Bills to catch access
to medicine in region

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detention of all suspected
counterfeit goods, under
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A draft Bill seeking to protect
the region from counterfeit
products could deny millions of
people living with HIV/AIDS
access to life-saving generic anti-
retroviral drugs if passed, a new
report says.

Civil society activists and in-
tellectual property experts warn
that generic medicines have
wrongly been labelled “fake”
and “counterfeit” under the EAC
Anti-Counterfeit Bill, which will
block the production and impor-
tation of generic drugs into East
Africa.

If passed, the Bill could see the
region lose recent gains made in
improving access to healthcare,
especially for people living with
HIV/AIDS, and would signific-
antly undermine the region’s
progress in attaining Millenni-
um Development Goal 6, which
calls on countries to halt the
spread of HIV and AIDS by 2015
and achieve universal access to
treatment for HIV and AIDS by
2020. It also aims at halting
and reversing the spread of malaria
and tuberculosis by 2015.

There are concerns over possible
abuse of IP enforcement such
as preventing market entry by
competitors and compromising
efforts of technology transfer

This policy, in its current
form, would not in any way
address the question of quality of
medicines but instead has the
potential to negatively affect
both regional and national ini-
tiatives in EAC partner states
to protect the right to health
and life as well as improve public
health, “the report by Southern
and Eastern African Trade
Information and Negotiations
Institute (SEATINI) notes.

The report investigating pat-
ten, laws, policies and institu-
tions related to access to medi-
cine in the EAC indicates that
the Anti-Counterfeiting Policy
does not provide for the use of
Trade-Related Aspects of Inte-
lectual Property Rights (TRIPS)
flexibilities as the World
Intellectual Property Organisa-
tion recommends.

These flexibilities would al-
low trade in generic medicines
as long as they are not coun-
terfeit, experts say. Instead, the
Bill makes recommendations for
seizure and detention of all sus-
pected counterfeit goods, under
which generic drugs have now
been categorised, affecting the
cross-border flow of generics.

“Let’s harmonise laws ac-
cording to our needs; we need
to be proactive and negotiate
to change these agreements
and take advantage of the flexibilities
where we think it will help,” said
Nathan Irumba, chief executive
officer of SEATINI.

The survey conducted in
March by SEATINI and Centre
for Health, Human Rights and
Development and Health Action
International notes that while
intellectual property holders
view IP enforcement as a criti-
tical tool for their business, some
health groups, consumer groups
and other stakeholders have ex-
pressed concerns over possible

PROPOSED CHANGES
IN THE EAC ANTI-
COUNTERFEIT BILL

Definition of counterfe-
ted product should be
limited to
- Trademark infringement as
  provided for in TRIPS
- Criminal sanction should
  be imposed on willful
  trademark counterfeiting
  or copyright piracy on a
  commercial scale and should
  be consistent with the
  level of penalties applied
  to crimes of corresponding
  gravity.
- Provisions criminalising
  patent infringement should
  be deleted.
- Border measures should be
  imposed on imported goods
  only.
- The exclusion clause should
  not be stricter than the
  TRIPS as it would infringe
  on some domestic laws and
  limit non-commercial use of
  patented products.

The Bill, if made into law, could result in reverse gains made in
the access of drugs by HIV/AIDS patients. Picture File

abuse such as preventing market
entry by competitors and com-
promising efforts of technology
transfer.

“Generally on the East African
level, they are mixing up intel-
lectual property and quality is-
sues. We need to make sure that
mistakes made at national level
do not escalate to the East Afri-
can level first,” Melba Kitindo of
Kenya Legal and Ethical Issues
Network observed.

According to Mr. Kitindo, the
civil society has to understand
the operation of the East African
Community and inform the peo-
ple so that they can have a say on
what is going on.

This is a view shared by a law-
ner with the Centre for Health
Human Rights and Develop-
ment, Moses Mulumba.

“The operation of the EAC is
confusing on the one hand they
suggest utilising TRIPS flexibili-
ties under the [World Trade
Organisation] Protocol and on the
other, they take away the flexi-
bilities under the proposed anti-
counterfeiting Bill and Policy,” he
said.

Mr. Mulumba blamed policy-
makers for “signing agreements
before understanding what they are
signing” leaving little room to
mitigate what they have al-
ready done.

However, Uganda Ministry of
East African Community Affairs
commissioner Ronah Werwada
defended the EAC arguing, “The
EAC recognises those issues and
has a policy, legal and institu-
tional framework to handle that.
We are looking into how we can
form partnerships between gov-
ernment and civil society so as
to form strong laws which do not
infringe on access to medicine.”