included in the amendments which will be introduced at the Committee Stage. In Section 19 we have Clause 53(2) which is intended to bring the Bill into conformity with the WTO Article 27(1) of the TRIPS Agreement. In Section 20 we have Clause 59 which is intended to bring the Bill into conformity with the provisions of Article 3 of the Harare Protocol on Patents, Industrial Designs and Utility Models.

In Section 21 we have Clause 60 of the Bill. This is intended to bring the Bill into conformity with Article 33 of the TRIPS Agreement. Section 23(2) deals with Clause 81(c) which has been amended to accommodate the proposal made by the Minister for Public Health. It is not possible to include an amendment that would provide that in the event of the making of a Ministerial Order for the Government's own use under Clause 80 of the Bill, the owner of the affected patent would not be compensated since such a provision would be inconsistent with the provisions of the Constitution of Kenya.

Mr. Deputy Speaker, Sir, Clause 84 deals with the definition of an industrial design which means a monopoly right for the outward appearance of an article or a set of articles of manufacture to which the design is applied. It lasts for an initial period of five years and may be extended for two five-year terms, up to a maximum of 15 years. Protection in an industrial design extends only to the shape and appearance of the design and not the functions of the design. Clause 92(2) provides that industrial design rights conferred by registration are limited to works done for industrial or commercial purposes only. Clause 110 is intended to bring the Bill into conformity with Article 34 of the TRIPS Agreement.

This Bill will entail some financial implications as is clearly stated in the Memorandum of Objects and Reasons. The last paragraph states that the enactment of this Bill, particularly, the establishment of the institute will occasion additional expenditure of public funds which will be provided for in the Estimates. This has also been taken care of in the Ministry's budgetary estimates. I hope that it will find space in the forthcoming Budget.

Mr. Deputy Speaker, Sir, with these few remarks I beg to recommend this Industrial Property Bill to the House. I hope that hon. Members who have had enough time to discuss will find it necessary to deliberate and improve on it, if need be. I believe that the Committee which took us back when we met last time before recess by not giving us permission to debate it then have done a very good job. In fact, I would like to commend the intelligence of the Chairman of that Committee because he did a thorough job. I would also like to thank the Members of the Committee including their friend, *amicus curiae*, Dr. Kulundu who, although he was not a Member of the Committee, participated very effectively. I would also like to acknowledge the good work and indulgence by the Minister for Public Health who has also taken the trouble to know more and ensure that his part, especially on the parallel importation, is thoroughly taken care of.

Mr. Deputy Speaker, Sir, you will find as I said earlier on, that in the Bill, we have introduced this Boler Exception which is new. So, as far as we are concerned, I think the Bill as it is, is quite adequate for our needs and it conforms with international practice and standards and it is also in compliance with WTO requirements. Therefore, we have nothing to worry about and I think the sooner we pass it, the better for the welfare of those

who are suffering from AIDS, malaria or any other opportunistic diseases.

With these few remarks, I beg to move.

**Dr. Kituyi:** On a point of order, Mr. Deputy Speaker, Sir. I did want to raise this issue a bit earlier because what hon. Biwott is moving is extremely important and very much anticipated by Kenyans. However, I find it strange that a Minister is moving a Bill before the House and the title that is given on the Order Paper does not concur with any Ministry existing in the Government of Kenya. Is what he is moving on the Order Paper?

**Mr. Deputy Speaker:** It is a matter of common knowledge that there has been a reshuffle and this House, including the Chair are in no doubt that if you take away the word "Tourism" from that title, the Minister is performing the functions assigned to his portfolio.

**The Minister for Trade and Industry** (Mr. Biwott): On a point of information, Mr. Deputy Speaker, Sir. The Industrial Property Bill falls under the Ministry of Trade and Industry but not the Ministry of Tourism.

**Mr. Deputy Speaker:** Order! You cannot inform the House. Prof. Ongeri is seconding. Go ahead!

**The Minister for Public Health** (Prof. Ongeri): Mr. Deputy Speaker, Sir, I stand to second this Bill because I think it is basically a very fundamental Bill before this House. It addresses very critical issues of patent rights and I think as a Kenyan nation, we need to look far and wide and see how we can, in a way, be able to promote the inventorship of our own scientists, engineers, designers and techno-inventors. This is a critical factor which hinges on the question of being able to exploit our biotechnology. It also gives us the opportunity to exploit our intellectual prowess and what is currently known as new innovations that require patenting.

Mr. Deputy Speaker, Sir, having said that, we must also take cognisance of the fact that once we have a masterpiece Patent Rights Bill before the House and soon, when it is passed, becomes an Act of Parliament, there must be adequate safeguards and provisions that are able to take care of the odd situations that any nation may face from time to time. As I stand here, I am happy that in 1989 I had the pleasure of moving this Kenya Intellectual Property Bill before this House, and I am glad that now we are beginning to look at it in a wider perspective in terms of what is existing currently internationally.

Mr. Deputy Speaker, Sir, the World Trade Organisation has some stipulations that all nations must comply with. Under those stipulations, we have what we call the TRIPS Agreement; the Trade Related Intellectual Property Services, that we ought to conform with. As a country Kenya, we are a signatory to this TRIPS Agreement and hence, by extension, we are in the wider membership of the WTO. Under these arrangements, there are some restrictions that we must be aware of but, fortunately, some of these restrictions have been provided. There is a window of opportunity that has been provided for under these restrictions and I will now confine my remarks strictly to issues related to health.

Mr. Deputy Speaker, Sir, for instance, if a nation is faced with a catastrophe of the nature of the one that we have here today under the HIV/AIDS programme, we have, as a first step, declared it a national emergency. Having done so, any nation is at liberty to employ all the measures within its command to be able to deal with the national emergency. Fortunately, under the TRIPS Agreement, Article 6, allows Governments who are members of WTO and signatories to the TRIPS Agreement that they can seek that window of opportunity to address or redress the issues of national emergencies. That is whether it is in public health, national security angle, agriculture or in any sphere of life that we feel a nation is threatened by the very existence of that emergency. In this case, we are talking about HIV/AIDS.

I need not remind Members of Parliament since they are too well aware of and fully abreast with the kind of statistics that we are talking about. We are talking about 2.2 million Kenyans who are afflicted with the HIV/AIDS pandemic. We are talking about 1.1 million orphaned children, 1 million children who have died, the prevalence rate of about 14 per cent, the age of children who are likely to enter into these difficulties aged between 15 and 29, and the prevalence rate going very high to the zero rate. Therefore, under these circumstances and umbrella, it is only fair that we now look at the opportunities available in coping with this situation.

Mr. Deputy Speaker, Sir, the opportunities available to us are the anti-retroviral drugs. Now, the cost of these anti-retroviral drugs are beyond the means of any ordinary Kenyan to be in a position to cope or least even think in terms of entering into a work or treatment programme. They are very expensive and out of reach. This is because when you are talking of anti-retroviral therapy, these days, we have what we call triple therapy which is a combination of the three drugs and most of all these drugs are under the patent rights. Some have been registered here in Kenya while others have not, but the cost ranges between US\$2.5 per day to about US\$5 per day. The per capita income of our ordinary Kenyan is US\$1 per day and that is what we have. They cannot be exerted to pay beyond that. For the Government of Kenya, even if it were to undertake a social adventure in meeting the costs of these drugs, it would involve the cost of about Kshs12 billion and the budget of the Ministry of Health is only about Kshs9 billion for all other services, including HIV/ AIDS. Therefore, it is totally out of reach to be able to

afford in terms of thinking of purchasing the anti-retroviral drugs.

What are the avenues of exit? There are three avenues. One, either the manufacturing firms, that is the pharmaceutical industries, are able to reduce their prices drastically, and I know they have made presentations to me--- They have given public indications that they have reduced the drugs by 80 per cent. However, when you really calculate to find out what that means in terms of cash, you are talking of costs which still are beyond US\$2.5. Now, that is obviously unacceptable. The second way of looking at it is that I should have, in fact, said once you grant a patent to any techno-invention, it has a life span of 20 years before you can allow any other operators to either import or manufacture that particular item in this country. Now, of all these patent rights, none has a life span of 15 to 20 years. In terms of this Bill before us, we are talking about 20 years. Now, you cannot, of course, wait for 20 years to be able to bring in cheaper versions of drugs if you have to save the nation from a national catastrophe, hence the introduction of the question of parallel importation.

