



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly 75TH SITTING – SECOND ASSEMBLY: THIRD MEETING - THIRD SESSION

Thursday, 11 February 2010

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the Parliament of Uganda, in Kampala.

PRAYER

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

(The Assembly was called to order.)

PAPERS

The following Paper was laid on the Table:-

by Dr Aman Kabourou (Tanzania):

The Report of the Committee for Regional Affairs and Conflict Resolution, on the Draft Election Observation Manual of the East African Community

THE ASSEMBLY IN COMMITTEE

(The Hon. Abdirahin Haithar Abdi in the Chair)

**BILLS
COMMITTEE STAGE**

The East African Community Tourism and Wildlife Management Bill, 2008

Proposed New Clauses:

Dr Nangale: Mr Chairman, the Committee proposes new clauses to the Bill as follows:

Clause 21, "Decision of the Board"

(a) A decision made by the Commission shall be enforced by Partner States through the enforcement authorities. 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."

The Chairman: Honourable Member, I think we are a bit lost, because yesterday we were on Clause 14, and now you have jumped to Clause 21. Therefore, I am wondering! I have another document here, which talks of a new Clause 2. Which is which? Can we go from the top and come down?

Dr Nangale: Mr Chairman, the new Clause 2 is entitled, "*Commencement*".

The Chairman: So which one are you doing now? Do you want to start with Clause 2 now?

Dr Nangale: I will start with Clause 2. I propose to insert a new Clause 2 entitled, "*Commencement*" which states: "*This Act shall come into force on such a date as the Council may, by notice in the Gazette, appoint.*"

Mr Chairman, the justification for this new clause is to let the Council to determine the most appropriate date of the commencement of the Act.

The Chairman: Hon. Mwinyi, I think you had something yesterday. Does that satisfy what you were afraid of?

Mr Mwinyi: Mr Chairman, I support the proposal.

Ms Kwekwe: Mr Chairman, I agree.

The Chairman: Honourable Members, I now put the question that a new Clause 2 be inserted in the Bill.

(Question put and agreed to.)

Dr Nangale: Mr Chairman, the Committee wishes to withdraw the new Clause 14, proposed yesterday, on the East African Tourism and Wildlife Development Fund.

The Committee proposes a new Clause 21 to be entitled “*Decision of the Board*” to read as follows:

- (1) *A decision made by the Commission shall be enforced by Partner States through the enforcement authorities.*
- (2) *In case of disagreement between the Commission, the 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.”*

This justification for this clause is to give enforceability of the commission decisions as provided for by Article 8, sections (4) and (5) of the Treaty for the Establishment of the East African Community.

Dr Masaburi: Mr Chairman, I wonder whether the sanctions are within the scope of the contents of the Act because, it is my understanding that it is the contravention of the Act that should be penalised.

The Chairman: Honourable Member, we are not talking about sanctions; I think we are talking about decisions of the Board. I think you have jumped the gun.

One question I wanted to ask the chairperson is why you have to justify Clause 8(4) when everyone knows it is in the Treaty already.

Dr Nangale: Mr Chairman, we are justifying for the purpose of clarity.

Mr Ogalo: Mr Chairman, much as this provision already exists in the Treaty, for purposes of making it easy for cross referencing so that the Act in itself is self sustaining, I see no harm in having this provision there. It just reinforces what is in the Treaty. Since it does not contradict the provision in the Treaty, I think we could go ahead with it.

Ms Kwekwe: Mr Chairman, I have no objection.

The Chairman: Honourable Members, I now put the question that a new Clause 21 be inserted in the Bill.

(Question put and agreed to.)

Dr Nangale: Mr Chairman, the Committee is proposing a new Clause 22 on “*sanctions*” to read as follows:

1. *Any industry actor in the public, private or civil society domain shall not –*

- (a) *Undertake activities that jeopardise the sustainability of wildlife resources and tourism attractions and habitats; violate internationally agreed instruments such as the 1933 Convention related to the protection of fauna and flora in their natural state known as the London Convention; the 1968 Africa Convention on the conservation of nature and natural resources; the 1971 Convention on wetlands of international importance, especially as waterfall habitats; the Ramsa Convention; the World Heritage Convention; the Convention on International Trade in Endangered Species Of Wild Fauna and Flora of 1973 known as CITES; the Convention on Biological Diversity of 1992; and, the 1994 Lusaka Agreement Taskforce, among others;*
- (b) *Act in any manner contrary to standards set by the Commission;*
- (c) *Contravene intellectual property rights in relation to tourism products of unique value to the region;*
- (d) *Fail to meet any other obligation as set out in this Act.*
- (2) *Any person who contravenes the provision of this Act commits an offence. A person who_*
- (a) *Destroys the habitat of wildlife resources shall be liable to a fine of not less than US \$2,000 but not exceeding US \$50,000, or imprisonment of not less than two years but not exceeding ten years;*
- (b) *Destroys wildlife resources and/or tourist attractions is liable to a fine of not less than US \$1,000 but not exceeding US \$50,000 or imprisonment of not less than one year but not exceeding five years;*
- (c) *Deliberately flaunts the set industry standards is liable to a fine of not less than US \$5,000, but not exceeding US \$25,000, or suspension of license for not less than 12 months;*
- (d) *Transfers ownership of tourism and wildlife products of intellectual property in nature for commercial purposes without due process and expression of authorisation by original owner(s) of that product commits an offence and is liable to a fine of not less than US \$25,000 but not exceeding US \$100,000, or imprisonment of not less than 5 years but not exceeding 15 years;*
- (e) *Fails to meet other obligations as provided in the Act is liable to a fine of not less than US \$5,000 but not exceeding US \$25,000, or imprisonment of not less than one year but not exceeding five years.”*

The Chairman: Honourable Members, you have heard.

Dr Masaburi: Mr Chairman, the basis of my concern on this clause is the facts within the Bill itself. I was expecting to see the penalties arising from the functions of the Commission, and the penalisation of any person who prohibits the functioning of the Commission because the Act itself seems to be establishing a Commission, which, if not mandated properly within the law, might fail to function.

What I see in the proposals are other things, which are outside the scope of the law itself, which have not been imported into the law, such as undertaking activities that jeopardise the sustainability of wildlife resources. If we cannot see that in the law itself, how can it be part of the sanctions? The issues for sanctioning are not within the scope of the Act itself.

In my view, sub clause (a) should especially not be part of the sanctions because we want to penalise people who violate this particular Act, and I think it should not be otherwise. Therefore, the sanctions should reflect on the basics, like for example on those who fail to present their accounts in time. We can see on the functions of the Commission that they want to co-ordinate the national institutions. They should agree on the formula of sharing proceeds. If somebody contravenes that, what will the penalty be?

The mechanisms within are just generalised under (d). That is the law providing for a sanction for a person failing to meet any other obligations as set out in this Act. That, to me, is too general, but the ones specifically indicated in this new proposal are outside the scope and content of the Act itself.

Mr Kaahwa: Mr Chairman, the basis of the proposed new clause, just like all the other clauses in the Bill, is, first, the memorandum of objects of the Bill, and secondly, the objectives and functions of the Commission, which, if read in their entirety, would presume that there would be the kind of offences created, and the sanctions in respect of which are provided. Therefore, in my humble opinion, I think the sanctions created by the new clause are within the context of the Bill itself.

If I may add, the Committee may feel obliged to pinpoint any other area not covered under the general sanction in the proposed Clause 2 sub-paragraph (e) that may require a specific sanction. I thank you, Mr Chairman.

