

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 13th June, 2001

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.104

CHANGE OF LOCATIONAL NAMES

Dr. Kulundu asked the Minister of State, Office of the President, why the Government has not changed the names of Bukura, South Butso, North Butso and Shikoti locations in Lurambi Division to South Butso, Central Butso, North Butso and East Butso respectively, as recommended by the Kakamega DDC in 1997.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply. The Kakamega District Development Committee has never discussed or approved the change of names of the mentioned locations.

Dr. Kulundu: Mr. Deputy Speaker, Sir, that is a very disappointing answer from the Minister. I doubt whether he has even consulted his officers on the ground. This is a matter that has been discussed several times in our DDC meetings, and the last meeting in which this issue was discussed was on 17th June, and minutes of that meeting were forwarded to his Ministry. Is the Minister aware that the residents of Bukura and Shikoti locations are Batsoto?

Maj. Madoka: Mr. Deputy Speaker, Sir, the Question is very specific. It talks of recommendations made in 1997. I have all the minutes of the meetings held in 1997 and there is no question of the DDC recommending the suggested names.

Mr. Wanjala: Mr. Deputy Speaker, Sir, you clearly heard Dr. Kulundu saying that the minutes for that recommendation were forwarded to the Minister's office. Now that Dr. Kulundu who is also a member of the DDC has confirmed that, could the Chair defer the Question so that Dr. Kulundu can bring the minutes to confirm to the Minister that, that was the recommendation? Probably the DC did not give him the correct information.

Mr. Deputy Speaker: Mr. Wanjala, that is what Dr. Kulundu ought to have done in the first instance. He should have been armed with his evidence so that the Minister does not answer the Question the way he wants; he could have confirmed that with those minutes.

Dr. Kulundu: Mr. Deputy Speaker, Sir, in fact, I first asked this Question in 1999, but the supporting documents are not with me now. Could the Minister confirm that on receipt of these minutes, he will effect the changes that the people of Butso have requested for?

Maj. Madoka: Mr. Deputy Speaker, Sir, when I receive those minutes, then I will be able to respond.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, could the Minister tell the House the policy of the Government as concerns naming of locations and divisions? If he gets the minutes, and the policy is to grant what the people want, will he give them the names that they want?

Maj. Madoka: Mr. Deputy Speaker, Sir, normally we go by the recommendations of the DDC, and if that is their recommendation, it will certainly be implemented.

Mr. Deputy Speaker: Next Question!

Question No.305

LIST OF PARASTATALS' BOARD MEMBERS

Mr. Kaindi asked the Minister of State, Office of the President whether he could table a list of the current board members of parastatals/corporations, and the names of their respective chairmen.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Deputy Speaker, Sir, for the avoidance of doubt, the Question sought whether I could table a list of the current board members of parastatals and corporations and the names of their respective chairmen. I do not have another answer to give. I just want to table the list.

Mr. Deputy Speaker: Order! Could you tell us what that list contains first? Do not read the names.

Mr. ole Sunkuli: Mr. Deputy Speaker, Sir, I thought you were giving me the indulgence of reading a long list of 40 pages. This is the data on chairmen, chief executives and board members of State corporations and national statutory boards as of June, 2001. It is touching on all the Ministries in the Government.

(Mr. ole Sunkuli laid the document on the Table)

Mr. Deputy Speaker: Thank you, very much.

Mr. Kaindi: Mr. Deputy Speaker, Sir, what the Minister has done is right, but I should have been given a copy of that list to peruse through so that I can have the opportunity to ask the questions that I would have liked to ask. Since I do not have that list, it will be very difficult for me to ask any question. Is it possible, therefore, to defer the Question so that I can have a look at that list before I ask any questions?

Mr. ole Sunkuli: Mr. Deputy Speaker, Sir, I think that is fine.

Mr. Deputy Speaker: That is a fair request. The Question is deferred to Wednesday, next week!

(Question deferred)

Mr. Deputy Speaker: Next Question!

Mr. Kombe: Mr. Deputy Speaker, Sir, I have not received the written answer.

Question No.321

ISSUANCE OF ID CARDS

Mr. Kombe asked the Minister of State, Office of the President:-

(a) whether he is aware that young people in Mambui and Ngomeni in Magarini Constituency are denied the right of obtaining identity cards; and,

(b) what criteria the Government is using in the issuance of identity cards to citizens in this area.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The Government issues identity cards to citizens who have been duly recommended by the local administration.

Mr. Kombe: Mr. Deputy Speaker, Sir, the Minister is now aware, but I would like to tell him that there are over 200 youths in Mambui and Ngomeni who applied to obtain identity cards, but up to now they have not. They have provided their birth certificates, their parents' and even their grandparents' identification papers, and yet they have not received the identity cards. I do not know what else is required for those youths to obtain this important document.

Maj. Madoka: Mr. Deputy Speaker, Sir, this may be a question of the delay, but they have not been denied the identity cards. In the entire Malindi District, I know, up to June, 711 identity cards were issued.

Mr. Kihoro: Mr. Deputy Speaker, Sir, could the Minister explain the criteria of the recommendation? Who actually does the recommendation, because you have said that a person cannot be given an identity card until he or she is registered? Who does the recommendation and on what basis do you put people in such powerful positions to decide whether somebody should have an identity card or not?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am sure the hon. Member knows. You have got to prove that the person was born and resides in this country and he has his parents here. Then he would be issued with an identification card.

Mr. Odongo: Mr. Deputy Speaker, Sir, could the Minister tell the House how many non-Kenyans were

issued with identity cards last year?

Maj. Madoka: Mr. Deputy Speaker, Sir, that is a different Question, and I do not think I am in a position to answer it.

Mr. Deputy Speaker: Not only is it different, but non-Kenyans cannot be issued with Kenyan identity cards!

An. hon. Member: They do!

Mr. Deputy Speaker: Order! That is not a matter that can be settled in the House!

Mr. Anyona: Mr. Deputy Speaker, Sir, the Minister says that people get identity cards on recommendation. Is the Minister aware that it is mandatory under the Act that once a Kenyan citizen attains the age of 18 years, he must have an identity card? In fact, he is breaking the law by denying people who have reached age 18 to obtain identity cards when the law requires them to do so.

Maj. Madoka: Mr. Deputy Speaker, Sir, we have not denied any Kenyan an identity card. We only have to be satisfied that, that person is a Kenyan.

Mr. Muchiri: Mr. Deputy Speaker, Sir, is the Minister aware that, currently, we have more than two Kenyans possessing the same identification card numbers as a result of which there has been a double registration in the register of voters?

Maj. Madoka: Mr. Deputy Speaker, Sir, that could be a possibility, and if we have such a case, that can easily be rectified.

Mr. Kamolleh: Mr. Deputy Speaker, Sir, this problem is not only in Magarini. There are several of such problems in Matuga. The problem actually arises from the fact that the centre is about 15 kilometres away from the villages and many of the people do not have money to travel to those centres and most of them have been discouraged. When they arrive at the centres, they are told that there is no film and many other items are missing. Does the Government really want to give those young people identification cards? They should have first of all made sure that those facilities are there.

Mr. Deputy Speaker: What is your Question?

Mr. Kamolleh: Mr. Deputy Speaker, Sir, could the Minister assure this House, that from now onwards - not only in Magarini or Matuga, but in the whole country - he will make sure that facilities will be provided to make sure that identity cards are issued to these young people?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am aware of problems that people undergo. Indeed, they find it difficult to move to the various centres where this is done, and we are looking at the possible ways to ensure that we simplify the procedure.

Mr. Sungu: Mr. Deputy Speaker, Sir, speaking from the Government side for the first time, I would like to ask the Minister when he will simplify the procedures for getting identity cards and deliver the same to the recipients, because this problem is in all constituencies in Kenya. We have heard that some identity cards are lying in different district offices without being delivered to their rightful owners. Could he mobilise the chiefs and the provincial administration to do the same?

Maj. Madoka: Mr. Deputy Speaker, Sir, we are looking at ways of simplifying the process.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, on a much more fundamental issue, could the Minister explain to the House why Kenyan citizens should pay for identity cards when an identity card is the property of the State, and it is the right of a Kenyan citizen to be identified by the State as such?

Maj. Madoka: Mr. Deputy Speaker, Sir, normally we get people to pay when they have lost their identity cards. But on issue of the first card, they do not pay.

Mr. Kombe: Now that the Minister is aware that youths from Mambui and Ngomeni have been denied their rights to obtain identity cards, could he assure this House that he will do the needful for these youths to get identification cards this week?

Maj. Madoka: Mr. Deputy Speaker, Sir, I cannot guarantee that they will get them this week. In any case, this week has come to an end. But we are examining the whole process.

Question No.368

REPLACEMENT OF RETIRED CHIEFS

Mr. Deputy Speaker: Dr. Murungaru is not here? We will come back to the Question.
Next Question, Dr. Oburu!

Question No.299

RETIREMENT OF MRS. DIETTO

Dr. Oburu asked the Minister for Agriculture:-

(a) whether he is aware that Mrs. Mercy Dietto, an Accountant with Nyayo Tea Zones Development Authority requested for a transfer from Meru to Nairobi due to maternal health complications but was instead retired on medical grounds on 31st August, 1999 with no benefits paid; and,

(b) whether he could consider reinstating Mrs. Dietto and paying all her dues.

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, I would like to request that this Question be deferred until next week. We received the answer yesterday and we are still scrutinising it. We have not got all the details. Therefore, I would like to request that we be given until Wednesday next week to answer the Question.

Mr. Deputy Speaker: When did you receive the answer?

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): We received answers from the field officers.

Mr. Deputy Speaker: But this Question has been with you for the last two months.

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, we got the answers earlier but we asked for more details which were provided yesterday. We have not compiled the final answer. I beg that we be given until Wednesday next week to come and answer.

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, hon. Dr. Oburu has said this Question was sent to the Ministry two months ago. When an Assistant Minister comes in here and asks for more time to go and get a better answer, and we have given them two months, does the Government realise that those hon. Members who filed Questions stand to lose them if they are not answered within a given Session of this Parliament because of such a delay?

Mr. Deputy Speaker: Order, Mr. Nyagah! You cannot direct question to the Chair! You have [Mr. Deputy Speaker] asked me a question and I decline to answer!

Mr. Anyona: Mr. Deputy Speaker, Sir, the Ministry does not require two months in order to answer a Question. They require only 14 days as stated under the Standing Orders. He had more than 14 days. The Assistant Minister says he got an answer which did not please him and he went for another one. Who is this who is holding Parliament to ransom? Who are they taking these answers from? How can Parliament operate like this?

Mr. Deputy Speaker: Order, hon. Members! The Chair cannot compel a Minister to answer a Question. When a Minister does not answer a Question, look at what the Standing Orders say. That would be considered to be a disorderly conduct and certain punishment will follow. Do not ask the Chair to compel a Minister to answer a Question and more particularly when a Minister has been frank enough to say he does not have an answer. I think we should be fair enough to allow him to provide that answer. But the Standing Orders are very clear that normal Questions should be answered within 14 days.

So, Mr. Assistant Minister, whether the answer is coming to you from Tierra del Fuego or the North Pole, please, make sure that it is answered within 14 days. Let us not go over this again because we have done it before. That Question is deferred to Wednesday, next week.

(Question deferred)

Next Question, Mr. Muturi!

Question No.312

RURAL ELECTRIFICATION IN MBEERE

Mr. Muturi asked the Minister for Energy:-

(a) how much money, if any, had been set aside for rural electrification in Mbeere District for the last five years and how much of that was spent and on which projects; and,

(b) how much of that money was intended for projects within Siakago Constituency.

The Assistant Minister for Energy (Mr. Leting): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Over the last five years, a total of Kshs37 million has been budgeted for rural electrification in Mbeere District through the normal Government budgetary process. Government budgeting is based on anticipated revenue, which is not always realised. Also, a large portion of rural electrification funds is spent on operations and maintenance. Accordingly, the planned target is not normally achieved. The undermentioned projects were implemented in Mbeere District over the same period at a total cost of Kshs8.2 million:-

Weru Academy	Kshs0.3 million
Kangugi School and environs	Kshs5.3 million
Muchokonoke	Kshs2.6 million

Total Kshs8.2 million

(b) Rural Electrification Programme budgeting process is not available on constituency basis for Mbeere District. However, all the three projects I have mentioned are in Siakago Constituency.

Mr. Muturi: Mr. Deputy Speaker, Sir, I have in my possession two answers. One is signed by hon. Dr. Masakahlia and another one by hon. Raila. One of the answer talks about Karaba Coffee Factory at a cost of Kshs2.93 million and another one talks of Weru Academy being electrified at a cost of Kshs0.25 million. First of all, there is nothing like Karaba Coffee Factory in Mbeere District.

In the answer given by hon. Raila, numbers one and two are not in Siakago Constituency. This is confusion! Could I be told which is which so that we can proceed?

Mr. Leting: Mr. Deputy Speaker, Sir, the correct answer is the one signed by hon. Raila!

Mr. Deputy Speaker: Order, hon. Members! Well, these are some of the consequences of these reshuffles. They bring in their wake, a little confusion. I think to be fair to hon. Muturi, I will defer that Question to Wednesday, next week, so that the Minister can go and harmonise the two answers.

An. hon. Member: We should go by what the new Minister has signed!

Mr. Deputy Speaker: But we have another answer in our records by another man who calls himself "Y.F.O.O. Masakhalia?"

Question deferred)

Next Question, Mr. Kihara!

Question No.269

TERMINAL BENEFITS FOR MR. BARAGU

Mr. Deputy Speaker: Mr. Kihara is not here? We will come back to the Question later.

Next Question, Mr. Gitonga!

Question No.281

POLLUTION OF BATHI RIVER

Mr. Gitonga asked the Minister for Health:-

(a) whether he is aware that

sewage water from Kimende Trading Centre drains into the Bathi River; and,

(b) what measures he is taking to arrest the situation before an outbreak of water-borne diseases ensues.

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

(a) I am not aware that sewage from Kimende Trading Centre drains into the Bathi River.

(b) The Ministry is constantly monitoring the quality of water supply and educating the people on basic hygiene practices as a means of preventing the outbreak of water-borne diseases.

Mr. Gitonga: Mr. Deputy Speaker, Sir, first of all, I have not received the answer to this Question. Secondly, I should have corrected this Question to read "waste water" from Kimende Trading Centre instead of "sewage".

Is the Assistant Minister aware that waste water from Kimende Trading Centre is being drained into the

Bathi River?

Dr. Galgalo: Mr. Deputy Speaker, Sir, I apologise that the hon. Member does not have a written answer. But I would like to inform him that there is no sewage supply to Kimende Trading Centre. What we have there are pit latrines, a few of them have their own waste water sock-pits and quite a handful have septic tanks within their plots. So, there is no drainage of any kind of waste to the Bathi River which is more than a kilometre away.

Mr. Kihoro: On a point of order, Mr. Deputy Speaker, Sir. In the first part of his answer, the Assistant Minister said they monitor the river to make sure that there is no undesirable content in the water. Now you are telling us that people have pit latrines and there is no effluent getting into the river.

Could he confirm that the first part of his answer is, therefore, contradictory?

Mr. Deputy Speaker: Order, Mr. Kihoro! You have not raised any point of order! You have asked a question. I would have given you a chance to ask a question anyway, but now you have ruined it.

Mr. Gitonga: Mr. Deputy Speaker, Sir, the Assistant Minister does not seem to be fully informed. I have followed the trench that drains all the waste water from Kimende Trading Centre into the Bathi River. I have followed it up to the river. If he is in doubt, would he accompany me to Kimende and I will show him this drainage that goes to the Bathi River?

Dr. Galgalo: Mr. Deputy Speaker, Sir, we have got public health officers on site and this answer is based on a report which they gave us. Effluent and waste water from Kimende Trading Centre does not go as far as the Bathi River. We do monitor the level of pollution on the Bathi River because that is the source of water for the people of Kimende Trading Centre.

Mr. Gitonga: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister continues to mislead this House.

I have told him that I have been there and I have followed this trench all the way, down to the river. If he is in doubt, I challenge him to accompany me to that place so that he can see for himself rather than follow this misleading information from his officers on the ground.

Dr. Galgalo: Mr. Deputy Speaker, Sir, I have no reason, whatsoever, to doubt my officers. When Mr. Gitonga filed this Question, we actually sent a team from the Ministry headquarters to go and verify what the hon. Member has claimed. They came back with a report that waste from the trading centre does not get to the river because the river is a kilometre away from the centre. So, I do not understand what I need to go and see.

Mr. Michuki: On a point of order, Mr. Deputy Speaker, Sir. Yesterday, we had a Question by hon. Munyao here. He tried to get this Assistant Minister to visit a health centre but he refused. He is now refusing another request. Is he in order to treat Questions like this in the House?

Dr. Galgalo: Mr. Deputy Speaker, Sir, as you will recall, Mr. Munyao was, in fact, mixed up! He was not even sure about the health facility. He was the one who needed to go out and familiarise himself with the facility, first. That is why I did not go. But as far as this Question is concerned, since that is a serious matter, although I have said that I trust my officers, I will go there and look at it, if the hon. Member insists.

Mr. Deputy Speaker: Order! At the end of the day, this House holds the Minister personally responsible for the answer he gives before the House. In the past, I have had occasion to rule that we do not accept excuses of bad answers being attributed to some civil servant, who is not in this House. So, Mr. Assistant Minister, if a Member insists that what he is saying is correct, and you are saying that you believe your officers, the flip side of that coin is that you are not believing the hon. Member.

So, really, it does not cost you very much to go and visit the site and satisfy yourself, so that when you speak here, you speak with your own authority and knowledge on that subject.

Dr. Galgalo: Mr. Deputy Speaker, Sir, I have already obliged that I will visit the area with Mr. Gitonga.

Mr. Gitonga: Which date?

Mr. Deputy Speaker: Order! You can agree with him on the date.

Next Question!

Mr. Ndilinge: Mr. Deputy Speaker, Sir, although I do not have a written answer, may I ask Question No.367.

Question No.367

COMPLETION OF HEALTH CENTRES

Mr. Ndilinge asked the Minister for Health when Mutiluni, Mavivye, Muua and Mbyani health centres, which were built on Harambee basis, will be completed, staffed and supplied with drugs.

The Assistant Minister for Health (Dr. Wako): Mr. Deputy Speaker, Sir, I apologise that the hon. Member does not have a written reply. However, I beg to reply.

Mutiluni, Mavivye, Muua and Mbyani health centres are community-built projects and have not been taken over by the Ministry. It is, therefore, difficult to state when they will be completed. The Minister will,

however, consider staffing and supplying the facilities with the drugs once they are completed and handed over.

Mr. Ndilinge: Mr. Deputy Speaker, Sir, first of all, is the Chair satisfied with the Assistant Minister coming here with copies of answers, when the Member who has asked the Question has no copy? However, now that he has realised that there is Mutiluni, Mavivye, Muua and Mbyani dispensaries, and not health centres, which have been built almost to completion by the wananchi--- Now that you are aware that the common man has done his part, when are you going to staff those dispensaries and supply them with drugs?