If you look at Section 58(2) of this Bill, you will find that it addresses that issue squarely. This is allowed. As I said earlier on, the parallel importation is allowed under the TRIPS Agreement, Article No.6, which we are signatory to. So, we will not infringe any of the patent rights because we are dealing with an abnormal situation. The only thing that we would like to do is to make sure that we are fully covered. We have introduced some amendments to Section 21(3), because it will be Section 21(3e) later on which will include other very important subjects under that area; that other substances whatsoever used for the prevention or treatment of a disease, which disease may be designated by the Minister for Health as a serious health hazard or life threatening--- We feel, and I would like to appeal to this House, that the HIV/AIDS is, indeed, life threatening. This disease is killing most of our people who are in the most productive sector of our economy; the manpower; intellectuals, Members of Parliament are being killed by this disease. Therefore, it is important that we have an avenue of redress in this way.

Mr. Deputy Speaker, Sir, if in the event and in the interest of this nation, we find that the measures before us, including trying to lower the prices are not acceptable, then this clause exempts the Government. In fact, this gives room for us to introduce either the molecules or any other item that may be required specifically with an express idea or motive to deal with that situation - either a disease or a group of diseases. I think it is important that we are clear on this.

The second avenue that is available to us is compulsory licensing, which is fully addressed in Sections 72 to 77, and Section 80 of this Bill. I think that gives room. The patent holders have those obligations and the exceptions to those obligations. This Bill went into greater detail in trying to create what would be a fair deal to the patent holder. I think we should also support that because it is a scientific way forward for us to deal with our future innovations and inventions. I would like to point out that Kenyans are highly intellectual. Unfortunately, we have lost some of our inventions to some unsuspecting countries. For instance, the *Kiondo* is now a patent somewhere else. We must be wary of these issues. Recently, I had to grapple with the problem of HIV/AIDS vaccine. I also had to grapple with the question of who is the inventor and who is not. These are the issues that any law that deals with patent rights must adequately address. I think this Bill has indicated what the patent owner's rights are. We have also provided the exception to the patent rights.

I would like to say that the exception in the compulsory licensing between Sections 72 to 76 also presents us with an opportunity to deal with an emergency. Of course, the Minister mentioned about the Boler Exceptions, which are very interesting situations. They entail that if a patent is running out its time when it has been registered, sometimes three to four years, one is allowed to prepare for the importation of generic drugs. Therefore, that period of time should not be considered as part of the patent holder's right. I think we want to enter into the market much more easily.

I would now like to deal with the issue of generic drugs. I would like to say that these are cheaper versions and they are available. They are being manufactured elsewhere, maybe, with the same companies which have a patent holder in this country but whose life has run out in some countries. For example, we have big pharmaceutical industries whose patent rights in Brazil, India and Thailand have run out. I think it is only fair that Kenyans must access these drugs in order to deal with emergency situations. Mr. Deputy Speaker, Sir, there is one danger with these generic drugs. If you allow an influx of these drugs without proper supervision and monitoring, you run a big risk of getting in cheap versions or counterfeit drugs which may not conform to the quality and standards that are required in order to deal with that problem. Therefore, you will not deal with the problem adequately, but rather you will exacerbate it.

Secondly, if you allow the counterfeit drugs to come in off and on, then the issue of resistance to the virus would be much higher and, therefore, you run the big risk of developing resistance to HIV/AIDS virus. In fact, this is a bigger problem than just having the virus in the body. This is because under normal circumstances, your body sometimes has the ability and the capacity to produce some antibodies that fight the virus in order to deal with that

problem adequately. Therefore, we must avoid at all cost the question of the development of resistance to the drugs. Therefore, under this arrangement, we have, as a Ministry, equipped the National Drugs Quality Control Laboratory, which is located at the Kenyatta National Hospital (KNH). This Laboratory has got two functions. The first function is the privilege situation function. Under the Pharmacy and Poisons Act Board, we are mandated by this House, through an Act of Parliament, to know the type of drugs that come into the country. The pre-registration of those drugs is a major prerequisite before we can allow them to come into the country. Therefore, we will invoke this rule.

The second function of the Pharmacy and Poisons Act Board is to deal with post-registration surveillance. When you deal with a situation like the HIV/AIDS, it is important to know that you cannot open up a Pandora's box. People who are afflicted with the HIV/AIDS must be checked once they have been put on anti-retroviral therapy. The only way one can check them is, first, to know their viral loads, and secondly, CD-4 counts. These are prognostic indexes which are important and critical in the management of the after-care of patients with HIV/AIDS once they have been accessed to anti-retroviral drugs. We cannot be careless about this business.

Therefore, we have decided, as a Ministry and as a Government, that once this Bill becomes an Act of Parliament, we can only limit the places where these patients may be seen and assessed. As for the laboratory assessment, I remember my colleagues indicated that they visited the KNH; the National Drugs Quality Control Laboratory, and found that the equipment there is inadequate and, therefore, cannot deal with the issue at hand. They gave that as a possible deterrent to taking this measure.

I would like to inform this House that I am aware that they found a high power liquid gas chromatography, which is used in drug analysis for both anti-malaria, antibiotics and HIV/AIDS anti-retroviral drugs. I appreciate that a single machine is not enough. The Pharmacy and Poisons Board had also made arrangements to bring in two new HPL chromatography machines.

Mr. Deputy Speaker, Sir, the Ministry will bring new machines like photometer and the other related machines that measure these activities of HIV/AIDS and specimen, for instance, serum and so on. Therefore, we would now have about seven new machines, plus the current ones. We are now spending about Kshs26 million on this exercise. Therefore, the capacity and the infrastructural arrangements to enable us to deal with the monitoring of post-surveillance of the patients who have already been put on anti-retroviral drugs will be put in place, but only in major centres like Nairobi and provincial hospitals because these machines are very expensive. The ones that I have just mentioned will be at the National Laboratories, but the other infrastructural arrangements for trailing and monitoring these patients with CD counts and the viral load, we will have to put them in the provincial hospitals because they cost a lot of money. I think it is a cost that Kenyans must bear in mind so that they do not think that we would walk into this so easily because we do not have any obligation. We have problems and difficulties and, therefore, we must deal with them.

Mr. Deputy Speaker, Sir, the other area of interest, of course, where the National Control Laboratories Centre comes in is the question of condoms. There has been hue and cry with regard to the machines that test the strength of the condoms. Some people have complained that when they are having pleasure, these condoms do burst and, indeed, they create problems for both parties. Indeed, both parties are victims. We must protect the condom users as well. Therefore, we have these machines available at our National Control Laboratories Centre to test the pleasures and the delivery of the condoms; how they behave under different high tensile circumstances. I believe we are fairly well placed in dealing with this situation.

Having said that, it is therefore quite clear that the Government can also not stand aloof. What happens, if we run into problems with the importation of generic drugs and we are not able to get quality drugs that we want to have in the market? We have provided a third avenue of redress on this issue and, therefore, we have every intention of amending Clause 80 (1) (C), by putting an additional clause to read as follows:

"On designating under Clause 21(E)---"

**An hon. Member:** The Minister is anticipating debate!

**The Minister for Public Health** (Prof. Ongeru): They will come through the Committee. The Committee is aware of this but I want to make Members aware that when they see these clauses there they should remember that it is an issue that we have very clearly discussed with the relevant Committee of the House and these have been put on board. Therefore, Clause 21 (E), should read as follows:-

"The Minister shall, notwithstanding any of the measures set out on this section, authorise by a written order, the importation, manufacture or supply, or authorise the utilisation of any process for the manufacture, sale or supply of any molecule or substance whatsoever, by any individual, corporation or society as named or described by the order without notice to the patent-holder, or any other notifiable parties and such order shall remain in force until revoked by the Minister in writing, giving a six months prior notice of his intention of such revocation to the patent named

as described in the order. Any such order made under this subsection shall not require the payment or compensation to the owner of the patent or licence holder or any other party so interested."

Mr. Deputy Speaker, Sir, this is important because all other sections of the Bill deal with what is the entitlement of the patent holder, the compensation to be paid to the patent holder--- If a country so desires and finds that we have been caught in a situation where we cannot bail out ourselves, then we have every right to access these formulations through manufacturing or either importing the molecule itself, the raw material or indigenously producing those items in this country in order to deal with that specific problem. I think it is important that this kind of clause is entrenched in this Bill which we are discussing today when it becomes an Act of Parliament. It will give us a leeway to deal firmly with this problem of HIV/AIDS.

Mr. Deputy Speaker, Sir, finally, there is, of course, a clause that we want to make doubly clear, just for the avoidance of any doubts, that all this said and done, we do recognise the rights of patent holders, whether they are pharmaceutical industries or not. The Government does comply with the agreements reached under WTO Agreement. We do recognise all these factors we are now seeing, but under this Bill, we want to create exceptions. Some exceptions do demand that some compensation be made. This particular one I have just read requires no compensation to be made to the patent holder. I think it is an important part. For instance, if we find out that all the measures that this country has put in place are making us able to cope with the situation, then we have every right as a nation to take such measures as might be necessary in order to deal with the situation.