Mr Akhaabi: Mr Chairman, I agree that the proposed sanctions in the Bill will go a long way in promoting the original intention of the Bill, which is to improve the quality of the management of our tourism resources. However, if we look at the functions that we assigned to the Commission yesterday, a violation or breach of any of the standards set by the Commission should constitute offences punishable under the same Act. Therefore, I quite agree with the Counsel to the Community - and the Committee of course - that this is quite in order.

I thought that there was need for a definition of “*industry actor*”. I have looked at the original Bill and the amendments that we made yesterday but I have not seen the

definition. I think we need to define this so that when we are talking of sanctioning them, we know who they are actually.

In addition, when you look at sub-clause (2), it is dealing with two matters. There is the creation of the offence in the first sentence, and then there is the prescribed sentence that we are proposing in the alphabet letters (a) to (e). I propose to separate the two so that paragraphs (a) to (e), and starting with the words “*a person who ...*” should form a different sub-clause. We should not join it together with the clause creating the offence. Thank you, Mr Chairman.

The Chairman: Honourable Member, can you put that in writing so that we can read what you are saying?

Mr Kaahwa: Mr Chairman, with regard to the proposed new Clause 22, paragraph (2) sub-paragraph (e), there is need for a slight amendment in the wording in order to reflect the exact context and in future make enforceability of sanctions possible. What you have in paragraphs (a), (b) and (c) are specific sanctions. What you have in (e) is a residual sanction, which should be applicable to failing to meet any other obligation. If you provide for failing to meet other obligations, you presuppose a situation where somebody will fail to meet so many other obligations, and yet the most likely circumstance is where a person fails to meet any other obligation. Therefore, it is my humble proposal that the wording of sub-paragraph (e) should read, “*Fails to meet any other obligation.*” I thank you.

Dr Masaburi: Mr Chairman, since the experts, including hon. Akhaabi who is a specialist in law and the Counsel to the Community who, for the first time is now supporting this motion, have given clarifications, I think he will be able to convince the Council of Ministers and, therefore, I accept. (*Laughter*)

The Chairman: Honourable Members, you are putting the Counsel to the Community in a very awkward position. If you had thanked the Counsel to Community for helping us with this Bill, that would have been something else. Now you are saying the Counsel to the Community will convince the Council of Ministers, tomorrow he will not stand up to say anything. (*Laughter*) He is here to help enrich the Bill, but the Council will decide on what it wants to do. I thank him very much for doing so. Thank you very much, Mr Counsel to the Community. (*Applause*)

Ms Hajabakiga: Mr Chairman, it is just a small thing, and perhaps the lawyers can help me with it.

Under sub clause (1)(a) on the international conventions, I know that we have tried to enumerate the conventions that we could recall, but there are some others which I notice are not included, so I was wondering when you say, “amongst others”, whether it covers all the others which we have forgotten. Otherwise, we could amend this section and say, “... *or any other international instrument as ratified by the Partner States*”.

The Chairman: Honourable Member, are we on the same subject?

Mr Ogallo: On the same subject, Mr Chairman, I think hon. Hajabakiga has a point here, because an offence should be clearly defined and a sanction attached to it. Perhaps we will send the Bill back to the drafter, but the wording here is "...violates internationally agreed instruments such as..." This is not specific but leaves room to include all conventions, and makes transgression of all the conventions an offence. That will go against the principle of...if you are going to charge someone with a criminal offence he should know exactly what he has done so that he can defend himself against it.

I think we ought to send this back to the drafts person to clean it up by removing such phrases as "*such as the 1933 convention*" and make specific provisions. It also goes for what hon. Akhaabi submitted on in sub clause 2) that "*Any person who contravenes the provisions of this Act commits an offence*". This Act has very many provisions; some of them are just innocent and may not amount to an offence as such. It may be that you are telling the Commission to make policy – (*Interruption*) -

The Chairman: Honourable Member, let us finish with (1) and then we will come to (2).

Mr Ogallo: Much obliged, sir. I would just say that we should send this back to the drafts people to make it certain.

The Chairman: Honourable Member, I want to ask you one thing. If we send it back to the drafts people, are we saying that we go away from the Committee Stage, send it back and then come back another day? What are you saying?

Mr Ogallo: No, let us adopt the principle that we are creating sanctions but we must be specific. It will just be a question of drafting. We will not be adding anything but just cleaning it up.

The Chairman: But the problem I have with that is that right now we have to put the question on that clause. Are you leaving it to the drafts person to do whatever they want? It is going to be a problem because I think we have to put the question on it before it goes back.

Mr Ogallo: I do not know whether I am making myself clear. Maybe I can re-state this by re-reading it. "*Any industrial actor either in the public, private or civil society domain shall not undertake activities that jeopardise the sustainability of wildlife resources and tourist attractions ... their habitats ... violate internationally agreed instruments such as*"

In other words, what this is saying is that these conventions are simply examples and that there are others. This means that if you contravene those others, you will be committing an offence. The point I am making is that when cleaning it up, you will just be removing "*such as*".

The Chairman: Why don't you just request that and then we remove it?

Mr Ogalo: Okay, Mr Chairman, instead of sending it back, I will move – *(Interruption)* -

The Chairman: Hon. Byamukama, yesterday we were all listening to you, so I think that today you should listen to all of us as well. You will get a chance.

Mr Ogalo: I will take her clarification, sir.

The Chairman: She did not ask for clarification; she just said, no! You can continue hon. Ogalo - *(Interjection)*-

Mr Ogalo: I will accept the clarification, Sir.

Ms Byamukama: Mr Chairman, hon. Ogalo had started on the right note and then I do not know where he went. You must punish a crime prescribed under the law, but right now, the provision is saying, "*Any industry either in public, private or civil society domain shall not undertake activities*" The violation is against international law, and violations against international law are not justiceable. That is why we make enabling laws to domesticate the principles of the international laws through Acts like this one we are trying to make. Therefore, I am proposing for us to say that they should not violate principles of this Act. In that way, we will be in a better position to punish them, but if we go further to punish the violations using international law, which has procedures on how you report the violations, how you appeal, which court to go to...you will find this clause to be redundant. Therefore, I want to agree with hon. Ogalo that the offence has to be clearly defined, the penalty prescribed and it needs to be specific. Certainly, it has to have clarity. That is where hon. Ogalo was going and I just wanted to give this clarification.

The Chairman: So, honourable Member, are you suggesting that we remove all this because we already have prescribed sanctions?

Ms Byamukama: That is what I would propose to hon. Ogalo. I think that would make it clearer because these are principles that you bring down into enabling laws for purposes of domesticating them. You bring them down to the Treaty, and now we are bringing them down further into an Act of the Community. Perhaps we could refer them to the Community, and in that way, maybe hon. Ogalo's proposed amendment would be able to stand. Thank you.

Mr Ogalo: Mr Chairman, if I understood hon. Byamukama correctly, she is suggesting that we actually remove all these and that we simply say, "*Any industrial actor, either in public, private or civil society domain shall not contravene international law.*" I think that would be too wide, and you would not be able...I think I would rather leave the conventions that are there because they are specific, and simply move to remove the words "*such as*". This is because if we went the way suggested by the honourable

Member, you would not know exactly what you are punishing or sanctioning. Therefore, I would rather leave in the conventions already mentioned so that anybody will know the contravention and the punishment.

