



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly 74TH SITTING - SECOND ASSEMBLY: THIRD MEETING - THIRD SESSION

Wednesday, 10 February 2010

The East African Legislative Assembly met at 2.30 p.m. in Parliament House, Kampala.

PRAYER

(The Speaker, Mr Abdirahin Haithar Abdi, in the Chair.)

The Assembly was called to order.

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable Members, as you are aware, we started on a sombre note. When we came here on Sunday, 8 February 2010, hon. Mulengani lost his wife, and she will be buried today.

I would also like to announce some other sad news. Hon. Gen. Muntu lost his mother last night as well, so this time we are starting off on a sombre note, but I can only say that it is God's will, and we are all heading that way.

I would also like to say to them and their families that we are with them as Members of the East African Legislative Assembly and as members of this community. Let us rise for a moment of silence in respect of the departed.

(The Members rose in their places and observed a moment of silence)

PAPERS

The following paper was laid on the Table:-

by the Chairperson, Committee on Agriculture, Tourism and Natural Resources (Mr George Nangale:

The report of the Committee on Agriculture, Tourism and Natural Resources on the Common Strategy for Food Security in the East African Community.

**BILL'S
SECOND READING**

The East African Community Tourism and Wildlife Management Bill, 2008

(Debate interrupted on 25 March 2009 resumed)

The Speaker: Honourable Members, as you are aware, this Bill was tabled for second reading on 24 February 2009. We later adjourned debate to allow the Committee to go and have public hearings in the five Partner States for us to get more consultations.

On the 25th of March, the Bill was brought again before this House in Nairobi where members started debate on it. The debate was interrupted by the Chairperson, Council of Ministers who at that time requested for adjournment for more consultations before they could get back to this House.

It has been nearly a year since this Bill was brought before this House, and the mover of the motion requested that the Bill be brought before the House again so that we can get to a logical conclusion on it.

I would like to say that a number of you, Members, have already debated this Bill so, according to our rules, you cannot again debate the same Bill. Therefore, I would like to say that the persons who have debated so far are hon. Lotodo, hon. Mulengani, hon. Tiperu, hon. Masha and hon. Byamukama, so they will not be able to take part in the current debate on this particular Bill. Debate is now open.

Ms Kate Kamba (Tanzania): Mr Speaker, first of all, being the first time I am rising this year, I would like to wish all of us the best of luck for the year 2010. Much as we have started with a bit of sadness because of the loss of our friends' relatives, I hope there is a bright future for this year.

The East African Community Tourism and Wildlife Management Bill, which we are supposed to discuss and have a conclusion to is a very important Bill. East Africa is endowed with natural resources unlike other areas within the region, but because of a lot of bureaucracy and many blockages, we are not moving.

We have the Ngorongoro in Tanzania, Mt Kilimanjaro in Tanzania but you can view it from Kenya. It is like a common endowment, which God has actually bestowed on East Africa. Sometimes we have cries that the Kenyans use it for their own benefit while it is a Tanzanian asset, but I think it is a regional asset. We have the Ngorongoro as I said earlier and the Maasai Mara. As you are aware, the animals move from one country to the

other with no limitations. They just move and they do not need a visa or any permission to move, unlike most of us.

When we look at the object of this Bill, it is really to have a framework in natural resource management, and the Bill seeks to operationalise an article in the Treaty, which establishes the East African Community.

This framework will allow us to manage our natural resources together without limitations. Looking at tourism, which Kenya actually has developed very well in terms of the facilities and promotions, if we use the same facilities in promoting the tourism industry in the whole of East Africa, we will move a step forward. It will be one of the incomes for the region and it will increase the GDPs in the region.

Looking at wildlife as it is, we have animals moving from one area to another, and we need general protection for the animals whether they are in Kenya or in Tanzania. We should have a joint policy of protecting the animals. In addition, this Bill seeks to promote such issues.

The private sector, which has not really done well in the region, especially in Tanzania, should borrow a leaf from Kenya, and to a certain extent, Rwanda, as they are moving very fast in terms of promoting the tourism industry.

Therefore, what I am actually standing here to do is to support this motion, and to make sure that our governments take this Bill seriously because in areas where we have the strength, we do not need to invest so much, for example, we have the animals, and so we can invest in hotels and in infrastructure. Here I really want to call upon the region to try to harmonise transport infrastructure. When you fly from Zanzibar to Mombasa, it is like going to another foreign country. The fares are too high. Therefore, this area will also need to be harmonised.

We have the sea front from Mombasa to Zanzibar, to Dar-es-Salaam and down south to Mtwara, and then you can even move to Cape Town. However, we also need to look into this area regionally because if we do not have proper infrastructure, we won't enjoy the benefits of these facilities, let alone the beautiful coast of East Africa. Therefore, that area also needs to be harmonised.

We always talk about railways because that is an area, which has had some kind of attention since the colonial times, and even during the defunct East African Community. So, I think that if we look seriously at the Bill, we will find that what the Bill is seeking is really to harmonise, make use and maximise the use of the natural resources which East Africa is endowed with.

The Bill is also seeking to harmonise the exchange of information. For example, when we are trying to promote tourism, you will find Kenya going to the same promotion, they have their own stand; Uganda has hers and Burundi has her own. I think it is high time

sold East Africa as a one-stop centre, which this Bill is trying to do so that even when doing the promotions abroad, we work together as East Africa.

We have so much in terms of culture; we share a lot of culture and our natural resources, which in a way will promote the incomes of people in the region in terms of handicrafts. Once you start promoting tourism, you will also increase the incomes of the people in the region in terms of agriculture, because you will have a multiplier effect. Those who are growing vegetables will have a market within, those who are making handicrafts, especially the women, will have a market within so, when we harmonise and look at the East African Community Tourism and Wildlife Management Bill, you will find that we are trying to come together. Even before the federation, we will be there in terms of making maximum use of our resources.

Therefore, I stand here to congratulate the mover of the motion, hon. Safina Kwekwe Tsungu, for making an effort, which will remain in history that she moved a very important motion, which brought East Africans together. Thank you very much.
(Applause)

Mr Gervase Akhaabi (Kenya): Thank you, Mr Speaker. For the economy of our countries and sustained development, this is a very important Bill in that in East Africa, we now recognise that tourism and services related to tourism constitute a big percentage of our Gross Domestic Product. Tourism and services related to tourism employ a big percentage of people in East Africa in wage employment. It is probably in tourism that East Africa as a whole has a competitive advantage compared to other parts of Africa, and indeed the entire world. It is, therefore, important that we as East Africans recognise tourism as an important asset in our development agenda.

The Treaty for the Establishment of the East African Community is clear on the objective for which the Community was established, and that is to improve the social and economic wellbeing of the people of East Africa, of the citizens in the Partner States in East Africa. Therefore, the promotion of tourism in this region directly goes towards the attainment of the core objectives for which the Community was established.

Mr Speaker, East Africa's economy gravitates around wildlife, which constitutes the biggest attraction for tourists into East Africa. It is true that we have beautiful beaches, and we have a wonderful climate. All the way from Kiunga on the border with Somalia to Mtwara on the border with Mozambique, we have beautiful beaches. However, in spite of these beaches being a big attraction, it is the rare wildlife that we have in this region that keeps drawing so many people from where the wildlife has been decimated due to human greed, to our region.

Today East Africa has the highest percentage of lions and lionesses in the whole world. It is the responsibility of the people of East Africa to protect this wildlife, these lions, and these rare cats that people come from all over the world to see. Therefore, the management of our wildlife is of paramount importance, and it is important that as partners in the Community, we harmonise our policies relating to the preservation of our wildlife.

As has been said by hon. Kate Kamba, our animals do not know any borders at all, so a lion in Tanzania from the home province of my good friend hon. Masaburi will cross over into Kenya without seeking a work permit, a grazing permit or whatever passports from hon. Karan from Nyanza Province. If hon. Karan, for any reason, were to decide that he no longer wishes to see lions in his part of the country of the community and destroyed the lions, hon. Masaburi in Tanzania would not have the benefit of selling the lion to the world, and, therefore, the tourism related to lions would be gone and gone forever.

Mr Speaker, we say the same with regard to elephants. The elephant today is an endangered animal because of the recklessness and greed that governs our daily conduct. We want to make a quick buck by killing elephants to extract ivory so that we can get money quickly, and not for posterity but for the present. What are we doing to posterity? It is important, therefore, that Tanzania, Kenya, Rwanda, Uganda and Botswana – *(Interjection)* - eh Burundi with lions? I am referring to Botswana because Botswana and Tanzania have been collaborating and co-operating in fighting the attempts to sell ivory, which is a danger to our elephants in this region.

It is important for us as the people of East Africa to wish for our heritage to be preserved, and to harmonise our policies in order to protect our wildlife - *(Interruption)*-

The Speaker: Hon. Members, he does not want the information.

Mr Akhaabi: Mr Speaker, when I talk about preservation of our wildlife, it also means that we must harmonise our policies pertaining to our environment. It is a pity that after the Protocol on the Environment was signed quite some time back - I think it was 2004 - we still do not have a common policy on environment, and the environment in East Africa has continued to be degraded.

The destruction of our environment has a direct consequence on our wildlife. The destruction of the Mau Forest in Kenya has a direct consequence on the wildlife in the Serengeti and the Maasai Mara. Therefore, it is important that under this Bill, and when it becomes law, the policies that deal with environment should be harmonised with these policies that deal with wildlife management. *(Applause)*

As the environment in the Serengeti-Maasai Mara eco system continues to be destroyed, we are effectively destroying the world heritage that the Serengeti and the Maasai Mara are known for: the wildlife migration from Tanzania into Kenya and from Kenya into Tanzania. So this Bill, in my view, is an extremely important piece of legislation that this House is contemplating to harmonise these policies, and I pray and hope that the Council of Ministers will view this Bill as a serious attempt by this Assembly to preserve our environment, not to preserve for ourselves but to preserve this environment for posterity. *(Applause)*

Mr Speaker, we all know that in the Ambrosseli National Park, which borders the Mt Kilimanjaro National Park, there is serious poaching going on there. With this law in place, I hope that we will be in a position to address this threat to our heritage.

For these reasons, I support this motion whole-heartedly. Thank you, Mr Speaker.
(Applause)

The Speaker: Honourable Members, before I call hon. Masaburi to say something, I would like to recognise, in the Gallery, students from Multi-tech Business School who have come here to observe the proceedings of Parliament today. Please, stand up for recognition. (Applause)

Dr Didas Masaburi (Tanzania): Mr Speaker, thank you for also giving me this opportunity to contribute on the Bill on the Floor. I also wish my colleagues a happy new year.

Apart from supporting the contents of the Bill, I would like to point out a fundamental problem, which I see outside this Bill. The title of the Bill is “*The East African Community Tourism and Wildlife Management Bill*”, but when you go inside the contents, what is there is all about establishing a commission. That being the case, it would be appropriate to name the Bill for the establishment of a commission. If it were a management Bill, then the Bill would contain policy issues, some things to be done, and the actions and penalties to be imposed on those who will not manage the wildlife according to the provisions of the Bill.

Therefore, it is my considered opinion that should name this Bill otherwise because there is nothing in it concerning the management of wildlife and tourism in the East African Community, and the penalties to impose on those who will not implement the sections of the Act. Thank you.