Mr. Deputy Speaker, Sir, recently, we had an Ebola scare from Uganda and the country put its forces in full gear to stem off the coming of Ebola to Kenya. These are true situations that we find and, therefore, I hope that I have been able to simplify this Bill enough to an extent that it requires no further arguments except support. It should be given a stamp of approval by this House so that everybody knows. Today Kenyas are waiting, hoping that nobody is going to raise a finger against this Bill. If anything, they will say, "the Mover and the Secorder, we have had enough information", and only support the Bill throughout because if need be, we want to finish it today.

With those few remarks, I second.

*(Applause)*

*(Question proposed)*

**Mr. Achola:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill.

For the avoidance of any doubts, I am the Chairman of a Committee on Education, Research and Technology. This Bill was committed to us way back when it was first introduced. We have had many meetings to discuss the Bill and we were very fortunate to have many stakeholders who accepted to come and share with us their various experiences, fears and support. Let me just mention one or two stakeholders who gave us considerable assistance in trying to understand the Bill and its importance. We had doctors without borders, that is, the MSF Belgium on the project called Access to Essential Medicine. This particular group had a lot of information on this issue and we discussed at great lengths the involvement and the implications of what was contained in the Bill. We also had the Action-Aid; they came and gave us information; they talked about the various issues they thought the Bill should have addressed, and all these issues had actually been discussed by various Committee Members, and we came to a general conclusion that this Bill should be supported by everybody.

Mr. Deputy Speaker, Sir, let me express my disappointment at this juncture that, even after the entire country was embroiled in a lot of discussion about the Industrial Properties Bill, being discussed and passed in Parliament, you can see that there are only a handful of Members of Parliament present. I am very disappointed that they are not here to try and support this Bill today. But I think the message should go to them that they should take certain things seriously.

I want to report at this juncture that because of this situation, the whole country is very much interested in Clause 58 sub-section (2), which deals with parallel importation, a subject which has been very well addressed by Prof. Ogeri. In fact, towards that effort, we were presented with signatures of 50,000 Kenyans, not necessarily of those who have HIV/AIDS, but Kenyans who thought that this issue was so important that it was necessary for hon. Members to pass this Bill.

Mr. Deputy Speaker, Sir, if you allow me, at this juncture, I will present the signatures from the public which I received on behalf of the House. We have four volumes here containing 50,000 signatures from the public urging hon. Members to pass this Bill, particularly, Clauses 54, 58 and 80. Clause 54 gives the patent holder his

protective right. Clause 58(2) allows for parallel importation of drugs. Clause 80 is the one that Prof. Ongeru has dealt with at great length. This is the section of the Bill that allows for compulsory licensing. Let me mention that Clause 80 of this Bill is just a repetition from the original Act. Cap.509 of the original Act also had this provision; that the Government can import for sale within the country, any drug that it might need for emergency purposes. So, although we have been saying that we cannot bring medicines here because we do have the legal framework for it, that has not been quite fair. Cap.509, Section (6), allows for compulsory importation. This Government should have used that Section to import the drugs that would have helped many Kenyans who are dying today.

*(Mr. Achola laid the Document on the Table)*

The other issue that I would like to raise today is the fact that the Industrial Property Bill is not just talking about drugs. It talks about the industrial property rights. These are rights of even an idea, as a property. People have misconstrued the Industrial Property Bill here as just dealing with the issue of the importation of the HIV/AIDS and related illnesses' drugs. That aspect is referred to only in two clauses, whereas the Bill has 122 clauses, all dealing with various issues of the Intellectual Property Rights.

Mr. Deputy Speaker, Sir, let me highlight the issues that came out through these stakeholders. For example, when we were talking about parallel importation, we had the research-based pharmaceutical companies. They were fearing, as Prof. Ongeru has said, that if there is an influx of cheap and valueless drugs in this country, they will create resistance. So, our worry at the moment is what the Government will do to ensure that we do not have a non-controlled influx of cheap and valueless drugs, which will eventually lead to resistance. Prof. Ongeru has listed a few steps that the Ministry has already taken. I am not quite sure that Kenyans will believe him because at the moment, there are certain prescription drugs which ought not to be dispensed over the counter, but should be dispensed through a prescription. But you can walk to pharmacists and just get the drug without any prescription. So, what will stop these HIV/AIDS drugs from being dispensed over the counter? Prof. Ongeru has told us that this could still happen in the future and we are fearing that if the drug could be resistance to HIV/AIDS, then we will be in a real problem. This would be a catastrophe. So, we really want an undertaking from the Minister that the Government will put systems in place that will ensure that the drugs that are coming into the country are quality controlled drugs. We are suggesting that the HIV/AIDS drugs, when imported by whatever means, should go through the designated centres.

Mr. Deputy Speaker, Sir, I think Prof. Ongeru forgot to say this, but during the Committee discussions we agreed that the drugs would be imported and distributed through designated centres, such as the provincial hospitals or certain district hospitals throughout the country. That would go a long way in ensuring that we do not have a proliferation of drugs being dispensed by quacks. The other concern that came out from the public through their presentations to the Committee was the fact that many doctors are not trained well enough to be able to manage these drugs or HIV/AIDS-related diseases. So, if this is left to everybody, it will cause a problem for this country.

I now want to take this opportunity to go through the various clauses. Hon. Biwott has tried to do that, but generally, without boring you, I want to make one or two comments, particularly on Clause 60 which deals with the term of a patent. The original Cap.509 gave a patent seven years. Now we are moving from seven years to 20 years in this Bill. Many people are asking why we should give protection for such a long period to foreigners. Twenty years is a long period in which this country would hold monopoly. But the solution is that unfortunately, most of the patents that we have in this country are not held by Kenyans. In fact, I am told that 80 per cent of all the registered patents in this country are foreign-owned. So, although we are an accredited member of the World Health Organisation (WHO) and, therefore, forced to obey the TRIPS agreement, this particular section, which provides for 20 years for the life of a patent, stands economically very unfair to developing countries, and Kenya in particular. However, since this Government had already signed the agreement with the WTO, there is no way out, but to accept the 20-year-term.

If you read the title of the Bill, it is supposed to assist in the transfer of technology. Patent rights actually assist in the transfer of technology. What would happen if a patent holder has not exploited his invention within four years, which was provided for in the original Act, but which has now been changed? There is nowhere where it is indicated that the Government can come in and take over the patent right, so that there could be transfer of technology. We are not just talking for the sake of it. We want transfer of technology from the scientists that are involved in this invention to Kenyans. Therefore, I think that, that particular aspect of this Bill has been overlooked, but somehow, it has been addressed in Section 60 of this Bill. This is something that, perhaps, we did not discuss with the Minister during that time. I would like us to ensure that this is included in the Bill.

Mr. Deputy Speaker, Sir, it has also been mentioned that we had representation on the Boler Exception,

which has amply been talked about by both Ministers. I do not need to go over that again. But I would like to appeal to all our hon. Members that this Bill ought to be passed. There should be a caution on Clause 58(2) which talks about parallel importation. Many people think that when you talk about parallel importation, we will get cheap drugs tomorrow and that these cheap drugs will be high-quality drugs. The clause, if you look at it, states that it is the patent holders who will actually allow their patented drugs to be imported. But in further importation, you do not require authorization from the patent holder to import the said drug. That is why this particular issue will assist.

One group of stakeholders came and said that they were going to challenge this Report as being unconstitutional because on one hand, we have said, "yes, you have the right; this is the right of the mind and this is your invention", yet through Clause 54 which gives the right of the patent holder, it states what the patent holder is allowed to do. Then, Section 58(2) is limiting those rights and, therefore, they claim that, that is something that can be challenged in law. We have looked at Section 3 of the Constitution and I think that claim does not hold any water. That is because a Government or any sovereign state is in a position to pass laws in emergency situations. Therefore, that particular claim does not hold any water. But that was what the pharmaceutical companies were trying to put their fingers on, because they do not want competition. I think it is very selfish for research-based pharmaceutical companies to deny Kenyans access to essential medicines by just pretending that if we open the gates, the market will be flooded and this country is going to be in trouble.

Mr. Deputy Speaker, Sir, on Section 80 which deals with compulsory licensing, the Committee was approached and advised that some people might think that section is unconstitutional. We have looked at Section 75 of the Kenya Constitution and it states very clearly the conditions under which certain properties can be compulsorily acquired. Provided that the Government gives appropriate compensation, the pharmaceutical companies will have no ground to stand on. So, the Chairman and Members of the Committee are quite happy that nobody will find any loopholes in this Bill to go to court and challenge it on the basis of the Constitution.