Dr. Wako: Mr. Deputy Speaker, Sir, as far as we are concerned, Mbyani Dispensary is actually complete and is being operated by the Catholic Church. Muua Dispensary, which was constructed by the community in 1999, is neither staffed nor operational. But it needs to be completed. Maviloni, Mavivye and Mutiluni dispensaries are 80 per cent complete. If the hon. Member could actually encourage the community to complete the two dispensaries and then apply through the District Development Committee (DDC) for the Ministry to take them over, we can consider taking them over.

Mrs. Mwewa: Mr. Deputy Speaker, Sir, when you compare the distance from Mavivye to Mombasa Road, it is too long. If the community has done 80 per cent of the works, could the Assistant Minister consider sending a nurse or a clinical officer to those dispensaries? There is a house for a clinical officer to be accommodated in. Could he do that, instead of the people walking long distances to Machakos and Sultan Hamud?

Dr. Wako: Mr. Deputy Speaker, Sir, while I appreciate the hon. Member's concern for the patients, which is actually the concern of the Ministry, we would ask the hon. Member for the area to complete those dispensaries, so that we can be in a position to take them over.

Mr. Ndilinge: Mr. Deputy Speaker, Sir, the people from those areas suffer from financial constraints. In those days, we were assured by the Government that we were supposed to do 25 per cent, and the rest of the work was to be done by the Government. But here is a community that has done 80 per cent of those projects. Could the Assistant Minister tell us whether the Government will do the remaining 20 per cent?

Dr. Wako: Mr. Deputy Speaker, Sir, I am not aware of the Government commitment to do 20 per cent. What happened is that through the DDC, the community requested to put up the---

Mr. Ndilinge: On a point of order, Mr. Deputy Speaker, Sir.

Dr. Wako: Let me finish!

Mr. Deputy Speaker: What is your point of order, Mr. Ndilinge?

Mr. Ndilinge: Mr. Deputy Speaker, Sir, is it in order for the Assistant Minister to mislead this House by saying that his Ministry was not aware the community was supposed to do 25 per cent? Now, I am telling you that the community has gone ahead and done 80 per cent!

Mr. Deputy Speaker: Order! The Assistant Minister has stated very clearly that he is not aware of any Government commitment to do 20 per cent! Therefore, the onus stands on you to produce that evidence that the Government undertook to do the 20 per cent.

Dr. Wako: Mr. Deputy Speaker, Sir, as I was saying, it is the community which decided to put up those dispensaries. We request the hon. Member to mobilise the community to complete them, and then we can take them over.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. This Government levies taxes from the people of Kenya to provide some of those facilities. Here is a community which has done work up to 80 per cent.

Could the Assistant Minister undertake to provide the balance of 20 per cent?

Mr. Deputy Speaker: That is not a point of order!

Mr. Angwenyi: All right! My point of order is this---

Mr. Deputy Speaker: Order!

Mr. Anyona: Mr. Deputy Speaker, Sir, is the Assistant Minister telling this House that this Government has no responsibility at all to the people of Kenya in providing health facilities and services? What is the policy? Who puts up dispensaries, health centres and hospitals? What are you saying? What is he telling Parliament?

Dr. Wako: Mr. Deputy Speaker, Sir, this Government has a lot of responsibility. So far, 1,440 dispensaries are being run by the Government. An equal number of dispensaries are being run by the Catholic Church. But due to the distance and desire for more health facilities, the public actually demand for dispensaries, which they oblige to put up. We normally take them over, although we cannot take over all of them. But we have given an undertaking that we will take those ones over.

Mr. Ndilinge: Mr. Deputy Speaker, Sir, now that the Assistant Minister has accepted that the Ministry is not in a position to complete those dispensaries, could he tell the House whether his Ministry will organise for mobile clinics to serve people in those areas? That is because, as we are talking now, there is malaria outbreak in those areas!

Mr. Deputy Speaker, Sir, could he assure the House that he will do something?

Dr. Wako: Mr. Deputy Speaker, Sir, I think it is the hon. Member who should promise this House that he will complete the dispensaries fully, so that we could be in a position to take them over. On the question of mobile clinics, we are not given enough funds to manage them.

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to insist that a Member of Parliament should initiate projects, while the Government is the sole initiator of projects?

Mr. Deputy Speaker: Order! You know that is not a point of order! Really, hon. Members, we must stop this joke! Your Standing Orders are very clear on what you should do when you stand on a point of order! The Chair has elaborated on that issue more than once. If you want to ask a question, just stand up and try your luck. But it is no good shouting that you want to raise a point of order when, in fact, all you are doing is to ask a question. So, let us put a stop to this.

Mr. Ndilinge: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to tell me to go and complete those projects, while he knows very well that I am talking about medicine to my people? I am not a clinical officer. How am I going to help those people?

An hon. Member: Harambee!

Mr. Deputy Speaker: Order! Order! The Assistant Minister is certainly not in order to tell you to go and provide service which is supposed to be provided by the Government. But the question you asked, which the Assistant Minister has not answered, is whether he will send there a mobile clinic to alleviate the suffering.

Proceed!

Dr. Wako: Mr. Deputy Speaker, Sir, we will try and send a mobile clinic. But the Government is being accused of starting white elephant projects. We do not want these dispensaries which are 80 per cent complete to be white elephant projects.

Mr. Deputy Speaker: Order! You are answering a question which you have not been asked. Just say whether you will send a mobile clinic or not.

Dr. Wako: I have said that, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Question, Prof. Anyang'-Nyong'o!

Question No.370

COMPLETION OF KISUMU-YALA ROAD

Prof. Anyang'-Nyong'o asked the Minister for Roads and Public Works:-

- (a) how soon the Government will complete the rebuilding of the Kisumu-Yala Road; and,
- (b) whether he is aware that the work currently being done by the contractor is substandard.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The contract for repair and resealing of Kisumu-Yala Road Project will be completed on 30th April, 2002.

(b) I am not aware that the work being done by the contractor on Kisumu-Yala Road Project is substandard. However, arising out of this Question, we have sent a team to recheck the results that we have received before.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I would plead with the Assistant Minister to listen very carefully to the cries of the people in that area. It is only Ayah Bishan Singh who is the contractor on this road, who builds roads the way he does. I have not seen roads being built anywhere like that in Kenya. First, there is not a single piece of ballast being used to build the road. The contractor is using soil after soil, heaping murrum after murrum and then pouring tarmac on the road. So, the bits that have been done are already having potholes.

Mr. Deputy Speaker, Sir, secondly, he is fond of chipping into the road as if he is building culverts the way he did the Kisumu-Miwani Road. That is currently going on. I would like the Ministry and the Government to tell this nation whether a Trans African Highway, should be built the way Ayah Bishan Singh is building the Kisumu-Yala Road. This is a Trans African Highway carrying goods from Mombasa to Kampala. Could the Assistant Minister assure this House that the money being spent on that road will be spent usefully to construct a road that will stand the test of time and that it will stand the heavy tankers running on that road?

Eng. Rotich: Mr. Deputy Speaker, Sir, I said we have sent a team to check the results. We intend to build a good road and if this particular contractor is not doing the right thing, we intend to take action against him.

Mr. Kombo: Mr. Deputy Speaker, Sir, I think the question of substandard roads is a very prevalent problem in this country. Apart from the contractors doing shoddy jobs, the Government has got engineers who are supposed to supervise and check that the roads have been done properly. Even if you take the *El Nino* roads, we are told that Government engineers are asking for 3 per cent from contractors before they can give certificates. What is the Government doing to ensure that there is proper supervision from Government engineers to ensure that good roads are built?

Eng. Rotich: Mr. Deputy Speaker, Sir, I am not aware of the percentage that is being talked about. But in quality control, we have a laboratory and we test at certain intervals, usually every 50 metres. We take samples and test and compare them with the specifications. This is what we are going to recheck. The results we have appear to be good but we have sent a team from the headquarters to check and then, we compare with what we have.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, would the Assistant Minister tell this House how much money is being spent on this road and how long it is?

Eng. Rotich: Yes, Mr. Deputy Speaker, Sir, I can do that. The road is about 46 kilometres long and the total cost is Kshs322,175,490.

Mr. Odongo: Thank you, Mr. Deputy Speaker, Sir. Could the Assistant Minister tell the House when this contract was awarded and how much of construction work has so far been completed?

Eng. Rotich: Mr. Deputy Speaker, Sir, I do not have the percentage of completion but I have the date when the contract was awarded; that is, 29th June, 2000. The contract period is 18 months, commencing on 1st November, 2000, and is scheduled for completion on 30th April, 2002.

Mr. Wanjala: Thank you, Mr. Deputy Speaker, Sir. Roads in this country have become a serious problem to Kenyans. What is the Government policy about roads? Currently, along the lake region where fishing is done, there are no roads. Could the Assistant Minister tell this House the Government policy on roads along the lake region to enable fish to be transported to the factories?

Eng. Rotich: Mr. Deputy Speaker, Sir, the policy of the Government is to provide roads which are motorable. We may not have achieved it, but that is the Government policy.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, it is only in this country where the Government patches a new dress with old rags. It is not only on this road where the Government uses soil, as Prof. Anyang'-Nyong'o was saying, to patch up a tarmac road. Could this Assistant Minister undertake to ensure that if this road is going to be redone, it is going to be recarpeted not using earth or soil, but tarmac? Could he undertake to ensure that what they are doing now does not happen?

Eng. Rotich: Mr. Deputy Speaker, Sir, I thought that is what I had said; that a team is already on site checking these results.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the Assistant Minister has said that he is not aware that the work that is being on the road is substandard. Could he tell the House what specifications the Government gave the contractor for building the road, because from those specifications, I will be able to tell the Assistant Minister that part of the Obote Road, even from a layman's point of view, is substandard? Could he tell us what the specifications are?

Eng. Rotich: Mr. Deputy Speaker, Sir, I do not have the specifications with me now, otherwise I would have tabled them.

Mr. Deputy Speaker: When your team has completed its inspection and you are bringing that report here, include the specifications.

Eng. Rotich: Mr. Deputy Speaker, Sir, we have given them three weeks to give us the report.

Mr. Deputy Speaker: Thank you very much. Dr. Murungaru's Question for the second time.

Dr. Murungaru: Mr. Deputy Speaker, Sir, before I ask my Question, I beg to apologise for coming late.

Question No.368

REPLACEMENT OF RETIRED CHIEFS

Dr. Murungaru asked the Minister of State, Office of the President:-

- (a) what the position of the Government is regarding replacing chiefs and assistant chiefs who have reached retirement age or have been retired in public interest; and,
- (b) what plans the Government has regarding chiefs and assistant chiefs who have retired in

Kieni East and Kieni West Divisions, Nyeri District.

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, before I reply to this Question, I would like to apologise for not having supplied the hon. Questioner with the written answer. The answer was prepared and I had even signed it. I thought that the hon. Member would have gotten a copy by now. I apologise for that.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government policy is to replace all chiefs and assistant chiefs when they retire or have their services terminated by advertising the vacant positions.

(b) The posts have been advertised; the closing date is 22nd June, 2001.

Dr. Murungaru: Mr. Deputy Speaker, Sir, I accepted the Minister's apology for not having supplied me with the written reply to the Question. However, I am dissatisfied with the reply the Minister has given this House. In both Kieni East and Kieni West Divisions, five out of the ten chiefs are due for retirement this year. In fact, one of them has already been retired but his replacement has not been identified four months later. I am particularly concerned about Thego Location where the chief has been interdicted and reinstated four times for involving himself in criminal activities, including raping a woman. That chief has been reinstated even after being convicted by a court of law. I doubt whether it is the Government's policy to reinstate people with criminal records into Government service.

What action will the Minister take against chiefs who bribe senior administration officers at Nyeri Provincial Headquarters so that they can be reinstated, even after being convicted in a court of law? I am referring to the Chief of Thego Location, Kieni East Division.

Maj. Madoka: Mr. Deputy Speaker, Sir, if the said chief is a criminal, he should not have been reinstated. However, I am not aware of that development. So, I will find out the facts of the matter and report back to the House accordingly.

Mr. Twaha: Mr. Deputy Speaker, Sir, could the Minister confirm whether it is true that the number of locations in some parts of the country are set to be reduced?

Mr. Deputy Speaker: Order, Mr. Twaha!

Mr. Wamae: Mr. Deputy Speaker, Sir, could the Minister note that many chiefs and assistant chiefs in Nyeri District are not qualified for those jobs? Why has the Minister given us substandard chiefs and assistant chiefs, some of whom have criminal records?

Maj. Madoka: Mr. Deputy Speaker, Sir, if the hon. Member had brought specific names of such chiefs and assistant chiefs, I would find out how they were recruited.

(Mr. Biwott consulted with an officer on the Civil Bench)

Mr. Deputy Speaker: Order! Mr. Biwott, you cannot do that here. If you want to consult with the officer tentatively, go into the next chamber. You cannot use this Chamber as an extension of your office.

(Applause)

Mr. Gatabaki: Mr. Deputy Speaker, Sir, considering the amount of public outcry regarding criminal activities involving chiefs and assistant chiefs vis-a-vis the huge amounts of public funds used to pay them, only for them to engage in criminal activities and harassment of innocent people; could the Government consider abolishing the offices of chiefs and assistant chiefs? Sometime back, the Provincial Administration was all set to abolish those offices only for the President to intervene and have that decision reversed.

Mr. Deputy Speaker: Why did you not declare your interest?

Maj. Madoka: Mr. Deputy Speaker, Sir, at the moment, the Government has no intention of abolishing any of the offices of chiefs and assistant chiefs.

Mr. Munyasia: Mr. Deputy Speaker, Sir, in a number of places, when chiefs retire, they are promoted to paramount chiefs. How many of those chiefs who have retired in Kieni East and West Divisions, among other locations in Nyeri District, since 1992, have been promoted to paramount chiefs?

Maj. Madoka: Mr. Deputy Speaker, Sir, I think that is a different Question. If it is brought here as a Question, I will answer it appropriately.

Mr. Deputy Speaker: The last one, Dr. Murungaru!

Dr. Murungaru: Mr. Deputy Speaker, Sir, I have just brought to the attention of the Minister the fact

that one chief who has completely brought development efforts to naught in his area of jurisdiction has been interdicted and reinstated four times. The most recent reinstatement took place only two weeks ago, after he had been convicted in a court of law. When will the Minister remove that chief from office and replace him with a competent, upright, qualified and God-fearing person?

Maj. Madoka: Mr. Deputy Speaker, Sir, if the hon. Member gives me the name of that chief, we will look into the matter. At the moment, I am not aware of the chief he is talking about.

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead this House that whenever a vacancy arises, they advertise it when, in Nairobi, they promote administration policemen (APs) to the rank of chiefs? That is what has been happening for the last two years.

Maj. Madoka: Mr. Deputy Speaker, Sir, if that is what has been happening, it is wrong. Whenever a vacancy arises, we advertise it, inviting applications from interested persons. Then, we appoint the most appropriate person to fill the post.

Mr. Munyasia: On a point of order, Mr. Deputy Speaker, Sir. Part (b) of the Questions reads: "What plans has the Government regarding chiefs and assistant chiefs who have retired in Kieni East and [Mr. Munyasia] Kieni West Divisions, Nyeri District." I asked the Minister: "In view of the fact that in some areas, retiring chiefs and assistant chiefs have been promoted to the rank of paramount chiefs, how many retiring chiefs and assistant chiefs from Nyeri District have been promoted to the rank of paramount chief?", to which he said it was irrelevant. Will the Chair rule that the question is relevant and compel the Minister to answer it now? What has he been doing?

Mr. Deputy Speaker: Order! Mr. Minister, do you have an answer for that question?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am not aware of any chief or assistant chief who has retired in Kieni and who has been promoted to the rank of paramount chief.

Question No.269

TERMINAL BENEFITS FOR MR. BARAGU

Mr. Deputy Speaker: Mr. Kihara is still not here? The Question is dropped!

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

ISSUANCE OF BIRTH CERTIFICATES

Mr. Maitha: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that persons of Asian and Arab origin in Kenya are forced to travel all the way from Mombasa to Nairobi to apply for their birth certificates?

(b) Is he further aware that the same people have been forced to visit the Department of Civil Registration regularly to check on their documents?

(c) What remedial action is the Minister taking to facilitate registration of births for Mombasa residents?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) I am also not aware.

(c) Arising from my answers to parts (a) and (b) of the Question, part (c) does not arise.

Mr. Maitha: Mr. Deputy Speaker, Sir, Nyali, Old Town and Kizingo areas of Kisauni Constituency are inhabited by Kenyans of Arab and Asian origin. Three weeks ago, I was approached by Arabs and Asians whose children have not been issued with birth certificates by the District Registrar of Births and Deaths, Mombasa. When I visited his office, that officer told me that the law requires that those people travel to Nairobi to acquire the birth certificates for their children. That officer also made that point very clear in a press statement. This position resulted in a massive protest demonstration in Mombasa. Is the Minister in order to mislead the House that he is not aware of this development, when he knows that a massive demonstration to protest against this provision was held in the streets of Mombasa?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am certainly unaware of people who have had to travel to Nairobi in order to get their birth and death certificates. Under the Births and Deaths Registration Act, all persons born in Kenya are required, and it is their right, to be registered within six months. After six months, that is not a right; they are entitled to late registration.

For late registration, they only have to go to the District Registration Officer (DRO) and, then, he or she does the initial vetting. The DRO refers the matter to the headquarters, where there is an immigration or the registration bureau and, then, they advise the District Registration Officer to issue the certificates if all is well. They are not required to travel to Nairobi in order to get those certificates. If, indeed, they have travelled to Nairobi, that has been their own wish.

Mr. Twaha: Mr. Deputy Speaker, Sir, before the collapse of the "Iron Curtain," the Government obtained a lot of money from America by taking a hardline stance against perceived communists. Is the Government trying to revive its fortune by now persecuting Muslims in order to carry favour from America?

An hon. Member: Confirm or deny!

Maj. Madoka: Mr. Deputy Speaker, Sir, I deny in the strongest possible terms.

Mr. Shill: Mr. Deputy Speaker, Sir, the Minister said that he is not aware of that issue, but the whole country knows that people in Mombasa are demonstrating against that unjust way of dealing with people. Could the Minister order, through this House, and to the nation, that Kenyans of Arab and Asian origin have got the same rights like other Kenyans?

Maj. Madoka: Mr. Deputy Speaker, Sir, I have said that in a statement that I issued; that every Kenyan is a Kenyan, and it does not matter what colour or creed he or she is; he or she is entitled to registration.

Mr. Kajembe: Mr. Deputy Speaker, Sir, the Minister must be frank on that issue. That issue involving Arabs and Indians has now been extended to Muslims in Mombasa. That is why Muslims in Mombasa are carrying out demonstrations. Can this Minister issue a statement indicating that those Muslims living in Mombasa will be equally treated with the rest of Kenyans?

Maj. Madoka: Mr. Deputy Speaker, Sir, I have said that all Kenyans are treated equally.

Mr. Munyao: Mr. Deputy Speaker, Sir, it is worrying when a Minister in the Government stands here and says that he is not aware; it is either he has no eyes or no--- This is because, last week, there was a major demonstration which was covered in the media. I have also seen the Minister issuing a statement to the media in his own constituency, where he assured the people in Mombasa that their claims will be considered by the Government. Is the Minister now retracting from the answer that he publicly gave, which I am a witness to?