Mr Munya: Mr Chairman, I think hon. Byamukama's argument is the correct one because if you create offences then you must also create the sanctions and the mechanisms for enforcing them. Therefore, if you create them at the international level, you will have a problem of enforcement, especially where you are not very clear on the kind of offence. If you read these provisions carefully, you will realise that there is no clear disclosure of a particular offence. We are just referring to many international conventions and saying that if you violate them, there is a sanction. An offence framed in these general terms cannot stand in any court of law. I think hon. Byamukama's proposal is very strong in law.

The Chairman: Let us hear from a non-lawyer.

Dr Kabourou: Mr Chairman, I am not arguing the points, but I just remembered that hon. Akhaabi wanted a definition of "industry actor", and that is what I am also interested in at this point. I would like to say in this case that I do not think we need a definition –
(Interruption) -

The Chairman: I am sorry, where are you?

Dr Kabourou: I am on "Industry actor", which is in the same sub clause (1). All I am saying is that "*any person as defined by the Treaty in the interpretation*" would be a good definition.

The Chairman: Okay, we will come back to that one.

Ms Byamukama: Mr Chairman, my concern is this. When you look at all these internationally agreed on instruments like the 1933 Convention, the 1968 Africa Convention, and the World Heritage Convention, are we sure that all the East African Partner States are signatories to these international conventions? Have they ratified them? So, really, what I am trying to say is that if we want to follow the good drafting principles so that we are specific, certain, consistent and we have clarity, then I think what we can do is outlaw any activity that would jeopardise wildlife resources, tourist attractions and their habitats under the Act. Alternatively, we could even refer to the Treaty. I think that is more feasible and slightly more specific than us referring to international conventions, which we do not know whether all the Partner States are signatory to or have ratified. Thank you.

Mr Munya: In addition to what hon. Byamukama is saying, if you look at all these conventions, they give obligations to states. The states enter into them and are obligated to do certain things. Therefore, when you refer to actors, you are bringing in non-state actors, and you are saying if those non-state actors violate these conventions...this is confusing because the conventions have nothing to do with individuals or companies.

The conventions deal with state obligations, so it is the government that is sanctioned if it violates certain things. Now if you want to bring non-state actors into the pavilion of international law, you will bring total confusion.

Mr Ogalo: Mr Chairman, if we go by what the honourable Minister is saying, then all of sub clause (1)(a) will have to fall completely, because it not only sub clause (a) that affects international law. In addition, this would defeat the argument that one must know the offence for which one is charged.

I take note of the point made by the honourable minister that these conventions normally have many provisions, but the principle of law is that one should know the act for which one is being punished, and that the sentence for a particular offence should be given. Therefore, if we take the arguments of minister and hon. Byamukama, then we cannot substitute sub clause (a) simply with international law. It must all go.

The Chairman: Exactly! So do we delete (a)?

Mr Ogalo: It would mean so. We would have to delete the whole of it without any replacement.

The Chairman: If you go by that argument, I think we should remove the whole of (a); it should not be there. I think that is the easiest way of dealing with that issue.

Dr Masha: Mr Chairman, I am not a lawyer, but I appeal to honourable Members to leave it in, and perhaps with a small change. In light of what I have heard, and if it would be acceptable to the chairperson of the committee, we could say, “*violate internationally agreed instruments to which Partner States are signatories*” and just end it there without the particulars. I think it would meet the query, which the minister has made, and it might go some way to meet what Mr Ogalo wants. Personally, I would have preferred to retain the particulars of these instruments even though there is the problem of legality if some member states have not been signatories to them. I am not sure I want to have it deleted because it has some useful elements for this purpose.

The Chairman: If you listened to what the minister has said, some of these things are more for Partner States than for individuals. I think we have heard the arguments. Hon. Safina what do you say? Do we delete sub clause (a)?

Ms Kwekwe: Mr Chairman, I cannot speak for the chairperson of the Committee – *(Interruption)* -

The Chairman: No, it is not the Committee; it is your Bill. You are the one to decide on it. He made a proposal that some honourable members are against, so is for you to decide.

Ms Kwekwe: Mr Chairman, I think the gist of that provision is noble, and so perhaps we could retain it to read, “*A person, either in the public, private or civil society domain, shall not undertake activities that jeopardise the sustainability of wildlife resources*”

tourist attractions and their habitats under this Act.” This would narrow it down to the provisions of the Act. If that is agreeable, I am okay with it.

The Chairman: But if you look at sub clause (d), it says, “...*fails to meet any other obligation set out under this Act*”. Would that not take care of what you are saying? I think sub clause (d) would take care of what you have said.

Ms Kwekwe: Mr Chairman, I think what the Committee was trying to particularise here was the protection of the wildlife resources, the attractions and their habitats. This provision is trying to protect that particular interest in the wildlife resources, tourist attractions and their habitats. I think they are being particular to that, and sub clause (d) would be any other interest that not taken care of in (a), (b) and (c) I suppose.

Ms Byamukama: In that case, I have advice for the mover of the motion. Why don't we just say, “*Any industry actor either in the public, private or civil society domain shall not undertake activities that jeopardise the sustainability of wildlife resources, tourist attractions and their habitats*”?

Ms Hajabakiga: Mr Chairman, I would agree with hon. Byamukama amendment but remove “*any industry actor*” and instead say “*any person*” because even people who are not in the industry and - since it is not even defined - even the communities who just live near the habitats might destroy them. Therefore, I would rather go with “*any person*” as this would be all-inclusive.

Ms Kwekwe: Mr Chairman, since the Treaty defines “person” as both natural and legal, an industrial actor can also be a legal person and, therefore, I would be comfortable with “*any person*” because it takes care of both natural and legal persons. However, because the Act has not defined “person”, I seek your advice on whether we should say “*any person as defined in the Treaty*” or just say “*any person*”.

The Chairman: It says, “... *either in the public, private or civil domain, shall not (a) undertake activities that jeopardise the sustainability of wildlife resources and tourist attractions and their habitats.*”

Ms Kwekwe: Yes, I agree with that. Mr Chairman, “person” has already been defined in the Treaty, so if we must say, “*as defined in the Treaty*” for purposes of clarity, I have no objection to that.

The Chairman: Maybe the Counsel to the Community can help us with that.

Mr Kaahwa: Mr Chairman, the primary fountain of the legal instruments of the Community, including legislation acts enacted by this House, is the Treaty. It is the equivalent of the constitution at national levels. Therefore, it is my humble view that the addition of “*as defined in the Treaty*” does not assist much. Any person means a natural or legal person. However, as I did submit before the Committee, I the House should not

misunderstand me to be contravening the position of the Council as stated during the Second Reading. Thank you.

The Chairman: Mr Counsel to the Community, whether the House will pass this Bill or not, we are trying to enrich it so that it is a good Bill.

Honourable Members, I now put the question that paragraph (1)(a) as amended be part of the Bill.

(Question put and agreed to.)

(Paragraph 1(a), as amended, agreed to.)

The Chairman: Do we have any amendment to paragraph 1(b)? Let us go through them one by one, and quickly.

Mr Ogalo: Mr Chairman, this should now read, “... *any person ... shall not act in a manner contrary to standards set by the commission*”. This means that the Commission shall set certain standards, and if you contravene any of those standards, you commit an offence for which we are going to prescribe punishment. The same argument that I gave earlier that for an offence to be punishable it must be defined, still runs through here. In law, you must know what you are not supposed to do, because thereafter if you contravene that, then you commit an offence. Here, what we are providing are standards set by the Commission on what shall not be done. That will not be in this Act but written somewhere. Therefore, if you had this law in your hand, it would not help you to know whether an act you are performing is an offence or not, and yet it should be specifically provided for so that it can be punished. Therefore, I still have problems with this because of that principle of law.