**An hon. Member:** Mwau!

**Mr. Achola:** Someone is shouting "Mwau", but I think Mr. Mwau has run short of ideas this time round! Therefore, since Mr. Biwott had gone through all the amendments that the Committee agreed with the Minister, I would only recommend that we give this Bill our nod and pass it. The Committee did a good job. It went through every clause and we are in agreement with most of the issues therein.

With those few remarks, I beg to support.

**Dr. Kulundu:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to strongly support this Bill. Right from the start, let me say that it was very wise for this House to allow this Bill to be referred to the relevant Departmental Committee. I think that was a very wise decision. Having sat in some of the sessions with our counterparts in the Education, Research and Technology Committee, I have no doubt that the information availed to the Committee was very useful, and it will go a long way in strengthening this piece of legislation. I think it is important that Departmental Committees be allowed to delve into legislation as much as possible. They should interview as many stakeholders as possible.

Mr. Deputy Speaker, Sir, it is common knowledge that nobody should be condemned unheard. It is also common knowledge that when a deal looks too good, we have to think twice. The temptation of this Bill looking good is great. As it has been said by Mr. Achola, this Bill is not aimed at the pharmaceutical industry alone. Unfortunately, that is a misconception that has been created by the media and we, in the process, have forgotten that the Bill also targets other industrial properties. This Bill, in so far as it affects medical services in this country, is very wonderful and good. It is in keeping with what this House has resolved in the past.

Mr. Deputy Speaker, Sir, you will recall that Members of this House went to Mombasa for the sole purpose of discussing HIV/AIDS. We came up with resolutions in that Mombasa symposium. In fact, it is at that symposium that His Excellency the President declared HIV/AIDS a national disaster. In Resolution 8 of the 14 Resolutions that hon. Members passed in Mombasa, we urged the Government to make it easy for Kenyans to access anti-HIV/AIDS and Sexually Transmitted Diseases (STD) drugs. That is what this Bill aims to do. So, I wish to congratulate the Government--- Once in a while, we congratulate this Government although sometimes, it is so insensitive! I would also quickly add that although His Excellency the President declared HIV/AIDS a national disaster, the Government never gazetted it as such! That negates the urgency that was created by the President in declaring HIV/AIDS a national disaster.

Mr. Deputy Speaker, Sir, this Bill, in so far as medical services are concerned, will allow the Government to make parallel importation of drugs. It will import not only HIV/AIDS drugs, but all drugs in general. It will also compulsorily license a firm or firms to manufacture those drugs locally. The net result of those two measures will be to reduce the price for the consumers. As you know, nearly 2,000,000 Kenyans are living with HIV/AIDS. That may even be an under-estimate as far as I know! We could even be talking about 3,000,000

Kenyans! Now that those drugs will be cheaply available, we will be in a better position to know the true picture of HIV/AIDS in this country because the people will have an incentive to go for voluntary HIV/AIDS testing.

Mr. Deputy Speaker, Sir, I would like to take this opportunity to urge the Government that, as much as we have put pressure on the pharmaceutical industries to lower the prices; and now that we are all unanimous about passing this Bill with a few amendments, it must go further and ensure that those drugs are freely available to Kenyans. Prof. Ongeru talked about his Ministry requiring about Kshs12 billion in order to make those drugs freely available. No cost and effort should be spared in enabling Kenyans access those drugs. Kenyans are dying in their thousands. In fact, I even suspect that this Government does not know how many Kenyans die of HIV/AIDS every day. We hear about 500 and 700 people, but probably, the figure could be around 1,000 people or more! We as a nation cannot afford to lose so many lives in a day, due to an infection that can be controlled. But because it was declared a national disaster, we are calling upon the Government to ensure that the burden of managing that disaster falls on the Government and not the people.

Because this is a national disaster, drugs must be made freely available to Kenyans.

Mr. Deputy Speaker, Sir, having said that, we must also tell each other some home truth. We must tell Kenyans that the mere availability of these drugs will not be a panacea for all the ills that are afflicting Kenyans. We are calling upon the Ministry of Health not just to come and give us platitudes and so forth, but to ensure that they have got the infrastructure in place to be able to use these drugs. We are talking about drug quality and my Committee, nearly a month ago, had an opportunity of visiting the National Drug Quality Laboratory. What we found, to be brief, was horrifying. It would appear that drugs used in this country are not analyzed for quality. That is a fact. Now that we are going to import these anti-retroviral, there is even more urgent need for us to be able to analyze each and every drug that comes to the Kenyan market. Only the other day, the Minister for Public Health read a long list of beauty products that have been in use in this country for more than two decades without anybody ever analyzing them for toxicity. It is a sad commentary on the way we manage our public affairs. It is not enough for us to give Kenyans an assurance that the Government will do this and that, when we know that these things have not been provided for in the Budget. We are calling on the Ministry of Health to ensure that all drugs consumed in this country are tested for quality. We are calling upon the Ministry of Health to ensure that they decentralize the National Drug Quality Laboratory.

*(A mobile phone rang in the Chamber)*

**Mr. Deputy Speaker:** Order! Order! Which of you has that cellular phone? I will get the Serjeant-at-Arms to inspect you.

**Mr. Munyasia:** I do not use it!

**Mr. Deputy Speaker:** Order, hon. Member! Which of you is carrying that cellular phone? Serjeant-at-Arms---

**Mr. Munyasia:** I do not use it, Mr. Deputy Speaker, Sir.

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order! This is not a laughing matter. Will the Member who has that cellular phone identify himself?

**Mr. N. Nyagah:** On a point of order, Mr. Deputy Speaker, Sir. This is really interesting. This is drama. I have been sitting here the whole afternoon and around this area, there seems to be that noise that is coming out as though it is a cellular phone. It must be something else and it is happening around here!

*(Mr. Nyagah pointed at the area between the Table and the Chair)*

**Mr. Deputy Speaker:** Order! Order! The Chair is not so naive as to believe that it could be around here without it being from somebody. I want to know the Member who has it, because a ruling has been made, not once but many times, to the effect that if you want to come into the Chamber and you are carrying that gadget, better make sure that it is "dead". If it is on, you cause grave disorder. Do you know what your Standing Orders state about disorderly conduct? Hon. Members, do take this seriously.

The Chair has stated in the past that he will instruct the Serjeant-at-Arms to inspect Members. Well, that cannot quite easily be done in the Chamber, but I will get them to waylay you outside the Chambers, so that this

very bad habit may be eradicated once and for all.

Proceed!

**Mr. Munyasia:** On a point of order, Mr. Deputy Speaker, Sir. I wish to take this opportunity to issue a disclaimer. It could not have been me because I do not use that mobile phone because of the radioactivity.

**Mr. Deputy Speaker:** Order! Order! I do not know how that disclaimer arises because the Chair has taken a benevolent view of this rather bad habit.

Proceed, Dr. Kulundu!

**Dr. Kulundu:** Thank you very much, Mr. Deputy Speaker, Sir. I hope that interruption does not count on my time.

I was talking about the need for drug quality control. In countries where these anti-retrovirals have been used for a long time, resistance has become a problem. With resistance, there is always a danger that this virus could develop into a super bug that is more lethal than the variant of viruses that we have here. If we are not going to be strict with our quality checks, this country may end up having a super bug that will kill people even faster than they are being killed right now. We know that Kenyans can be very enterprising, indeed. For those of them who are dishonest, this will be a wonderful opportunity for them to import chalk or cassava and label it AZT or something like that. I cannot emphasize it enough, that quality control checks must be there not only in Nairobi but at all our borders, so that we check whatever comes into the country.

Another point of caution, Mr. Deputy Speaker, Sir, and this again goes to the Ministry of Health, is that the use of anti-retrovirals can create problems. There is no drug anywhere in the world which is not toxic. But this particular category of drugs can cause very serious health problems. Prof. Ongeru has alluded to the need for monitoring the viral load in patients who are using these drugs, I quite agree with him. As you know, he was my teacher at some point many years ago, and I am impressed that he still remembers some of these nitty-gritty details of medicine. But these anti-retrovirals are very toxic and the need for us to monitor patients is even greater now than at any other time in our history as a nation. It is also sad that in the whole of Kenya, there are only two places now that can carry out these tests; that is, the Kenya Medical Research Institute (KEMRI) and Kenyatta National Hospital (KNH). We are demanding that before these drugs are allowed to be used on a mass scale in Garissa, Busia, Lunga Lungu, Lodwar and so forth, it is important that the Ministry of Health puts in place some laboratory capacity in all our hospitals. In fact, it is not enough to talk about provincial hospitals, because in some places, those provincial hospitals are very far from wananchi.