Maj. Madoka: Mr. Deputy Speaker, Sir, first of all, if there was a demonstration, it does not necessarily mean that it was justified.

Mr. Muiruri: Mr. Deputy Speaker, Sir, is the Minister aware that in Kenya, today, a lot of Arabs, Somalis, Ethiopians and Asians have acquired for themselves Kenyan citizenship through corruption? Maybe, that is one of the ways in which corruption takes place, and that is why some people are now being forced to come to Nairobi because it is all a matter of corruption. Mr. Minister, are you aware of that?

Maj. Madoka: Mr. Deputy Speaker, Sir, I am not aware of that, but if there are any specific cases, they should be brought forward, and we will look into them. But, in fact, one of the reasons why we have to pursue the procedure very vigorously is to try and ensure that we do not register non-Kenyans.

Mr. Wamae: Mr. Deputy Speaker, Sir, that is a very serious matter. Could the Minister consider establishing a better registration office in Mombasa, even by increasing the number of immigration officers there, rather than asking the people in Mombasa to come to Nairobi? Would you consider that as a better solution?

Maj. Madoka: Mr. Deputy Speaker, Sir, we are not prepared to consider that because it is not a question of lack of personnel. That is not the issue.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, Section 82 of our Constitution talks against discrimination of any kind against any Kenyan. But if the Minister wants us to believe that they have not been discriminating against the Asians and Arabs, could he tell us how many cases of late registration were effected in Mombasa in the past one year? Could he confirm that none of such cases have been referred, in the past one year, to Nairobi in order to get late registration?

Maj. Madoka: Mr. Deputy Speaker, Sir, I did not come prepared to give the number of those late registrations, but if that is required, I would, certainly, do so.

Mr. Shill: Mr. Deputy Speaker, Sir, is it in order for the Minister to evade answering question, because what we are saying is that people have been refused to register themselves, and he is saying that is not true. What action is he taking? Is it in order for him to evade answering that question? This is because the whole nation is waiting for him.

Maj. Madoka: Mr. Deputy Speaker, Sir, maybe, the hon. Member could ask his question again.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, a very legitimate question was asked, and we want to plead with the Chair. Could the Question be deferred, so that the Minister will lay on the Table, the number of cases for late registration involving Asians and Arabs that were locally handled in Mombasa? We want him to lay that on the Table, so that he can convince us.

Mr. Deputy Speaker: Order! The Minister did say that if that is what the House wants, he would comply. Really, what you should be asking is when he will do that.

Dr. Ochuodho: That is right.

Mr. Shill: Mr. Deputy Speaker, Sir, my question was not answered by the Minister!

Mr. Deputy Speaker: Order!

Maj. Madoka: Mr. Deputy Speaker, Sir, I would request two weeks.

Mr. Deputy Speaker: Then, it is okay.

Mr. Maitha: Mr. Deputy Speaker, Sir, I want to ask my last question because there is a very high demand for late registration by Asians and Arabs, and the DRO in Mombasa is refusing to see the applicants in his office. There is a very big danger looming in Mombasa because of the on-going demonstrations there. Could the Minister ensure removal of that officer from Mombasa and replacing him with another officer because of the danger posed by the on-going demonstrations? This is because that officer does not even have public relations skills to enable him tackle the issue of late registration as per the law.

Maj. Madoka: Mr. Deputy Speaker, Sir, one may ask: Why is there this sudden urge of late registration by the people in question? But on the question of the individual officer, we will look into it. If his public relations is bad, we will, certainly, consider removing him.

SUPPORT FOR SCHOOL FEEDING PROGRAMME

(Mr. Achuka) to ask the Minister for Education:-

(a) Is the Minister aware that school children/students in Turkana District risk being expelled from schools and colleges as the parents are unable to pay school fees?

(b) What action has the Minister taken to ensure continued support of school feeding

[Mr. Achuka]

programme and waiver of school fees for children in the area?

Mr. Munyes: Mr. Deputy Speaker, Sir, Mr. Achuka could not make it to Parliament today because he missed his flight and he has, therefore, requested me to ask the Question on his behalf.

Mr. Deputy Speaker: Order! You cannot ask a Question by Private Notice on behalf of somebody. I will defer the Question to next week on Wednesday. Mr. Munyes, this time, make sure that Mr. Achuka is here on time.

(Question deferred)

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Mwenje! We still have a Question to be asked before we move to points of order.

WHEREABOUTS OF MR. RIAGA

Mr. Otula: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Transport and Communications the following Question by Private Notice.

(a) Is the Minister aware that Mr. Evans J. Riaga, staff No.556035 who was working with the Kenya Ports Authority, Mombasa disappeared while being taken to hospital on 20th August, 2000, and has not been seen since then?

(b) Is he further aware that Mr. Riaga was taken from his House by Messrs Kirande and Achiando in a Kenya Ports Authority (KPA) vehicle registration No.KAD 372M?

(c) What action has the Minister taken to trace Mr. Riaga's whereabouts?

The Assistant Minister for Transport and Communications (Mr. Lengees): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Evans Riaga, staff No.556035, who was working at the KPA disappeared at Nairobi X-ray Centre at Stand Shastra Building waiting room while waiting to see the doctor on the 19th July, 2000.

(b) I am further aware that Mr. Riaga was taken from his house by Messrs Kirande and Achiando in a KPA vehicle registration No.KAD 322M.

(c) On the disappearance of Mr. Riaga, the matter was reported to the police on the 27th July, 2000. The management of KPA contacted his family and placed a "missing person" advert in the newspapers and an announcement on the radio on the same day. The management and the police are still continuing with the search.

Mr. Otula: Mr. Deputy Speaker, Sir, here is a case where an employee is taken from his own house by the staff members of the KPA in a vehicle belonging to the Authority. The man was taken to a hospital and he disappeared. Where were the two gentlemen when this man disappeared?

Mr. Lengees: Mr. Deputy Speaker, Sir, the two gentlemen took him to hospital and went to wait for him outside the clinic. After waiting for a long time they checked inside and they were told that Mr. Riaga sneaked out. They tried to search for him, but they could not get him at that particular time.

Mr. Ayoki: What evidence does the Assistant Minister have to prove that Mr. Riaga actually reached the waiting room?

Mr. Lengees: Mr. Deputy Speaker, Sir, I beg the indulgence of the House that the Questioner repeats that question.

Mr. Ayoki: What evidence do you have to prove that Mr. Riaga actually reached the waiting room as you allege?

Mr. Lengees: Mr. Deputy Speaker, Sir, Mr. Riaga was taken to the clinic by these two gentlemen on the first day, but there was no appointment. He was told to return the following morning. Mr. Riaga was picked from his house at Bellevue Estate by these two gentlemen. They took him to the clinic and left him at the reception. There is evidence that those two gentlemen are still working with the KPA and they confirmed that he was taken there, then he disappeared.

Mr. Sungu: Mr. Deputy Speaker, Sir, it is shocking to note that somebody can disappear in the custody of two employees whereas he has a family. Why was his family not involved when he was taken to hospital? After all, it is his family's responsibility to take him to hospital.

Could the Assistant Minister explain under what circumstances this man disappeared? Was a *jinni* involved or something?

Mr. Lengees: Mr. Deputy Speaker, Sir, Mr. Riaga has been receiving medical treatment since 1990. His family knew that he was sick and he was being attended to by the doctor from 1990. His wife was also aware that he was sick. She was not with him at that particular time, but when he disappeared she was called. She came to Nairobi and tried to search for him, but was unsuccessful.

Mr. Ndicho: The Government has just admitted that a Kenyan got lost and efforts to trace him have not been put into action. The American Government was able to trace within three hours, the man who bombed a certain place, killing 168 people. Is the Government admitting that it is unable to trace a Kenyan who went into a clinic and then disappeared like that? Can the Government not undertake to trace the man and tell his family where he is? Are you admitting that you do not know where Kenyans disappear to?

Mr. Lengees: When the matter was reported to the police on the 27th of July, that year, the Government placed a "missing persons" advertisement in the newspapers on that particular day. His disappearance was also announced on the radio on that particular day. We have not yet got a letter from the police saying that they were unable to get him. The search is continuing up to now.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. Would it not be in order to ask the Assistant Minister to refer this matter to the Minister in charge of Security? This is now a security matter because you were not able to order proper investigations to be carried out on this matter.

Mr. Lengees: Mr. Deputy Speaker, Sir, the police fall under the Minister in charge of Internal Security and the matter was reported to them. We are waiting for the Police Headquarters to say that they were unable to trace him so that we can see what to do next.

Mr. Mwenda: Mr. Deputy Speaker, Sir, it appears that there is something the Assistant Minister is not explaining to us here. This man reportedly disappeared on 20th of August. A report was made to the police one week after the event. Did the Assistant Minister try to find out from the police why these two gentlemen who took him to the hospital did not report his disappearance until seven days later? Something fishy is happening!

Mr. Lengees: Mr. Deputy Speaker, Sir, the gentleman was not seriously sick. When he was taken to the clinic, these two gentlemen thought that he could wait by himself to be checked by the clinical officer. At first, a

blood test was taken and he was waiting for an x-ray to be done at that particular time when he disappeared. I think it was normal for the KPA officers to have waited for a week to see whether this man would reappear before reporting the matter to the police. The matter was reported to the police after a week and his wife came with his brother to join forces and try to look for him.

Mr. Kimeto: Could the Assistant Minister admit that this is a matter to be dealt with by the Minister in charge of Internal Security? Could he also include the Interpol in the search so that they can tell us whether this person might have gone out of this country?

Mr. Lengees: Since this is an internal issue, it should not involve the Interpol. Once the matter has been reported to the police in Kenya here, it is for them to find out the facts of the case and pass them over to the Ministry.

Mr. Otula: Mr. Deputy Speaker, Sir, here is a case where a man is still missing. The matter was reported to the police and they are still looking for him. Could the Assistant Minister tell this House if the KPA will take it upon themselves to pay the salary of this man to his family until the police bring their findings?

Mr. Lengees: Mr. Deputy Speaker, Sir, as per the regulations, it is not possible to pay the salary to his family until the man is confirmed dead or alive.

Mr. Otula: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to say that this man's family cannot be paid his salary when, at the same time he is saying that the police have not brought back the information on whether the man is dead or not?

Mr. Lengees: Mr. Deputy Speaker, Sir, I cannot confirm that to the House today but, if need be, I will find out and report to the House later.

Prof. Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to say that the man cannot be paid his salaries until the police do something when the KPA have rules and regulations stating how salaries, sick leaves and so on are paid? Those are the facts that he should use to answer the question that the hon. Member is posing.

Mr. Lengees: Mr. Deputy Speaker, Sir, I think it is the work of KPA to see whether they could pay him. Anyway, I will also undertake that issue and see what KPA will do.

POINT OF ORDER

THEFT OF NAIROBI MAYORAL CHAIN

Mr. Mwenje: Mr. Deputy Speaker, Sir, I note that the Minister for Local Government is not in the House but the Leader of Government Business, who is his friend, is actually here and so we expect to have an answer. Recently, the Nairobi mayoral chain, was stolen and was sold for Kshs2.5 million. Today, the mayoral chain was stolen and those who are connected with it are right now at the police station recording statements about its disappearance. Nairobi people would want to know what is happening with this mayoral chain which is stolen bit by bit and then, finally, it is all stolen. The suspects are the same people who wear the chain. Could the Government tell us precisely what is happening and what the position is? We demand a Ministerial Statement to be told what is happening to this chain, who are responsible for stealing it, and who will pay for the replacement.

Mr. Maitha: Mr. Deputy Speaker, Sir, with the revelation of this matter, as the Shadow Minister for Local Government, I am very much worried and the Government should explain this because---

Mr. Deputy Speaker: Order! When a Member has stood on a point of order and asked a Minister to make a Ministerial Statement, you do not debate that issue. Well, why do you not find for them [**Mr. Deputy Speaker**]

a "shadow" chain? The Minister for Local Government is not here.

(Laughter)

Mr. Maitha: But the Assistant Ministers are here!

Mr. Deputy Speaker: But you know what happens. They will transmit that request to the Minister who will then respond.

COMMUNICATION FROM THE CHAIR

TRANSPOSITION OF AGENDA ON ORDER PAPER

Mr. Deputy Speaker: Hon. Members, before we proceed to the next Order which was stated to be Committee of the whole House, it has not been possible for us to prepare the amendments and to introduce them onto the Order Paper on time. So, a Supplementary Order Paper is being prepared and will be introduced into the House as soon as it is ready. I am hoping that that will happen by 5.30 p.m. So, I would like to transpose the agenda so that we proceed on the Motion on the Report of the Committee on Energy, Communications and Public Works and then go back to Committee of the whole House when that Supplementary Order Paper is brought in.

Mr. Gatabaki: On a point of order, Mr. Deputy Speaker, Sir. I serve in the Committee of Health and we concluded this Bill quite some time ago, and the other Committees as well. The issue has been the urgency of bringing this Bill to allow various kinds of parallel importation of drugs because of the AIDS calamity. Now, the Government is dragging its feet and I must mention that.

Mr. Deputy Speaker: Order! Indeed, everybody in this House and the country at large, appreciates the urgency of deliberating on this Bill to a conclusion as quickly as possible. Now, if we had gone to that item on our Order Paper, we would have no business to transact and, in that event, we shall not have achieved that urgency. I deliberately altered the agenda so as to give us enough time and, if possible, with the approval of the House, extend so that we can complete that business today.

Next Order!

MOTION

ADOPTION OF REPORT ON KENYA ROADS BOARD

THAT, this House adopts the report of the Departmental Committee on Energy, Communications and Public Works on the operations of Kenya Roads Board laid on the Table of the House on 26th April, 2001.

(Mr. Mbela on 7.6.2001)

(Resumption of Debate interrupted on 7.6.2001)

Mr. Deputy Speaker: Mr. Maundu was on the Floor. Proceed!

Mr. Maundu: Thank you, Mr. Deputy Speaker, Sir. I had made certain comments on the Report of the Committee and I would like to add the following to what I said on that day. The operations of this particular Act have been arbitrarily stopped because of an Act that we should have foreseen, but we are now tackling it rather too late. I am saying that Road Committees had already been formed and they were supposed to be functioning but they were immobilised by the fact that this particular Act has now been proved not to have been put into operation.

Mr. Deputy Speaker, Sir, the Ministry of Finance has clearly committed an offence by failing to follow what the Act says.

(Loud consultations)

Mr. Deputy Speaker, Sir, there are very loud consultations here and I cannot be heard and yet I want to be heard loud and clear. Even you cannot hear me because Mr. Ndicho is interfering. I stand not protected because of too much loud consultations.

Mr. Deputy Speaker: Order!

Mr. Ndwiga: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member has raised an issue that he cannot be heard because consultations are too loud in the House and we really want to hear the recommendations of this Committee. Could you, please, protect Mr. Maundu?

Mr. Deputy Speaker: Order! Hon. Members, do consult in low tones so that the Member on the Floor may be heard, and I am sure that is all you want when you are contributing. So, why make life difficult for hon. Maundu?

Proceed!

Mr. Maundu: Thank you, Mr. Deputy Speaker, Sir, for that protection. I know there is a little excitement because of the events of the last few days, but I will proceed.

The Ministry of Finance should have strictly followed what the law says. I do not envisage a situation

where a full Ministry defies the law. The law that we passed in this House is very clear about the disbursement of these monies to the Roads Board. So far, no monies have been disbursed to the Roads Board because of two simple reasons; that the Board itself is immobilised, and to date, it has not even opened an account. They have not carried out a simple act of opening an account. Imagine they could not do it! At the same time, the appointment of an executive director is something so difficult and because of these reasons, the Ministry of Finance has now decided to dish out monies to local authorities. So far, we are told under this Report that Kshs3.6 billion has been spent without any supervision and operation of the law. Under those circumstances, we are seeing a situation where public finances are now going to be spent by people who are not authorised to spend that money.

Mr. Deputy Speaker, Sir, I would like to say that the Ministry of Finance should expeditiously within the Finance Bill, bring about the amendments that we require for the purposes of making the Kenya Roads Board operational immediately. We do not see any reason why the Ministry of Finance should continue holding money to itself, and because it is being deprived of a traditional role of keeping money to itself and dishing it to whichever Ministry it wants without following any procedure, we should now not allow it to do so and to continue doing so. Monies that should improve our infrastructure in this country should go where the law directs it must go. If there are any people who are dissatisfied with the Board as it was constituted, they should come out very clearly. This is because we know those who are frustrating the work of this Board are those who have been getting big contracts, monies and certificates without even completion of any works. We know that the same people would like monies to be disbursed by the Ministry to contractors who do not even qualify. Since the money will now go to the districts where hon. Members of Parliament and other leaders within the local community would be hawk-eyed to make sure that public money is properly spent, there are those people who are not happy about this.

Mr. Deputy Speaker, Sir, I would like to say that we want our money to be properly scrutinised and checked by the leadership that is representative and elected. We cannot continue to allocate monies to the Ministry to squander it with impunity and without following the right procedure. We must commend the previous Minister for Roads and Public Works for being foresighted, forthright, honest and taking into account the interest of Kenyans within this age. The problem with public funds, so far, is that when we vote enough money to very key areas, like in the repair of roads, education and other Ministries which are key to the population, that money is misappropriated without any explanation being given to this House.

We are tired of looking at Reports of the PIC and the PAC where monies have been spent and nobody has answered or explained how it has been spent. We want monies that have been voted in this House to a certain project to be used there. I would like to commend this Committee, which did not mince in its words. I would like to say that the Chairman came with a Report which should regularise this position. We would like to ask the Minister for Roads and Public Works to move expeditiously and make sure that this Board is functional by 1st July, 2001.

The repercussions are clear. We will not allow a Ministry to spend money which it is not allowed to spend. I would like to urge my colleagues to resist the temptation of passing a Vote to the Ministry of Roads and Public Works unless it complies with the law.

(Applause)

We cannot allow a Ministry which defies the law to handle public money. We are abusing our responsibility. Our business here is to check and make sure that monies that belong to the public are properly spent for the benefit of that public.

Mr. Deputy Speaker, Sir, I would like to say that the roads that would have been approved by the Kenya Roads Board within the programme that was developed by the Committees will miss out in this Budget because the Committees have been immobilised. We would like the Minister to come out with a clear guideline and institute the operations of the Committees before 1st July this year. We would like the Committees to start operating immediately so that major roads can be repaired with immediate effect.

The amount of money that the Ministry has disbursed to various districts--- In fact, the Ministry has not disbursed any money to the districts. We have only been given a paltry sum of money. Some constituencies have been allocated Kshs500,000 or Kshs400,000. They want to dish out money in the old way, through canvassing or other means.

In Makueni Constituency, where I come from, I would like to say that Kshs500,000 has been given. Where will this money be spent? The committees have not sat down, the Ministry of Roads and Public Works has not indicated how the money will be spent, and the officers down there will spend the money in the way they want, and finally, no work will be done. Secondly and more importantly is that this money that was going to be disbursed was to be used to purchase equipment for our roads within the district. I can bet that there is not a single

district in the country now that has any equipment to make minor repairs to access roads for the communities.