(Hon. Byamukama stood in her place to catch the Speaker's eye)

The Speaker: Thank you, hon. Masaburi. Hon. Byamukama, I think if you came in earlier, you would have heard that you already contributed to this Bill in Nairobi; so you cannot contribute twice on the same Bill.

The Minister for East African Cooperation, Tanzania and Chairperson of the EAC Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, while congratulating you and the honourable Members upon successfully concluding the year 2009 and wishing you a happy and prosperous 2010, I note with sorrow the passing away of hon. Mulengani's dear wife, and hon. Gen. Muntu's beloved mother. On behalf of the Council, I pray to the Almighty God to rest the souls of the departed persons in perfect peace.
(Amen)

During the last but one meeting of this august House, the Second Reading of the East African Community Tourism and Wildlife Management Bill started. In the course of the

deliberations, the Chairperson of the Council of Ministers moved a motion to suspend the debate. This was based on the Council of Ministers' request for more time to finalise the ongoing work on the Draft Protocol on Tourism and Wildlife Management. The contents of this protocol are meant to inform the Council's position on the Bill and, indeed, on the scope of the operationalisation of Articles 115 and 116 of the Treaty.

The use of protocols is an acceptable mechanism in the EAC integration process. Article 151 of the Treaty allows Partner States to conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and the scope and the institutional mechanisms for co-operation and integration. The Council of Ministers is of the view that the matters pertaining to tourism and wildlife management are areas in respect of Partner States, to spell out what is contained in Articles 115 and 116 of the Treaty more explicitly.

The technical works and input into the Protocol have been finalised by both technical experts and the line permanent secretaries responsible for tourism and wildlife management. What is outstanding is the consideration and adoption of the Protocol by the relevant Sectoral Council of Ministers responsible for Tourism and Wildlife Management as an institutional policy making organ. This sectoral council has not been able to meet, although it is scheduled to meet next month.

I am mindful of the fact that this Bill has been in the House for a long time. On two occasions, debate was suspended at the insistence of the Council. I also bear in mind the need to enable this august House to proceed with its legislative business, as reflected in the annual legislative programme, expeditiously. However, I am also conscious of the fact that subsequent to the Sectoral Council's approval of the Protocol, there will be other necessary steps, such as ratification, before the Protocol enters into force.

The post approval process, including ratification, is a Partner State action. Logically, and in order to apply and rely on any protocol, the Partner States should have ratified such protocols. It is through such a process of ratification that the Partner States finally commit themselves to any protocol.

I cannot gainsay the importance of managing tourism, natural resources and wildlife. The provisions of Articles 115 and 116 and the EAC Development Strategy are clear on this matter. The five Partner States share common goals and are committed to development in the promotion of tourism as well as conservation and management of wildlife in a regional context.

It is, therefore, important to have legislation in support of policy projections in this regard. Such policy projections are what are contained in the protocol. Legislation would guide all such issues as marketing and the promotion of tourism, management and protection of wildlife resources and tourism attractions, standardisation of tourism facilities and services, harmonisation of tourism and wildlife policies and the necessary institutional frameworks, mobilisation of resources for tourism development and wildlife conservation and the development of quality tourism and related matters. All these are

matters in respect of which the Partner States as contracting partners to the Treaty need to express themselves at policy level when they are ratifying this Protocol.

The Partner States, while appreciating the importance and the timeliness of the Bill, will also have to consider any budgetary or financial implications that necessitated by the conclusion of the Protocol.

Based on what I have stated, the Council is not in position to support this motion. However, this does not necessarily mean that this august House should not legislate as it deems fit. I thank you for allowing me to make this statement on the position of the Council. Thank you.

The Speaker: Before I call the mover of the motion, can I call hon. Nangale, who is the Chairperson of the committee, to say something?

The Chairperson, Committee on Agriculture, Tourism and Natural Resources (Dr George Francis Nangale) (Tanzania): Thank you, Mr Speaker. The East African Community Tourism and Wildlife Management Bill, 2008, was introduced as a Private Members' Bill, as we know, by hon. Safina Kwekwe during the Third Meeting of the Second Session of the Assembly way back in December 2008, here in Kampala, and this is approximately 14 months ago.

The Bill seeks to provide a legal and co-operative framework to mitigate challenges facing the regional tourism and wildlife industry. These challenges include, but are not limited to, high marketing costs, fierce competitions and fragility of the region's tourism base.

The Bill was referred to the Committee on Agriculture, Tourism and Natural Resources for consideration and report thereof in accordance with Articles 49, 59 and 62 of the Treaty; and rules 64 and 67 of the Assembly.

The Committee first reported to the House on the 24th of February in Arusha, and sought more time to consult more widely, stakeholders around the region. Mr Speaker, with your help, the Committee got support from AWEPA and managed to interact with stakeholders in the five capitals of East Africa, namely Dar-es-Salaam, Bujumbura, Kigali, here in Kampala, and Nairobi.

During the Second Reading of the Bill, at the Fifth Meeting of the Second Session of the Assembly on 25 March 2009 in Nairobi, the Committee submitted its report, including input from the public hearings. It was during the same meeting in March 2009 - which is almost a year ago - that the Council of Ministers moved a motion for adjournment of the debate on the Bill, which was ongoing by then. The Council asked for more time to consult and complete a protocol on the establishment of a tourism agency, which the House was told, would provide policy direction. We have heard the Minister alluding to the same here.

The Council committed to resolve this issue by the then next session in May 2009 in Bujumbura. We all know that that did not happen. Today, close to one year, the Council of Ministers is still consulting, and the protocol is nowhere. The Committee would like the House to consider this report and go forward to amend it as it sees fit.

In the Committee stage, the Committee will introduce new clauses, which will facilitate the establishment of a fund to finance the Commission. We will also introduce a new clause to facilitate the decisions of the Commission. The Committee will also propose the introduction of a new clause to provide sanctions in the case of violation or non-adherence to the provisions of the Bill. Thank you.

Ms Safina Kwekwe (Kenya): Thank you, Mr Speaker. May I start by joining you and the entire House in wishing East Africans a very happy new year, and wishing all those Members of this House who have been bereaved that they may get strength from God to persevere and overcome their grief!

Mr Speaker, hon. Nangale, who is the Chairperson of the Committee on Agriculture, Tourism and Natural Resources, has already given the background and history to this Bill, and the process that it has gone through. The hon. Dr Kamala, the Chairman of the Council of Ministers, has also echoed the same. Several Members of this House on the Floor of this House in Nairobi, Arusha and now in Kampala have indeed contributed to the debate on this Bill.

Honourable Members have raised several issues on the Bill, and I will respond to them in a short while. Since this Bill has been in the possession of this House for 14 months now, I just want to remind Members that this Bill seeks to do six things, namely: joint marketing is to be a matter of necessity and not an issue of option; that harmonisation of laws, policies and regulations governing the sector in the different Partner States should be done; that we shall widen the product scope and enhance the image of East Africa; target large prospects, both within the East African region itself and abroad; foster cooperation among the EAC Partner States, national tourism organisations and jointly invest in support services such as research, human resource development, tourist safety and security programs, search and rescue, including evacuation services.

I would also like to inform this House that I am a member of the Committee, which considered this Bill and, therefore, I have benefited from the wealth of input and good ideas that the Committee has generated. I am sure that at an opportune time, the chairperson of the Committee will give the amendments, which, amongst others, shall seek to establish an independent fund for marketing and promoting tourism, and for the development of infrastructure and investment in support of industries.

It has been said that tourism is important to the economies of the East African states. It is true, and if you look at the budget statements of the three Partner States of Kenya, Tanzania and Uganda, tourism and wildlife have, in those three states, received acknowledgement that it is important to the economies of those three Partner States.

Kenya, for example, and if I may quote: *“Following the post election violence, the tourism sector suffered major losses with decline of about 60 percent in the first quarter. The sector is expected to play a key role in the achievement of Kenya’s Vision 2030 objectives, and strong actions are required for the sector to withstand the current challenges and return to its impressive performance that was witnessed prior to the post election disturbances.”* To do that, the Minister of Finance proposed and allocated a budget of US\$16.2 million; US\$10.8 million to go towards an institution called the Kenya Tourist Development Corporation, which would be linked to related business enterprises as an economy recovery stimulus package; and US \$5.4 million to go towards marketing of tourism.

I want hon. Members to note the figure of US \$5.4 million going to marketing of tourism. If you go to Tanzania, the minister made a pronouncement on two issues, namely: to promote the service sector through increased marketing of tourism destinations, especially to the domestic market - although there was no financial figure given specifically to do this. The second thing that the minister proposed was to scrap incentives to investors, especially tax waivers on capital goods, a provision that the investors who import non-capital items like linen and cutlery have abused by posting them as capital items.

I also want Members to note this policy directive of scrapping incentives because it has a bearing on what this Bill seeks to do.

Uganda acknowledges that tourism is one of the fastest growing sub-sectors of the economy, and that the budget provision was US \$1.08 million for tourism promotion and development in this current financial year. It also extended the policy of import duty and VAT exemption on construction materials for hotels, health and educational institutions for one, and VAT exempted all lease transactions for items that are VAT exempted as detailed in the VAT (Amendment) Bill. In order to promote tourism in the East African region, import duty on specially designed tourist vehicles imported by licensed tour operators will be remitted. The details will be contained in the EAC Gazette.

Why am I bringing these issues? You will realise that we have harmonised our budget cycles, but if you look at the policy statements that are made during the budget speeches, they are contradictory. In Uganda, they are extending import duty and VAT exemption on construction materials. In Tanzania, they are scrapping incentives to investors, especially tax waivers on capital goods. This is in one sector, tourism.

The essence of this Bill is to do away with such contradictions to gear all policy statements towards promotion of tourism within the region, and we propose to do this in harmony through a legal institution, which the Bill has called, “The Commission”.

I recognise the contribution or input by the hon. Nangale, hon. Hajabakiga and hon. Harelimana because they contributed to the research stage of this Bill. I would like to give special recognition to hon. Dr Masha because he has been a faithful partner throughout this process. He has been co-author and co-sponsor of this Bill. I want to recognise him and say, “Thank you very much”. *(Applause)*

Hon. Mohamed Abood raised some issues when he was moving the motion for adjournment of debate on this Bill, said that this Bill of course is well intentioned but good things always come when there is patience. I think this House has been patient enough, and today might probably be too late because we needed this Bill yesterday rather than today.

Hon. Masaburi has proposed that we rename the Bill because in his own analysis he does not see how it relates to wildlife management and not tourism management. I would like to respond as follows. This Bill indeed cannot look at tourism in the absence of wildlife management, and that is why it is making Articles 114, 115 and 116 of the Treaty operational.

If you look at Article 114, it looks at management of natural resources, and we as East Africa know that our tourism base is mainly wildlife, and wildlife survives in eco systems and habitats. These habitats are marine, forests and wetlands. Therefore, the Bill has said categorically that it shall promote initiatives that safeguard these habitats and eco systems.

I feel that hon. Masaburi, particularly after going through the stage of the Committee of the Whole House, I am sure his concerns shall be addressed fully.