The highest level at which this facility should be available ought to be the district hospital because we will deal with a massive number of people, and they cannot all flock to Nairobi every month to be monitored for toxicity and viral load. So, I would like to urge the Government, in the next Budget, to provide for the development of a laboratory capacity that will monitor the stations we want to have. Right now, that facility is non-existent in public hospitals. At private hospitals where the facility is available, it costs Kshs9,000, which an ordinary Kenyan cannot afford. Even an ordinary Member of Parliament cannot afford that kind of cost, especially if the test has to be done on monthly basis.

Mr. Deputy Speaker, Sir, another thing the Ministry of Health should do - and which it should do fast enough - is training its health personnel, doctors included. Nearly 75 per cent of the practising doctors in this country today qualified long before the AIDS causing virus came on to the scene. We do not want to pretend for a single moment that every doctor in this country knows everything about HIV/AIDS. The situation becomes even worse when we relate this fact to their lack of knowledge about the administration of HIV/AIDS management drugs. It is important, therefore, that the Ministry of Health moves with speed to train medical personnel not only about HIV/AIDS, but also about the administration of anti-retroviral drugs. That is very important.

We are also talking about another category of health personnel who should be trained. These are the laboratory technicians and technologists. The equipment that we insist the Ministry should have in place is not familiar to most practising people in the field of laboratory technology. It is our wish that the Ministry of Health puts together some training manual for the various categories of health workers and put them through some training so that at the end of the day, our people will be said to be safe in terms of the quality of services they will receive from health workers.

Mr. Deputy Speaker, Sir, the need for continuously preaching about prevention cannot be over-emphasised. For a long time to come, there will be no cure for AIDS. In fact, anti-retroviral drugs are not a cure for AIDS. The drugs can only control the viral load in the blood of victims of HIV/AIDS by stopping the virus from multiplying, but they do not kill the virus. Our people must be told this in no uncertain terms.

So, control measures will still continue to be the hallmark of our management of HIV/AIDS. While talking about prevention and control measures, we must also talk about the constituency AIDS committees that we have formed. As far as we are concerned, those committees should be functional by now. They should have had

some funding. The Minister responsible for the anti-HIV/AIDS programme is here. I hope that he will have an opportunity to tell this House why constituency AIDS committees have been left moribund.

*(Applause)*

It is not enough for us to be rhetoric about anti-AIDS campaigns. We must do away with the situation where we are very long on rhetoric, and very short on action. When we came back from Mombasa where we attended the AIDS awareness seminar, the expectations of this House were very high. However, when it came to the question of funding the constituency AIDS committees that have already been launched, the Government has been dragging its feet. Now that we are about to import the anti-retroviral drugs, it is important that we step up our AIDS prevention campaign by revitalising the constituency AIDS committees. We have been told that money for funding the operations of the constituency AIDS committees is available.

Mr. Deputy Speaker, Sir, however, that money has disappeared somewhere between the World Bank, the Treasury and the Office of the President. So, we would like to know the whereabouts of the monies that have been pledged by our development partners for the funding of the anti-AIDS campaign countrywide. Why can we not disburse that money to the constituency AIDS committees so that the campaign against AIDS can be intensified at the grassroots level?

With those few remarks, I strongly support this Bill.

**Mr. Muite:** Mr. Deputy Speaker, Sir, among the few issues that are important in this country as well as in many other countries is the AIDS epidemic. There is hardly an individual in this country, Members of Parliament included, who has not been touched directly or indirectly by the AIDS epidemic, through the loss of a brother, a child, a mother or a close relative. So, we need a collective approach in the containment of this epidemic, which is going to impact very negatively on this country's economy, both in the long-term and medium-term. So, it is very appropriate that this Bill has come here for debate today. Some of us have found ourselves in the awkward position of supporting Mr. Biwott, who has moved this Bill, 100 per cent because he has done the right thing.

Mr. Deputy Speaker, Sir, it is a bit of a pity that we had to wait for South Africa to give us the lead in taking this initiative. As a nation, we should have been in the forefront in taking the initiative. Really, it is not a coincidence that this Government only got the courage to challenge the international community by bringing this sort of Bill after South Africa had broken the ground. But it is better late than never. I would like to appeal to the Minister to consider bringing an appropriate amendment to this Bill at the Committee Stage to include what is commonly known as Boler Exceptioni provisions, so as to permit companies in this country to commence research immediately before the expiry of the patency. On the expiry of the patency, those companies will start manufacturing the drugs locally. That is one of the improvements we can make to this Bill in the Committee Stage. I can see that the Minister for Public Health, Prof. Ongeru, is taking notes.

**The Minister for Public Health (Prof. Ongeru):** Mr. Deputy Speaker, Sir, that provision is contained in the Bill.

**Hon. Members:** It is there!

**Mr. Muite:** I beg your pardon, Mr. Deputy Speaker, Sir. I thought that the provision is not included in the Bill. I stand corrected.

**Mr. Deputy Speaker:** Order!

**Mr. Muite:** Mr. Deputy Speaker, Sir, if the provision is included in the Bill, that is very important.

**Mr. Deputy Speaker:** Even if the provision is included in the Bill, hon. Members should not be arguing with you.

**Mr. Achola:** We were only informing him, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! You should have risen on a point of information.

**Mr. Muite:** Precisely, Mr. Deputy Speaker, Sir. Just because my colleagues have crossed over to the Government side, it does not mean that the Standing Orders of this House are suspended. We are still bound by the Standing Orders.

**An hon. Member:** They will come back!

**Mr. Muite:** Mr. Deputy Speaker, Sir, I would now like to sound a word of caution. If we are to be effective in the management of the HIV/AIDS pandemic, we should have a holistic approach in its management. We must not allow our people to be lured into the false comfort that all they now need is to access the retroviral drugs because they are going to be affordable. That will be very dangerous. We should combine this initiative with educating our people in schools and everywhere, through the religious sector on the need to take care and uphold

high moral standards. We need to continue making condoms freely available to our people. So, we should take all the necessary measures in order to contain the HIV/AIDS pandemic.

Mr. Deputy Speaker, Sir, the other issue that I would like to raise is: Let the Bill be the starting point. We need as a nation - because we are trigger-happy in signing international treaties in every field - to be careful when signing international treaties. This is because when you ask how many Kenyans have registered patents, you will be told that the number is negligible. Now, before we sign any treaty, let the Government pause to analyse how any treaty is going to benefit our country. How will it benefit the economy of Kenya and advance our interests, because our interests as a nation must continue to come first? There are too many treaties that we are signing, whose net effect is benefitting the other side. Even in the field of agriculture; on the genetically altered seed varieties, let us examine whether we are disadvantaged, or we are going to gain an advantage.

So, let us examine those issues before we sign any international treaty in the field of patents. Very few Kenyans register patents. It is the multinationals and nationals of other countries who do that. Let us make that the starting point; of making our interests as a nation the priority. I do wish to support very strongly the passage of the Bill so that it becomes law, and let us ask the Ministry of Health and the Government as a whole to work out on the distribution mechanisms. This is because sometimes we pass laws here, and even we make goods and services available for Kenyans, including, for example, food aid, but the distribution mechanism is poor. We read in one of the newspapers the other day how food was rotting somewhere in Garissa, and people were still dying because of the institutional distribution mechanism. Let us make sure that as soon as the Bill becomes law, and I do hope that it becomes law sooner than later, and the drugs are imported into the country, the Ministry of Health works with all the other departments to ensure that their distribution is effective in every clinic, village and hospital; that, they are accessible by people across the entire country. We had earlier on - during Question Time - had a dispute between the Minister for Health and an hon. Member from the Opposition side, arguing as to whether some particular drugs are available in a clinic in Ukambani or not. The hon. Member who comes from the area says that the drugs are not available, and the Minister says that they had sent drugs there and they are available. We do not want to see that sort of argument when the drugs arrive in this country. We want the Government to work hard on the distribution network so that the drugs will be available to every Kenyan across the entire Republic.

With those remarks, I beg to support.

**Mr Gatabaki:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to that very important Bill. Nobody in this country can oppose such an important Bill. So, I support it with all the amendments proposed by my colleague, Dr. Kulundu, the Chairman of the Committee on Health, Housing, Labour and Social Welfare. We had gone virtually through all the clauses, particularly, those concerning health, and given endorsement to the amendments the Minister is talking about. Let me repeat that there are some innovative initiatives which were put across by Prof. Ogeri, the Minister for Public Health. Prof. Ogeri, your contribution to this House on matters that relate to Health should be applauded. It is only when he talks about political issues, like the Kisii politics, that he goes wrong.