I would like to say that people within the tea, coffee, cotton and fish producing areas cannot transport their produce because there is no equipment to make sure that the roads are repaired. Whatever little monies that are sent to the districts---

*(Prof. Ongeru consulted with officers
on the Civil Service Bench)*

Mr. Deputy Speaker: Order! Order! Prof. Ongeru, you should not use this Chamber as an extension of your office.

Mr. Maundu: Thank you, Mr. Deputy Speaker, Sir. I was saying that paltry sums of monies have been sent to our constituencies and are being used now by the officers for purposes of logistics. The officers just move around in the district using the monies that have been disbursed to the constituencies to make some repairs. They are not doing anything serious. Therefore, it is important, and this House must, in solidarity with the Committee, express its displeasure in the manner in which the Minister for Finance and the Minister for Roads and Public Works want to handle public money.

I would like to say that the roads that have been approved in some cases, and where there are even financiers for those roads, the Ministry has just sat down and failed to act to make sure that they are done. I would like to say that we have a donor who has given money for the repair of the road from my district headquarters from Makueni to Kibwezi, but the Ministry sits there and says that they are waiting until 1st July this year to start thinking on how they will spend money from a donor. What is the effect of that? The effect is that the contract value will continue to deteriorate to the extent that the monies that have been given by our friends abroad will have no value and the road will never be done. This is pathetic. Why should we do things like that?

The Ministry of Roads and Public Works, if it has any money from the donors, should move expeditiously to make sure that it is spent in time. We would like to appeal to the Ministry of Roads and Public Works to make sure that the road from Wote to Makindu/Kibwezi is commenced, because the money is already there. Our delay in making sure that this money is spent means that the donor will be fatigued and withdraw it. We know what is likely to happen. When money has been given for a particular project, some people would like to canvass and confuse issues to divert it to other places where it is of little viability. I would like the Ministry of Roads and Public Works to move in on this road.

Finally, I would like to say that the report that was prepared by the Committee was expeditious. We know that there are many other areas where Boards should be formed to manage public funds. We would like to call upon, particularly, the Ministry of Environment and Natural Resources and the Ministry of Energy to come up with a programme like the one we have in the Roads Board and a particular Act to make sure that public funds within the Ministry of Environment and Natural Resources and the Ministry of Health are managed by a board, where hon. Members of Parliament have an input to make sure that nothing goes wrong.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support the Report of the Committee.

Eng. Toro: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Committee's Report. As a shadow Minister for Roads and Public Works, I am very concerned about what has happened since the enactment of the Kenya Roads Board Act. May I remind the Minister of the injustice that he has done to Kenyans.

The Kenya Roads Board Act, 1999, which established the Kenya Roads Board that started to operate in July last year has not benefited Kenyans. The Minister for Roads and Public Works has adamantly jeopardised the operations of the Kenya Roads Board. This is because the Minister does not want to lose control of the funds, which have previously been controlled by the Ministry. When the hon. Members of Parliament passed this Bill, the mandates which was given to the Board were well stipulated. The co-ordination and implementation of the policies of road development, maintenance and rehabilitation were given to the Kenya Roads Board. That power was withdrawn from the Ministry of Roads and Public Works.

Mr. Deputy Speaker, Sir, when the Committee sat down on realising that the Government has refused to implement the Act to the letter, it did a good job. Every Member of Parliament who has read the Report of the Departmental Committee on Energy, Communications and Public Works should sincerely thank the Chairman and the Committee for a job well done. The Committee has brought to light, the happenings in the Kenya Roads Board (KRB) since its inception.

The reason why the KRB was brought into being was because the Ministry had consistently over the years, failed to offer good services. It was no longer the interest of the Ministry to give Kenyans roads with regard to cost effectiveness. Efficiency in the operations of the Ministry had deteriorated to the lowest level. Safety standards have been ignored over the years, giving rise to hue and cry from the public about the safety of our roads. The KRB was mandated by the Act to administer the funds from the Fuel Levy Fund and any other funds

that are available for roads maintenance and development.

Mr. Deputy Speaker, Sir, when Members of Parliament enacted the Bill and they were all enthusiastic that everything was going to work, the Minister, in his wisdom, decided it was not going to work, hence the Report we have today in front of us. So, it is up to the Minister to own up and tell this House why he has refused to let go, the funds meant for the maintenance of roads. The Act is very clear about the percentages that were passed and enacted into law. The road agencies are clearly named in the Act. There are only three road agencies which are supposed to take care of our road networks. These are the Roads Department in the Ministry of Roads and Public Works, the District Roads Committees and the Kenya Wildlife Service (KWS). There is no other agency which is mandated by the law to receive funds for road maintenance. What have we got so far? The disbursement of these funds has not been done and the Ministry has consistently, through the Roads Department, received money and used it at its discretion.

We would also like to remind the Minister that some of the powers of the Minister regarding the maintenance and development of roads were given to the Board. The Minister was merely to be advised by the Board on any matters regarding research studies and any other related recommendations on the promotion of development, rehabilitation and maintenance of the road networks. The Minister was not supposed to dictate to the Board about these matters, but he was supposed to wait, consult with the Board and the Board would advise him. If the Minister had any other way of rejecting the advice of the Board, he would have to do so with reasons and not just because he is the Minister.

Mr. Deputy Speaker, Sir, responsibilities regarding specifications, designs, standards and classification of roads were also given to the Board and not the Roads Department. If the Board was to consult the Roads Department, that would be its choice, but it has no obligation to consult the Roads Department. The Board was supposed to advise the Minister and then the Minister, who is in charge of the Roads Department, would take the necessary action. But it is almost one year since the inception of the KRB and nothing has been done. Section 31 of the Act is very clear about what is failing Kenyans. This has been the misappropriation of funds over the years by the Government. Section 31(1) states:

"There is established a Fund to be known as the Kenya Roads Board Fund which shall vest in the Board".

Section 31(2) states:

"There shall be paid to the Fund all proceeds from the Roads Maintenance Levy Funds".

There is no other recipient of the money except the KRB. But over the months, the Kenya Revenue Authority (KRA) has continuously disbursed the money to the Ministry, in disregard of the existing Act. If I would be specific, that is a criminal act by the KRA, to act against the Act. I do not know what action the Attorney-General would take against the KRA for going against the existing Act.

The Ministry has seen it fit to disburse the money to the projects of its choice, completely ignoring the problems in the districts and constituencies. The Report has clearly stated that only 7.7 per cent so far had been disbursed to the constituencies by March, 2001. I do not think any more money has been sent to the constituencies. We have come to the end of the year and every Kenyan knew by July last year, that every constituency was to receive approximately Kshs5 million. Every Member of Parliament is being taken to task by his or her constituents about the whereabouts of the approximately Kshs5 million.

With regard to the 24 per cent which was supposed to go to the districts, nothing has been given to the districts to date. This is because the Minister has been very selfish. On receipt of the funds, he has decided to use the money himself. I would like the Minister, when responding, to tell the House very clearly how much money has been sent to the constituencies. Under the existing rules, come the end of this month, all the money that will have not been used by the respective departments of the Ministries will have to be surrendered to the Treasury. Was this the intention of the Minister? If the money was held by the KRB, that rule would not prevail. Some little money has been sent to the constituencies for road maintenance, but at the end of this month, the unutilised amount will have to be surrendered to the Treasury. Is that what is going to happen? If that is the case, even the little money that has been sent to the constituencies as the Report indicates, will not be used for the maintenance of our roads. If you look at the Report, a lot of money was sent to the Ministry of Local Government. It received almost Kshs1.4 billion by March, 2001. The money was given to the Ministry of Local Government at the expense of the constituencies and districts. Under what Act did the Kenya Revenue Authority (KRA) give money to the Ministry of Local Government? It is not listed as one of the agencies of the Kenya Roads Board. We would like the Minister to take note of the recommendations in the Report. That money did not belong to the Ministry of Local Government. A way must be found for the Ministry of Local Government to refund that money to the Kenya Roads Board. The money does not belong to the local authorities. The money belongs to the Kenya Roads Board but it was irregularly disbursed to the Ministry of Local Government. If we are going to be strict

and obey our laws, the Government should be in the forefront to obey the Act that was assented to by the President. We cannot have the Government assenting to an Act and then breaking the same Act. If that is the case, we have no business enacting laws if the Government ignores what has been passed by this House.

Mr. Deputy Speaker, Sir, the post of the Executive Director of the Kenya Roads Board has been a thorn in the flesh of the Minister. I do not [Eng. Toro] know why it has been a thorn in the flesh of the Minister. Looking back, one of the mistakes that this House made was to say that there shall be an Executive Director appointed by the Board, in consultation with the Minister. What this House should have passed was: There shall be an Executive Director appointed by the Board and that is all! If that was the case, we could have an Executive Director by now. But when we brought the Minister in, he took his time because he knows very well that as long as there is no Executive Director, the Board is not operational. It cannot even open a bank account or recruit engineers and other officers. The first person to be recruited is the Executive Director. The Minister should tell this House why he has taken almost one year to appoint an Executive Director, which has jeopardised the Kenya Roads Board. If he has any problems in the appointment, I can offer my services as a Shadow Minister, and do it tomorrow!

Mr. Deputy Speaker, Sir, regarding the Miscellaneous Civil Application No.1372 of 2000, where judgement was passed on 27th February, 2001, it said that Section 17(1) of the Act is inconsistent with the Constitution, to the extent that Members of Parliament will sit in the District Roads Committees (DRCs). That is an issue that has jeopardised the operations of the DRCs and the Kenya Roads Board as a whole! That is because the bulk of the work of maintenance of our roads was to go to the DRCs. It is hypocritical that Government Ministers are also Members of Parliament. You know very well that some Chairmen of DRCs were also Assistant Ministers. Are we saying that somebody could be an Assistant Minister in the Government but he cannot be a Chairman of a DRC? Where are we? We have got to own up and decide that separation of powers in our system of Government cannot be put in effect here.

Mr. Deputy Speaker, Sir, at that time, we were saying that KANU was the Executive Party. But now, we have the NDP there. It has also formed part of the Government. Its Members are also in the Executive. So, it is not a question of one party being in the Government. There are two parties in the Government. So, the issue of saying that Members of Parliament cannot be Chairmen of DRCs does not arise. That is because Ministers can be said to be executive.

Mr. Deputy Speaker: Eng. Toro, we did not challenge that in court---

Eng. Toro: Mr. Deputy Speaker, Sir, I am giving my opinion!

Mr. Deputy Speaker: Order! Go and appeal to the Court of Appeal! This is the wrong forum. You may have a point to raise there.

Eng. Toro: Thank you, Mr. Deputy Speaker! The appeal is pending in court.

Lastly, I would like to challenge the Minister to think about the state of our roads in the entire country. If the Kenya Roads Board does not start functioning tomorrow, we will continue saying that our road network is in poor condition, and Questions will continue to be brought to this Parliament concerning the poor state of our roads. Is that what the Minister wants? There is no point for the Minister to continue to hold on to the funds that are meant to go to the Kenya Roads Board.

If we talk about the attitude of the Government, it is owning up that it has failed and started appointing Ministers from the Opposition. That is what we have been saying all the time; that the KANU Government has failed and has taken the first step to improve its services. We would like the President to consider, since we have got more Members of Parliament from the Opposition, replacing all the Cabinet Ministers with Members of Parliament from this side of the House. That way, we can show them how work is done.

With those few remarks, I beg to support the Report.

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika, nafurahi kuzungumzia juu ya Ripoti hii ya barabara. Nimetembelea nchi nyingi katika Afrika na ulimwengu mzima. Lakini furaha yangu ni kwamba, kunakomea majani chai na kahawa nyingi, Serikali hii imejenga barabara sana.

Hon. Members: Aaah! Shame!

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika, binadamu hana shukrani kwa Mungu! Hiyo ni kibinadamu na ukisema "aaah", si vibaya! Nyinyi ni marafiki wangu na mkipata, mimi pia nimepata vile vile. Lakini sasa wakati wa Wabunge kugombana na kuonyesha uhodari wa kusema umekwisha katika Kenya. Wale tunaowafanyia kazi ni werevu zaidi kutushinda sisi.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, you heard what Mr. Nassir said; "I have been to many countries of the world." Could he tell this House any single country with worse roads than Kenya?

Mr. Deputy Speaker: Order! Order! Dr. Ochuodho, I think you are running out of option. That is not a

point of order.

Proceed, Mr. Minister!

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika, ninamsamehe Mbunge yule kwa sababu ana taabu zake mwenyewe za kibinadamu. Lakini huu ni wakati kwa kila mtu ambaye anaitwa Mbunge kujadili mambo yanayohusu eneo lake la uwakilishi. Mimi ninatoka Mombasa, Mvita, na ninataka kuzungumzia juu yake. Ninasikitika sana kumsikia Mbunge mmoja akizungumza juu ya hatua ya chama cha NDP kujiunga na KANU. Haya ni mambo madogo. Yanayokuja ni makubwa; utatetemeka roho!

(Laughter)

Hatuwezi kuwa na vyama vingi vya kikabila. Ni lazima tuungane tuwe kitu kimoja kama Wakenya kwa kuleta vyama vyote pamoja.

Mr. Ndwiaga: On a point of order, Mr. Deputy Speaker, Sir. I appreciate the handicap of the Member but could you refer him to the law of relevance? There is nothing in this Report about KANU or NDP or anything. We are talking about the Report of a Committee of this House.

Mr. Deputy Speaker: If I understood you correctly---

Mr. Ndwiaga: Is he in order, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: He will probably argue that in this case, you have the handicap because you do not understand the language he is speaking!

The Minister of State, Office of the President (Mr. Nassir): Bw. Naibu Spika, Waswahili husema mkuki ni mtamu kwa nguruwe, lakini ni chungu kwa binadamu. Tubadili tabia tuweze kuwafanyia kazi waliotupigia kura sote katika Kenya na tusahau mambo mengine. Ni lazima tupitishie katika Katiba jinsi pesa zinazotengewa barabara zitakavyotumika katika wilaya na mikoa.

Bw. Naibu Spika, kwa sababu tunatarajia kuwa na marekebisha ya Katiba, hata wakati huu si wa kusema tena; huu ni wakati wa wananchi kutoa maoni yao kwa Tume ya kurekebisha Katiba. Katika Kenya, kuna Wabunge matajiri na maskini. Ninafikiri huu ndio wakati wa kusawazisha mambo hayo. Hatuwezi kufanya maskini awe tajiri, lakini tutampatia chakula. Hayo yote yatategemea ushirikiano wetu sote. Kuhusu mambo ya vyama, ninasema kila asubuhi ainukae, ainuka na chama. Tunataka chama ambacho kitaweza kupata wafuasi katika kila wilaya kisajiliwe.

Ni juu ya kila Mbunge kuchangia mambo ya barabara katika DDC na kuamua ni barabara gani itashughulikiwa. Lakini kusema hapa ni kupoteza wakati wako bure. Mimi nilichaguliwa kuwa Mwenyekiti wa DRC, lakini nilipoambiwa kuwa kuna hatari, nilisema ni vizuri iende kwa watu wengine ili wapate kazi ya kufanya. Kwa hivyo, si kila Mbunge atakuwa na mamlaka kila pahali. Lakini yangu zaidi ni kuwa ninapenda Wakenya tuwe kitu kimoja ili tuwatumikie watu wetu kwa umoja na mapenzi. Hivi karibuni nitakwenda kufanya Harambee kwa mhe. Ndicho. Naye nitamwalika Mombasa. Pia nitaenda kufanya Harambee kwa mhe. Karume. Vile vile nitamwalika aje kwangu pia. Haya yote yanataka mapenzi; sitaki kelele za kisiasa. Siasa zilimalizika kitambo na hayati Kenyatta, Jaramogi na Ngala. Sisi sasa tunataka kuhifadhi viti vyetu na ni lazima tufanye kazi kwa sababu wakati wa siasa umekwisha.

Kwa hayo machache, ninaunga mkono.

Mr. Kibaki: Mr. Deputy Speaker, Sir, I really have only two points to make. The Minister has presided over the contravention of the provisions of the law. It is his duty, when he comes to reply, to tell this Parliament how he could allow money prescribed by this Parliament to go to the Kenya Roads Board---Why did he decide alone to allocate this money to the Ministry and part of it to the Ministry of Local Government? That is the first thing that we require to be explained. Up to now, the Kenya Roads Board is not operational. It has not done any roads and yet, the fuel levy, the source of this money, continues to be paid by all of us. If we continue to pay and that money does not benefit us as the law passed by this House provided, then we have a Government which is behaving in a criminal manner. Refusing to obey the law is unbecoming of any government anywhere in the world. If, indeed, the Government had decided that they were not going to implement the law as passed by this Parliament, they should have come back to this Parliament to amend or change it. Otherwise, to ignore the law is an abuse to Parliament and is cheating people. Since the Government has cheated so many times, it is terrible to continue to have a Government behaving contrary to the law in the use of money paid by taxpayers. That way, they have no respect even for taxpayers particularly those who pay the fuel levy and those who travel on the roads.

How could a Government behave like that and still expect respect internationally and even nationally? It is not possible. Someone who refuses to obey the law should be treated so. They cannot be treated as law abiding when they have refused to obey the law. How could they be respected internationally in matters of finance when

they can cheat their own Parliament and misuse the money collected from the citizens? That is where the question is and it requires an answer. There is no point trying to pretend and ignoring the issues we are raising. Strictly speaking, and under the Exchequer and Audit Act, the Ministry ought to be held responsible for the decision to send this money to the Ministry of Local Government. There is nowhere in the law where it provides that some part of this money could be sent to the Ministry of Local Government. You can see the kind of Government we are dealing with. It has no respect for law and for the taxpayers. How can we go on this way?

Secondly, Mr. Deputy Speaker, Sir, could the Minister tell us who is responsible for the money which was illegally given to the Ministry of Local Government? There is no provision anywhere in the law for following up what has happened to that money. Has it been embezzled or shared amongst friends as is usual? It is a lot of money, in billions. Where has the Ministry of Roads and Public Works spent the money that remained with them? The Kenya Roads Board Act prescribes how the money should be shared out; some money will go to the constituencies, some to the District Roads Committees and the rest to the KRB. Since the Minister is not following the law, how has he shared this money out? He should table those facts and figures so that we are able to see where in Kenya that money has been spent and we are able to check on the ground. No part of this country is unrepresented in this House. If the Minister can tell us exactly where the money has been utilised, we can verify that to establish whether any road that has been existent has been repaired or a new one built. What we know is that no old road has been repaired or a new one built. Could the money have been diverted to some other uses rather than the maintenance of roads? We would like to have the specifics when the Minister replies to this debate. We would like to know the roads on which the money has been spent. Let him identify those roads by their names and numbers.

Mr. Deputy Speaker, Sir, why has the Minister refused to appoint the Director of the Kenya Roads Board (KRB)? Does he want to continue pretending that the KRB is not functioning because certain key officers have not been appointed? That appointment is supposed to be made by the KRB itself. The Board has been set up. Why has it not met to make that appointment?