I thank hon. Kamala for clearly giving us and owning up to the process that the Council has been going through that indeed they are also seized with issues of tourism and development. The process might have taken too long for them but it does not mean that they are not concerned. I thank you, Dr Kamala for assuring his House that as a Council you too are concerned about the regional tourism and wildlife management. *(Applause)*

I want to conclude by thanking the following members who contributed to the debate: hon. Dr George Nangale, hon. Christopher Nakuleu, hon. Mike Sebalu, hon. Augustine Lotodo, hon. Bernard Mulengani, hon. Nusura Tiperu, hon. Dr Masha, hon. Dora Kanabahita, hon. Kate Kamba, hon. Akhaabi and hon. Abood Mohamed who in his own way debated this Bill through seeking adjournment. In his own way, he actually debated this Bill. Mr Speaker, I beg to move. *(Applause)*

(Question put and agreed to.)

THE ASSEMBLY IN COMMITTEE

(The hon. Abdirahin Abdi in the Chair)

BILL'S COMMITTEE STAGE

The East African Community Tourism and Wildlife Management Bill, 2008

Clause 1

Dr Nangale: The Committee is proposing an amendment, starting with the Long Title.

The Chairman: Honourable member, we are looking at clause 1 and not the Title, which will come is at the end.

Dr Nangale: Mr Chairman, the Committee is proposing an amendment to Clause 1 by deleting the expression: *“And shall come into force on such a date as the Council of Ministers may, by notice in the Gazette, appoint.”* Consequently delete, *“and the commencement”* appearing on the marginal note.

Ms Kwekwe: Agreed.

(Question put and agreed to.)

Clause 1, as amended, agreed to.

Clause 2

Dr Nangale: Mr Chairman, the Committee proposes the amendment of Clause 2 as follows:

- (a) In the definition of the *“day visitor”*, insert after the word *“country”* the words *“or place”*.
- (b) In the definition of *“tourists”*, insert after the word *“country”* the words *“or place”*
- (c) In the definition of *“visitor”*, insert after the word *“country”* wherever it appears the words *“or place”*.
- (d) Insert in their proper alphabetical order the following new definitions:

“Service provider” means any person offering direct or indirect services to facilitate the movement, stay, development, marketing and consumption of tourism related products;

“Foreign tourist” means any person from outside East Africa visiting any Partner State;

“Council” means the Council of Ministers established under Article 9 of the Treaty;

“The Treaty” means the Treaty for the Establishment of the East African Community;

“Audit Commission” means the Audit Commission established under Article 134 of the Treaty;

“Commission” means the East African Tourism and Wildlife Commission established under Section 3 of this Act;

“Board” means the Board of the Commission established under Section 8 of this Act;

“Stakeholders Advisory Council” means the Stakeholders Advisory Council established under Section 11 of this Act;

“Secretariat” means the secretariat of the commission established under Section 12 of this Act;

“Assembly” means the East African Legislative Assembly established under Article 48 of the Treaty;

“East African Court of Justice” means an organ of the Community as provided for by Chapter 8 of the Treaty *“Courts”* means the judicial courts of the Partner States; and,

“Gazette” means the Official Gazette of the Community.”

Ms Kwekwe: Mr Chairman, I have no objection, except I would prefer that for purposes of consistency, instead of saying under “section” this, we say under “clause” this so that we have consistency in terms of the flow of the Bill. So, on the interpretation bit where hon. Nangale is proposing, for example, “board” to mean “the Board of the Commission established under Section 8 of this Act”, we should instead say, “Board” means the “Board of the Commission established under Clause 8 of this Act”. This is for purposes of consistency.

(Question put and agreed to.)

Clause 2, as amended, agreed to.

Clause 3

Dr Nangale: Mr Chairman, the Committee proposes an amendment to Clause 3 by substituting sub-clause (1) with the following new sub-clause:

“There shall be a commission responsible for the overall supervision, co-ordination and management of all matters that relate to the promotion, marketing and development of the tourism and wildlife industry in the East African region, which shall be accountable to the Council of Ministers.”

Ms Kwekwe: I agree.

(Question put and agreed to.)

Clause 3, as amended, agreed to.

Clause 4

Dr Nangale: Mr Chairman, the Committee proposes amendments to Clause 5 -

The Chairman: Hon. Nangale, we are on Clause 4. Hon. Members, I now put the question that clause 4 be part of the Bill.

(Question put and agreed to.

Clause 4, agreed to.

Clause 5

Dr Nangale: Mr Chairman, the Committee proposes amendments to Clause 5 as follows:

“Objectives of the Commission”

The general objective of the Commission is to put in place a mechanism to mitigate the challenges facing the region’s tourism and wildlife industry, which include high marketing costs, fierce competition and fragility of the region’s tourism base while taking due consideration of the overall development needs of the people, the wildlife resources and other natural and cultural resources.”

“The specific objectives of the Commission are to - and here sub-clause (a) is amended by adding, “Tourism and wildlife” after the word “promote”;

(b) Amend sub-clause (c) by adding the words, “consumer through” between the words “and” and “amongst”;

(c) Amend the Bill by creating a sub-clause (d), which reads as follows: “Co-ordinate the marketing and promotion of tourism in East Africa as an integrated industry and single tourist destination which is attractive and affordable.”

Sub-clause (d) becomes (e), which reads “the Bill is amended by creating a new sub-clause (f), which reads as follows: “Ensure that the development and management of the tourism and wildlife industry is sustainable through reinvestment and self financing mechanisms.”

Create a new sub-clause (g) to read as follows: “Encourages and nurtures the tourism and wildlife industry within the region through inter alia restocking of under populated habitats, research, training and capacity building.”

Sub-clause (e) becomes (h), which reads: “The Bill is amended by creating a sub-clause (j) which reads as follows: “Oversee the management of wildlife systems in the region and ensure that the wildlife assets and their habitats are sustainably maintained in line with international standards for prosperity.”

Amend the Bill by creating a new sub-clause (k), which reads as follows: *“Co-ordinate efforts to ensure safety and security of tourists, including joint search, rescue and evacuation services.”*

Dr Masaburi: Mr Chairman, I would propose to add one objective, namely *“to propose harmonised policies for effective management of tourism and wildlife in the region”*.

The Chairman: Hon. Masaburi, could you put that in writing and bring it here?

Ms Kwekwe: I agree with all of them, including hon. Masaburi’s.

The Chairman: Honourable Members, I now put the question.

(Question put and agreed to.)

Clause 5, as amended, agreed to.

Clause 6

Dr Nangale: Mr Chairman, the Committee proposes amendments to Clause 6 by inserting a new Clause 6 entitled, *“Guiding principles”*:

Sub-clause (1): *“The composition of the Board and staffing at all levels of the Commission shall be guided by the principles of gender balance, rotational and equitable sharing of positions amongst Partner States.”*

Sub-clause (2): *“The Board and the Stakeholders’ Advisory Council shall determine their own rules of procedure on how to conduct their affairs.”*

Sub-clause (3): *“The EAC staff rules and regulations, and terms and conditions of service shall apply where applicable”*

Ms Kwekwe: Agreed.

(Question put and agreed to.)

Clause 6, as amended, agreed to.

Clause 7

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 7 by amending sub-clause (b) to read *“The Stakeholders’ Advisory Council”* *(Interruption)*

The Chairman: Before we finish this one, hon. Nangale, you have inserted a new Clause 6 but you have not told us what to do with the old Clause 6.

Dr Nangale: Mr Chairman, Clause 6 remains the same. What we did add here is to insert a new clause on guiding principles, but the functions of the Commission remain the same.

The Chairman: Mr Nangale, you still have not told me what you want to do. What are you doing with the old Clause 6? I would rather you tell me you are changing the numbering and it becomes the new Clause 7. If you told me that, I would agree, but you still have not told me what you want to do with Clause 6. I should actually be asking the mover of the motion. Hon. Kwekwe, what do you want to do with the old Clause 6?

Ms Kwekwe: Mr Chairman, the wording shall remain the same, but it should be renumbered to become Clause 7. A new Clause 6 should be inserted entitled, “*Guiding principles.*”

The Chairman: Thank you, hon. Kwekwe, then it is now a new Clause 7.

(Question put and agreed to.)

Clause 7, as amended, agreed to.

Clause 8

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 8 by deletion and rephrasing as follows:

- 1. The Board shall be made up of 15 commissioners comprising two members from the public sector from each Partner State, one member from each Partner State representing the private sector or civil society organisations, the chief executive officer who shall be the ex-officio member and secretary to the Board.*
- 2. The commissioners shall be appointed by the Council upon recommendation of the Partner States.*
- 3. The Commissioner shall serve for a term of five years, renewable once.*
- 4. The Commissioners shall, on rotational basis appoint from amongst themselves, a chairperson who shall serve for one year.”*

Ms Kwekwe: I agree, Mr Chairman.

(Question put and agreed to.)

Clause 8, as amended, agreed to.

Clause 9

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 9 by inserting a new clause entitled, “*Vacation of office by a Commissioner:*

- 1. A commissioner may resign from his or her position by giving three months’ notice of resignation to the Council.*

2. *The Council shall, before the expiry of the said period of three months, fill such vacancy."*

The Chairman: Dr Nangale, I think we are going to run into the same problems we had earlier. You are now inserting a new Clause 9 before we dispose of the old Clause 9. If you look at our Rules of Procedure, they say that when you propose a new clause, you must first dispose of the Bill and then you can come back and insert new clauses. That makes it easier for all of us to follow. So, let us talk about the old Clause 9 as it is in the Bill.

Dr Nangale: Mr Chairman, there is no change to the old Clause 9; the functions of the Board.

The Chairman: Mr Nangale, from what I see here, you say Clause 9 becomes the new Clause 10 and to be amended to read... So, are you getting rid of this, or how do you want it? Maybe you should come down here and consult the mover. But perhaps to help you, I think you should say that you would like to amend Clause 9 to read...

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 9 to read, "*The functions of the Board shall be as follows:*

(1)

- (a) To be responsible to the Council of Ministers on matters affecting the Commission.*
- (b) To co-ordinate the implementation of policies and regulations related to the industry.*
- (c) To promote an enabling environment for local investment in the industry.*
- (d) To oversee the promotion of industry, both locally and internationally.*
- (e) To create synergies with national institutions in Partner States managing the tourism and wildlife industry.*
- (f) To approve a formula for sharing proceeds from tourism and wildlife revenues among Partner States*
- (g) To oversee the marketing and promotion of tourism in East Africa as an integrated industry and a single tourist destination.*
- (h) To develop a framework for the registration of tourism and wildlife products through patents, copyrights, geographical indications, among others, for all tourism and wildlife products unique to East Africa such as cultural products, geographical features, landmarks, artefacts, inter alia, in collaboration with national institutions.*
- (i) To designate hunting areas and related fees in consultation with relevant partner institutions.*
- (j) To oversee the production and development of cultural and historical sites in the region for tourist interests.*
- (k) To oversee exchange of information and setting of industry latest standards, quality assurance, training, research and environmental impact assessment; inter alia.*

- (l) *To promote the worth of African culture, diversify development and consumption of tourism products, including but not limited to, ethical and domestic tourism within the region.*
 - (m) *To oversee the management of wildlife systems in the region in line with international standards for posterity through the safeguard wildlife and its habitats, including joint cross border surveillance by the Partner States.*
 - (n) *To approve a formula for compensation for losses resulting from stray wildlife activities.*
 - (o) *To operationalise and set up management of a fund known as the East African Tourism and Wildlife Development Fund.*
 - (p) *To establish a mechanism through the Council of Ministers to track ratification and domestication of international instruments that EAC Partner States have signed to.*
 - (q) *To oversee the control and management of international trade and wild species of fauna and flora in line with CITES.*
 - (r) *To establish an internal dispute resolution mechanism upon approval by the Council.*
 - (s) *To act on behalf of the Commission in seeking redress in the event of violation of provisions of this Act through appropriate dispute settlement mechanism.*
 - (t) *To establish criteria for membership of the Stakeholders Advisory Council.*
 - (u) *To ensure the Commission's adherence to the laws and international instruments, that governs the industry.*
2. *The Board shall submit progress reports to the Council every six months.*
 3. *The Board shall engage with third parties including local and international agencies on matters of their jurisdiction upon the approval of the Council.*
 4. *The Board shall meet at least twice every 12 months.*

Dr Ndahiro: Mr Chairman, I wanted to move one amendment to add on the functions of the Board, which is *"to monitor and advise state parties on accessibility challenges in our centres of tourist attractions."* We could either combine them or add it as a separate amendment.