*(Laughter)*

Having supported all the amendments, like the Boler Exception and parallel drugs, and all the essential areas in order to allow this Government to take HIV/AIDS as a national crisis, let me come to the real issue. Even if we pass all the amendments, we will not change tomorrow. Three years ago, the President of the Republic of Kenya, hon. Members, the World Bank and the international community gathered in Mombasa. The President announced to the world that HIV/AIDS was a national disaster. What is the definition of a disaster? During a disaster, all resources of the country are mobilised towards solving that crisis. So, what is going on in America? As the flooding in Texas, America, continues, the President himself has mobilised every resource in the country to tackle that issue. Since three years ago, we have done nothing about HIV/AIDS, and it has not even been gazetted. That Minister has not even gazetted the Presidential announcement on national disaster. How serious is this Government towards tackling the HIV/AIDS crisis? The first time a HIV/AIDS patient was discovered was in 1984, and since then, we have been burying an average of about 700 to 1,00 Kenyans daily. When the bomb blast devastated the American Embassy recently, everybody, including the President - all the leadership of the political parties - gathered at the site to pay condolences to the victims. It became a crisis, and everyday there were new stories about the incident because of the loss of less than 300 Kenyans. But everyday, for many years, we have been losing an average of 700 to 1,000 Kenyans. Yet, there is no seriousness on the part of the Government to consider that a disaster.

Dr. Kulundu has alluded to the formation of the Constituency Aids Control Committees. I constituted

mine last June, and it is now one year and I am using my resources while the Office of the President and a body called the National AIDS Control Council, housed by the Office of the President, have been sitting on the US\$50 million given by the World Bank and British Government. The donor community has been waiting to support the initiative of Kenyans to fight the disease, but the Government is doing nothing. All it cares about is the survival of President Moi. Is it coincidental that the passage of the Bill, which we are going to pass, came at the time when the President announced the inclusion of the NDP party in his Government? Is it coincidental that when we are discussing this important Bill, the NDP party has crossed over to become part of the legacy of an immoral Government? Whatever we do and whatever we pass, there is no initiative on the Government to fight HIV/AIDS. Kenyans will continue to die because the Government is not prepared to take the initiative of protecting the health of Kenyans.

The Bill is a replacement of another Bill of 1989. For the first time, we are repealing a whole Bill and replacing it with another Bill. It is an indication of lack of seriousness in protecting the national interests. Elsewhere, with regard to the Industrial Property Bill and the Intellectual Property Bill, the protected copyrights and the patents are very important and jealously guarded. If Kenya wants to export those things to the United States, for example, she will go through a whole series of checks, to ensure that the American copyrights and patents are not violated. While supporting the Bill, I would like to say that we will see tomorrow and the next day a whole emergence of political merger of a group of people who will bring anything and violating all the tax regulations to be able to satisfy their greed.

One of my colleagues talked about provision of the drugs. How do you ensure their licensing and protection aspects? The Committee on Health, Housing, Labour and Social Welfare visited the National Health Laboratory Council, which has got the capacity to do that. There is willingness on the part of the customs' officials and the law enforcement officials to check the quality of what comes into the country. We have seen that.

A senior KANU official in Nairobi City Council used chalk to treat water for Kenyan consumers, and right now that man is walking free in this country. We have no choice but to tackle emergencies, particularly the AIDS crisis. We have to utilise all our resources to address this issue. What is so unique about the issue that we have to start addressing it tomorrow? There were provisions three years ago for the Government to license the importation of drugs for an emergency. Every government worldwide has got the sovereignty to address crises in the interest of its citizens, but we have not seen that initiative from our Government.

We will pass this Bill and the proposed amendments, but the challenge lies in the political will to implement the law. Right now, the main concern of this Government is the survival of President Moi. Their major pre-occupation is how they can get money from donors to finance their illegal elections. I am being harsh against this Government because we do not see any seriousness in combating the AIDS scare as we have seen in our neighbouring country Uganda, where the disease has been reduced to manageable proportions. This is because the President of Uganda made it a commitment for his Government to tackle a national crisis. We are the only country which takes health issues that have to do with human life as jokes. Our major pre-occupation is our political survival.

When I was assessing the impact of what happened yesterday, when my colleagues went to the other side of the House, I asked myself: "Why should Mr. Raila take a Ministry which has no resources?" This treacherous Government is notorious for finishing its opponents by giving them a Ministry that does not work. After one-and-a-half years, when we go for elections, Mr. Raila should tell the people of Nyanza what he has done at the Sondu Miriu Project.

**Mr. Achola:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member really being relevant to the debate before the House today? I think you ought to inform him on what is relevant because the NDP has nothing to do with the Industrial Property Bill.

**Mr. Deputy Speaker:** Order, hon. Achola! Even if you want me to interrupt him, you should invite my attention to do so, as the Standing Orders state that you should. You did not do it quite properly. So, I will ignore your intervention.

Proceed.

**Mr. Gatabaki:** Thank you, Mr. Deputy Speaker, Sir, for your protection. I am calling upon the House to treat this Bill with all the concern it deserves and pass it. We should get the relevant amendments, particularly, the one on parallel importation and the Boler Exception that allows companies and other parties to experiment on generics before the expiry of patents. The same has been done in India and Brazil. Today, Nigerians import generics from India for about one-sixth of the price that Kenya imports. While Kenyans pay about Kshs250,000 for generics, the Nigerians pay about Kshs3,000 because theirs is a country with political initiative. We should look beyond political exigencies and allow this kind of exemption. These provisions exist, but the Government is not willing to take advantage of them, because they want quick profits from imports or whatever shoddy products

are available in the world.

With those few remarks, I beg to support this Bill.

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, I want to take the shortest possible time while supporting this Bill. I want to remind the Government of a few things. The first one is that I am very grateful to the Member who asked that this Bill be subjected to scrutiny by the relevant Departmental Committee because only then were we able to get such a comprehensive report from Mr. Achola who is the Chairman of that Committee. Let me also thank Mr. Biwott for a beautiful presentation.

This is one Bill that has been looked at as a pharmaceutical Bill. Since I am the shadow Minister for Health, I want to confine myself to the parts that touch on health. Amendments will be brought forward by some of us from the Committee on Health to address issues which have not been previously catered for by companies in Kenya. These companies have been manufacturing generic products and putting them into the Kenyan market. There is need for this country to strengthen the local manufacturing industry. Africa produces only 1.3 per cent of the total pharmaceutical products manufactured in the world, and these are only for tropical diseases. This is the reason why major pharmaceutical companies will never come up with a solution because we are not a market to them. We will end up depending on the local manufacturers that we have in this country.

In 1992, the Pharmacy and Poisons (Amendment) Bill was brought to this House. It was a good Bill, but was lacking in implementation. Let me explain what the Government's use should have been as far as this Bill is concerned. We would have used compulsory licensing as far as that Bill was concerned. Even after we declared AIDS a national disaster, what did we do as a Government? We did not have to wait until 2001 to be compliant with the TRIPS Agreement. We should have passed this Bill in 2000. I am grateful, and I am not criticising the Government because it has taken time to go through the previous amendment that had been contained in the previous Bill of 1999. Therefore, the Government took time off to implement the amendments that were considered by Mr. Achola's Committee in this Bill. On that score, I think we need to compliment the Government.

Mr. Deputy Speaker, Sir, there was this feeling that this Bill was going to be opposed because there was a lot of lobbying by the pharmaceutical companies, but lobbying in itself is a very healthy act. In fact, I have always advocated that lobbying should be brought in here as a Bill so that it is recognised through an Act of Parliament. This is because it is only through the experience of lobbying that we have been able to get what we have. There are four things that we need to include in this Bill and ensure that they are done properly. These include provision for compulsory licensing, Government use, parallel imports and the Boler Exception.

Mr. Deputy Speaker, Sir, we must also ensure that the use of new use will be something of history. It is something that we must fight to the hilt in that Bill. It is already there under Clause 21 and we are bringing in Clauses 21(3) and 54, and we will be bringing amendments to that effect. Let me give a classic example of why this should be out. A drug called Aspirin initially came into the market for a different course of treatment. Down the line, in many areas, there are people who are using Aspirin today for medication of the heart. Like if you get heart attacks and your arteries get thinned, to seal the blood, we need to use aspirin. Let me give another very common one that is used by very many Kenyans. There is this drug called "viagra" which came in as a result of treating hypertensive cases and was really effective. In the course of doing so, it started having side effects. What were these side effects? Only hon. Dr. Kulundu can explain the side effects that were created and because all of us know the side effects, then the patent holder should not be allowed now to come back and use this provision of "new use" and say: "Since it enhances those people who have deficiencies in their sexual game, then we patent it." That is precisely why we will be asking the Government to accept that the use of "new use" should not be used in the new Bill. Now, having said that, I am sure we will have no problems with the new use.