The preparation for the enactment of this law lasted for 18 busy months for a Committee of this House and the previous Minister for Roads and Public Works. The Minister and Parliament went into the finest details on how the law is supposed to operate and agreed on them. Also, the donor community agreed with the programme.

Now that the Minister has refused to implement this legislation, do we assume that the Government has changed its mind about the whole arrangement and that it wants to backtrack to its old system of awarding tenders to its traditional politically-correct contractors, to whom it awarded tenders year in, year out, and who shared amongst themselves, public servants and politicians, public monies that they looted in the process? It is a big shame that, for the last 15 years, no new road has been built in Kenya despite the fact that Government records indicate that money has been spent on roads. Over the years, this House has voted a lot of money for road rehabilitation, but a few people have shared it amongst themselves. Those people have now become very rich, and cannot be pursued. Some of them have already fled the country. So, has the KRB, which was created to salvage the road network, been abandoned?

The Minister should reply to these questions. In this Report, the Committee stipulates the actions to be taken to make the KRB operational. Rather than avoid the issues raised by hon. Members, the Minister should respond to specific questions and recommendations contained in this Report, so that we can be enlightened on how to proceed from here. We do not want him to give us a vague reply. We would like him to tell us whether he is going to ensure that the provisions of Section 31(1) and Section 31(2) of the Act are adhered to. If he does not agree to this recommendation, he should tell us under which law he intends to operate. This is the only law that stipulates the way monies meant for road repairs shall be spent.

The Minister should also tell us the person who authorised the disbursement of the billions of shillings that were set aside by Parliament for distribution to the District Roads Committees (DRCs). Was it himself, his Permanent Secretary, or was it some mysterious persons in that Ministry? Under what law has that person disbursed that money? That person did not operate under this law, which is the only law that stipulates how KRB money should be spent. Does that person insist on operating illegally? The Minister should reply to all these questions. As Parliament, we cannot make laws here and watch as the Executive ignores them. This implies that we have no Government. Instead, we have a group of people who operate outside the law and steal taxpayers' money. Those are the questions we want answered by the Minister.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I rise to support the Motion on the Report of the Departmental Committee on Energy, Communications and Public Works, of which I am a Member.

Mr. Deputy Speaker, Sir, the first question this Report addresses is why we created the KRB. This is the question all of us should address. We established the KRB because we were not getting value for our money on

roads. Maybe, until last year or this year, the Roads Department was rotten. Over the years, Parliament has voted a lot of money for roads, but we have not seen the work done. Wherever any work was done, it was always a shoddy job. Examples are Jogoo and Juja Roads in Nairobi; Kisii-Chemosit Road, which has now been done; and Mau-Narok Road, which is yet to be done.

So, in its wisdom, this House established the KRB to manage the road network countrywide. By law, the KRB came into effect on 1st July, 2000. But do we have a KRB today? We do not have a KRB because we are yet to appoint its chief executive. That is the person who is supposed to execute and implement the policies of the Board. In fact, the illegal disbursement of the KRB funds should not be blamed on the Ministry of Public Works but rather on the Ministry of Finance. The Ministry of Finance collects taxes and revenue for the Government and disburses those funds in accordance with the law. So, the Ministry of Finance is the first culprit in this macabre of misuse of public funds.

Mr. Deputy Speaker, Sir, there are many agencies that can handle road works in Kenya. The Department of Roads can handle road works on behalf of the KRB, as an agency. We are not opposed to the idea of putting the KRB under the Ministry of Roads and Public Works. However, the KRB is supposed to operate under the law that was enacted by this House. This law provides that funds collected from the Fuel Levy Fund and other sources shall be channelled to the KRB for disbursement as provided by the Act. Accordingly, 50 per cent of the funds shall be retained by the KRB for the construction of a particular type of roads; 24 per cent distributed equitably amongst the districts, and 15 per cent shall be distributed to the constituencies.

Mr. Deputy Speaker, Sir, I know that some mysterious people in this country moved on to bar the constituencies from receiving funds from the Government on the account that hon. Members should not sit on the District Road Boards (DRBs). Assuming that was correct, why is that not happening with the other agencies which are now operating? That is the question that we want to ask the Minister. Why can the Minister not make the DRBs operational? Why can the Minister not use the Roads Department to carry out road works in the rural areas?

Mr. Deputy Speaker, Sir, if you go round the country, or to any part of this country, whether it is urban or rural, you will find that we have got problems due to the poor state of the roads. This morning I went to Kibera Court and I found that I could not get there in my vehicle because the small section of the road - of about half-kilometre and from the main road - to the Kibera Law Court is impassable. It has got craters; in fact, not even potholes, simply because DRBs are not working and the KRB has never taken off. Nobody will contest the fact that the funds from the Government will go directly to the KRB. The KRB knows how to distribute those funds.

But the Ministry of Finance and Planning has sent some funds to the Ministry of Local Government. In fact, I commend the Ministry for Local Government despite the fact that - as most people know - Mr. Kamotho is not one of my best friends in this country. But, at least, he and his PS admitted that they received funds wrongly from the Ministry of Finance and Planning and they are willing to return those funds to the Ministry of Finance and Planning for onward transmission to the KRB. The KRB has not been constituted as I speak today, although the laws are clear; that, the money should be paid to the KRB. I would ask the Minister to straightaway---

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.21

ADJOURNMENT OF DEBATE ON KENYA ROADS BOARD REPORT

The Vice-President and Minister for Home Affairs (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. I do stand under Standing Order No.21 to propose that the debate on the Report on the KRB be postponed to some future date so as to allow the House to proceed to the Committee of the whole House and deliberate on the Industrial Property Bill. It is a well known fact that the Bill needs to be finalised as quickly as possible because it is really, about a matter of life and death. It is important that we do finalise the Bill because tomorrow is going to be the Budget Day. I do not think that we need to postpone the finalisation of the Bill even for any moment. I have also been informed that the amendments which we have been waiting for are ready.

So, I beg to move that the House does postpone this debate, so that we can move to the Committee of the whole House and debate on the Industrial Property Bill.

Mr. Angwenyi: What a hell! Road carnage is killing more Kenyans than HIV/AIDS!

The Minister for Public Health (Prof. Ogeri): Mr. Deputy Speaker, Sir, I think Kenyans will appreciate the gravity of the issue of Industrial Property Bill before the House and there is a great deal of anxiety and interest that this matter be finalised today. This is because beyond today, we will go into the deliberations of

the Budget Speech, and there is absolutely no window in the Budget Speech for any other business to come before the House until after August. So, we are talking about two months down the road and, therefore, it will be in the interest of the public and hon. Members that, that matter is definitively decided by this House. Therefore, I second the Motion proposed by the Leader of Government Business, that we do now adjourn so that we can go to the Committee of the whole House to finalise that matter.

Mr. Deputy Speaker: Order! We will be proceeding - if the Motion for Adjournment is passed - to the Committee of the whole House. Now, Standing Order No.21 does, in fact, allow any hon. Member to stand and propose that the debate be now adjourned.

(Question proposed)

Dr. Ochuodho: Mr. Deputy Speaker, Sir, it is very unfortunate that we have shelved the debate on the adoption of the Report of the KRB when we know that, that has been caused by the Government's failure to put things in order. The failure, especially, is on the part of the Chairman of the House Business Committee, who has failed to bring the amendments in time, and we went past--- Standing Order No.7 which should have been discussing that matter under the Committee of the Whole House--- But while I also appreciate the problems that we have and the urgent need to get the generic drugs, we must also not lose sight of the fact of the terrible state of the roads in this country. Whereas I find it very difficult to reject the request for adjournment, I think the onus is upon the Vice-President to apologise to this House for that error.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I oppose the Motion for Adjournment. The reasons are that more people in my constituency, and I believe also in the entire country, are dying from bad roads. They die because they cannot market their produce, and more people are dying through road carnage, the road network being poor. In fact, more people are dying in accidents than from HIV/AIDS. Both Motions are important and we would have disposed of the Motion on KRB and then extend the sitting of the House today, up to midnight, so that we can also pass the Bill. So, I urge the Vice-President and Leader of Government Business to first consult with hon. Members before he moves some of these Motions which go against public interest.

I know that HIV/AIDS is a big problem and it is a scourge, but it has been with us for the last very many years. We declared it a national disaster two years ago and we have not done anything to date. We cannot assure that passing that Motion tonight, unless somebody is going to make money out of it, we are going to assist Kenyans.

With those few remarks, I beg to oppose.

Mr. Wamae: Mr. Deputy Speaker, Sir, I would very strongly support the Motion on Adjournment. I support it because I am a Member of the Departmental Committee which has dealt with that matter and I have had an occasion to meet the stakeholders; different groups of people interested in that matter, and it is a very touchy issue. It is an issue which is very emotive and it is a matter of life and death, and Kenyans consider that to be a very urgent issue. Whereas the question of the roads is also important, I do not think that we are going to build roads within the next 24 hours or the next two weeks. Roads take a longer time to design than to build. But when we can give hopes to our people; that they can get cheaper generic drugs to help them to live longer - those who have HIV/AIDS - it is very important that we give them that opportunity. By opening the window of direct importation or licensing, we are going to make even branded drugs cheaper because they have to compete to remain in that market. Therefore, it is very important that all hon. Members agree that the House do adjourn to allow us to go to the Committee of the whole House in order to debate the Industrial Property Bill.

I support the Motion.

Mr. Deputy Speaker: Yes, Mr. Ojode. Let us hear your maiden speech.

The Assistant Minister for Education, Science and Technology (Mr. Ojode): Mr. Deputy Speaker, Sir, I stand to support the debate on adjournment. The reasons are that, one, when you go to the hospitals today, you will find that they are filled to capacity by those who are suffering from HIV/AIDS. The question of roads is equally important but who will use those roads when those people are dying of HIV/AIDS? We are saying that it is better for us to pass the Motion in order for us to have these drugs supplied at a very subsidized rate. We are also saying that we should have an inspectorate department, whereby, when the generic drugs come over---

Mr. Deputy Speaker: Order, Mr. Ojode! We are debating the Industrial Property Bill.

The Assistant Minister for Education, Science and Technology (Mr. Ojode): Mr. Deputy Speaker, Sir, I will contribute on that, but---

Mr. Deputy Speaker: Order! This Motion is restricted to the subject matter only.

The Assistant Minister for Education, Science and Technology (Mr. Ojode): Mr. Deputy Speaker, Sir,

I do support that we adjourn and discuss the Industrial Property Bill.

Mr. Deputy Speaker: Order! This is not the kind of Motion that should take forever. There are only two sides to it. Do you want us to adjourn the debate or to continue? In those circumstances I have very little choice. Let me say that I did explain earlier the reason why we juxtaposed the items on the Order Paper. It was because the amendments were not ready. As our regulations require, the amendments must appear on the Order Paper, hence, the production of a supplementary Order Paper, which has now been circulated. This does not mean that the debate on the Roads Report is being killed. It merely means that it is being adjourned to a future date, and the House Business Committee will take the earliest opportunity to reinstate it.

*(Question, that the Debate be adjourned,
put and agreed to)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman (Mr. Musila)
took the Chair]*

THE INDUSTRIAL PROPERTY BILL Clause 2

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended -

(a) in the definition of "industrial property rights" by inserting the word "include" immediately after the words "utility models and".

(b) in the definition of "licence contract", by deleting the words "know-how or other technical information or technical services."

The amended definitions should, therefore, read as follows:

(a) "Industrial property rights" means rights under patent certificate of utility models and including the technovative and registration of industrial designs issued under this Act.

(b) "Licence contract" means a contract or agreement by which a person grants permission to use his industrial property rights.

(Question of the amendment proposed)

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

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

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2(c) be amended -

by deleting the words "or any new and useful improvement thereof which is not obvious" appearing in paragraph 16.

The sole purpose for this amendment is to prevent any patent holder from invoking the powers of use of a product.

The Temporary Deputy Chairman (Mr. Musila): Could you repeat for purposes of clarification?

Dr. Kulundu: This is on the definition of the word "invention" which appears on page 473, the fourth line. The purpose of deleting this definition is to prevent the patent holder from raising another patent on a

product that has been in use, but which at the time it was first registered, may not have been useful in certain fields. Let me explain. For example, Aspirin was first invented for pain, but over the years it has been found to be useful in preventing heart attacks and heart ailments. Another example is Viagra, which is a popular drug. It was first manufactured as a drug for treatment of hypertension. Over the years, it was found that Viagra also enhanced potency in men and even in women.

By deleting this phrase here "or any new and useful improvement thereof" we are preventing the patent holder from raising another patent over the same product.

(Question of the amendment proposed)

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, while supporting what my colleague, Dr. Kulundu, has said, I think we need to be very careful here. This is because we are going to get into a situation where if, we allow the use of "new use" to be used, then we are going backwards. I want to give an example of what happened to one engineer in Iceland. He invented a machine for drilling water from ice for the Eskimos, and then some other inventor in Zimbabwe picked up that invention and invented another machine that was similar to the one that was supposed to drill for water for the Eskimos and drilled water from the ground. He was given the right and continued to do so. So, this is what we are now trying to prevent by saying, let us not allow anybody who manufactured a product and had a patent on it given, many years down the line, because of the side effects, then you find that, that drug is now doing other things. There are medications which Prof. Ongeru will agree with me were manufactured to heal certain ailments but over the years, they started having side effects on baldness and hair started to grow. So, that is the kind of invention we are saying we do not want the manufacturer to say: "Now that we notice that the hair grows, we want to patent this drug."

With those words, I support.

Mr. Achola: On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to oppose that further amendment to the depletion of invention. My reason for doing so is that if we change that definition on Page 473 in the manner proposed by hon. Dr. Kulundu, you will need to go and change it. There is another definition on Clause 21 on invention where they say that "invention" means a solution to a specific problem.

Now, taking the case that hon. N. Nyagah has highlighted on Viagra, for example, if, indeed, an invention is a solution to a specific problem and if someone was looking for a product that would agitate the male organ and it works backwards, and we eventually find that Viagra was the product that he was looking for, there could be two different people trying to solve different problems. So, I think deleting this particular clause is wrong, and we should not change it. It should not be allowed because nothing would stop a scientist working in America trying to sort out a particular problem, and another one working elsewhere trying to sort out another problem. In the case of Viagra, if someone was worried about hypertension and it is time to solve that same problem and come up with product "X"; and now another Owino, working elsewhere on these problems of AIDS in Migori, notices a product called "Y" and on further analysis finds that both "X" and "Y" are the same; why should I not be given protection? Therefore, I oppose that further amendment.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment for this reason: Hon. Dr. Kulundu has a very legitimate concern, but it will more legitimately address the definition of invention on Page 483, Clause 21, and not the current clause. This is because this clause is not talking about use but about useful improvement thereof, which is not obvious. It is improvement on the existing patented product. Actually, if you looked at this definition of invention, it is more consistent with other prototypes of WTO Compliance Legislation on Patents. If we seek improvement, I will propose that we strike out the second definition of "invention" on Page 483, but accept and adopt the definition present in the clause being proposed for amendment.

I beg to oppose the proposal.

Eng. Toro: On a point of information, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): Who are you informing?

Eng. Toro: Dr. Kulundu, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): No, since he is gone.

Eng. Toro: But he is still here!

The Temporary Deputy Speaker (Mr. Musila): No! Order! You are out of order. He finished his time and sat down. So, he cannot take your information now. Mr. Biwott!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I would like to oppose Dr. Kulundu's proposed amendment because it does not really address the issue which we would like to

address. This is new invention which, as Dr. Kituyi says, has already been taken care of in Clauses 21 and 22. In fact, I intend to bring further amendments to that in order to cater more clearly for the concerns of the new invention, that is the Viagra, and the patenting by the new modifier who has invented the new use and patented it on his own. I should be protected to assist him in order to benefit because that is more appropriate to Kenya.

However, in this other one also, it encourages Kenyans to do further research to see if there is an improvement on the treatment of that particular concern. So, there is a difference in trying to improve this Chamber and this Chamber being modified to suit something else. So, I think your worry has already been taken care of, but Prof. Ongeru might also add light to it if he has any.

The Temporary Deputy Chairman (Mr. Musila): Is it not sufficient so that I can dispose of the Question now?

The Minister for Public Health (Prof. Ongeru): That is fairly sufficient and let us not look at this at a narrow band. It could jolly well be a Kenyan, who, in the enthusiastic process, finds that a particular drug with a patent holder, has a completely new use altogether. Why should you deny that Kenyan the right to have a patent to it?

A hon. Member: Even if it is 20 years to come!

The Minister for Public Health (Prof. Ongeru): No, it does not have to be 20 years to come. It will have to be almost immediately so long as it is a different language altogether. So, without much ado, I want to oppose my own student and he knows that. It is not right.

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

(Clause 2 as earlier amended agreed to)

(Clauses 3, 4 and 5 agreed to)

Clause 6

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

That, Clause 6 be amended by inserting a new paragraph (i) immediately after paragraph (h) as follows-

(i) the chief executive of the Kenya Association of Manufacturers or his representative.

I think this is only an addition to the stakeholders.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Mr. Musila): The attention of hon. Members is drawn to Dr. Kulundu's proposed amendment. He has proposed a further amendment to Clause 6.

Dr. Kulundu: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 6(g) be amended:-

(a) by deleting 6(g) and inserting the following in place thereof.

Eight other members appointed by the Minister, seven of whom shall be nominated as follows:-

(i) one representative nominated by the Kenya Industrial Research Development Institute (KIRDI);

(ii) two representatives nominated by the Kenya Association of Manufacturers (KAM);

(iii) one representative nominated by the Law Society of Kenya (LSK);

(iv) one representative nominated by the Kenya Medical Research Institute (KEMRI);

(v) a renown research scientist from public universities appointed by the Minister for the time being in charge of education.

Mr. Temporary Deputy Chairman, Sir, with your permission, I would like to add (vi) which was omitted

by the typist.

(vi) one representative nominated by the Institute of Kenya Engineers.

The purpose of these amendments is to inject some private sector representation in the management board of this institute. As it is now, it is totally Government and it is important that the private sector be given a chance to have places on this Board.

With those few remarks---

The Temporary Deputy Chairman (Mr. Musila): Could you also pursue the second amendment? That is Clause 6(h).

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6(h) be amended as follows:-

By deleting the words "or his representative" appearing in the second line.

The reason for this amendment is that the Managing Director of this institute has got specific qualifications and duties which are only applicable to him. He is such an important person, and we do not want him to delegate his duties to any other person.

Thank you, Mr. Temporary Deputy Chairman.

(Question of the amendment proposed)

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I rise to support the proposed amendments for the following major reasons. The recent history of attempts to manage industrial property in this country and many statutory institutions established by Acts of Parliament have been haunted because of excessive responsibilities given to Ministry personal representing Ministries that have no direct interest in matters at hand.

Mr. Temporary Deputy Chairman, Sir, we have a situation where you might have representatives of the Minister for Finance, the Permanent Secretary or the Attorney-General who are not enthusiastic about the responsibilities that go with this. Whereas there are persons in professionally qualified institutions, like research institutions of medicine who are interested, and have a lot of attention for the matters of patent law; who would be ready and available to participate in such meetings, we make a mistake of taking civil servants all the time from line Ministries who either have no interest or have competing interest that will reduce their presence for the work necessary for the Board. It is for these reasons that I find it necessary that this House starts shifting away from the traditional obsession with Permanent Secretaries, the Attorney-General and their representatives; and goes to institutions like the KIRDI, the KEMRI and the LSK, whose personnel will find it a privilege to use their competence to assist in the work that is at hand.