The Chairman: So are you suggesting that we should delete it?

Mr Ogalo: Instead of deleting it, perhaps the Committee or the mover can tell the House what they had in mind, and we could then frame those specifically as offences.

The Chairman: These are committee amendments; perhaps the committee chairperson can tell us what he meant.

Dr Nangale: Mr Chairman, if you go back to Clause 9(1)(k) and the amendment we handled yesterday on the functions of the Board, it says, “*The functions of the Board are to oversee the exchange of information and setting of industry related standards, quality assurance, training, research and environmental impact assessment inter alia.*” This provision here relates to that provision for function of the Board to ensure adherence to the standards by the Commission. Therefore, the Committee thought it important to provide a sanction for when those standards are not adhered to, and that is why we have this provision, which states that “*An act in any manner contrary to the standards set by the commission...*” because the Commission, under this Act, puts standards in place.

Dr Masaburi: Mr Chairman, I think this has no effect, because these standards will be set in accordance with the Act itself, because it is my understanding that normally we do make provisions to the effect that any person who violates the regulations made under an Act will also face the same sanctions. However, at the time of passing the law, the regulations would not be in place yet, so I think that is similar to this case because we have provisions in the Act that say that the Commission will set standards, and that there are mechanisms and principles for setting those standards. Therefore, if somebody violates those standards, which will be set within the scope of the law, then that person will be committing an offence. If that is not true, then even the regulations would not work because they are set in the same way as these standards which will also be set in accordance with the Act.

Mr Akhaabi: Mr Chairman, I wholly agree with my friend, the hon. Dr Masaburi, and I am, for the first time, unable to follow the reasoning by my friend. Whereas I do agree that in criminal law one should only be charged or sanctioned for a known offence at the time that it is committed, as hon. Masaburi is saying, the setting of standards varies virtually on a daily basis. Therefore, you cannot say that the standards set today will be the same applicable tomorrow, if the standard setter publishes and gives notice of the standards that have been set in the prescribed manner. That would be deemed sufficient notice, so I do not see any problem here at all. Thank you, Mr Chairman.

Mr Ogalo: Mr Chairman, I am at a loss about this offence. What are you going to call this offence, standards? That anybody who contravenes a standard...because if hon. Akhaabi agrees that an offence must be defined and known, then there is no way that you can punish anybody on some standard which is going to be set by somebody somewhere. I cannot follow it!

I think Dr Masaburi had it at the beginning but then he mixed it up with others, but the only way to be able to remove this would be to say that the Council of Ministers should make regulations and create offences in those regulations. In that case, you can then say, *"... any act, which contravenes regulations made by the Council of Ministers ..."*

Now when you go into the regulations, you will be able to find an offence, which has already been defined, and you will also find the penalty for it. However, simply saying this offence is an act contrary to the standards made by the Commission, I cannot understand that.

Dr Kabourou: Mr Chairman, I should agree with hon. Ogalo and say that should probably take out paragraphs (b), (c) and (d) and we just say, *"Any person, either in the public, private or civil domain shall not undertake activities that jeopardise the sustainability of wildlife resources, tourist attractions and their habitats ..."* We should get rid of the whole of sub clause (2) and just go by *"(a) Destroying the habitat of wildlife resources, (b) Destroying wildlife resources, (c) Deliberately flaunting the set industry standards, (d) Transferring ownership and (e) Failing to meet"* That way we do not have to worry about too many words.

Ms Byamukama: Mr Chairman, I am trying to understand the chairperson, and where the Committee came from when they were talking about standards. This is because when you look at Article 115, it says, “*Partner States shall establish a code of conduct for private and public tour and travel operators, standardise hotel classifications, harmonise professional standards of agents*” Therefore, this issue of standards is even in the Act. However, I want to agree with hon. Ogalo that the minute you start talking about standards and punishments when you do not know the subsidiary legislation, you may fall into a trap of not knowing exactly what you are legislating for.

Therefore, I would like to go the way he has proposed and say that regulations shall be made and penalty for breach of such regulations shall be provided therein. Otherwise, we may have a problem of putting something on paper, which we will not be able to enforce in due course because it conflicts with some of the principles. Therefore, I would like to agree with hon. Ogalo’s proposal.

Dr Ndahiro: Mr Chairman, I am going to ask a question like a pedestrian and not a lawyer. If you are telling me that if I contravene tourist attraction standards and other things I will be punished under this law, what is the definition of a tourist attraction? Even my gate and house can be a tourist attraction. How does this law define those things that are punishable? Thank you.

The Chairman: Honourable Member, you are very right there. There are houses, which are tourist attractions, even people. Mr Chairperson, we are waiting for your guidance. Should we remove it completely?

Dr Nangale: Mr Chairman, as I have said earlier, the standards that this sub-clause refers to, goes back to the provisions of the Act. For example in Clause 9, which we amended yesterday we said, “... *oversee the exchange of information and setting up of industry related standards in quality assurance*”. Therefore, we are specifically referring to quality assurance, training, research and environmental impact assessment.

Dr Masaburi: Mr Chairman, I am now totally at a loss after listening to the various issues raised by the legal experts. Originally, I proposed to remove that item but I withheld my proposal because I was convinced otherwise.

Now as I go through Article 115 section (2) of the Treaty, it says, “*The Partner States shall establish a common code of conduct for private and public tour and travel operators, standardise hotel classification, harmonise the professional standards of agents in the tourism and travel industry within the Community.*”

Therefore, I think what we are doing here is contrary to this because it is the Partner States to do these things, and anybody doing these things other than the Partner States might be doing it illegally. Therefore, I am at a loss, and I would like to seek advice on that. Otherwise, I think we should talk about the travel agents, standardisation of hotels, classification and the like because it is the duty of the Partner States.

The Chairman: Honourable Member, I think he read what is in the Treaty, and if you have another interpretation of the Treaty, maybe you can help us out here.

Ms Kwekwe: Mr Chairman, reading the Article presented by hon. Masaburi and hon. Byamukama together with the clause that the Chairperson of the Committee has cited as paragraph 10(k) in the amendments, I think the standards referred to here are, as already said, related to the training in the industry, research, environmental impact assessment, amongst others. The Committee has gone ahead to put a penalty on that, which is the lifting of licences because many such standards are mainly set for operators, be they trainers in the industry or the tour operators, and what gives them the mandate to operate is a licence.

Therefore, the penalty that I think the Committee has proposed is the lifting of that licence or a fine. Therefore, I think the proposal to remove it will in essence not work towards actualising Article 115(2). It will also negate the functions given to this Commission under the proposed amendment in paragraph 10(k). Thank you.

The Chairman: Honourable Member, you have not helped me out at all. What do you want? Someone is saying that this one does not suffice, and I think there have been many arguments against these standards because they are not prescribed. I think that is what most of the Members are saying, including hon. Ogalo.

So, what is the way forward? Do we remove (b)? *(Interruption)* The Counsel to the Community is helping me here. If you look at Clause 22 of the Bill where it says that the “*Council may - I think we made some amendments - ... statutory instruments after consultations with the Board, make regulations for better carrying into effect the provisions of this Act.*” I think that is why hon. Ogalo was saying earlier that we should substitute these standards with regulations as approved. I think that maybe we can go that way.

Dr Masaburi: I also think that would be a proper way to go, but the problem is that we have already passed a certain clause, which is talking about the standards. There is a clause within this same Act, which is saying that the Commission will set standards!