The other one that we need to bring in is what is called Boler Exception. I was expecting the Minister to explain what Boler Exception is all about. It came up as a result of a Canadian firm that used this exception which is commonly called early working whereby, if, for instance, a branded product were to go through the entire 20-year period and comes to an end, if it is withdrawn from the market, Kenyans will not be made to suffer. This is because there is a whole process of anything between one year to three and four years before you can have this drug registered as a generic. That is the use of this Boler Exception that we must include in the Bill so that it gives the local pharmaceutical companies ample time to be able to test the quality of the drugs, be able to register, and do the documentation work. All these will need this lead time which takes---

**Mr. Achola:** On a point of information, Mr. Deputy Speaker, Sir. I would like to inform hon. N. Nyagah that we have actually included Boler Exception in our Committee's report this morning under Clause 5(54) Sub-clause 3. In fact, the Minister actually talked about it here.

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, what can you do to a great man like hon. Acholla other than thank him?

*(Mr. Biwott consulted loudly  
with the Ministry staff)*

**Mr. Deputy Speaker:** Order, hon. Biwott! If you want to consult extensively with the staff, retire to the ante-Chamber.

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, I said that I will not take a very long time as far as this Bill is concerned because we want to pass it quickly and be able to bring in the amendments. I thank the Committee and the Government for having looked into this.

Mr. Deputy Speaker, Sir, Kenya's patent system was ruled by Intellectual Property Bill of 1989. Why was this done? It was done so as to protect Kemron which at that time had just come into the market and that particular Act prohibited two things. That is the parallel imports and this Boler Exception, and what this new Bill is trying to do is to get rid of those restrictions that were brought in.

Let me say something with a very heavy heart. My Committee on Health had the opportunity of visiting the Drug Quality Control Laboratory in Kenyatta National Hospital and this is what we found: Beautiful big monuments lying idle. One of the big questions I asked the lady in charge was: Did you or did you not get rid of members of staff because you were told hurriedly that the Committee on Health was coming in? This was because I can tell you authoritatively that there were very few members of staff who were working in there. This is the point that hon. Dr. Kulundu was trying to drive forward on quality assurance by this laboratory. The machines hon. Prof. Ongeru talked about, that is HP and fotoform or whatever, were not available when we were there. Only one was available. After our visit, and I repeat only after our visit, those machines were taken in. Why and yet testing of drugs is a prerogative of the Government, whether the drugs are branded or generic into the country? Why must it take us that long?

Mr. Deputy Speaker, Sir, the other big question, and I am still not quite sure whether we shall be able to meet it if it has not been put in the provisions of the budget of the Ministry of Health, was the budget for the National Laboratory. When we visited there, we were told of a very small figure that will not be able to cater for good quality drugs that we are being assured are going to be there. However let me appeal to the Government. When very many Heads of State, including our Head of State, went to Abuja, we were told that out of the national Budget of this country and African countries, 15 per cent of that Budget was going to go to the Ministry of Health. If that were to happen, then the Kshs9 billion that we have been talking about would be something of history. We would want the Government to allocate more money to hon. Prof. Ongeru so that we are able to wipe out, and, if we are serious, get rid of this menace. If you go to Government hospitals, you will find that six people out of 10 are infected with HIV/AIDS or suffer from HIV/AIDS-related diseases. Out of 2.3, 2.4, 2.5, 2.6 or 3 million Kenyans who are infected with HIV/AIDS, there are about 200,000 Kenyans who have access to anti-retroviral drugs. Therefore, this is something that we must be cautious about, if we really care about the welfare of Kenyans.

Mr. Deputy Speaker, Sir, let me talk about generic drugs. There is nothing wrong about these drugs. In the developed world, 60 per cent of the drugs the patients use are generic. In Kenya, it is anything up to 80 per cent. I would like to say that the ingredients are more or less the same. It is good to pin-point that generic drugs are not counterfeit drugs. I would like to inform this House that counterfeit drugs are the ones which do not have the required ingredients and have wrong labels to cheat the patients. Therefore, patients in Kenya should not be worried about our capacity to manufacture generic drugs.

Mr. Deputy Speaker, Sir, with those few words, I support the passage of this Bill. I look forward to tomorrow, God willing, if at all we will go into the Committee Stage, so that we bring in the amendments and from then on, this will be something in the history.

With those few words, I support.

**Mr. Angwenyi:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this important Motion. I would like to say that Kenya is being ravaged by the HIV/AIDS epidemic. All of us must support any measure that is taken by the Government or anybody that can bring relief to our people.

Presently, half of Kenyans who die in Government hospitals, do so from HIV/AIDS or HIV/AIDS-related diseases. I would like to thank the Government for bringing this Bill before the Floor of this House. But I wish that the same Government which declared HIV/AIDS a national disaster two years ago would take other measures to contain this epidemic. We should start allocating more funds than what we are allocating to security, law and order, and even the Department of Defence, to combat this disease. I would like to point out that the number of people who die from HIV/AIDS-related diseases are more than the people who could have died if we had a war with Ethiopia, Uganda and Somalia combined together. I would like to inform this House that about 2,000 people die everyday out of HIV/AIDS-related diseases. I do not think that even if we were at war with any of our

neighbours, they would kill 2,000 Kenyans per day. If that were to happen, then our armed forces would be wiped out in a month. So, we should take the HIV/AIDS seriously. The Government and Kenyans must take this disease seriously. This House must also take this disease seriously.

Mr. Deputy Speaker, Sir, I believe that this House will pass this Bill, but---

*(Mr. Angwenyi's mobile phone rang)*

I am sorry, Mr. Deputy Speaker, Sir. I apologise profusely, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order! That has been described by rulings of the Chair. Mr. Angwenyi, I now require you to vacate the Chamber for the rest of this afternoon's sitting.

**Mr. Angwenyi:** Forgive me, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** You are now a stranger!

**Mr. Angwenyi:** On a point of apology, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! You are a stranger and I cannot hear you.

*(Mr. Angwenyi withdrew from the Chamber)*

**Dr. Murungaru:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this extremely important Bill before the House, which concerns the lives of a large proportion of our population.

As we are speaking here today, 700 Kenyans or more than 700 Kenyans are dying of HIV/AIDS everyday. Of those who are dying, the majority are in a very productive segment of their lives. They are young parents with young children and these are the future leaders of this country. Today we are talking about the possibility of enacting a law to enable this country and those who are involved in the health care sector, particularly the pharmaceutical industry, to import or procure medication to treat those unfortunate Kenyans who have acquired the virus and who have already started showing symptoms of the HIV/AIDS condition.

Mr. Deputy Speaker, Sir, in the West today, HIV/AIDS as a disease has been downgraded through medication to be a chronic ailment as opposed to the acute condition that it is in Kenya and other countries similar to Kenya. The sole reason why this situation has been confined to less developed countries, like Kenya, is because those who have fallen victim of **[Dr. Murungaru]**

HIV/AIDS have access to treatable and anti-retroviral drugs in the developed countries. This is the gist of the matter. If one in this country can be able to avail medication for those who have succumbed to HIV/AIDS, we can be able to prolong their lives. We can be able to make them lead fairly stable and comfortable lives and the effect of that would be dramatic.

Mr. Deputy Speaker, Sir, the greatest challenge that this country is facing today is those orphans who have been left in the care of their grandparents through the death of both their mother and father. That is really the greatest component of the problem that is brought about by the scourge. If it is possible to make drugs available at a cost that most Kenyans can be able to afford, we would reduce the effect of the scourge on our economy and on our society by, perhaps, up to 80 per cent because of the mere fact that those parents would be available to their children in order to provide for them.

In some sections of this country today, and virtually everywhere, and particularly in our City slums; in some provinces and even areas which were in the past considered to be low prevalent areas, almost everybody has to shoulder the burden of caring for those who have been affected or who have left behind children of HIV/AIDS victims. That is an untenable condition. That is a non-tenable condition. The cost of drugs, and I would say this with some measure of authority, is fixed by pharmaceutical companies in order to plug certain budgetary provisions. There is no special cost attributable to the manufacturing of an anti-retroviral agent as opposed to the aspirin. There is no magic or great expense that one has to undergo in order to produce the active ingredients in anti-retroviral capsules as opposed to a tablet, a drapsule or paracetamol. So, the cost really is fixed because there is an opportunity to make a profit. I think it would be immoral if we allowed human beings to perish, so that certain commercial organisations can make profits.