With those few remarks, I beg to support.

The Minister for Public Health (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I really have no problem in accommodating this type of amendment, if it creates the smoothness of this Bill. However, I have one problem. Dr. Kulundu proposed about the representation, which he enumerated. The last one which I did not hear is the Institute of Engineers of Kenya.

If you look at Clause 6(g)(i), it reads:

"One representative nominated by the Kenya Industrial Research Development Institute---"

These are usually our engineers. If you remember, the genesis of The Industrial Property Bill was that we also wanted to take on board the Jua Kali innovations. I do not think that we have catered for them anywhere; they do not have their representation here. I would like to plead with him that, whereas I agree [**The Minister for Public Health**]

with the main body of that amendment, whether we can substitute the words "Kenya Engineers" with "Jua Kali representative. I think that will make a better meaning.

Dr. Kituyi: On a point of information, Mr. Temporary Deputy Chairman, Sir. I would like to inform Prof. Onger that it would be more appropriate that, instead of the proposed two representatives of the Kenya Association of Manufacturers, we have one and another one to represent the Jua Kali Sector.

The Minister for Public Health (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I like that information. I am saying that, since we have the KEMRI and the Kenya Industrial Estates (KIE) who are professional people, we do not want to load it again with other professions. Otherwise, I will demand that you bring in the Kenya Medical Association (KMA), who are also rightful stakeholders to this Bill. So, we just want to keep it wide open while we bring on board--- Let us not load this Bill so much. I think the Jua Kali representative should find a place here. In effect, I have no problem with the other proposal.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, I would like to inform the Minister that if he looks at the Kenya Industrial Research Development Institute, where the Minister says that they are engineers, he will realise that those are scientists. There is a difference between scientists and engineers. If I heard Dr. Kulundu well, he said that part "vi" is missing - "a representative nominated by the Institution of Engineers of Kenya."

We are talking about the manufacturing industries which are composed of engineers. When you talk about the KAM, that association has nothing to do with engineers who work in the industry. So, it is appropriate that we do not replace the Institution of Engineers of Kenya with Jua Kali but accommodate the Jua Kali Sector by withdrawing one person from the Kenya Association of Manufactures and nominating one representative from the Jua Kali Sector.

Mr. Gatabaki: Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to support the amendment because it brings diversity of opinion. We are talking about a very important institute, which is very technical. This institute deals with innovation, technology, patent and copyright. So, we must look for the highest professionalism and diversity of profession. We are bringing in key stakeholders into this institution.

Mr. Temporary Deputy Chairman, Sir, lastly, the Government appreciates the role of the private sector in the development of this country, and increasingly seeks the views and inclusion of professionals in key institutions. So, it must be seen in this context for the benefit of the Minister. This strengthens the institute.

The Temporary Deputy Chairman (Mr. Musila): Let us hear from the Minister and then we will come to you.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, the amendment which I moved of the Kenya Association of Manufacturers (KAM) arose from Dr. Kulundu's intervention during the Committee Stage. We agreed because we thought it was necessary to create space. But then, he must have been in a slumber because he only gave us this one. He seemed to have woken up from his slumber and came up with further space which I have no difficulty in accommodating. I would like to support the proposal made by Prof. Ongeri of bringing on board, the Jua Kali Association (JKA) instead of taking away from engineers who have merit. We have engineers of all types. We have mechanical, civil and structural engineers. We should have them there, and as Dr. Kituyi has suggested, we should have a JKA representative and a sophisticated manufacturer in (ii), so that instead of having two representatives from the KAM, we will have one and one from the JKA.

The Temporary Deputy Chairman (Mr. Musila): I just want to draw the attention of the Members to the fact that the Jua Kali Association cannot come in, unless I have here a notice of amendment to include something that is not already here. So, if it comes we will put it, but as of now, I do not have anything on JKA.

The Minister for Public Health (Prof. Ongeri): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, in Clause 6(g)(vii), we include one representative from the Jua Kali Association. Then (ii) should be---

The Temporary Deputy Chairman (Mr. Musila): Prof. Ongeri, I will call you again. Let us sort it out. Let us get the information and then go to Mr. Murathe.

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, I wish to reassure the two Ministers that, we feel that seven people should be appointed by these professional bodies here. There is (vi) which I said was left out during the typing stage. We wanted to get this from the Institution of Engineers of Kenya. There is one more chance---

The Temporary Deputy Speaker (Mr. Musila): But that will be item number (vi).

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, it will be (vi). So, I would like to assure the Minister that this will only take seven out of the eight places that the Minister has authority to appoint. So, there is one vacancy that the Minister can fill from the Jua Kali Sector.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, my argument is more or less the same, except that I think it is a bit late. It is in connection [Mr. Murathe] with the one that they were proposing to split into two. We would probably need to include the Kenya Medical Association (KMA).

The Temporary Deputy Chairman (Mr. Musila): We have got that, but let me get something in writing, a further amendment proposed.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, am I made to understand that (vi) is already inserted, which is the Institution of Engineers of Kenya?

The Temporary Deputy Chairman (Mr. Musila) I know you have interests there. It is already inserted.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, can we then be clear on what we are agreeing?

The Temporary Deputy Chairman (Mr. Musila): We are agreeing as per the proposal to be added.

Nothing is being deleted.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, nothing is being deleted except that they have a chance to add the words "Jua Kali representative appointed by the Minister".

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, we are agreeing with the Minister that everything remains intact up to (v). Then in (vi), we should add the words "the Institute of Engineers of Kenya". Then on (vii), we should add the words "Jua Kali" as proposed by the Minister, but in (ii) which had two representatives nominated by the KAM, be split so that we have the KMA and the KAM.

The Temporary Deputy Chairman (Mr. Musila): We do not have that one.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, I am proposing it.

(Several Members stoop up in their places)

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! I have got three Members standing up. Mr. Murathe, you have already had your chance. Will you please sit down?

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I want to respond to the two positions that have already come to the Floor. The one by Dr. Kulundu and the one which is being pre-formalised by Prof. Ongeru and Mr. Biwott. I want to oppose the argument by Dr. Kulundu. I would rather we reduce the representation of the KAM by one and create a slot for the Jua Kali Sector than say that the Minister's hands are tied and he cannot appoint an eighth person. If you look at what is happening in South Africa today, this country may discover a genius into the management of invention and we want that person to have the possibility of being brought on board without representing any of these organisations. What South Africa has is a special advisor to the President on invention. I would not like us to extinguish the possibility that such a person can find an entry into this, because all the slots available are tied down to specific individuals. So, I would rather we reduce the KAM representation and create space for the Jua Kali than to create the eighth slot and use it here.

The Murathe: Mr. Temporary Deputy Chairman, Sir, I am just trying to appeal to the Minister that the professional body as far as the Industrial Property Bill is concerned, is the KMA. This is the organisation which will not allow sub-standard generic products, not just the anti-retroviral drugs, but even other drugs coming into this country. That is why I am appealing to the Minister for Public Health to consider this one.

The Minister for Public Health (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, let us end this debate because, in the area of patent rights, we are quite happy with one representative nominated by the Kenya Medical Research Institute (KEMRI). I am quite happy with that. Let us now bring in the Jua Kali Sector which will also be taken care of on technical innovations and other related modifications. So, we have everybody on board.

The Temporary Deputy Chairman (Mr. Musila): Let us make some progress.

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, I wanted to seek guidance from you. You said that you were waiting for somebody to write something for you.

The Temporary Deputy Chairman (Mr. Musila): What do you want to know?

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, I wanted to seek your guidance. Has this got to come from the same person or it will come from---

The Temporary Deputy Chairman (Mr. Musila): Why can you not wait because it is ready? We will read it out for you, then if you have an issue to raise, you can raise it.

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, then you should give the guidance.

The Temporary Deputy Chairman (Mr. Musila): Yes.

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, but it will be too late!

The Temporary Deputy Chairman (Mr. Musila): No, it will not be late. I will give you a chance to raise your issue.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Bill be amended as follows:-

By deleting the word "two" in (ii) and insert thereof the word "one", and further we introduce a new (vii) to read "one representative nominated by the Jua Kali Association of Kenya".

I agree with Dr. Kituyi, he seems to be bright this [**The Minister for Trade and Industry**]

afternoon, that there is always the impossible and, therefore, we should leave that slot in part (viii) to cater for any contingency whatsoever.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, we must make progress now. I think you have heard and, therefore, I am going to put the Question.

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

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

(Clause 6 as amended agreed to)

(Clauses 7, 8, 9 and 10 agreed to)

Clause 11

The Minister for Trade and Industry (Mr. Biwott) Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 be amended:-

(a) by substituting 2(a) by inserting the word "working" immediately after the words "seven years".

(b) by deleting Sub-Clause 2(b) and substituting therefor, the following:-

(b) has a university degree in law, science, information technology or business administration from a recognised university.

That was necessary in order to give room to those who might join at this initial level and acquire considerable experience which will entitle them to qualify.

With those few remarks, I beg to move the amendment.

(Question of the amendment proposed)

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, I would like Mr. Biwott to slightly modify part (b) where he says: "Has a university degree in law, science and information technology---" That would imply that the person must have all those three qualifications first.

I am suggesting that between the words "degree in", we add, "has a university degree in the following disciplines: law, science, information technology or business administration."

The Temporary Deputy Chairman (Mr. Musila): We should put in any of the following.

Mr. Achola: We should put in any of the following to read: "Has a university degree in any of the following disciplines: law, science, information technology or business administration."

The Temporary Deputy Chairman (Mr. Musila): I think we got it.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, mine is just a point of clarification from the Minister. When he says "science", it does not necessarily mean engineering. I thought it would be better if we included "engineering" there.

An hon. Member: It is included in sciences!

Eng. Toro: No! It is different!

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, the chronology over the past decade in this country, apart from lawyers, is that one of the main body of researchers and scholars who have been prosecuting the debate on patent rights and industrial intellectual properties have been graduates of science policy studies, particularly from the University of the Hague. Now, that is not included in the categories provided here. Science policy studies are social sciences. It is not a science. Do I understand science to include social sciences?

The Minister for Trade and Industry (Mr. Biwott): Yes!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, if it may help for purposes of clarity, I would not mind including the words "engineering degree". It does not really matter.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, if you start adding the word "engineering", we will add "medicine" and other things. Sciences are broad subjects which cover almost every discipline, including law. There is the science of law which is called jurisprudence.

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

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

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I want to draw your attention to Section IV on your Order Paper. There is a notice of amendment received from Mr. N. Nyagah.

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 be amended as follows:-

- (i) That subparagraph (1) be amended by deleting the words "Minister on the recommendation of the" appearing in the second and third lines.
- (ii) THAT, subparagraph (2) be amended by deleting (b).

Mr. Temporary Deputy Chairman, Sir, I am bringing this amendment because of what we have gone through in the past. We have just created a competent Board that should be able to appoint its own Managing Director without having to be appointed by the Minister. We have in the past through this Parliament passed as an Act that the Minister in consultation with the Board shall appoint the Chief Executive of the Kenya Roads Board. Todate, many months later, that has not happened. This could easily happen. Time has come that when we as a Parliament create positions for people, they must be left independent. It is very easy for a Minister to introduce that sort of thing.

Mr. Temporary Deputy Chairman, Sir, once a person becomes an appointee of the Minister, he owes his total loyalty to that Minister and not to the Board. This is a competent board and I am appealing to all hon. Members sitting here to accept this, for the first time.

The reason why I was amending part "b" of this clause is that, we did not again want to appear to be saying that for you to take over as the Managing Director, you must have deputised. In a situation where two of them die at the same time, who then takes over? But I am quite happy in this case by the amendment that Mr. Biwott has suggested. Therefore, I am withdrawing Clause 11(ii) so that I can support the Minister. In the same spirit, because we have a long way to go, I will also expect the Minister to support my amendment.

(Question of the amendment proposed)

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, it is very dangerous to lead by suspicion and lack of trust.

In doing anything, someone has to be the appointing authority. Anybody holding a position of responsibility must be a person of integrity unless proven otherwise. So, to this extent, I think it is absolutely necessary to maintain this provision. The Minister should do the appointment. One cannot appoint himself. A child cannot be born without a father.

Therefore, I oppose the proposed amendment.

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment that has been moved by Mr. N. Nyagah.

The essence of the amendment is to make the Board independent and thus delink it from the usual Government interference as much as possible. If the Managing Director (MD) is appointed by the Minister rather than the Board, there will be a conflict of loyalty. We would like the MD to be completely answerable to the Board. Since the Board will comprise of very senior Government and private sector officials, they will have no problem identifying a suitable person for the position.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment on the basis of the fact that the Board will be a public office. So, we should not run away from the fact that the Government must have authority over the Board. We may disagree with the Government, but any Government must have the responsibility of identifying suitable persons to fill up public offices. Especially, since the Board is going to comprise of very independent people from the manufacturing sector and associations, the MD will have very little to do in the event that its membership disagrees with him. So, we should let the Minister appoint the MD. Let us not deny the Government chance to do its job.

So, I oppose the amendment.

Mr. Kibicho: Mr. Temporary Deputy Chairman, I rise to support the amendment. We have seen people campaign for such jobs in this country. So, if the Minister becomes the appointing authority of the MD, the Board will have MDs who will not serve the interests of this country. Because the operations of the Board will involve a

lot of money, even people outside the country who have interest in the whole issue may try to influence the appointment of the MD.

The Minister for Public Health (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I think we must be very clear on what we are doing here. First of all, the Board will have a tremendous diversity in its membership. The day-to-day running of the institute will be under the direction of the Board. The Minister will have no role in the Board's management other than that of appointing its MD, on the recommendation of the Board itself. So, still, the Board will have a role to play in the appointment of the MD; it will be recommending suitable persons for the position.

Mr. Temporary Deputy Chairman, Sir, I think like Mr. Kajwang' has said, and in the light of what happens traditionally even in the appointment of other members of such august bodies, like the KIPO, the British and Swiss KIPO and others, that is a very onerous responsibility. I think we should leave it to the Minister to appoint the Managing Director, but on the recommendation of the Board. Let us not tamper with it.

The Temporary Deputy Chairman (Mr. Musila): Maybe, I will give chance to two hon. Members so that they can raise their queries and then I put the Question.

Mr. Wamae: Mr. Temporary Deputy Chairman, Sir, we have learnt a very big lesson from the KRB; the KRB has been completely incapacitated by the Minister concerned, and it is not doing its work. It is for that reason that we feel we want to remove as much politics from that important body as possible, and let the key and very technical people appoint their chief executive without having political input. That is why we want to remove the Minister as the appointing authority.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, the main argument by the Mover is the absence of trust that Ministers will always proceed to do as recommended, by professional bodies. The main counter argument of the Minister responsible was that nobody can appoint himself. But he has not defeated our anxiety; that if we were like other societies, we would not have problems with the Minister appointing the Managing Director upon recommendation by the Board. But we do not always behave that way. That is what brings this fear, but as for this fear of the Minister, that a child cannot appoint himself to be the Managing Director, but the amendment does not say that he should appoint himself; we are asking the Board to appoint him. So, the fear expressed by the Minister is allayed, and the reason given by the Mover has not been dismissed. I strongly recommend that we accept the amendment.

Mr. Munyasia: Mr. Temporary Deputy Chairman, Sir, I wish to oppose that amendment. Where you have a Board sitting to appoint the Managing Director, you can be sure that they would make that Managing Director dance to their tune and when he or she does not agree, again, any other time they are meeting, they will be free to sack him or her, having appointed him or her. That is when you will find that the office will be unstable. There is absolutely nothing wrong with a Minister appointing a Managing Director. I have not found much reason.

The Temporary Deputy Chairman (Mr. Musila): Very well, Mr. Munyasia, the point is taken. Now, I will put the question.

Hon. Members: The Ayes have it!

*(The Temporary Deputy Chairman
(Mr. Musila) declined to declare the results)*

The Temporary Deputy Chairman (Mr. Musila): Order! I will put the Question again and please do not---

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! You are not in the Chair. I mean, I could not even pronounce the results because you pronounced it for the Chair. I now again put the Question.

Mr. Munyao: The Ayes have it!

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Munyao! And, please, Mr. Munyao, do not say whether the Ayes have won or otherwise.

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

(Clause 11 as amended agreed to)

(Clauses 12, 13, 14, 15, 16, 17 and 18 agreed to)

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, you are looking for an amendment, but there is no amendment there.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members. Let us give Mr. Obwocha a chance to contribute.

Clause 19

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I would ask the Minister to do something on Clause 19. It is a matter that touches on the accounting profession. Clause 19 2(b) talks of accounts. Basically, that Clause is talking about the production of accounts. Clause 19(2)(a) is okay because it talks about production of an income and expenditure account. I am very uncomfortable with part "b" which says that they should only produce a statement of assets and liabilities. In normal accounting, an organisation like this one should produce a balance sheet because it is slightly more than just a statement of assets and liabilities. There are other components that are normally included in a balance sheet. I would appeal to the Minister that after "statements of assets and liabilities" he should add "and a balance sheet for the institute on the last day of that year."

The Temporary Deputy Chairman (Mr. Musila): Since there is no notice, you are just persuading the Minister.

Mr. Obwocha: The production of just a statement of assets and liabilities will not be satisfactory for an institute like this one.

The Temporary Deputy Chairman (Mr. Musila): You want the phrase; "as well as a balance sheet" to be added?

Mr. Obwocha: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, do you have any problem with that?

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, I think accountability is a very important factor in governance. I will accept that improvement in the Bill.

The Temporary Deputy Chairman (Mr. Musila): You will now move an amendment labelled "d" which should read; by inserting the words "balance sheet".

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19(2)(b) be amended by deleting the words "a statement of assets and liabilities."

The Temporary Deputy Chairman (Mr. Musila): No, it will be an addition; not a deletion.

The Minister for Trade and Industry (Mr. Biwott): I wanted to delete "unfair balance sheet" because it includes the whole of it. Instead of saying "a statement of assets and liabilities", we can just say "a balance sheet of the institute" because then it conforms with the other practices.

Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, Clause 19 be amended by deleting the words statement "of the assets and liabilities" and substituting in place thereof, the words "balance sheet of the institute".

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

Clause 20

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 20 be amended in subclause (2) by inserting the words "subject to the approval of the Treasury" immediately after the words "Board may".

Mr. Temporary Deputy Chairman, Sir, this is because anything dealing with financial matters must be known to the Treasury.

(Question of the amendment proposed)

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

(Clause 20 as amended agreed to)

Clause 21

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended in subclause (3)(e) by deleting the words "for therapeutic purposes of a known product" and substituting thereof the words "of any molecule or other substance whatsoever used for the prevention or treatment of any disease which the Minister responsible for matters relating to health may designate as a serious health hazard or as a life-threatening disease".

Mr. Temporary Deputy Chairman, Sir, I think this is self-explanatory. I think this is to allow those with the knowledge to pass it on without the necessity of demanding.