The Chairman: Honourable Member, then you can use the rules and do the needful on that clause that the House passed. I think you have your Rules of Procedure. Do you want me to advise you on which rules to use?

Dr Masha: Mr Chairman, we are caught in a wrangle of the learned ones, and sometimes they never agree as far as I know. Here is something that baffles my little mind. We are always making laws in which we give authority to make regulations to some other bodies and the regulations made there from are equally binding and enforceable. Now they are telling us that regulations not known before the punishment was set are not enforceable. That baffles me. If we set up a commission or a board and give it authority to make or propose standards, which after all the Council will have approve, those standards should be as equally binding as the regulations.

On the question whether we should use the word “regulations” instead of “standards”, I think it is on a point of substance. Regulations will include the manner in which the Board operates, including the rules of procedure that it will adopt. “Standards” are very specific for this kind of industry, so in my view I think we ought to retain the word “standards” in this clause and give authority to the Board to propose these standards, and have them approved by the Council.

Let me also say something about the position taken by my friend hon. Masaburi to invoke the Treaty. I think that this is a function of the Partner States. Again, I am not a lawyer but we are here working on behalf of the Partner States. In any case, the Partner State presidents will have to sign whatever law we pass. Therefore, to me, we are not violating that particular Article of the Treaty at all by proposing legislation, which we have been asked to do, and which will have both the authority and acceptance of the Partner States. I do not see any contradiction in that, and I would appeal to hon. Masaburi not to press it.

The Chairman: Honourable Member, there are two things here. First, there is the argument that we do not already know these standards and yet they are going to be punishable. That was the big problem that we had at the beginning.

What we are saying now is that in this Bill, we have regulations, and the Council can issue those regulations or determine them, and we are saying those regulations should be the ones that should be punishable if they are contravened. Maybe the honourable Counsel to the Community can help us and allay hon. Masaburi’s fears.

Mr Kaahwa: Mr Chairman, I heard the honourable Dr Masaburi correctly reflect what Article 115 of the Treaty provides, which is to the effect that the Partner States undertake to develop a collective and co-ordinated approach; that the Partner States shall establish a common code of conduct. If you read the whole of this Treaty, you will find that litany. The Partner States, as contracting parties, undertake to do this within the context of co-operation and integration.

Now, Partner States committed themselves to discharge those obligations through a mechanism. They either do it through Council decisions, and regulations would be part of the Council decisions. When the Council makes a decision on the regulations, it is translating that commitment into effect. They also do so through legislation. When there is legislation of the East African Community translating the Partner States’ commitment, the Partner States are deemed to be living to their commitments under the Treaty. I thank you, Mr Chairman.

The Chairman: I do not see any of you complaining once he said you could do it through legislation. When he gives you powers, you agree very quickly. *(Laughter)* Let us have a way forward because we have been on this for more than an hour now. What is the best way forward? Let us move forward. Shall we maintain it or delete it? I think that with what hon. Kaahwa has said, those standards can be enforced, so they can be the same as regulations. Why don’t we just have regulations? I think that will suffice. Will regulations be the best alternative?

Ms Byamukama: Mr Chairman, maybe the middle point would be for us to have the regulations and standards and then that way we would encompass both the aspect advanced by hon. Ogalo and the standards, as mentioned under the Act. I thank you.

Dr Masaburi: Mr Speaker, I think that is not correct, because the Council of Ministers makes the regulations, and we said that the Commission itself should make the standards. In the Commission, we expect to have professionals, who can set better standards. Therefore, if the Commission sets the standards and then we now say that it will be the responsibility of the Council of Ministers, I think this is not correct. I propose that we just leave it. Possibly, we could just leave the Commission to set the standards and the Act to enforce them.

Mr Kaahwa: Mr Chairman, I think that the middle line that those who are learned advanced to the Committee, unfortunately, is that while we recognise that the Commission will formulate the standards, we also have to appreciate that the Council will make regulations for those standards, so there is no dichotomy. You have established the standards, but you need regulations for enforcing them, which regulations, under Clause 42, shall be made by the Council of Ministers.

The Chairman: I think now you know why he is the Counsel to the Community. *(Laughter)* I can see people nodding here, so I think we can change the word “standards” to “regulations”. Hon. Ogalo maybe you can help us with that wording again.

Mr Ogalo: Mr Chairman, it would then read: *“Any industry actor, either in the public, private or civil society domain, shall not act in any manner which contravenes the regulations as set by the Council of Ministers.”*

The Chairman: Honourable Member, we will go by what you have said, but look at Article 22 and follow the wording there. It says *“... make regulations ...”*

Mr Ogalo: Clause 22 reads, *“The Council may, by statutory instrument after consultation with the Commission, make regulations ...”*

The Chairman: We will follow that wording. Is that fine?

Mr Ogalo: That is fine.

Ms Kwekwe: Mr Chairman, I beg hon. Ogalo to repeat what he has proposed.

The Chairman: He substituted *“standards”* with *“... regulations as made by the Council of Ministers”*.

Ms Kwekwe: If that takes care of the standards that Article 115(2) envisages, then I agree.

The Chairman: You are putting a condition, which you should not do. You either agree or not.

Ms Kwekwe: Mr Chairman, my concern is that the standards that are being set here are specific to the industry, its human resource development and the operations of tour operators. Those are the standards that the Treaty is addressing itself to under Article 115(2), and this Act is giving the Commission the mandate to set up the standards. Therefore, if we can take care of that - and I actually want somebody in this House to educate me on whether Council can take care of the standards under Article 115(2) through regulations. If the answer is yes, then I agree with the proposal. I do not want the gist of Article 115(2) to be lost.

Mr Ogalo: Mr Chairman, it was my understanding that what we passed yesterday under paragraph 10(k) is the parent section. From what the chairperson has said, the standards we are talking about are those in 10(k), which include overseeing the exchange of information and the setting up of industry related standards. That is what I understood the chairperson to mean.

Therefore, what we can do in the amendment is to refer to the regulations made under this section 10(k). This is because if you go to the Treaty, you will be going outside the ambit of what the chairperson has told us. My understanding was that the standards you are talking about are under 10(k). Perhaps we may need some clarification on that.

The Chairman: I think the Counsel to the Community gave the clarification earlier, and I think we have laboured on this for too long.

Honourable Members, there is an amendment that has been proposed. I will put the question to the amendment proposed by hon. Ogalo. If we agree, yes, if we do not, then we will go further.

Honourable Members, I put the question on hon. Ogalo's proposed amendment to Clause 22 sub clause (1)(b).

(Question put and agreed to)

(Clause 22 sub clause (1)(b), agreed to)

The Chairman: (c) *“Contravenes intellectual property rights in relation to tourism products of unique value to the region.”* I think there is no problem with that.

(d) *“Fails to meet any other obligations as set in this Act”.* Is there any problem with that? Okay, let us go to (2) now.

Mr Munya: I just wanted to know what the drafter meant by (c.) because there is total confusion. What does he mean by *“intellectual property rights in relation to products of unique value to the region”*?

Dr Nangale: Mr Chairman, the intellectual property rights referred to here relate to tourist products of unique value in the region, such as Mt Kilimanjaro. There are many such tourist products in the region.