Dr Masaburi: Mr Chairman, I wanted to object to sub-clauses (f) and (n), and propose something on sub-clause (p) as proposed.

The Chairman: Dr Masaburi, I am not taking any more of your amendments until you put them in writing. I have not yet received the one you had made earlier.

Dr Masaburi: I have already sent it.

The Chairman: It has just arrived; you may continue.

Dr Masaburi: Mr Chairman, I think the mover must accept before I move ahead to submit my amendments. I was trying to figure out the capacity of this board to approve a formula for sharing proceeds from tourism and wildlife revenues amongst Partner States. I do not think that is proper as it may create conflict between the Council of Ministers

and that board. Therefore, I would propose that the board presents the formula for sharing to the Council of Ministers.

Sub-clause (n) is the same; this board should only propose to the Council of Ministers to approve.

On sub-clause (p), we should add the word “on” between “signed” and “to” to read “signed on to.”

The Chairman: Can we have what you are saying in writing so that we can follow it? Do you have it? Hon. Kwekwe, while Dr Masaburi is writing down his amendment, do you have a problem with Dr Ndahiro’s amendment?

Ms Kwekwe: Mr Chairman, I do not have a problem with Dr Ndahiro’s amendment, but I have a problem with the amendments moved by the Chairperson of the Committee on the proposed amendment to sub-clause (p) which reads: “*Establish a mechanism through the Council of Ministers to track ratification and domestication of international instruments.*” I would rather say, “Relevant international instruments”, because there are many instruments. Another objection I have is on sub-clause (r).

The Chairman: Maybe we should dispose of them one at a time. Can you read it out again?

Ms Kwekwe: It reads, “*Establish a mechanism through the Council of Ministers to track ratification and domestication of industry related international instruments that that the EAC Partner States have signed to.*”

The Chairman: That is sub-clause (p). I think Dr Masaburi also made a comment on that one. He added the word “on”.

Ms Kwekwe: That is semantics, Mr Chairman.

The Chairman: That is true but we are drafting a law, and it has to be on *Hansard*. Therefore, you have to either agree or not, and then the House approves.

Ms Kwekwe: Did he say sign “unto” or “on to”?

The Chairman: “signed on to”.

Ms Kwekwe: Okay agreed.

The Chairman: So, will sub-clause (p) read, “*Establish a mechanism through the Council of Ministers to track ratification and domestication of...*” Can you read it again, please?

Ms Kwekwe: *“Establish a mechanism through the Council of Ministers to track ratification and domestication of relevant international instruments that the EAC Partner States have signed on to.”* That includes Dr Masaburi’s amendment.

Dr Masha: Mr Chairman, first, let me beg the indulgence of the chairperson of the committee as well as hon. Kwekwe’s, because I am a member of the committee, for the suggestion I am going to make. It is a very small suggestion. In the proposed amendments to sub-clause (l) in the last sentence - let me read it: *“Promote the wealth of African culture, diversify development and consumption of tourism products including, but not limited to, ethical and domestic tourism within the region.”* I must say, either there is a typo or somebody has introduced a new word, with which I am not quite familiar. I am not too familiar with *“ethical tourism”*, and since we have not defined it, I want to suggest that we delete the word *“ethical”*. However, I am in total support of the rest of the Bill. I thank you.

Dr Nangale: Mr Chairman, I think *“ethical”* is an English word, and our amendment was based on the issue of preserving our culture within the region. As we know, the industry – *(Interruption)*-

Dr Masha: Mr Chairman, I have no problem with the reference to culture. My only problem is with *“ethical tourism”*. I am not sure, since it is not defined and my memory - and please allow my lack of hair, my memory might have lost it but I don’t remember a discussion on ethical tourism in the committee, so maybe if I am enlightened on what *“ethical tourism”* is, I would go along with the phrase. It is just that one word *“ethical”*. I thank you.

The Chairman: Dr Nangale, perhaps you can tell us what *“ethical tourism”* is?

Dr Nangale: Mr Chairman, I agree to delete the word *“ethical”*.

The Chairman: I thought it was a noun or word earlier; okay, I think we have deleted the word *“ethical”* and just go with *“but not limited to domestic tourism within the region”*. How can you have ethical...then what do you do to *“and domestic”*?

Dr Kabourou: Maybe we should call for a definition of *“ethical”* instead of deleting it because there could be an *“unethical tourism”*, like we have *“sex tourism”* in Thailand.

The Chairman: Honourable Member, maybe you can help us. I know you studied language. Maybe you can tell us what *“ethical tourism”* is.

Dr Kabourou: Mr Chairman, I am not sure, I am not an expert in definitions, but I am quite sure that if we put our heads together we will find exactly what the proper definition should be.

The Chairman: Hon. Nangale could not find it so I do not know.

Ms Byamukama: Mr Chairman, I have a proposal, which may give us a way out, and it is that they should propose to the Council of Ministers a common code of conduct, and this is based on the Treaty. Maybe this would also address the issue of ethics. I wanted to bring this later – *(Interruption)*–

The Chairman: We are talking about (I).

Ms Byamukama: Yes, I know you are talking about (I), and about the use of the word “ethical”. I am saying that if we drop it here, it could come up again under a common code of conduct for the tourism sector.

The Chairman: I think you can propose that later. Let us dispose of this first. Honourable member, I think you have agreed that we drop this, isn’t it? Do you mind deleting the word, “ethical”?

Dr Nangale: Honourable Chairman, I would like to rephrase; instead of putting, “ethical and domestic tourism,” in that sentence, I propose to put the word, “ethical” in front of “tourism”, so that it becomes, “consumption of ethical tourism products”. So the “ethical” comes here in front of – *(Interjections)* – and I will put a definition of “ethical” in...I will give an example. For example, I do not think African ethics allows for nude tourism.

The Chairman: But that is just one small...anyway, I think I am not supposed to debate. Hon. Masha, I think he has confused us even more, but please continue.

Dr Masha: I was feeling very comfortable when the chairperson of the committee offered to delete that word. Now according to the Rules of Procedure, I do not know if anybody wishes to introduce a new amendment or change – *(Interruption)* -

The Chairman: Hon. Masha, we have not disposed of that clause and so you can continue making as many amendments as you want until we put the question to it.

Dr Masha: I am in agreement with the chairperson of the Committee that we delete the word, “ethical”.

The Chairman: He has brought it back again, and that is the only problem. Maybe hon. Akhaabi can help us.

Mr Akhaabi: I am sorry, Mr Chairman, but I have not heard of “ethical tourism”, so I am not in a position to help. *(Laughter)*

The Chairman: Hon. Members, what do we do? Do we delete “ethical”?

Dr Nangale: I have agreed to delete the words, “ethical” and “domestic tourism”. We delete that one – *(Interjections)* - no, we delete, “ethical”.

The Chairman: Honourable, I think we delete, “ethical” and “and”. It will then make sense.

Dr Nangale: Yes, we delete, “ethical” and “and” so that it remains, “*Domestic tourism within the region.*”

The Chairman: Very well! Hon. Masaburi, I think you have a proposal on (f), do you not? Yes, I see it here and that is why I am calling for you to read it. Can you then read them out?

Dr Masaburi: I propose to amend (f) to read, “*Propose a formula for sharing proceeds to the Council of Ministers,*” and remove, “approve.” Similarly, I also propose to delete, “approve,” and replace it with, “*propose to the Council of Ministers.*”

The Chairman: Hon. Members, I hope you have understood what hon. Masaburi is saying. In (f) he says we should remove the word “approve” and say, “*Propose to the Council of Ministers to approve a formula for sharing proceeds.*” Hon. Nangale?

Dr Nangale: I accept the proposal for the Council of Ministers to approve the formulas in (f) and (n).

The Chairman: Hon. Members, I now put the question to paragraphs (f) and (n).

(Paragraphs f and n, as amended, agreed to.)

The Chairman: Anyone else on this one? Hon. Byamukama?

Ms. Byamukama: I propose two amendments based on Article 115, and these I propose should be (v) and (w). The first one is, “*To propose to the Council of Ministers a regional strategy for tourism promotion and a common code of conduct for private and public tour and travel operators.*” This I propose would be paragraph (v). Maybe I should sit down and – *(Interruption)* -

The Chairman: Honourable Member, what you are reading is different from what you sent here.

Ms Byamukama: “*Propose to the Council of Ministers a common code of conduct for private and public tour and travel operators.*”

The Chairman: Okay!

Ms Byamukama: And the second one, “*Propose to the Council of Ministers, standardisation of hotel classifications and harmonisation of hotel classifications; and harmonisation of professional standards of agents in the tourism and travel industry within the Community.*”

These are all based on Article 115(2) of the Treaty.

The Chairman: Hon. Kwekwe?

Ms Kwekwe: I have no problem with that, Mr Chairman.

The Chairman: That is finished. Yes, honourable, you can continue.

Ms Kwekwe: I had an objection to (r) “*Establish an internal dispute resolution mechanism upon approval by Council,*” because I have seen that the committee at a later stage will have a new clause on sanctions regarding non-conformity and disputes. Therefore, I think that it would be a contradiction.

The Chairman: Honourable Members, the mover of the Bill wants (r) deleted from this clause. Paragraph (r) says, “*Establish an internal dispute resolution mechanism upon approval by Council.*” Does it contradict with that, honourable Member? With what does it contradict?

Ms Kwekwe: I say that we remove it because I feel it contradicts an amendment that the Committee made, which introduced a new clause entitled, “Sanctions”, which deals with issues of disputes. I feel that it will be a contradiction to have two dispute resolution mechanisms – two parallel dispute resolution mechanisms within the same Bill.

The Chairman: What is the new clause, Hon. Kwekwe?

Ms Kwekwe: I have confidence that the Committee of the whole House will come up with an appropriate dispute resolution mechanism, which will be all encompassing, and I think that (r) is vague and not specific.

The Chairman: Honourable Members, the proposal is to delete (r). Is there anyone else who wants to say something before I put the question? Hon. Masaburi?

Dr Masaburi: I do not see any problem with that sub-clause because if there is an internal dispute resolution mechanism, and clause (s) talks about appropriate dispute settlement mechanisms, one of the dispute settlement mechanisms could come from (r) so that in the event of a violation, they can seek redress by selecting an appropriate mechanism they can use.

They should go through either the internal dispute resolution mechanism or any other, whichever is relevant in accordance with (s). Therefore, I do not think there is any problem with that, and there is no conflict at all. I thank you.

The Chairman: Hon. Byamukama?