(Question of the amendment proposed)

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, before you put the Question about the amendment---

The Temporary Deputy Chairman (Mr. Musila): But I have finished!

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I have no problem that, that amendment is finished but before you propose Clause 21 to be part of the Bill, there is a separate part of the Bill on Clause 21 that I want to raise with the Minister.

The Temporary Deputy Chairman (Mr. Musila): Dr. Kituyi, I already have another further amendment proposed by Dr. Kulundu on the same clause. So, I have to dispose it off.

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, on second thoughts, I wish to withdraw my amendments.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I was just wondering if the Minister could explain why, after what we discussed on page 473 in Clause 21(i) he is having a very narrow definition of "invention"? Why are you defining "invention" specifically narrowing it down to technology only when we had a more acceptable definition of invention earlier on page 473?

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy, Chairman, Sir, actually this refers to specific solutions. But I think this is mainly intended to take care of ethical objections. For example, any method used by a [The Minister for Trade and Industry] practitioner to save life, or something like that, should not be patented. This is actually more or less to take care of this. If you say "in any specific...", it can mean as many as possible. It is not narrow. But it is mainly for ethical purpose.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, look at a situation where an innovative creation has occurred, which logically, is a breakthrough as a scientific exercise but there is no current problem it resolves. Why does he decline to consider that as an invention just because it does not solve a problem? This is a narrow

definition of an invention under patentability. Why does he only consider it an invention if it deals with solving a problem, when an invention can solve a future problem?

The Temporary Deputy Chairman (Mr. Musila): That is a question.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, let me explain. If my explanation will be inadequate there are scientists here, including Prof. Ongeru and all those who have studied medicine. I think this is intended to cover cases where, for example, there might be an ingenious man who operates in a particular style, which is so unique that it performs miracles. The idea is that he should not capitalise on that by insisting on patent, because human life is very important. It is important that he donates that. There could be, for example, a new disease which has cropped up as an emergency. The Minister should have power to say "please, do not capitalise on this, save life first." For example, in the case of Kemron, when HIV/AIDS was first diagnosed, if that had been a product that would have saved life very quickly, on ethical grounds, it could have been justified for the Minister to say that, that should not be patent---

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, there is a specific question which I asked and it has not been answered. If you look at the earlier definition of "invention" on page 473, you will find that something qualifies to be an invention without having to solve any specific problem, as long as it is an improvement---

The Temporary Deputy Chairman (Mr. Musila): Order! Dr. Kituyi, I do appreciate your contribution, but let the Chair give guidance here. Dr. Kituyi, you are not proposing an amendment, but you are simply seeking clarification.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I do not think that our options in Committee are either to amend or seek clarification. You can also help the Minister to see that, maybe, he should move an amendment, and that is an option that is readily available to the Minister.

The Temporary Deputy Chairman (Mr. Musila): Very well. Let us hear from Prof. Ongeru.

The Minister for Public Health (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, what appears on page 473 gives a comprehensive meaning of the word "invention". This word covers a broad spectrum of other things. When we were talking about patentability, we had some difficulties in treating the word you use. For instance, if you take viagra, which is supposed to be an anti-hypertensive drug, the new use is also helping individuals to perform functions better than those we thought of. What do you do with that new use? It is important that we allow our scientists--- Whereas they may be pursuing the use of that particular patent on a described module, certainly in the process if they discover a new use for this patent, you cannot deny them the opportunity. This is because they would have discovered something for new use and, therefore, the patentability of this is important. I think we are opening space for our scientists. More often than not, they initiate modules, scientific research and before long, they get hijacked. We encourage our scientists that, at every stage, when they think they are in a new situation, they should do this.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I am having difficulty here. I think Dr. Kituyi has tried to persuade the Minister to propose an amendment. But we are not making progress because the position of the Government has been stated very clearly.

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

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

(Clause 21 as amended agreed to)

Clause 22

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 be amended by deleting the words "and is industrially applicable" and substituting therefor a "coma" after the word "step" and the words "is industrially applicable, or is a new use".

That caters for the new users as desired by the hon. Members who spoke earlier.

(Question of the amendment proposed)

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

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

(Clauses 22 as amended agreed to)

(Clauses 23, 24, 25, 26 and 27 agreed to)

Clause 28

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, in moving the amendment to Clause 28, could I be permitted to propose all the amendments as indicated in the Order Paper?

The Temporary Deputy Chairman (Mr. Musila): We must go through them one by one.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28 be amended in Subclause (3) by deleting the word "twenty" immediately after the words "not exceeding" and substituting therefor the words "two hundred".

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

(Clauses 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 agreed to)

Clause 39

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 39 be amended by deleting the words "of the" immediately after the words "the payment".

(Question of the amendment proposed)

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

(Clause 39 as amended agreed to)

(Clauses 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 agreed to)

Clause 54

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 54 be amended by deleting subsection (2) and substituting therefor, the following new subsection:-

(2) the rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval or registration of a product from the Institute for the purpose of commercialising the produce after the expiry of the patent.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Musila): Now, I have a further notice from Eng. Toro to further amend Clause 54.

Eng. Toro: On a point of clarification, Mr. Temporary Deputy Chairman, Sir. If you look at the last page, there were two amendments by the Minister. That is more or less the amendment that I intended to bring.

The Temporary Deputy Chairman (Mr. Musila): The Minister's amendment was done! So, if you wish, you can withdraw your amendment if it is the same as the Minister's.

Dr. Kituyi: No! On a point of order, Mr. Temporary Deputy Chairman, Sir. Eng. Toro is right! The amendment proposed by the Minister, which was read earlier, and which was on an earlier page, is different from the one at the end of the Order Paper.

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Musila): Yes, but he referred to the amendments as per the Order Paper. He did not read them. He said: "As per the Order Paper." So, it is assumed that you all have the Order Paper!

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I know you are looking at the clock, but look at it this way. There are two amendments by the Minister on the Order Paper. The second amendment looks like Eng. Toro's. His first amendment does not! Which one are you calling "as per the Order Paper?" Is it the first or the second?

The Temporary Deputy Chairman (Mr. Musila): They all relate to Clause 54(2).

Eng. Toro: No! No! No! On a point of order, Mr. Temporary Deputy Chairman, Sir. The reason why I did not rise to oppose the first amendment is because I had noticed that there were two amendments. I thought that the Minister would clarify which amendment he would present to the House. The last one is exactly like mine! So, we need clarification there. That is why I never bothered to stand when the first amendment was read out.

The Temporary Deputy Chairman (Mr. Musila): I think Eng. Toro and Dr. Kituyi are right.

Mr. Achola: On a point of order, Mr. Temporary Deputy Chairman, Sir. If the Minister pleases, I can assist him on this one.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, according to my notes, I think Clause 54(2) was amended. I think the one in the last page, as you see it, is the correct one.

The Temporary Deputy Chairman (Mr. Musila): So, the first one is withdrawn and then substituted with the other one?

Order! Order! Mr. Minister, could you, please, clarify which one is very important and which one has been dropped?

The Minister for Trade and Industry (Mr. Biwott): Let me be quite sure.

The Temporary Deputy Chairman (Mr. Musila): You better be sure. There is one on (v) and the other one on the last page of the Order Paper.

The Minister for Trade and Industry (Mr. Biwott): I think the first one then is the correct one. Let us now forget about Clause 54.

The Temporary Deputy Chairman (Mr. Musila): Did you get that Eng. Toro, that the one on Part V is the amendment and the other one is withdrawn? That is what I got from the Minister. Just to be clear, the proposal by the Minister is:-

THAT, Clause 54 be amended by inserting a new subclause(3) immediately after subclause(2) as follows:-

(3) The rights conferred on the owner of the patent under this Section shall not apply to acts by third parties necessary to obtain approval or registration of a product from the Institute for the purpose of commercialising the product after expiry of the patent.

Is that okay, Mr. Minister?

*(Mr. Biwott consulted with officers
on the Civil Servants Bench)*

Eng. Toro: Mr. Deputy Chairman, Sir, there is a difference here. Whereas that is the same, it is introducing subclause (3) and subclause (2) remains. If you introduce subclause (3) without deleting subclause (2), both subclauses are conflicting.

The Minister for Public Health (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, let us put the House into the new mood. We have just passed in the previous sections on the new use and I think all of us know about the Boler Exception which must be included. When we were suggesting that subclause (3) should come in, it takes care of the Boler Exception which is an important clause that we must include there. We cannot delete subclause (2) because it makes reference to the new use. We have just defeated that proposal on the new use and therefore, the new use must be in place. I think subclauses (2) and (3) come in.

Eng. Toro: It is contradictory, Mr. Temporary Deputy Chairman, Sir.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, let me make further clarification on this one. On the Order Paper, it says: "Clause 54 be amended... to the rights conferred on the owner..." If this is agreeable to hon. Members, then this is the correct one.

Hon. Members: Which one?

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir. Let me request the Chair to do the following for us; we are moving amendments as per the Order Paper. I think in this case, let us take a bit of time so that the Minister can read the actual amendment as opposed to the amendments on the Order Paper.

The Temporary Deputy Chairman (Mr. Musila): I agree with you.

An hon. Member: Extension!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir---

The Minister for Transport and Communications (Mr. Mudavadi): On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to move that you use your discretion in accordance with Standing Order No.17(2) so that we can have an extension of time in view of the importance of this particular Bill and bearing in mind that the Budget will then take precedence from tomorrow.

Hon. Members: Yeah!

The Temporary Deputy Chairman (Mr. Musila): This is coming under Standing Order No.17(2) and it reads:

"Unless for the convenience of the House, Mr. Speaker or the Chairman as the case may be directs earlier or later interruption of business at 6.30 p.m. or---"

In view of the importance of this matter, I am exercising my discretion to extend this session until we are through with the business at hand.

The Minister of Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, a clarification is required on Clause 54(2).

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, let us be clear so that we know exactly what we are amending.

The Minister of Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I have just checked with my scientists and they have told me that what I said earlier is correct. The amendment proposed to Clause 54 is the deletion of Sub-Section (2) and substituting in place thereof the following new Sub-Section:-
(2) the rights conferred on the owner of the patent under this Section shall not apply to acts by third parties necessary to obtain approval or registration of a product from the Institute for the purpose of commercialising the product after the expiry of the patent.

Mr. Temporary Deputy Chairman, Sir, I would like to confirm that this the correct amendment we intend to make to Clause 54.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, we are now making progress.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, since the Minister has honoured the amendment proposed to Clause 54, as set out on the Order Paper, I withdraw mine since the two amendments are similar.

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

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

be inserted, put and agreed to)

(Clause 54 as amended agreed to)

(Clauses 55, 56 and 57 agreed to)

Clause 58

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I would like to appeal to the conscience of hon. Members as I move this amendment.

I beg to move:-

THAT, Clause 58(2) be amended by:

(a) deleting the words "or with the express consent" appearing after the word "patent" on the fifth line.

(b) inserting the words "licensee and any authorised party by the Government of Kenya" in place thereof.

Mr. Temporary Deputy Chairman, Sir, the Bill provides that a branded product can only be imported into the country with the consent of its patent holder. We have no problem with this provision. However, the prices of branded products are too high for most Kenyans. Only about 200,000 Kenyans can afford them. This amendment seeks to allow the importation of the generics for use in this country as long as the Government authorises their importation. In other words, we are recognising the role the Government will play to enable many Kenyans---

The Temporary Deputy Chairman (Mr. Musila): That is enough, Mr. N. Nyagah!

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, please, do not rush me! I would like to explain this amendment so that hon. Members may not shoot it down without even having a chance to understand its importance. The amendment seeks to enable Kenyans to also have access to generic drugs, and not just the branded products, which are too expensive for the majority. It is, therefore, important for this House to support this amendment.

(Question of the amendment proposed)

The Minister for Public Health (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, this is the single-most important clause in the whole Bill. It is related to parallel importation, and my brother, Mr. N. Nyagah, may have missed the point because later, in one of the clauses; Clause 105, it will be one of the areas that shall be exempted from infringement of the patent rights. It will be that clause; the entire Clause 58.

So, it has been legally framed in a manner that takes care of the interests that Mr. N. Nyagah is talking about. I would not want us to tamper with it because we have provided an indemnity clause on infringement which covers the whole - not only section 58 (ii), so that it takes care of the problems that he talked about. I think the clause clearly states that the rights under the patents shall not be extended. In other words, the patent holder will not extend all the obligations and rights that have been conferred to him in the previous section of the Bill. Then, in that way, we are reaffirming that in Clause 105.

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I want to be heard. When I came to make my presentation on the amendments, Prof. Onger was in good mood. We realised that the whole clause talks about parallel importation, and that is the whole purpose of us being here; to allow the parallel imports that we have been talking about since yesterday. But the point that I am making is that we can only import into the country the branded products, but we cannot bring in generics. So, what are we saying as a Government? Are we, therefore, saying that the poor Kenyans out there in the villages and who are not in Nairobi cannot be given an opportunity to buy the generics that are going to come into the country? If that is so, I am very sad; if that is what a Cabinet Minister is telling this country. I am appealing to his conscience, once again and finally, to give Kenya an opportunity to be able to import generics. If we do not do that, then, I have no point of sitting here.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member is excited for nothing.

Mr. N. Nyagah: It is because you, Mr. Biwott, can afford it! **The Temporary Deputy Chairman** (Mr. Musila): Order!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, the worry of the hon. Member has already been taken care of by a new amendment which I am introducing in Clause 105. We

are just coming to it. If he is patient, I will give him exactly what he wants because we were as concerned as he is and we wanted to amend that section to read in the manner that he wishes us to amend. But we found it more appropriate to introduce it in Clause 105, which will cater comprehensively for all those sections which are exempted from infringements.

Dr. Kulundu: Mr. Temporary Deputy Chairman, Sir, I wish to support the amendment as proposed by Mr. N. Nyagah, in the sense that we do not want our hands to be tied by the patent holder or its licensee. Let us take, for example, a Pfizer product that is made by Pfizer US which is the patent holder. The licensee would be for example Pfizer, Thailand. If Pfizer, Thailand has a product which is cheaper than what is produced in the US then we can access it in Thailand. By adding the phrase "any other authorised party by the Government of Kenya" we will create room for bypassing Pfizer and go to another reputable firm like Sittler for example, which has got quality products. As long as the Government of Kenya has authorised importation, we can access those same drugs in generic form, but at a much lower cost than the patented ones.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I think the two hon. Members are speaking the same language as we are. We are catering precisely for what they want in Clause 105 which we will discuss. We must behave normally until we get to an abnormal situation which is then provided for under Clause 105. Otherwise, we would not be meeting the WTO compatibility where patents are considered to be a universal right. We should behave normally and be law-abiding in order to protect everything. In cases of emergency and need, we will then declare that there is need and we will go ahead to import parallel generics. We will access those generics in the manner they want us to. I would appeal to the two hon. Members to bear with us until we get to Clause 105. If they are not satisfied with Clause 105, let us amend it as much as possible until they are satisfied.

I would like to oppose this amendment.

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I do not want the Minister to put words in our mouths about the WTO. We are within the TRIPS Agreement in the amendments that we are making. If the Minister says that Dr. Kulundu and I are right in what we have been trying to ask him to accept, and because he has looked back and seen that he has the numbers, why can he then not accept to bring in his amendment and we shall tear it down? Why does he want to think that it is only his amendment that will do? We have tried for the last one hour to accommodate each other, but he is now misbehaving because he has the numbers. I will go out, get more Members and I will misbehave in the same manner he has.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, I have been watching the behaviour of the two Ministers and it is very compatible with the kind of environment we are in. I must support them for the kind of contribution they are making. There is an element of friendliness in it. We want legislation that is friendly to the people of Kenya. We are talking about emergencies and the AIDS crisis and we do not want this Government---

The Temporary Deputy Chairman (Mr. Musila): Mr. Gatabaki, go specifically to the amendment.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, we do not want the Minister to be tied. All we are asking is that parallel importation must not decide, in any way whatsoever, in terms of the crisis we have. So long as this Bill stands, it ties the Minister to---

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Gatabaki! I think you have had your chance. Finally, Eng. Toro and then I will put the Question.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, I think what hon. Biwott says, that this subclause 2 will be accommodated in Clause 105--- We are talking about the Government of Kenya going to do something and we are told that we should not give the Government of Kenya the power to do what is necessary. I do not understand what is the objection is about if we include a provision in our Act that the Government of Kenya should go ahead and take certain actions.

Mr. Temporary Deputy Chairman, Sir, I wonder what hon. Biwott sees wrong in even accommodating this amendment and even repeating it in Clause 105. What is the harm? We can repeat it but if we reject this amendment, we cannot come back because we shall have finished with it. So, we are safer by accommodating it now and, if necessary, even repeat it another time so that Prof. Ongeru, as the Minister, has the powers to take action. Those words we are deleting "with his express consent", we are saying the patent holder has got to give his consent and that withdraws the powers of the Minister. We are withdrawing the powers of the patent holder and giving them to the Government.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I do not see why the hon. Members are so excited when, in actual fact, what they and us have been saying is true. All this, as I said, is that under normal circumstances, this is what will be done, but under abnormal circumstances, which we are in at the moment, the provisions of Clause 105 will apply but if---

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Minister for Trade and Industry (Mr. Biwott): Well, I do not want it to appear like a threat because we are passing the laws of this country and those who are passing them are supposed to be calm and composed hon. Members who take care of--

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir. Are you satisfied with the insinuations by hon. Biwott that if you are not composed, then you cannot be an hon. Member? Surely, you must also intervene as the point is wrong!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, all I have said is that hon. Members are honourable. All are expected to be honourable. If there is an offence on that one, then I do not know what an hon. Member is supposed to look like.

Mr. Temporary Deputy Chairman, Sir, if you want us to repeat exactly the same thing, in Clause 58, as we are going to give you in Clause 105, I have no difficulty at all. Let us become a little bit calm so that at least what we are giving you will be absorbed properly. What about if we put a fullstop after "Kenya" to say: "The rights under the patent shall not extend in respect of articles which have been put on the market in Kenya or in any other country or imported into Kenya."; and then we delete "by the owner of the patent or by his express permission?"

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, procedurally, we cannot accept that. We are dealing with this clause and, unless there is a further amendment to it which you should propose---

The Minister for Trade and Industry (Mr. Biwott): I am actually willing to propose other amendments. I beg to move:-

THAT, we delete the words, "by the owner of the patent or with his express consent" and put a full stop after the word "Kenya."

I am happy I have got some therapeutic power.

The Minister for Public Health (Prof. Ongeru): On a point of order, Mr. Temporary Deputy Chairman, Sir. I know my two brothers. When you create a law, there is the first part of it and they know that, one of the things that we have got to be compliant with is the TRIPS Agreement. That must not be seen to discriminate against that compliance because we are a signatory to that Agreement. When you have created that compliance, we now create exceptions.

One of the amendments we are going to create in that exception will come in Clause 81(c). With your permission, I can read it out because that will solve all the other problems. There is a new amendment that we want to bring and that will take care of those interests. It reads:

"The Minister shall, notwithstanding any of the measures set out in this section, authorise the utilization of any process for the manufacture, sale or supply of any molecule or substance whatsoever by any individual, corporation or society or described in order, and such shall remain in force."