Mr Munya: Mr Chairman, I understand intellectual property rights to mean rights to products that an individual creates. If you create a pot, for example, that is unique, and that is intellectual property. If you write a book, that is your intellectual property. Natural resources can never be intellectual properties because no particular individual has created them. Even though they are rights, they are not intellectual property rights. Intellectual property rights are to do with things from the intellect; things created using the mind. Therefore, if you use intellectual property rights, even in the intellectual property regime, you will go outside what is created; or under the value of using the mind, and then you will be taking us somewhere else that is completely – *(Interruption)* -

Ms Kwekwe: Mr Chairman, I want to give information to the Minister that intellectual property rights do not only revolve around issues of the mind, but they include even geographic indications, like the Mountain Kilimanjaro or Lake Tanganyika. Those geographic indications are intellectual properties of the regions where we find them. When we talk about intellectual property rights, we do not only talk about patents and copyrights, but also geographical indications. I thank you.

Ms Hajabakiga: Mr Chairman, I want to give information on a similar right. Let me give the example of the dance of the beautiful women in Rwanda. That is a tourist product, and we need to have an intellectual property right to it, which we have to protect. Anybody who contravenes that commits an offence.

Dr Masha: Mr Chairman, as far as I know, there is a world intellectual property rights organisation which, among its functions, handles matters to do with copyright. Maybe the proper word to use here would be “copyright” rather than “intellectual rights”. If my colleagues could agree to use the word “copyrights”, to refer to those products, then I think there would be no problem rather than retaining it as intellectual rights. I think the Minister may have a point.

Dr Masaburi: Mr Chairman, I just want to pick up from what hon. Masha has just said that intellectual property rights are concerned with intellectual things. I think that having Mountain Kilimanjaro somewhere does not give us intellectual property rights, but we could say we have the copyright. I think we should remove the term “intellectual”.

Mr Lotodo: Mr Chairman, I think the information given by hon. Safina was that we should use the phrase “geographical indicators” and say, “*Those who contravene geographical indicators in relation to tourism products*”

Ms Byamukama: Mr Chairman, the phrase “intellectual property” has several aspects; it has copyrights, patents, trademarks, geographical indications such as Kilimanjaro, and so it is not only on the issue of intellectual property. It encompasses a whole realm. Actually, the Common Market Protocol, which has just been signed, lists all these aspects

under intellectual property, and perhaps the honourable Counsel to the Community could give more advice on this matter. As such, the only concern we could have under this law would be that some of the resources are shared resources, like for example, Mt. Elgon and Lake Victoria.

So, what we are saying in effect is that if you put a fine on, for example, abuse of intellectual property rights, it may contravene what is already prevailing in the Partner States. Maybe we need to look at it again in view of that. Otherwise, intellectual property encompasses a whole range of things, and I am seeing my learned friend hon. Akhaabi nodding his head vigorously. Thank you.

The Chairman: Do you mean that if hon. Akhaabi nods his head it is okay?

Mr Harelimana: Mr Chairman, in support of the proposals made by the mover of the motion and the hon. Members who have preceded me on the Floor, I remember that in the clauses, which we agreed upon yesterday, there is one, which talks about cultural tourism, and culture is something, which is very vast. For instance, we can talk about the baskets made in Rwanda and sold in America and other countries. These are cultural, and I think they form part of the tourism industry.

The Chinese tried -I think two years ago- to do something like that and they took it to the international market, but the Rwandan Government protested that and said, "That is our intellectual property; you are not allowed to sell it to the world."

Now because we agreed yesterday that cultural tourism is among the things that we will be doing in this Commission, I think we can support the proposal that the phrase "intellectual property" should remain in this Bill. Thank you, Mr Chairman.

The Chairman: Hon. Members, I just wanted to say one thing. When you say "intellectual property rights", you must register it for that right to be yours. Once you register it and someone contravenes it, is there no sanction for it?

Hon. Members: It is there.

The Chairman: I think that is where we were heading earlier when we were talking about these other sites in Clause 1. The reason we deleted them was that you said they already had sanctions. Am I correct? So, why are we again putting it in the law? If someone contravenes my intellectual property rights, there is already a sanction for it so, why put it there?

For example, talking about this *Kiyondo* thing in Kenya, I think the Japanese took the thing and they are now producing it. However, because that patent was not registered, no one can say, "You cannot do it"! You cannot stop anyone from coming in. If you are lazy and you do not do something, you cannot now come with a law like this one and say -
(*Interruption*) -

Ms Byamukama: I want to implore the Chairperson that this aspect of the law is quite complicated and very diverse. I think that for now we should leave this issue of transferring ownership of tourism and wildlife products of intellectual property in nature for commercial purposes because I do not think it will add value, or even cause any loss. I think we will be in a position to specifically deal with them in a separate law under the intellectual property rights. I think that mixing it with wildlife may have some problems.

For example, if someone comes to Africa and buys a leopard skin or takes a plant, if we do not have a seed bank where it has been registered, our Partner State laws would kick in anyway. Therefore, I think that legislating for it here and penalising it at US \$12,000 may not have much impact. Let us leave it for another specific law. That is my proposal.

Ms Kwekwe: Mr Chairman, I just wanted to draw your attention to sub-clause 10(h) that we passed yesterday. We charged the Commission with the responsibility of developing a framework for the registration of tourism and wildlife products through patents, copyrights, and geographical indications for the products that are unique to East Africa, such as cultural products like the Maasai Dance, the Kinyarwanda Dance; geographical features like Mt. Kilimanjaro, Lake Tanganyika; landmarks and artefacts.

Now, since we have given the responsibility of registering all those products that are unique to the East African region - and we agree that we need to protect them - to the Commission, this shall serve as a catalyst to ensure that those who have not done it do so. Moreover, this is not for just one Partner State but for all of them together through this Commission. Therefore, I plead with you, Mr Chairman, to see the gist of the proposal that the Committee was putting it forward.

The Chairman: Hon. Kwekwe, you should plead with the Members, not with me. I do not have a vote. *(Laughter)*

Ms Byamukama: I just want to give information to hon. Safina. As I said before, the Common Market Protocol has a whole chapter on intellectual property. And when you look at Article 103(1)(i) of the Treaty on science and technology, it says “... *in recognising the fundamental importance of science and technology to promote co-operation in science and technology within the Community through the harmonisation of policies on commercialisation of technologies and promotion and protection of intellectual property rights.*” One of the ways they are doing this is through the Common Market.

I do not know whether by bringing it here, it will take away or add any value, but I would like to implore that when that law on intellectual property rights comes, then we will also be able to put in the issues of tourism and wildlife. Rather than putting it here now and later penalising it where it has not been harmonised, I think there is another opportunity when it will be clearer for us. I thank you.

Dr Nangale: Mr Chairman, because we are not sure when the law on intellectual property rights will come, I propose that we maintain this clause specifically for the

tourism product. I agree that when the intellectual property law comes, it will cover aspects of tourism and wildlife, but before then, we need to have a law, which covers it.

Mr Akhaabi: Mr Chairman, I agree with the proposal that we should remove this particular clause, for the following reasons.

Nearly all, if not all, the East African Community Partner States are members of the World Trade Organisation (WTO), and the World Intellectual Property Organisation (WIPO). Under the WIPO and the WTO instruments, there are mechanisms for enforcement or protection of intellectual property and, indeed, under the WTO Agreement of 1996, there is an agreement specifically on trade related aspects of intellectual property. Therefore, that being the case, we ought to be very careful, when proposing this kind of legislation, to make sure it does not conflict with the international commitments that we have undertaken under the WTO. Therefore, it is my proposal that we remove this clause from this Bill. Already there are negotiations, even at the East African Community level, regarding the intellectual property related aspects of trade, which are coming under the Common Market and under the WTO arrangements. Therefore, Mr Chairman, I propose that we delete this part to avoid the possibility of conflict in the law. Thank you.