Ms Byamukama: I also think that this should be retained, although the only problem I have is that when you call it an internal dispute resolution mechanism, when it is internal, is it supposed to only serve the commission or is it the dispute resolution mechanism

supposed to serve the tourism and wildlife industry? Perhaps if we say, “Establish a dispute resolution mechanism upon approval by Council,” that will be fine because it would also provide an alternative form of a dispute resolution mechanism, and thereafter you can also use (s) because you are not precluded from using (s) by having (r). Those are my comments.

The Chairman: Hon. Kwekwe?

Ms Kwekwe: The gist of the matter is noble, but I feel that we can still capture the dispute resolution mechanism under (s). If we get to (s), I could propose just a slight re-wording to capture what I suppose the committee was trying to cure under (r).

The Chairman: I do not think you have answered what hon. Byamukama is asking. When you say “internal”, is it for the Commission? For the other one “...on behalf of the Commission, seeks redress in the event of the violation of the provisions of the Act.” Therefore, generally, it is like the whole Act. I think (r) is very specific in terms and talks of “internal” which will mean the Commission itself. On the other hand, (s) is talking about the Act, and that is when we start talking of sanctions and what have you.

Dr Masha: Mr Chairman, at the bottom of page 10 of the report, paragraph (2) of Clause 21, reads, “*In case of disagreement between the Commission and Partner States, other authorities or courts, the matter shall first be resolved through an internal dispute settlement mechanism, failure of which, the matter shall be referred to the East African Court of Justice.*”

As you can see, the resolution of disputes or so-called differences is covered a little later, so my opinion would be that we should not be in a hurry to elaborate it at the stage of the functions. However, if some Members feel we must elaborate it in (s), so be it, I have no problem, but we it will be covered later, if you look at that amendments schedule.

The Chairman: Honourable Member, I think we are talking of (r) right now in terms of an internal dispute resolution mechanism; (s) talks of the whole Act.

The other thing I want to say is that we are looking at Clause 10, and let us not jump to the other clauses because those are also new clauses, and we do not know whether they will be accepted or not. So let us do this one and then we can see to that later.

Dr Masha: It is my understanding - and I think we discussed it in the Committee - that the Commission would establish this mechanism. If we try to define it here, then we will probably need a little more time to define what that mechanism shall be.

The Chairman: Hon. Safina, it is your Bill, so it is up to you to agree or not to agree.

Hon. Nangale, since this amendment is yours, what do you say about the amendment? Hon. Safina wants it deleted and I think most of the other people want it retained. What do you say?

Dr Nangale: I would like to retain the clause, although I would probably like to elaborate more on the words, “internal dispute mechanism,” arising out of a dispute between the Commission and the Partner States.

The Chairman: I think you have complicated the matter even more because I thought this was an internal dispute mechanism within the Commission, and not outside. Is it? So what you are saying is, “*Establish an internal dispute resolution mechanism upon approval by the Council,*” that is what we are talking about. Maybe hon. Kabourou can help us out.

Dr Kabourou: I am not sure, but we were thinking that if this is limited to the Commission itself, then maybe there is no problem. But “internal” now...I do not know; maybe matters internal to the Commission itself as opposed to internal meaning East Africa as well?

The Chairman: Maybe the Committee members can help us out as well. Hon. Lotodo?

Mr Lotodo: Mr Chairman, I just want to point out that any commission would normally have dispute resolution mechanisms within it, and so there is no harm in having it here. That is my point of view. I support that we should retain it.

The Chairman: Yes, hon. Ndahiro?

Dr Ndahiro: Mr Speaker, I think we can delete paragraph (r) because it is not the function of the Board to establish dispute resolution mechanisms because they are also players. Perhaps they could just put internal procedures in place. If that is what the Committee is referring to, then perhaps they can re-word this. Otherwise, they can delete that because the Bill addresses dispute resolution mechanisms at the end, and is different parties with competent powers that address them because a board does not have powers to work, supervise and punish itself. I thank you.

The Chairman: Hon. Byamukama?

Ms Byamukama: Earlier on, under Clause 6 on guiding principles, we had already passed that the East African Community Staff Rules and Regulations terms and conditions of service shall apply where applicable. Therefore, if there is dispute, then these will automatically apply. I believe that the intent of this particular clause was to establish a mechanism, which would enable the Board to handle disputes within the tourism and wildlife sector of the Community and, therefore, if we remove the word “internal”, I think it may make better sense in this context. I thank you.

The Chairman: Hon. Masha?

Dr Masha: I was trying to nudge my colleagues, the movers of this amendment, together with the chairperson, to accept hon. Byamukama’s suggestion.

Dr Nangale: I accept the removal of the word, “internal” because it makes sense as far as this particular clause is concerned.

The Chairman: I think we should also remove the words, “*and establish a dispute resolution mechanism upon approval by the Council.*” Is that it? How fair is that? (Applause) I now put the question to (r).

(Paragraph r, as amended, agreed to.)

The Chairman: Do you have anything else on that clause, hon. Kwekwe?

Ms Kwekwe: On (s), I propose that after, “mechanisms,” we say, “As provided for under this Act.” The Act itself provides for dispute settlement mechanisms.

The Chairman: Hon. Nangale?

Dr Nangale: I accept.

The Chairman: I do not know, but maybe the lawyers can help us here. When you look at the Act, it says, “... *on behalf of the Commission in seeking redress on the event of the violation of the provisions of this Act through appropriate dispute settlements of the provisions of this*” Are we not repeating “*the provisions of this Act*”? Do we need to repeat it? Hon. Byamukama?

Ms Byamukama: I was whispering it here because it is repetitive. You are saying, “*To act on behalf of the Commission in seeking redress in the event of the violation of the provisions of this Act through appropriate dispute resolution settlement mechanisms.*” That is enough because if you say, “... *as regards this Act,*” and you have already said, “... *in violation of the provisions of this Act,*” then it is repetitive. I think the ambit of the context within which this redress is going to be done was already stipulated earlier and, therefore, there may not be any need for us to say “...*in regard to this Act.*” Maybe the honourable mover of the motion may just take it as it is because it covers what she would want to cover.

Ms Kwekwe: I concede.

The Chairman: I guess she has withdrawn her amendment. Do we have anything else on this clause?

Dr Masha: I was very much involved in the work of this Bill, and so I want to be sure that we get it correct. Here, it reads in the same line, “On the event,” I think the correct word should be, “In the event.” It is just a correction of English.

The Chairman: Okay, I have it. I now put the question to it.

(Question put and agreed to.)

Clause 9, as amended, agreed to.

Clause 10

Dr Nangale: The Committee proposes to amend Clause 10 to be entitled, “*Stakeholders Advisory Council*”, and to insert sub-clauses as follows:

1. *There shall be a Stakeholders Advisory Council representing the actors from different sectors of the industry.*
2. *The Stakeholders’ Council shall comprise representatives from each of the stakeholder associations in the industry, including among others, tour operators, travel agents, hoteliers, curio outlets, institutions of research and learning relevant to the sector, communities hosting wildlife, civil society advocating wildlife and environmental conservation, and cultural tourism actors.*
3. *Membership to the Stakeholders’ Advisory Council shall be as determined under Clause 10(1)(t) of this Act.*
4. *The Stakeholders’ Advisory Council shall advise the Board on matters relating to the industry, including development, promotion and marketing of tourism and related products; development of best practices, harmonisation of relevant laws, development or research and documentation amongst others.”*

The Chairman: Hon. Kwekwe?

Ms Kwekwe: I do not have a problem but I do have a proposal for the mover of that amendment for purposes of consistency. The new sub-clause (2) should state, “*The Stakeholders’ Advisory Council*” instead it reads: “*The Stakeholders’ Council*.”

The Chairman: Yes, hon. Nyiramilimo?

Dr Nyiramilimo: I wanted to move amendments to sub-clause (2) and sub-clause (4), where it talks of the industry, to add, “*Tourism industry*”.

The Chairman: Honourable chair?

Dr Nangale: Accepted.

Ms Byamukama: Maybe the Committee chairperson and mover can help us understand this. I have an issue of clarity, and I am happy she has considered the issue of consistency. The issue of clarity goes to the numbers because it says, “*The Stakeholders’ Council shall be constituted by two representatives from each of the stakeholders’ associations in the industry, including, amongst others ...*” and I count eight.

Therefore, in essence, these will be 16, and when you go down, they are talking about working through four committees. My worry is that at some level the categorisation is at different levels. Are we comfortable with this kind of selection? Is it wholesome? Does it give us the kind of people that we would like to address these issues?

The Chairman: Hon. Akhaabi?

Mr Akhaabi: Mr Speaker, together with what hon. Byamukama is saying, that clause would now read, *“The Stakeholders’ Council shall comprise of representatives from each of the stakeholders’ associations in the industry ...”* That, first of all, presupposes that there are stakeholders’ associations in the industry, and that they are known and that each one of them will be represented. However, most confusing is the inclusion of the words, *“... including, amongst others...”* This does not close but leaves the net very open, and you could have an infinite number of representatives. I think that we need to close that. If we are saying that they should be 15, then we must limit the number so that we do not exceed that.

The Chairman: Honourable chairperson?

Dr Nangale: When we were discussing this in the Committee, we agreed that the number of stakeholders’ associations...we are not sure how many they are, but what we were talking about is the associations, which have subscription. The known associations are few, and the word, “each” relates to the known major associations like hoteliers, tour operators and others. Nevertheless, I agree with you that the way in which the clause is constructed does not put a limit on the number because in the course of the implementation of this Act, a number of associations might emerge. Therefore, I agree with you that we should take out the word “each”.

Ms. Hajabakiga: Mr Chairman, I am also a member of this Committee, and since we are on this amendment, I want to speak on that. I think if we leave it like this as said, it will be open-ended. They might end up not knowing exactly how many people will be making up this stakeholders’ advisory council. Therefore, I suggest that we give this function to the Board to determine who will be on the advisory council so that we do not end up being unable to know how many people will be there.

The Chairman: I think we have already taken care of that. Look what it says on (3). It says *“The membership of stakeholders on the council should be determined under clause 10(1)(t) of the Act”*, and if you go to clause 10(1)(t), it talks of established criteria for membership of stakeholders of the advisory Board.

Dr Kabourou: Mr Chairman, I may be mistaken but I think we deleted “ethical” simply because we did not have a definition for it, and here we are talking about stakeholders, and now we are concerned about the numbers. If we leave this open and yet we do not even know who these stakeholders are – *(Interruption)* -

The Chairman: I think we have already taken care of it, and that is what I just said. If you look at (t), it says, *“...established criteria for membership of the stakeholders’ advisory council.”* Therefore, I guess you will know who they are because one of the functions of this Board is to establish criteria for the membership of the stakeholders.

Mr. Akhaabi: Mr Speaker, I agree with you because that clause refers us to clause 10(1)(t), which sets the criteria under the advisory council and the advisory council tells us that the Board shall comprise 15 commissioners. So, that is the number, and I agree with you, Mr Chairman.

The Chairman: Is there anyone else with anything else?

Mr Lotodo: I am just proposing one amendment that “there shall be a stakeholders’ advisory council representing actors from different sectors of the tourism industry”, a consequential amendment that has already been suggested before.

Dr Nangale: Mr Chairman, whenever we mention “the industry”, do we mean the tourism and wildlife industry in this Act?

The Chairman: So, what are you saying? Do we put tourism there or not?