The Temporary Deputy Chairman (Mr. Musila): Prof. Ongeru, you know I have a proposal by the Minister. Unless that proposal is withdrawn from the Floor, it is still there. The Minister has already--

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, let us go ahead with the proposed amendment as I had indicated earlier on by deleting the words "by the owner of the patent or with his express consent" and putting a full stop after the word "Kenya."

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

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

*(Clause 58 as amended agreed to)
(Clauses 59, 60, 61, 62, 63, 64, 65,
66, 67, 68, 69, 70 and 71 agreed to)*

Clause 72

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 72 be deleted and the following new Clause 72 be inserted in place thereof:

1. At any time after four years from the filing date of an application or three years from the date of grant of a patent, whichever period last expires, any person may apply to the Tribunal for a license to exploit the patented product, or a product obtained by the patented process, in any of the following cases:

(a) when the patent holder has refused to grant a voluntary license which was requested on reasonable commercial terms and, for instance, the availability of a product is negatively affected or the development of commercial activity jeopardized

(b) when the patented product, or a product obtained by the patented process, has not been worked or is insufficiently worked in Kenya and working is necessary for health care or to promote a sector of vital interest for socio-economic development.

(c) when the existing degree of working of the patented product, or a product obtained by the patented process, in Kenya does not meet on reasonable terms, within the context of local conditions, the demand for said product on the domestic market, which shall be so understood as to include failure to make said product available to the public at a reasonable price.

(d) in cases of declared national emergency.

(e) when required for reasons of public health, such as to ensure the availability to the population of essential drugs (as listed by the Minister for the time being responsible for Health) or when required in the public interest, including security reasons.

(f) to remedy anti-competitiveness.

2. (a) A compulsory license can be granted to locally produce the patented product, a product directly made with a patented process or any other legitimately produced product that under normal conditions would be considered to be an infringement of a patent under this Act; or

(b) in the absence of local capacity undertake importation.

3. A compulsory license shall only be granted in relation to particular uses of a product, or processes for the manufacture of such product, on the individual merits of each case.

If you look at page 528 of the Bill, you will find that--- The Minister should embrace this amendment because it simplifies many things for him and the Government too. It talks about "reasonable time" on "reasonable terms" which can be any age. So, the purpose is to clarify or remove the vagueness. Furthermore, we are working and what we get is a very friendly Bill. We want to remove any ambiguity whatsoever, that somebody can rush to court and get a decision made. We want to give the judge the latitude. We want to give any importer that capability. We are talking about compulsory licensing and we are in agreement with the Minister, so that there is no particular time when there can be a refusal to deal(?), when a patent holder refuses to grant patent licences. That, in case of emergencies, like the one we are in now, no patent holder can refuse to grant emergency licences.

(Question of the amendment proposed)

The Minister for Public Health (Prof. Ongeri): Mr. Temporary Deputy Chairman, Sir, I understand and appreciate the sentiments being expressed by Mr. Gatabaki. The new Clause 72(1) does not differ from what is contained in Clause 72(i). So, we have no difficulty with that statement. With regard to Clause 72(2), you cannot just break the law overnight. I do not want us to view these patents from the angle of foreigners. Kenyans could well be holders of these patents. Let us not create unfavourable circumstances. This House is on record saying: "You shall be heard when a situation has arisen".

All that Clause 72 is seeking is that they know that when a patent holder has lasted for three to four years, if there is an application by a third party, they have a right to be heard. That is why we have created a Tribunal in this area. If the Tribunal in its own judgement declines, we should allow that Clause. Otherwise, we will be tying the hands of the Tribunal in making a decision in one direction. Therefore, I [**The Minister for Public Health**]

plead with Mr. Gatabaki, that in the interest of justice to all parties, he should not bring Clause 72(2). I have no problem with Clause 72(i).

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

(Clause 72 agreed to)

(Clause 73 agreed to)

Clause 74

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, if you look at the Bill, Clause 74(1) (a) at the end, you will see that it states: "within a reasonable time", we do not want to leave that hanging. "Reasonable time" can be one year or two years. It is subject to interpretation. So, I would like a time frame to be there and put an amendment as follows:-

"THAT, Clause 74(1)(a) be amended by deleting the words "within a reasonable time" appearing on the fourth and fifth lines and inserting the words "within the context of local conditions, within six calendar months from his initial application for such contractual licence".

This will ensure that it is clear.

Secondly, there is an error, where it is written "Sub-Clause 74(2)", whereas it is supposed to be 74 (b). It should be deleted and the following new sub-clause be inserted:-

"satisfies the Tribunal of his technical infrastructure and financial capacity towards the relevant invention sufficiently, to remedy the deficiencies or to satisfy the requirements which gave rise to his request".

(Question of the amendment proposed)

The Minister for Public Health(Prof. Onger):Mr. Temporary Deputy Chairman, Sir, I would like to seek further clarification. Because, when you are talking of the Tribunal and you put a time limit to a tribunal, there are other cases, that when submitted to the tribunal will end within a day, and others, because of the complexity of the nature of the issues that are involved in patent rights, can take endless time. I think it would be dangerous to shut out. Supposing it is an international tribunal, how then do you put the time frame for an international tribunal? If the man feels dissatisfied and goes to an international tribunal, how do you set the time frame? That is the difficulty we have. Whatever laws we are enacting here must be in conformity with what the rest of the international community is doing, and more so, this particular patent law. It is an international law, and those who are lawyers know it. Within Kenya that can be practicable, but outside the territory of Kenya, it becomes very difficult to enforce a time frame.

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, I think the hon. Member is misleading the House because the definition of a tribunal in this Bill does not refer to an international tribunal. It is a Kenya tribunal. If there is anything international, that would be a different matter altogether. But we are talking about a tribunal in Kenya, whereby we would not like a delay of any sort to occur. But we are talking of "within six months". If it takes one day, well and good.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I think any reasonable person would know what "reasonable" is. So, let us not regiment---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Chairman, Sir. How can Mr. Biwott call Eng. Toro unreasonable?

The Temporary Deputy Chairman (Mr. Musila): Order! Let the Minister finish! I have not even heard what he intended to say.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, in fact, Mr. Gatabaki enjoys all manner of reasonable and unreasonable issues, altogether. But here, I am referring to what is reasonable. I would like hon. Members to accept the word "reasonable" because that is flexible. Flexibility is good. "Reasonable" can be a week, two weeks or two days. We are dealing with emergencies and so we should allow flexibility so that a matter that needs to be referred to a tribunal can be referred as soon as practicable instead of waiting, for example, for four days. This could take long. Somebody who is aggrieved should be given the flexibility and also the tribunal should be given the flexibility to accept distress in order to solve the matter. So, rather than regiment it, I would like to plead that we go for flexibility.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, we are talking about a Government which does not know what is "reasonable". We have got institutions which, after one year, are not working. We must put a definite time frame. Reasonability to this Government is non-existent.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I just wanted us to understand that at the convenience of the House, the Chair did exercise a discretion, and my understanding was that it was going to be a very short time. If we continue like this, I will have to withdraw my discretion. So, I would like to urge hon. Members to try to co-operate in seeing this through, whereas, we should be very careful in passing whatever

we do. Do we have another comment?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, whatever is stated in Clause 74(1)(a) and (b) is of general application. The exemption to what is in the general application comes in Clause 74(2), which is in the case of national emergencies or other circumstances of extreme urgency. I think, if we go by the amendment, then we shall be negating what is stated for general application.

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

(Clause 74 agreed to)

Clause 75

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, I think the opposite side of the House are not listening to my proposed amendments and that is why they are just saying: "No, no". It is better for the House to be together. I would like to move:-

THAT, Clause 75(2) be amended by inserting the words "within the context of local conditions"

By putting the words "local conditions", it can be misinterpreted that conditions in Kenya are not the same conditions like those in America or Europe. So, we have to be cognisant of the fact that our conditions in Kenya could be different from conditions in developed countries. That is why we are saying that the local conditions will be taken care of.

(Question of the amendment proposed)

The Minister for Public Health (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I think we should agree. I know we debated this matter: What are the local conditions, international conditions and what-have-you? I think when we put the word, with due regard to all the circumstances, it meant including local conditions. If we find the international conditions are unfavourable to this decision, we will go for local conditions. Let us not be seen to be pre-judging the issue. That is why we said: "To all the circumstances", which include the local conditions.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I would also like to seek the indulgence of the hon. Member who has moved the amendment to the Bill, to understand that Kenya is a member of the TRIPS. So, as far as possible, I think we should appear to be international. But in that internationality, Kenya's conditions are part and parcel of that. In most cases, we always use our local conditions. So, it is already implied in the universal aspect of it. So, I would really plead that we accept the formulation as it is in the Bill.

(Question of the amendment proposed)

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

(Clause 75 agreed to)

(Clauses 76, 77, 78 and 79 agreed to)

Clause 80

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 80 be amended:-

(a) in subclause (1) by deleting paragraph (b) and inserting the following:-

(b) the Managing Director determines that the manner of exploitation of an invention by the owner of the patent or his licensee is not competitive, the Minister may, upon application to him in the prescribed form and after consultation with the institute and the owner of the patent, order

that the protected invention shall be exploited by a Government Ministry, Department, agency or other persons as the Minister may designate in the order, subject to the payment of adequate compensation to the owner of the patent in accordance with this section.

(b) by inserting the following new subclauses immediately after subclause (1):-

(1A) Upon exercising the powers conferred upon him under subsection (1), the Minister may, notwithstanding any of the measures set out in this section, authorise by written order the importation, manufacture or supply, or authorise the utilisation of any molecule or substance whatsoever by any individual, corporation or society as named or described in the order without notice to the patent or any other notifiable party and such order shall remain in force until revoked by the Minister in writing, after giving six months' prior notice of his intention of such revocation to the party named or described in the order.

(1B) An order made under subsection (1A) shall not require the payment of compensation to the owner of the patent or licence holder or any other party so interested.

(Question of the amendment proposed)

Clause 80(1C)

The Minister for Public Health (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, there was difficulty in inserting that critical clause that I promised this House. The Minister was supposed to have inserted Clause 80(1C). This is an important clause and it must be inserted.

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Minister shall, notwithstanding any of the measures set out in this section, 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 in the order, and such order shall remain in force until revoked by Minister in writing giving six months' prior notice of intention of such revocation to party named or described in the order.

The relevant Committee of the House discussed it and agreed that it is an important clause to be inserted.

The Temporary Deputy Chairman (Mr. Musila): Are you amending the Minister's proposed amendments?

The Minister for Public Health (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, this was an additional clause.

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir. In that case, should I not be given the first opportunity to make amendments to the Minister's amendment and then we shall listen to Prof. Ongeru's amendment? As we know, the practice is that we must file our amendments with the Clerk beforehand. I am not opposed to that but I do not want us to get there.

The Temporary Deputy Chairman (Mr. Musila): Mr. N. Nyagah, it is in order for a Minister to add or propose an amendment even if it is not given in the notice. What you are saying is that at (iv) you are proposing an amendment. You are wondering why you should not be given the first chance. We had already given the Minister the opportunity to move his amendment. Are those amendments the same?

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, it is the protocol of doing things. Protocol demands that if my amendment is the first one to reach the Clerk--- Prof. Ongeru is not the Minister in charge of this Bill. So he should come after me!

The Temporary Deputy Chairman (Mr. Musila): Mr. N. Nyagah has a point. First of all, we should clear with hon. Biwott's amendment and then come to these others.

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

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

Clause 80(1)

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 80(1) be deleted and the following new subclauses inserted in place thereof. The amendment I am making is based on the fact---

The Temporary Deputy Chairman (Mr. Musila): Could you please move your amendment so that I can propose the question?

Mr. Achola: On a point of order, Mr. Acting Chairman, Sir. There was an amendment by hon. Biwott to Section 1 of Clause 80. So, which section is Mr. N. Nyagah going to amend?

Mr. N. Nyagah: Mr. Temporary Deputy Chairman, Sir, if hon. Achola would be patient, I will be able to tell him the amendment I am making. If you look at the substantive Bill, page 533, there is Section 80(1) and that is what I am amending. It reads as follows:-

" The Minister may, upon application to him in the prescribed form and after consultation with the Institute and the owner of the patent, order that the protected invention shall be exploited by a Government Ministry, Department, agency---"

This can be read together with these sections which talk about "national emergency and "national disaster".

If you look at those two, like His Excellency the President, in 1999, declared AIDS a national disaster, and if you looked at what is contained in the Bill, it does not mention anything to do with "national emergency" or "national disaster". It talks of nutrition, national security, health and environmental conservation. That is the only addition I am requesting this House to approve for inclusion.

The other amendment which is envisaged in my prayer is that if you look at this Bill, every single clause begins with "the Minister shall" do the following, subject to "this" but in this case, if you read it the way it is, subject to this section where it talks about public interest and goes on to "competitive", that sentence itself does not make any sense at all. You need to give this to the Minister right from the beginning like we have done with other Bills. The Minister should become the subhead who gives that authority. That way, we will move in conformity with what that Bill carries.

With those remarks, I beg to move.

(Question of the amendment proposed)

Mr. Munyasia: Mr. Temporary Deputy Chairman, Sir, I wish to oppose that amendment because it is well catered for under Clause 80(2). There is a provision on page 534 which states:-

"Provided that the provisions of this subsection shall not apply in cases of national emergency or extreme urgency in which case the Minister shall cause the content of the order to be communicated to the owner of the patent as soon as is reasonably practicable."

So, why does he want to bring something that is superfluous?

Eng. Toro: Mr. Temporary Deputy Chairman, Sir, I think Mr. Munyasia missed the point. If you look at Clause 81, the Minister will only take action in subclause "b" and not in "a". So by shifting the Minister and what he is supposed to do in Clause 81, then he will take action in both subclause "a" and "b". But according to this clause, he can only take action in "b" and not in "a". We want to amend this clause so that the Minister can take action in both "a" and "b".

Mr. Muturi: On a point of order, Mr. Temporary Deputy Chairman, Sir.

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, there is a point of order by Mr. Muturi.

The Temporary Deputy Chairman (Mr. Musila): Order! Mr. Achola, you cannot tell the Chair that there is a point of order by someone. The Chair can listen, hear and see whoever raises a point of order. Is it your point of order? Mr. Muturi, will you, please, sit down?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, my point of order is that we have just amended Clause 80(1) as proposed by hon. Biwott. Now for us to say again that we will amend Clause 80(1)(a) and (b), is superfluous. Unless we are saying that this will be an amendment to the amended Clause 80(1), then we will have missed the boat. That is the point.

The Temporary Deputy Chairman (Mr. Musila): Mr. Muturi has a point. However, this is an amendment to the amendment.

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

Clause 80 (1)(C)

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 80 be amended by adding subclause (1)(c), that the Minister shall, notwithstanding any of the measures set out in the new section, authorize 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 in the order, and such order shall remain in force until revoked by the Minister in writing, giving six months' prior notice of intention of such revocation to the party named or described in the order.

(Question of the amendment proposed)

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

(Clause 80 as amended agreed to)

*(Clauses 81, 82, 83, 84, 85, 86, 87, 88,
89, 90, 91, 92, 93, 94, 95, 96, 97, 98,
99, 100, 101, 102, 103 and 104 agreed to)*

Clause 105

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 105 be amended by adding 21(3)(E) and 80(1)(c).

The new subclause will read as follows:-

Subject to Sections 21(3)(E), 58, 61(6), 72, 73, 80(1)(c) and 86, any act specified in Section 54 or 92 and performed by a person other than the owner of the patent or the registered utility model or industrial design without the owner's authorization in relation to a product or a process falling within the scope of a validity granted patent or certificate of registration shall constitute an infringement.

(Question of the amendment proposed)

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

(Clause 105 as amended agreed to)

(Clause 106 agreed to)

Clause 107

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 107 be amended in subclause (2)(b) by deleting the words "a reasonable time" immediately after the words "to reply within" and substituting therefor the words "fourteen days".

(Question of the amendment proposed)

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

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

(Clause 107 as amended agreed to)

*(Clauses 108, 109, 110, 111, 112,
113, 114, 115, 116, 117, 118,
119, 120 and 121 agreed to)*

Clause 122

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:
THAT, clause 122 be amended by deleting the word "or" immediately after the words "in favour" and substituting therefor the word "of".

(Question of the amendment proposed)

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

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

(Clause 122 as amended agreed to)

First Schedule

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule be amended:-

- (a) in paragraph 2(b)(iii) by deleting the word "or" appearing at the end thereof and inserting the words "for a period exceeding six months";
- (b) in paragraph 5 by inserting a new subparagraph immediately after subparagraph (2) as follows:-
- (3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine of Kshs100,000, or to imprisonment for a term of six months or to both.

(Question of the amendment proposed)

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

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

(First Schedule as amended agreed to)

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Industrial Property Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Mr. Imanyara) in the Chair]*

REPORT AND THIRD READING

THE INDUSTRIAL PROPERTY BILL

The Temporary Deputy Chairman (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the Whole House has considered The Industrial Property Bill and approved the same with amendments.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Public Health (Prof. Ongeru) seconded.

(Question proposed)

(Question put and agreed to)

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

The Minister for Public Health (Prof. Ongeru) seconded.

(Question proposed)

(Question put and agreed to)

Mr. Achola: Mr. Temporary Deputy Speaker, Sir, I really want to thank this House for passing this Bill, and also the Members of the Education, Research and Technology Committee who went into great lengths in analysing the Bill. Most of the recommendations that we made have been adopted today. However, I would like to appeal to the Minister for Public Health to ensure that the issues that were raised by hon. Members, regarding the integrity of the drugs that might find their way into the country are checked, so that our people are not exposed to any substandard drugs.

With those few remarks, I thank you all.

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, I would like to sincerely thank the Minister for at last having made sure that we have passed the Bill. On behalf of the Chairman of the Departmental Committee on Health, Housing and Social Welfare, I thank my Committee for having gone through the Bill and also having made some important amendments that have been included in the Bill.

With those few remarks, I beg to support.

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, although this Bill has been passed, unless the Government waives fees in all Government hospitals, our people will still continue dying. So, this Bill, by itself, may not solve all the problems.

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, with the passage of this Bill, Kenyans now expect that there are going to be cheaper drugs for HIV/AIDS. But the Ministry of Health must take into consideration the caution that has been advanced by various groups about laying the infrastructure that will deal with this particular problem. There should now be an intensified programme to train personnel from every part of the

country that will be able to make the prescriptions and to monitor the use of these drugs. If the Minister is going to put that in mind, Kenyans will be safe with the passage of this Bill.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I am happy that we are just about to pass this Bill. I appreciate that a lot of attention has gone to the area of health. The passage of this Bill will pave the way for the creation of the Institute proposed therein.

I would like to appeal to the Ministry of Trade and Industry to ensure that the Institute enhances its activities by publishing journals for circulation countrywide, so that even Kenyans who are involved in the Jua Kali sector can be aware of the existence of a law which protects their technovations.

(Question proposed)

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, on that note, we will adjourn our proceedings to tomorrow, Thursday, 14th June, at 2.30 p.m.

The House rose at 7.45 p.m.