Mr Mwinyi: Mr Chairman, I am in total agreement with hon. Akhaabi and hon. Dora Byamukama for the removal of this part of the Bill. I have an impression that my friend the chairperson of the Agricultural Committee feels that this particular right is of a special nature, and that it requires protection that is distinct from other intellectual property rights. I would like to alleviate his fears by informing him that intellectual property is such a wide area of law that we cannot only fix it to current issues. It is something that is growing. We can capture anything that creates, or which has an aspect of creativity, novelty and intelligence under the ambit of intellectual property law.

So, this particular activity under the existing law can be protected and on that basis and on the basis of conflicting sanctions that may be in contravention to the World Intellectual Property Organisation and other treaties that the Partner States may be party to, I urge the chairperson and the mover to accept to remove this aspect. I thank you.

Dr Nangale: Mr Chairman, having listened to my honourable learned colleagues, I agree to remove sub-clause 1(c) on intellectual property rights and, subsequently, we should remove 2(d) as well, which refers to the penalties. Thank you.

The Chairman: I thank you, chairperson. Honourable Members, do you have anything else on (2)? 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.

Clause 17

The Chairman: Honourable Members, I now put the question that Clause 17 be part of the Bill.

Dr Nangale: Mr Chairman, it remains as it is.

The Title

The Chairman: Honourable Members, I propose that the Title be part of the Bill.

Dr Nangale: Mr Chairman, the Committee proposes to amend the Long Title by deleting the expression “*natural resources management.*”

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

(Question put and agreed to.)

The Title, as amended, agreed to.

MOTION FOR THE HOUSE TO RESUME

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

(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 passed it with amendments.

ADOPTION OF THE REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

Ms Safina Kwekwe (Kenya): Mr Speaker, I beg to move that the Report of the Committee of the whole House be adopted.

(Question put and agreed to.)

Report adopted.

BILLS
THIRD READING

The East African Community Tourism and Wildlife Management Bill, 2008

Ms Safina Kwekwe (Kenya): Mr Speaker, I beg to move that “*A Bill For An Act To Make Provision For A Framework For Cooperation In Natural Resources Management, Including The Management Of Tourism And Wildlife And Other Related Matters, 2008*” be read the Third Time and do pass.

Dr F. Lwanyantika Masha: Seconded

The Speaker: Honourable Members, I put the question that the *East African Community Tourism and Wildlife Bill, 2008* be read for the Third Time and do pass.

(Question put and agreed to.)

Bill read a Third Time.

QUESTIONS FOR ORAL ANSWER

Question For Oral Answer Reference: EALA/PQ/OA/008/2009

Ms Dora Byamukama (Uganda): Asked the Chairperson, Council of Ministers_ *“The Treaty for the Establishment of the East African Community has entrenched provisions through which the EAC Partner States could resolve any conflict arising amongst the Partner States either through application of the fundamental and operational principles of international law or through bilateral arrangements.*

Article 124 specifically emphasizes the need to maintain peace and security in order to enhance the social and economic development within the Community. This idea is reinforced by the need to promote the realisation of the objectives of the Community. Therefore, as a matter of principle, the Partner States are required to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultation on issues pertaining to peace and security of the Partner States with a view to prevention, better management and resolution of disputes and conflicts between them so as to maintain good neighbourliness amongst themselves.

Could the Chairperson of the Council of Ministers inform this august House when the conflict resolution mechanism provided for under the Treaty will be put on place?”

The Minister for East African Cooperation, Tanzania and Chairperson, Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, at its 13th meeting held in November 2006, the Council of Ministers adopted an EAC strategy for regional peace and security. Goal number 14 of the strategy provides for the development of a conflict prevention management and resolution framework for the East African Community.

Over the last two years, work has been underway on the EAC Peace and Security Protocol, which will provide a legal domicile for the various activities that we envisage undertaking within the context of the strategy implementation. The protocol will provide a sound legal foundation and teeth to other instruments that will be developed pursuant to giving form to the various goals.

At its 18th meeting held on 4 September 2009, the EAC Council of Ministers referred the draft protocol to the Sectoral Council on Legal and Judicial Affairs for legal input. This sectoral council will meet from 13th to 20th March this year. In the meantime, the development of the EAC/CPMR framework in line with the provisions of the Treaty and the EAC strategy on regional peace and security is underway. A zero draft of the EAC/CPMR framework has already been developed in the Partner State negotiations, and it will commence in June 2010.

The process is being supported by the African Union through the Africa Peace Facility within the context of the African Peace and Security Architecture. The zero draft provides for the establishment of a number of structures to support conflict prevention, management and resolution. These include offices of special envoys and representatives, a panel of management persons, peace support operations, post conflict reconstruction and development, and an EAC peace fund.

We envisage that the EAC/CPMR framework will be presented to the Council for adoption by October 2010, and it will provide normative policy mechanisms to legitimise EAC's interventions and/or initiation of the process for conflict prevention or resolution in regional conflicts among and between the Partner States.

Ms Byamukama: Mr Speaker, I must say that I am very delighted to receive such a comprehensive answer to my question, which I posed as far back as August last year. I would like to congratulate the Chairperson, Council of Ministers for his concise response. However, I would like to hear more on the timeframe because this is a fundamental principle of the Community.

When you look at Article 6, it provides that peaceful settlement of disputes is a core fundamental principle. Article 114 states that we cannot realise the objectives for setting up the Community unless we have peaceful co-existence. Therefore, basing on our past experience of conflict in the region emanating from shared resources and from the nature of elections in the region, bearing in mind that in the next three years all the countries will undergo elections, I would like to hear from the Council of Ministers when we are likely to have this mechanism in place. I think it is urgent, because it is ten years since the signing of the Treaty. It is high time we got this mechanism in place. I thank you.

Dr Kamala: Mr Speaker, we expect the mechanism to be in place by October 2010, but let me assure hon. Dora Byamukama that experience has shown that whenever our heads of state meet, they never fail to resolve any issue, and that is a good thing. So, if anything happens now before this mechanism is in place, be assured that our presidents can always handle any problem, even before this mechanism is in place.

Ms Byamukama: I thank the Chairperson of Council for again giving me a concise answer, and Come October 2010, obviously, you will still be in the chair, and I will put you to task. We would like to ensure that peaceful co-existence in the Community is upheld by a structure, a mechanism, rather than individuals. Much as we trust our Summit, it is imperative, and I know the makers of the Treaty were very wise in including this mechanism. Therefore, I would like to implore the Chairperson of Council to follow it up as he has said. I thank you again, and I wish you well as you chair to the EAC Council of Ministers.

Ms Margaret Zziwa (Uganda): Thank you very much, Mr Speaker, I also want to add a supplementary question to hon. Dora Byamukama's question.

Mr Speaker, after you sent us on a goodwill mission to Kenya, we came back and submitted a report to this House, and the Council of Ministers then made an undertaking to compile a list of potential areas of conflict as part of this mechanism, I would like to find out how far this exercise has gone. We know that there are many areas prone to conflict, and particularly around natural resources and other governance issues. I just want to find out whether the Minister has followed up on the recommendations, which came out of the goodwill mission, for which you yourself, Mr Speaker, assigned a team. Thank you.

The Speaker: Honourable Member, I think the Minister was asked another question. If you want to ask about recommendations of that report, maybe you can ask a substantive question for him to answer specifically. I think your question is outside the original question. Maybe you will have an opportunity to ask your question next time.