Ms Kamba: I was a bit hesitant to add tourism because we are talking of one industry, which is well established. We know it is tourism and wildlife. Therefore, you can enumerate many things. It is safe if we just leave it as it is.

The Chairman: Hon. Members, I now put the question that Clause 10, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 10, as amended, agreed to.

Clause 11

The Chairman: Honourable Members, I now propose that Clause 11 be part of the Bill.

Dr Nangale: Hon. Members, the Committee proposes to delete Clause 11.

Ms Kwekwe: I agree.

The Chairman: Honourable Members, I now put the question that Clause 11 should be deleted from the Bill.

(Question put and agreed to.)

Clause 11, deleted.

Clause 12

The Chairman: Hon. Members, I now put the question that Clause 12 be part of the Bill.

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 12 by rephrasing it to read as follows:

- (i) *The secretariat shall comprise the chief executive officer, deputy chief executive officers, directors and other officers of the Commission.*
- ii) *The chief executive officer shall:*
 - a) *Implement the work of the Commission in accordance with the directive of the Board;*
 - b) *Be the accounting officer of the Commission;*
 - c) *Be the secretary to the Board;*
 - d) *Be the chief spokesperson of the Commission and the principal liaison between EAC Partner States and the Commission;*
 - e) *Be appointed by the Council upon recommendation of the Board and shall serve for a fixed term of five years.*
 - f) *Submit reports of the work of the Commission and audited accounts to the Council.*
 - g) *Carry out any other duties conferred by this Act, or as may be directed by the Council through the Board.*
- iii. *There shall be deputy executive officers, who will include at least a deputy executive officer for tourism, a deputy executive officer for wildlife management, and any other deputy executive officer as the Council may determine.*
- iv) *The deputy executive officers shall serve five-year tenure, renewable once.*
- v) *There shall be directorates appropriately staffed in the service of the Commission as may be determined by the Board and approved by the Council."*

Ms Byamukama: Mr Chairman, I have a problem; maybe I need to understand better the provision for the deputy chief executive officers. This title is rather new. I would have presumed that this person would be deputising for the chief executive officer and not necessarily heading tourism and another one heading wildlife management. I thought these would be the two departments talked about earlier. Therefore, I do not understand the wisdom of having these two deputies and one chief executive officer. I think you may have an administrative problem when you have these two deputies and they are both reporting to the chief executive officer and none of them can wholly deputise for the chief executive officer because either of them will be specifically in charge of a particular sector of the industry. So, I need to understand this better, but I propose that perhaps you could just say "... *the secretariat shall comprise the chief executive officer and other officers as shall be determined by the Board and approved by the Council.*" I think that would save us from going into the practical details and help us to be consistent.

Dr Nangale: The reason for having deputy executive officers is for these two senior officers to assist the chief executive in the two major areas of the industry, namely, tourism and wildlife. However, as this Act stipulates, the rules of procedure for their work will determine how they are going to deputise the chief executive. The Act clearly states that the Board shall develop its own rules of procedure to manage their affairs, but also, sub-clause (iii) here says that if there is a need to have other deputy executive

officers, the Council may determine, depending on the emergence of another industry, which will be important, in order to run the industry.

The Chairman: Honourable Member, I am just giving a suggestion; why don't you say, *"The secretariat shall comprise of a chief executive officer and such other officers as shall be determined by the Council, and on approval of the Board"* and then leave it at that so that you do not have to specify these officers here? Then, you do not even have to have the three. Anyway, that is just a suggestion.

Ms Byamukama: Mr Chairman, perhaps we could say, *"the secretariat shall comprise the chief executive officer and other officers as shall be recommended by the Board and approved by the Council"* because when you say "maybe" it means they may not! Perhaps they should only recommend and then the approval is by Council. I would like to ask that we adopt this friendly amendment.

Dr Nangale: Mr Chairman, accepted.

The Chairman: Honourable Member, you could repeat it and write it down please. Then what happens to (iii), (iv) and (v)?

Ms Byamukama: Mr Chairman, I think there would be a consequential amendment to sub-clause (iii) in that if we have already provided for such other officers, we would not have to itemise them because there would already be deputy executive officers. Therefore, we would then delete sub-clause (iii), but I think on the sub-clause for the officers, maybe we could say, *"The officer shall serve a renewable term of five years."* I do not know whether we want to make it a general term for everybody, but maybe it would be good for us to provide for tenure of service.

Mr Akhaabi: Mr Chairman, I agree with hon. Byamukama that consequent upon the proposed amendment, sub-clause (iii) would have to go out, but I also propose that sub-clause (iv) should go out, and we should replace it by a further amendment to sub-clause (i) to say, *"the Secretariat shall comprise of the chief executive officer and such other officers as may be recommended, upon such terms and conditions as may be determined by the Council"* That would now take care of sub-clause (iv).

Dr Nangale: Mr Chairman, I agree with hon. Akhaabi that that Clause 12(1) should read: "There shall be a chief executive officer and other officers and directors as shall be determined by the council – *(Interruption)* -

The Chairman: That is not what he said. He said that, "The secretariat shall comprise of chief executive officer and such other officers"

Dr Nangale: Mr Chairman, I was just following the proposal that she read out.

The Chairman: I will read out for you; I have it here: *"The secretariat shall comprise of the chief executive officer and other officers as shall be determined by the Board, and shall be recommended by the Board and approved by the Council."*

Dr Nangale: Then I suggest that following that, we will say, *“the terms and conditions of service of the officers of the Commission shall be determined by the Council, and the officers of the Commission shall serve upon such terms and conditions as may be determined by the Council.”*

Ms Byamukama: Mr Chairman, I do not want to drag this on, but you will remember that under Clause 6, we talked about guiding principles, and we agreed that the EAC staff rules and regulations, and terms and conditions of service should apply where applicable. So, maybe hon. Akhaabi could weave it with what he is saying, or should we assume that by saying that the Council will determine terms and conditions of service it therefore means that these are EAC terms and conditions of service? I do not know. I think we need to find a way of weaving it in. Thank you.

The Chairman: I think the Council determines what cycle depending on which directorate or which commission or whatever. You will find that they are different from one commission to the other. So, I think we can maybe give them leeway to determine the terms and conditions of service, maybe say “on the recommendation of the Board” or something like that. Hon Akhaabi, can you put it in writing please?

Dr Nangale: Mr Chairman, accepted.

The Chairman: You have accepted, but the only problem I have is that then you will go to the chief executive officer and start giving him terms and conditions. What happens then in sub-clause (2)? You are saying that the Council should determine, in sub-clause (1), and then in (2) you are giving fixtures that by appointment of Council or upon recommendation of the Board!

Dr Nangale: But the terms and conditions will be determined under Clause 6(3), which reads: *“The EAC staff rules, regulations and terms and conditions shall apply where applicable.”*

The Chairman: What happens with sub-clause 2 -that is what I am asking you now- if you say staff rules and regulations, and then 2(e) talks of *“...appointment of the Council upon recommendation of the Board, and shall serve for a fixed year term of five years”*? Will you remove sub-clause (e) from clause 2?

Dr Nangale: Mr Chairman, we will retain clause 2(e) so that the appointment of the Council upon recommendation of the Board shall serve for the chief executive. However, for the other officers, the rules and conditions of the EAC will apply.

Ms Byamukama: Mr Chairman, I think we need to be consistent as a House. If we say that Council shall appoint the chief executive officer upon the recommendation of the Board, and that the EAC terms and conditions of service shall apply, then we should not go ahead and talk about this fixed term of five years because this House has hitherto consistently argued against this fixed term of five years. Therefore, I do not know

whether there is any value added by introducing this concept again, unless you persuade me otherwise.

Dr Masha: Mr Chairman, as you may have noticed, there is no consensus yet, but I propose that we accept hon. Byamukama's suggestion. Let us go with the amendment, which she has already introduced. We have accepted to delete this sub-clause (e) and re-number the rest of the sub-clauses. Let us completely delete (e).

Dr Nangale: Mr Chairman, accepted.

The Chairman: I suggested that earlier. I do not know why you picked hon. Byamukama's and not mine, but I am told it is because the Speaker should not contribute to the debate. Anyway, hon. Members, I now put the question – Oh, hon. Leonce, do you want to say something?

Mr Ndarubagiye: Thank you very much, Mr Chairman. I am a member of this committee, but honestly, if we can amend 50 to 60 percent of the document, then it is an embarrassment. Anyway, let us go ahead and there is no other thing I can say. *(Laughter)*

The Chairman: Hon. Leonce, the House is only enriching your Bill; it is not here to embarrass the Committee or anything.

Hon. Members, I now put the question that Clause 12 as amended be part of the Bill.

(Question put and agreed to.)

Clause 12, as amended, agreed to.

Clause 13

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 13 to read as follows:

"The Secretariat shall:

- a) Be responsible for the day-to-day running of the Commission;*
- b) Be accountable to the Board;*
- c) Be responsible for budget preparation and management of the Commission's accounts and records;*
- d) Organise annual conferences for the Stakeholders' Advisory Council;*
- e) Maintain inventories of:*
 - (i) All the tourist products and services available;*
 - (ii) All service providers within the region; and,*
 - (iii) Register of the Stakeholders' Advisory Council*
- f) Co-ordinate information, communication, documentation and outreach programmes in order to reflect the tourism and wildlife image of the region;*
- g) Build synergies with national and international institutions for the protection of intellectual property rights relevant to the industry."*

Ms Kwekwe: Mr Chairman, the actual amendment, I think, is on (h) and (i) to the effect that wherever “*stakeholders’ council*” appears in the Bill, we should add “*advisory council*”. I have a problem with the placing of the amendments because some of them are just repeating what the Bill is saying. For example, if you look at the proposed amendments to sub-clauses (a) up to (e), they just remain the same as in the original Bill. Therefore, I do not think it is anything new, other than the fact that where the “*stakeholders’ council*” appears it has been replaced by the “*Stakeholders’ Advisory Council*”. Therefore, the substantive amendments would be on (h) and (i). I do not know whether you are following, Mr Chairman.

The Chairman: I only see amendments up to (g).

Ms. Kwekwe: Mr Chairman, I am looking at the original Bill, and I am saying that the amendment, as presented by the Committee, might look very long but what it seeks to do actually is that where the “*stakeholders’ council*” appears in the original Bill, they are proposing to add “*advisory*” between “*Stakeholders*” and “*council*”. However, the substantive amendment is on sub clauses (h) and (i), which they have now replaced with (f) and (g) respectively, which I have no problem with.

The Chairman: So, you have no problem with the amendment. Hon. Members, is there any one else?

Ms Byamukama: I am sorry, Mr Chairman, but this secretariat seems to have no work, because it is responsible for the day-to-day running of the Commission, it is accountable to the Board, it is responsible for budget preparation and management, the annual conference, then there is the inventory and the co-ordination of information and building of synergies. What about implementing the commission’s programmes and activities, I thought this would be the operational body. Maybe I am mistaken. I need clarification on that.

Dr Nangale: Mr Chairman, when we go back to the activities of the chief executive, we said that the chief executive shall implement the work of the commission according to the directives of the Board, and he is the one heading the secretariat. So, it goes without saying that that is the activity of the secretariat.

Ms Byamukama: Mr Chairman, I will let it pass, but hinging it on an office rather than an establishment may have its problems. Nevertheless, I will let it pass.