Mr. Deputy Speaker, Sir, indeed, when this Bill was mooted, the cost of anti-retroviral drugs charged by companies which import and distribute those products dropped down by a factor of more than 15 per cent. There is one particular company whose products' cost dropped from about Kshs60,000 for one month's cost, to less than Ksh4,000 over a period of three weeks. Within three weeks, the company dropped the price of what it was offering to the public before at Kshs60,000 to Kshs4,000. That shows that in the first place, that price was grossly inflated

and it was not justified whatsoever.

I will support the sentiments of Mr. N. Nyagah. He said that generics are not necessarily counterfeits. By the same token, branded products are also not necessarily true products. There are many products being vendored in this country as branded products. Those in the know will bear me out that if a proper analysis was done, they will be found to be less potent than the so-called generic products. So, in short, I would like to support this Bill. I would like to say that we should allow parallel importation and only choose the source of the product carefully, so that we do not get counterfeits.

Mr. Deputy Speaker, Sir, I would be failing if I did not add the rider that, once the products get here, the Ministry of Health, and Prof. Onger, perhaps, might want to listen to this, must ensure that there will be a proper mechanism in place to control the usage of those products, so that we do not import the products, then distribute them in a haphazard manner and create a problem which is worse than not having the product in the first place; that is, the problem of resistance of the virus to the proper medication. So, we must have a mechanism in place to control the usage of those products once they are here because I believe no sane Member of Parliament will oppose this Bill. We must control and ensure that the products get here and they are used properly for the benefit of those who have succumbed to the disease.

With those few remarks, I beg to support.

**Mr. Mboko:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

From the onset, I support this Bill. This is the time for all Kenyans of goodwill to show their concern for the fate of our suffering Kenyans. We have, as a country, not treated the HIV/AIDS scourge with the concern it deserves. Our people are dying daily from the scourge. In the whole of Eastern Province, Meru District is leading, followed by Makeni District. In Makeni District, it is my Kibwezi Constituency which is number one. So, I am one of the most affected people. I sympathise with the situation because those of us who live along the highway have known the story of how our people have been perishing. Time has come for this Government to show enough concern. I may not be a medical man, but you cannot differentiate a medical man from a layman in terms of HIV/AIDS.

Mr. Deputy Speaker, Sir, I do not know what steps our Government shall take because 75 per cent of our rural population is poor and HIV/AIDS has entrenched itself in it heavily. I do not know how that situation will be treated. I do not know whether the Government is ready to support the distribution of drugs for special occasions in our local hospitals and dispensaries. Unless the poor in this country are considered by the Government, we may not be targeting the actual group.

The previous speaker has said that generic drugs may not necessarily be counterfeit, and that patented drugs may not be the real drugs. I would like to pass one message to Kenyans; that, the HIV/AIDS has no cure. Those drugs are only meant to manage the disease, and to make sure that the victims live a day or two longer than their time of death. We must tell our people that even though we will allow the importation of those drugs in the country, they are not a cure. If we do not manage that situation properly, our people may become more aggressive and engage in sexual activities thinking that the matter is now at rest. We must pass the message in strong terms that those drugs are meant to only manage---

**Mr. Muturi:** On a point of order, Mr. Deputy Speaker, Sir. Having listened to the contributions from various Members, it is my suggestion that enough has been covered. I, therefore, suggest that the Mover be now called upon to reply.

**Mr. Deputy Speaker:** Hon. Members, even the Chair feels that Members have begun to repeat themselves and, accordingly, agrees that the Mover be now called upon to reply.

**The Minister for Trade and Industry (Mr. Biwott):** Mr. Deputy Speaker, Sir, I beg to reply.

The hon. Members who have spoken have concentrated more on the HIV/AIDS related aspects of the Bill. But as I introduced the Bill earlier on, the Bill is very comprehensive. It has 101 Sections, with most of them dealing with the intentions of the Bill. The Bill is actually intended to provide incentives to scientists and enterprising people to patent their trade marks and innovations, in order to make some money out of them. It is intended to create a commercial value and also to alert Kenyans that there is value in the things that they possess which are of value and which have come out of their innovations.

For example, on the question of herbal medicine, Kenyans have been exploited for many years because they have made it available to whoever comes at no cost at all. Others have taken those herbs and extracted the ingredients that are active and patented them and sold them back to our own people, or used them for the purpose for which they want. In such circumstances, the individual who revealed such secrets would have lost a commercial value. Today, a country is known to have advanced by the number of patents they have registered.

Let me again remind the House of the things that are contained in this Bill, so that they can appreciate

the importance of the Bill and also the fact that today, intellectual property is a big subject in the globalized world and even in the World Trade Organization (WTO) itself of which Kenya is a member and signatory. I had earlier on, while introducing this Bill, mentioned the areas where this Bill covers.

Mr. Deputy Speaker, Sir, we talked about the patent because we are trying to get Kenyans to patent whatever they have, even if it is coming out of ordinary day-to-day discoveries or innovations or modifications, which we find in the Jua Kali sector like *Kiondo*, Maasai attire and folklore items which are being used all over the world. It has commercial value. If somebody had patented them, he would be able to earn money out of that knowledge that has gone into the making of those items. As the hon. Member for Kieni said earlier on, the real value of anything that you buy is in the patent itself. It is what somebody has added as his own royalty. This is what we want to attack, for example, when it comes to the case of medicine which our own people cannot afford because of the poverty level at which this country is at the moment. Any patient here cannot afford to buy medicine because he has no source of money. But where they are patented, like in Europe or America, the people there have income and they can afford to pay for that tax which the intellectual-property person has already imposed on the drugs. When it comes to the parallel importation, which Prof. Ongeru is very much conversant with, and I will be giving him a few minutes in the course of my reply---

**Mr. Deputy Speaker:** He will not stand to do anything after you except that the Chair will put the question.

**The Minister for Trade and Industry** (Mr. Biwott): I was hoping that because of the HIV/AIDS and the fact that he is conversant---That is known.

As hon. Members have said, HIV/AIDS is one of the calamities facing this country, and people cannot afford medicine. Therefore, we have got to do something. They will not only die from HIV/AIDS itself, but from the diseases that come in because the body cannot resist anything. In most cases, people will say they are dying out of malaria, tuberculosis or pneumonia, but that is not the real disease; it is the HIV/AIDS which has weakened the body.

Mr. Deputy Speaker, Sir, in order for our own people to benefit, we have to do something about it. Therefore, in order for our people to be independent, we need to deal with all aspects of the Bill.

There is also the question of transfer of technology. We need to have a patent and rules that administer the patenting and which will also ensure that none of the counterfeit drugs are allowed into this country, so as to motivate the people to innovate and introduce new uses, as has already been explained by Mr. N. Nyagah.

**Mr. Murathe:** On a point of order, Mr. Deputy Speaker, Sir. What assurance can the Ministry give the House on the capacity of the Government to ensure that counterfeit drugs will not enter into the country?

**Mr. Deputy Speaker:** Order! Mr. Murathe, the Chair has ruled on several occasions that hon. Members must ensure that the points of order they [**Mr. Deputy Speaker**] intend to raise are related to conduct and procedure. In this case, you are asking a question. Therefore, you are totally out of order.

Proceed, Mr. Biwott.

**The Minister Trade and Industry** (Mr. Biwott): Mr. Deputy Speaker, Sir, indeed, Mr. Murathe is totally out of order.

### QUORUM

**Mr. Katuku:** On a point of order, Mr. Deputy Speaker, Sir. It appears that we do not have quorum. I would like us to pass this Bill when we have a quorum in the House.

**Hon. Member:** Aah! We have a quorum! Sit down!

**Mr. Deputy Speaker:** Order! Order! Mr. Katuku is perfectly within his rights to raise the issue of quorum. We do not know whether we have a quorum or not. I have not even counted the hon. Members present. So, let me proceed and count.

Hon. Members, it is true that we do not have a quorum. So, could the Division Bell be rung?

*(The Division Bell was rung)*

**Mr. Deputy Speaker:** Order! Hon. Members, we now have a quorum. Could you proceed, Mr. Biwott?

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Deputy Speaker, Sir, with those few remarks, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time and  
committed to a Committee of  
the whole House tomorrow)*

#### ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, it is now time for us to interrupt our business. This House, therefore, stands adjourned until tomorrow, Wednesday, 13th June, 2001, at 9.00 a.m.

The House rose at 6.30 p.m.