The Chairman: Honourable Members, I now put the question that Clause 13, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 13, as amended, agreed to.

Clause 14, agreed to.

Clause 15

Dr Nangale: Mr Chairman, the Committee proposes an amendment to Clause 15 hereto to read, *“The Council may give the Commission such general direction on the policy to be pursued in the administration of this Act, and the Commission shall take such steps as are necessary or expedient to give effect to the direction of the Council.”*

Dr Masaburi: Mr Chairman, I am getting a problem with the modalities for the Council to give general directives on pursuing policies in the administration of the Act. Will that not conflict with the Act itself? Who will be having the powers, because I think that most of the activities will come from the policies? Now for us to give powers to the Council to give general direction on the policy on the administration of the Act seems confusing to me. So, what will happen if they, for instance, give such policies that may water down the provisions of the Act? Therefore, I am confused, and I do not think this is a good provision in the Act. Maybe they should only give direction to implement the Act. The regulations provide better ways of implementing the Act. Perhaps if we give them the responsibility to develop the regulations, then those regulations could give direction on how best to implement the Act. Thank you.

Dr Nangale: Mr Chairman, as the Council is the organ which directs policy in the EAC, I don't think that there is any conflict with the Council giving general direction on policies to the Commission in the administration of this Act.

Dr Masaburi: Mr Chairman, I do not see any value added by that clause. We should delete it because it is not adding any value to the Act. The Council has a mandate to prepare regulations for the better implementation of the Act. Writing that clause there will create some confusion.

Mr Akhaabi: Mr Chairman. I think hon. Masaburi has a point. Elsewhere in the Bill, we have already indicated that the policy direction will come from the Council and the foundations of this proposed Act is also clear on the policy origination. With due respect, I would plead with the committee to agree to the proposal by hon. Masaburi so that we do not have a redundant clause in the Bill. I plead with them.

Ms Byamukama: Mr Chairman, I can appreciate where the Committee is coming from. Perhaps when they looked at Article 14 of the Treaty on the functions of the Council and they saw that it is the policy organ, they thought to introduce it here. This notwithstanding, however, when you look at Article 14 carefully, you will find that even in the Council's work, it gives directives to all other organs except the Summit, the Court and the Assembly. This is really to protect the sanctity of the law-making entity as well as the law itself. So, in effect, by bringing in the Council to give general direction on the administration of an Act, we shall be setting a precedent for all the Acts that we enact. We shall be providing for Council directive on the administration of the law, which brings in another element, which may be difficult to interpret. Therefore, I would like to urge the Chairperson of the Committee to drop this particular proposal.

Dr Masha: Mr Chairman, perhaps if I read it aloud what it is about would be clearer.

Clause 14 reads, *“The Council may, by notice in the Gazette, delegate any of the powers conferred upon it under this Act to the Commission.”* That is all it is saying.

There are so many points of detail in the work of the Commission that it is very possible, given the routine of the Council of not sitting daily, to choose, at its own discretion, what matters, and to leave the Commission to perform on its behalf. I do not see any harm in that, after all, we have already passed an Act for the Summit to delegate some of its powers, and now we are asking the Council to delegate some powers, or rather we are giving them an option. Actually, we are not even demanding it but giving an option to the Council to delegate whatever it may feel it does not need to deal with, and I do not see any harm in it at all. I would suggest that we retain it.

The Chairman: I thank you, honourable member. I did not want to interrupt you, but we have already passed that clause about which you are talking. We are on the next clause. We are talking of Clause 15, which reads: *“The Council may give to the Commission such general directions on the policy to be pursued in the administration of this Act, and the Commission shall take such steps as are necessary to give effect to the direction of the Council.”*

Dr Nangale: I agree with hon. Dora Byamukama. Let us delete it. *(Laughter)*

The Chairman: Hon. Members, I think what we are talking about now is the deleting of the whole clause and not its amendment. We are not talking about the amendment but the deletion of the whole of Clause 15. Therefore, I now propose the question that Clause 15 should be deleted from the Bill.

(Question put and agreed to.)

Clause 15, deleted.

Clause 16, agreed to.

Clause 17

Dr Nangale: Mr Chairman, the Committee proposes an amendment to Clause 17 to read as follows:

- (1) *The source of funds for the Commission shall be the East African Community Tourism and Wildlife Development Fund; and,*
- (3) *The income and property of the Commission shall be used solely for the promotion of the objectives of the Commission as stipulated in this Act.”*

The Chairman: Honourable, just help us. In what clause does the Bill create the fund?

Dr Nangale: We created it under the new Clause 14.

The Chairman: Hon. Members, you have heard. I propose that we stand over this clause until we pass the other new clause, and then we can come back to this one later on because we cannot see this fund. We cannot pass this now and then later on perhaps reject the creation of the fund.

Ms Byamukama: Mr Chairman, there is also another concern as to why you want to limit this Commission to receive funds from only one source. Why should it be so? If it is an East African Community commission, then we should fund it like all the other commissions. Therefore, I think what had been carried in the Bill should still stand because if you limit it to this particular fund, which is not even up and running, then you are stunting it and actually killing it before it has started and – (*Interruption*) -

The Chairman: Anyway, we shall come back to that later on when we get there.

Clause 18

Dr Nangale: The Committee seeks to amend Clause 18 to read as follows, “*The Commission shall prepare an annual budget for submission to the Council for consideration and the Assembly for approval.*”

Dr Masaburi: Mr Chairman, I think we should abide by the Treaty in the preparation of the budget, and I am not certain whether we are allowed to write there that the budget shall be prepared in accordance with the provisions of the Treaty establishing the East African Community. The Treaty, in Article 132(5), stipulates, “*The resources of the Community shall be utilised to finance activities of the Community as shall be determined by the Assembly on the recommendation of the Council.*” Therefore, the activities must first be determined. If you leave it open like this, then they will not be able to submit their activities in accordance with the Treaty. So, if it is possible. I think we should just leave it as “*in accordance with the Treaty*” so that we can follow the Treaty in approving the budget.

The Chairman: Hon. Masaburi, could you write your amendment and bring it over?

Dr Nangale: Mr Chairman, I accept.

The Chairman: What are you accepting, because I do not even know what he said?

Dr Nangale: That the Commission shall prepare annual budgets according to the Treaty.

The Chairman: Hon. Masaburi, we are waiting for you.

Honourable Members, the amendment reads: “*The Commission shall prepare the annual budget in accordance with the Treaty.*”

I now propose that Clause 18 as amended be part of the Bill.

(Question put and agreed to.)

Clause 18, as amended, agreed to.

Clause 19

Mr Nangale: Mr Chairman, the Committee proposes to amend Clause 19 to read as follows: *“The Commission shall keep proper accounts and records of its transactions and affairs, and ensure that monies received are properly accounted for, all payments out of its funds are properly made and authorised and that adequate control is maintained over its property.”*

Sub clause (2) should remain the same, and (3) should read:

“The Commission shall, within three months after each financial year, submit –

- (a) To the Council an annual report in respect of the financial year containing the financial statements, the report of the operations of the Commission, an audit of the procurement process for goods and services, and any other information the Board may deem appropriate.*
- (b) To the Audit Commission, the accounts of the Commission for the preceding financial year, and the annual report referred to in this sub-section.”*

Ms Kwekwe: I propose the inclusion of the word “year”.

The Chairman: Hon. Members, I now put the question that Clause 19 as amended be part of the Bill.

(Question put and agreed to.)

Clause 19, as amended, agreed to.

Clause 20

Ms Byamukama: Mr Chairman, there is just a consequential amendment where there is “internal dispute settlement”. Let us take away the word “internal” as it is a consequential amendment.

The Chairman: Hon. Byamukama, what did you say you wanted amended in Clause 20?

Ms Byamukama: It is in Clause 20 about disagreements within the Commission, and it has the words, “Through an internal dispute settlement mechanism ...” We had proposed that this should be “dispute settlement mechanism” but I do not know what happens.

The Chairman: Hon. Byamukama, we are on Clause 20, and I do not see anything like that on this clause. Maybe you can help me out because I am looking at the Bill.

Ms Byamukama: I think I am moving ahead, sir.

The Chairman: Honourable Members, I now put the question that Clause 20 be part of the Bill.

(Question put and agreed to.)

Clause 20, as amended, agreed to.

Clause 21, agreed to.

Clause 22, agreed to.

Proposed New Clauses:

Dr Nangale: Mr Chairman, the Committee proposes to amend Clause 22.

The Chairman: Is this a new clause?

Dr Nangale: No, Mr Speaker.

The Chairman: Then where were you when we were passing it? Continue please; maybe I will let you off this time.

Dr Nangale: The Committee proposes an amendment to Clause 22 by substituting the word “commission” with the word “Board” so that it reads: *“The Council may, by statutory instrument after consultation with the Board, make regulations for better carrying out into effect of the provision of this Act.”*

Ms Kwekwe: Agreed.

The Chairman: Hon. Members, I now put the question that Clause 22, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 22, as amended, agreed to.

Dr Nangale: Mr Chairman, the Committee proposes a new Clause 9 to be entitled, *“Vacation of office by the commissioner”, to read as follows:*

- (1) *A commissioner may resign from his or her position by giving three months’ notice of resignation to the Council. The Council shall, before the expiry of the said period of three months, fill such a vacancy.*
- (2) *The Council may remove a commissioner, including the chairperson from the office anytime if –*
 - (a) *The commissioner is declared bankrupt;*

- (b) *The commissioner takes the benefit of any law to unfairly grant favours to industry players;*
- (c) *The commissioner is convicted of a criminal offence;*
- (d) *The Council decides that the commissioner is guilty of gross misconduct or is incapable of carrying out his or her expected duties because of ill health or physical or mental impairment;*
- (e) *The commissioner fails to attend two consecutive ordinary meetings;*
- (f) *The commissioner has committed a breach of the code of conduct to which the Commission is subject, or a material breach of the provision of this Act.”*

Ms Byamukama: We are lost; we do not know what the chairperson is reading. Where is the text?

The Chairman: You should look at page 5. You have it in your hand.

Ms Byamukama: Sorry.

The Chairman: It is the new Clause 9 on page 5. Hon. Byamukama, we did not reconvene but if you read the Rules, you will find that new clauses come after we have finished with the clauses in the Bill.

Ms Kwekwe: Mr Chairman, I have no problem, although I would wish to see the new Clause 9(1) ending with “... *in accordance with Clause 8 of this Act*”, because it is under Clause 8 that the appointment of commissioners is prescribed.

The Chairman: Honourable Member, you said that you don’t have a problem and you have a problem. Can you tell us exactly what you want so that we know?

Ms Kwekwe: Mr Chairman, I would like to see the words, “*in accordance with Clause 8 of this Act*” added at the end of the proposed Clause 9(1).

Dr Nyiramilimo: Mr Chairman, in sub-clause (e) if a commissioner fails to attend two consecutive ordinary meetings...I think it should be precise that without any reason, because if the commissioner is sick or if something has happened, he should not be fired from office. Thank you.

The Chairman: I think hon. Kwekwe had proposed something on sub clause (1). Do you still go by it or do you want to take – *(Interruption)* -

Dr Nangale: Mr Chairman, I agree that we add on clause 9(1) after the words “*fill such vacancy*” the words “*in accordance with clause 8(2)*” as proposed by hon. Kwekwe.

The Chairman: Honourable Member, why do you have to refer to that clause; it is already there? There is no way they are going to fill any vacancy without using Clause 8 anyway.

Ms Kwekwe: I will go with your advice and withdraw the proposed amendment, Mr Chairman.

The Chairman: There is also another one on 2(e) where the commissioner fails to attend two consecutive ordinary meetings. I think she said that we should say "...without permission", I do not know.

Dr Nangale: I accept "*without reasonable cause*".

The Chairman: Hon. Members, I now propose that the new Clause 9, as amended, be inserted into the Bill.

(Question put and agreed to.)

Clause 9, as amended, agreed to.

Dr Nangale: Mr Chairman, the Committee proposes to insert a new Clause 14 entitled, "*The East African Tourism and Wildlife Development Fund*", and to read as follows:

"There shall be a fund known as the East African Tourism and Wildlife Development Fund established to finance the commission. Sources of the fund shall be –

- (a) Proceeds from the revenue arising from tourism and wildlife activities as determined by the Board;*
- (b) Contributions, grants and donations from stakeholders and development partners*
- (c) Proceeds from penalties and fines; and*
- (d) Any other source as shall be approved by the Council."*

Ms Kwekwe: I was party to the formulation of that amendment so I agree.

Mr Mwinyi: Mr Chairman, I beg your indulgence. I am just reviewing the Treaty before I use my time. There is an issue in the Treaty regarding other sources of funding and financial implications of a Private Members' Bill, and I am trying to locate the exact Article in the Treaty.

Article 59(2)(a) reads, "*The Assembly shall not proceed on any Bill, including an amendment to any Bill that, in the opinion of the person presiding, makes provision for any of the following purposes, for the imposition of any charge upon any fund of the Community*", and this particular provision does so, which is in breach of the Treaty. Thank you.

Dr Nangale: Mr Chairman, the Committee is very aware of that provision in the Treaty, and if you read the sources of this fund, it does not include monies drawn from the budget. We have only said "any other source as shall be approved by the Council" and that does not mean that there is money coming from the EAC budget. So it doesn't add any charge to the EAC budget.

The Chairman: Where is the money coming from, hon. Nangale? If you are saying that the budget shall be considered by the Council and approved by the Assembly, so where are you getting your money from?

Dr Nangale: The money as stipulated here is coming from proceeds from revenue arising from tourism activities determined by the Board; contributions and grants; proceeds from penalties and fines.

The Chairman: How are you going to legislate to get this money? Are you going to steal it from people?

Dr Masha: Mr Chairman, this was a source of considerable debate in the Committee, and indeed in another committee as well where we have been looking at another Bill. It depends upon the interpretation. Leaving it as originally formulated in the Bill would definitely have caused charges on Partner States, but by providing a separate fund to which the Partner States do not have to contribute, we felt that this was a way to get around this Article 59 in the Treaty. Perhaps the lawyers will have to do some interpretation of this, but our attempt to establish this fund was to source funds for the commission outside of the regular budgeting from Partner States as indicated in the Treaty. If you read the article together with the various sections under it, it provides some room, in our judgement, to be able to do that as long as it has no direct impact on the funds provided by Partner States. That is how we saw it, but, again, I am saying that this is a matter for interpretation.

The Chairman: Honourable Member, I think you are setting up a commission, which is not a private entity but more of a public entity. For that public entity to be funded it has to come from some budget that comes from the Partner States. Even if it is a levy of some sort, it has to be something that Parliament must...if you say it is revenue, even if it is revenue from a fund or a levy somewhere, still it has to come from the Partner States' funding. They are saying that the Council and the Assembly are supposed to approve this budget, but how do we move forward? How can you set up a fund and you do not...even the EAC Budget right now - if you look at Article 132(4) - does not only include monies from Partner States, but also monies from donors and other international bodies.

Dr Masha: Mr Chairman, I concede that could be one legitimate interpretation, and the Speaker has the powers to make that kind of determination, but our feelings were that if the funds are not directly from the budgets of the Partner States – *(Interruption)* -

The Chairman: Honourable Member, I will read to you Article 132(4). It says, *“The budget of the Community shall be funded by equal contributions by the Partner States and receipts from regional and international donations and any other source as may be determined by Council.”* So, any of those funds, wherever they come from, even if they don't come from the Partner States, can cause a problem.

Dr Masha: Mr Chairman, I do not want to go into an argument over the interpretation because, as I said, ours was a humble interpretation because some of us are not lawyers.

The Chairman: Maybe we can help each other out by having some suggestions on how we can go around it. Perhaps I should give a suggestion. If we go by the way we are doing it right now, this whole Bill will not even come before this House, because we are creating a commission which is a charge to the Community. If you look at the other Acts, say the East African Trade Negotiations Act, we did set up a body like this one but we put a saving clause in the Act, which said that the Council would determine the budget of the Commission, and also when it would be operational. However, here we are giving all the powers to the Council to determine the budget, as well as when it becomes operational. Therefore, you are not creating any charge on the Community. It is only when the Council decides to create that charge that the charge will be created.

I think we need that kind of clause somewhere so that we can run away when the need arises. If you do not do that, then you will never bring a Private Members' Bill to this House because everything has a charge. If you use Acts that this Assembly has passed in the past, then you can get round that position.

Mr Akhaabi: Mr Chairman, I do not want to challenge your ruling - if it is a ruling - on this – *(Interruption)* -

The Chairman: No, that was advice and not a ruling.

Mr Akhaabi: Mr Chairman, my reading of Article 59(2) appears to give me a different understanding from that of my learned friend, hon. Mwinyi. The clause reads as follows:

59 (2) *“The Assembly shall not:*

- (a) *proceed on any Bill, including an amendment to any Bill that in the opinion of the person presiding makes provision for any of the following purposes:*
 - (i) *for the imposition of any charge upon any fund of the Community;*
 - (ii) *for the payment, issue or withdrawal from any fund of the Community of any monies not charged thereon or increase in the amount of any such payment, issue or withdrawal*
 - (iii) *for the remission of any debt due to the Community; or*
 - (iv) *proceed on any motion, including any amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the said purposes.”*

Mr Chairman, when we look at the Bill that we have before us on the funding of this Commission -and this is contained in the proposed Clause 14 – it says, *“There shall be a fund known as the East African Tourism and Wildlife Development Fund established to finance the Commission.”* Therefore, it is the fund established to finance the Commission, and the sources of this fund shall be proceeds from the revenues arising from tourism and wildlife activities as determined by the Board. In my view, we cannot say that this is a charge on the fund of the Community, nor does it, in my view and in the

face of it, purport to impose any charge or require payment or issue from any fund of the Community at all.

The second source is contributions, grants and donations from stakeholders and development partners. That is neither the Community money – *(Interruption)* -

The Chairman: If I may cut you short, hon. Akhaabi, what is the Community?

Mr Akhaabi: The Community would mean the East African Community established by Article 2 of the Treaty. Article 2 says, *“By this Treaty, the contracting parties establish among themselves an East African Community herein after referred to as the Community.”*

My point here is that we should interpret the word “Community” narrowly and not broadly. In addition, in interpreting the word “Community” narrowly, the Community will mean the East African Community, the Partner States of the Community or the institutions of the Community.

If we interpret it broadly to include even individuals and the private sector in the Community, we will not be in a position to move any Private Members’ Bills in this Assembly. I urge you to interpret “Community” narrowly and not broadly. Thank you, Mr Chairman.

The Chairman: From whatever you have said, if you look at the Community, it is the Partner States, and if we are putting a charge on those Partner States, you are bringing a charge on the Community, so you cannot run away from it. Forget about the fund. Even setting up the Commission is a charge on the Community. I showed you a way out which has worked before, so I do not understand why you do not want to use it. I am not debating, but the way out is to give the Council the prerogative to set up the Commission and the fund so that you are not putting a charge but giving that job to the Council of Ministers. They are the ones who will decide whether to effect or not to effect the Bill.

However, on the other hand, why should we have a fund? If you have...for example in Clause 17, it talks of, *“The source of funds of the Commission shall be the East African Community budget, contributions, grants and donations from stakeholders and development partners and any other source that shall be approved by the Council”*. So, why do you need this new clause and this fund?

Dr Nangale: Mr Chairman, we agree to your suggestion as a way out.

The Chairman: Honourable member, you make it appear as if I am debating; I am not debating anything here. Why don’t you try to look at this document and see which ones to delete? Instead of bringing a fund and doing all these things when another clause already covers it, why do we not leave it that way and then...I thought there was a saving clause this Bill was first brought to me, so I do not understand where it disappeared. The only reason we allowed it to come to the House was the saving clause!

Ms Kwekwe: The Committee moved an amendment to Clause 1. If we revoked that amendment, then that would take care of the suggestion that the Chairman is making, I suppose.

Ms Byamukama: I think there are two aspects; as the hon. Kwekwe has said, we have already taken care of the first one, which is on commencement. *The second one should be pegged to what was originally in the Bill that the sources of funds for the Commission shall be the East African Community budget, and the contributions and grants approved by Council.*” Therefore, I am proposing that the chairperson of the Committee does not move his new amendment and we retain what was in the original text to address those two aspects.

The Chairman: I still have a problem. When you look at the budget of this Commission, it is not just about approving, but they also have to determine it, so that it is not you setting up this thing for them. Let them determine the budget and approve it because once you approve, you are still setting up this commission and then you are saying that the budget...I think we have to have a clause that says that they also have to determine the commencement date. For purposes of consistency, we should just look at the other Bill and use the same wording so that we do not have to go through this process again.

Dr Masha: Mr Chairman, if my colleagues could agree, we could have consequential amendments in some of the clauses to the effect that the Council shall determine the budget of the Commission in accordance with the relevant articles in the Treaty.

The Chairman: Honourable Members, in order to give the Committee and the mover of this motion more time to be able to come up with those clauses and clean them up - there is just that one clause for you to clean up and also clause 17, which we haven't finalised, and the other new clauses that you are talking about. Maybe we should adjourn debate now and then tomorrow at 2.30 p.m. we finalise it so that you can actually get the proper thing. We do not want to pass a law that is going to be challenged in time. I already know that they are going to challenge it, but let them challenge it for other reasons, like a protocol or something else but not on a matter of the Treaty. It is not such a big thing; and there are just a few clauses remaining. Let us finalise those clauses, put in the same provisions and then we can continue tomorrow.

MOTION FOR THE HOUSE TO RESUME

Ms Safina Kwekwe (Kenya): Mr Chairman, I beg to move that the House do now resume and that the Committee of the whole House do report thereto.

Dr Masha: Seconded.

(Question put and agreed to.)

(The House resumed, the Speaker presiding.)

BILLS

REPORT STAGE

The East African Community Tourism and Wildlife Management Bill, 2008

Ms Safina Kwekwe (Kenya): Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled, “*The East African Community Tourism and Wildlife Management Bill, 2008*” and shall conclude on it at an appropriate time.

The Speaker: Honourable Members, I propose the question that the Report of the Committee of the whole House be adopted. I now put the question.

(Question put and agreed to.)

(Report adopted.)

The Speaker: Honourable Members, I think we should give the Committee some time to work on the Bill and then we can finalise it tomorrow.

ADJOURNMENT

The Speaker: I now adjourn the House until tomorrow, at 2.30 p.m.

(The House rose at 6.00 p.m., and adjourned until Thursday, 11 February 2010, at 2.30 p.m.)