Question For Oral Answer Reference: EALA/PQ/OA/12/2009

Ms Dora Byamukama (Uganda): Asked the Chairperson, Council of Ministers_

“The Customs Management Act, 2004 has so far been amended four times by the Assembly, making it the most amended piece of legislation so far. Specifically, the amendments have included an extension of the date prescribed in the Act to allow the EAC Partner States to resolve the problem of belonging to two customs unions. The last extension was granted in December 2008, for a period of one more year, which deadline is fast approaching.

Taking into account the time factor, could the Chairperson of the Council of Ministers inform this august House:

- 1. Whether the Partner States have complied with the provisions of the Act in respect to resolving the problem of dual memberships;*
- 2. About the progress so far made, and when the matter is likely to be concluded once and for all without necessitating further amendments?”*

The Minister for East African Cooperation, Tanzania and Chairperson, EAC Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, the Treaty that establishes the East African Community and Article 130 provides that Partner States shall honour their commitment in respect of multi-national and international organisations. The Protocol establishing the EAC Customs Union recognises the trade arrangements that Partner States have with other countries and organisations outside the Customs Union. However, the Partner States were to identify the issues arising out of their relationships with the other integration blocs in which they are members in order to establish convergence on those matters of the purpose of the Customs Union.

It is against this background that we incorporated Section 112 into the East African Community Management Act in order to preserve the preferential trade Partner States have under COMESA and SADC.

In accordance with the binding obligations on trade relationships under Section 112 of the Act, Partner States accord preferential and free trade treatment to goods from SADC in respect of Tanzania; and COMESA in respect of Rwanda, Burundi, Uganda and Kenya. The existing trade regime under COMESA provided an opportunity and made it easy for Rwanda and Burundi to adopt a free trade regime with the other Partner States when they commenced the implementation of the Customs Union in July 2009 without any transitional tariff reduction programme.

Suffice it to state that Section 112 of the Customs Union Management Act is limited to preferential tariff application to goods from COMESA and SADC, and, hence, cannot singularly be a panacea to the dual membership challenges.

The application of the Act on COMESA and the SADC goods upon expiry of the amended period of 31 December 2010 will have implications on the trade of Partner States are currently enjoying under COMESA and SADC regimes. In addition, it would be inconsistent with the most favoured national principle under WTO, in view of the fact that the WTO notifies the two rates as regional trade agreements. In this regard, the mechanism that will preserve the trade regimes and address the trade distortions caused by the dual membership is a better alternative for EAC. I will, later on, provide details on the inter-free trade arrangement as an appreciate route to take.

The Treaty also provides that the Community shall foster co-operative arrangements with other regional and international organisations whose activities have a bearing on the objectives of the Community. The Customs Union Protocol provides that Partner States shall formulate a mechanism to guide the relationship between the Customs Union and the other integration blocs based on the Treaty and the protocol requirements.

COMESA, EAC and SADC are developing a tripartite free trade arrangement between themselves, but before delving into the details of the tripartite trade arrangement, it is important to point out that the decision of membership to and withdrawal from another integration bloc rests with the Partner State, and we cannot enforce it at the regional

level. This is why the EAC Treaty and the Customs Union Protocol recognise such relationships.

The respective Partner States ratified the treaties of COMESA and SADC. The tripartite summit agreed on a tripartite free trade arrangement as one of the mechanisms intended to address trade distortions arising out of multiple memberships to different blocs. Once established, all Partner States will accord free trade treatment to goods originating from both SADC and COMESA member states, and, therefore, there will be no danger of trade deflection or trans-shipment of goods. Likewise, the goods from Partner States will access all the markets of COMESA and SADC free of duty. For example, currently goods from Egypt enter Kenya duty free, but Kenya can also shipped to Tanzania on the pretext that they originate from Kenya, and yet Tanzania has no free trade arrangement with Egypt.

Another benefit of the Free Trade Zone for the three RECs is the increase in inter-trade. The free trade arrangement will not hinder the progress of the integration of EAC, in any way. The Customs Union and the Common Market will continue to function, and the EAC Common External Tariff will apply to all goods originating from outside the EAC, SADC and COMESA member states.

However, suffice it to mention here that if the other RECs progress to a customs union, then the Partner States will have to belong to one customs union because a country cannot apply to two different Common External Tariffs. In this regard, the President of Uganda, at the COMESA Summit held this year in Victoria Falls, echoed an indication that Kenya, Uganda, Rwanda and Burundi will remain in the EAC Customs Union.

We should note that COMESA has adopted a similar Common External Tariffs band structure to the one of EAC, which will further reduce divergence of the trade regimes of the two blocs. The rules of origin that we are developing for inter-regional trade will guide the free trade arrangements between the three RECs.

We should note that in developing the rules of origin, the Partner States would not be according any better or more favourable treatment to COMESA and SADC member states than what Partner States have among themselves. After all, EAC has made more gains in the integration of various sectors compared with the other RECs.

In addition to the free trade area, work has commenced on the harmonisation of related measures in order to facilitate trade. This includes the removal of non-tariff barriers, sanitary and phyto-sanitary standard measures. The free trade area will also encompass the free movement of businesspersons between all the member states of the three RECs, as directed by the heads of state.

The progress of establishing a tripartite free trade area has reached the level of developing the necessary legal and institutional instruments, and the road map, as directed by the heads of state. In March 2010, the Tripartite Council will consider the draft free trade area agreement, the road map and the rules of origin. We distributed these

documents to Partner States in December 2009, and after consideration, the negotiations will commence. The target date for the commencement of the Free Trade Area is 2012. With the coming into force of the Free Trade Area, we will amend Section 112 of the Customs Management Act to reflect the new Free Trade Area regime.

As I had indicated earlier, the Free Trade Area for the three RECs provides a solution to trade distortions arising from dual membership to different RECs. In any case, EAC will not be reinventing the wheel for preferential and free trade arrangements with another REC, as evidenced by the ongoing negotiations with the European Union on the Economic Partnership Agreements.

The Speaker: Hon. Ogalo?

Mr Wandera Ogalo (Uganda): The Minister has indicated that the question of dual membership rests with particular Partner States; that every Partner State will determine that question. Does that therefore mean that the law that this House passed in respect of what the Minister is addressing, is irrelevant; that it has no purpose since it is not enforceable by the Partner States? Is that how the Partner States view the acts of the East African Legislative Assembly?

Secondly, the Minister indicated the intention to amend Section 112 to accommodate the Free Trade Area of the tripartite arrangement, and he put the date at 2012. Does the Minister, therefore, mean to say that the Customs Union, which the five Partner States of the East African Community entered into, is dependent on the arrangements with COMESA and SADC? I thank you.

The Speaker: Hon. Minister?

(Dr. Ndahiro stood in his place)

The Speaker: Hon. Ndahiro, you will get a chance later.

Dr Kamala: Mr Speaker, I would like to respond to hon. Ogalo's two questions as follows:

When I referred to the issue of dual membership resting on the Partner States, I meant that the Partner States themselves decided to join different blocs, and they ratified protocols for that purpose. However, the same Partner States, when the situation dictates that it is not possible to continue to be in different RECs, should see that fact and decide to take corrective measures.

For example, Tanzania was a member of COMESA but due to a number of reasons, she withdrew from COMESA. As we continue to integrate, it will come to a point, as I have said, when we will have to advise the Partner States to take the necessary steps. Therefore, the law is relevant, and that is why this House amended the East African Customs Management Act in order to facilitate Partner States to continue as they are

doing now, although the time will come when that arrangement will not be necessary. The law will always be relevant.

Mr Speaker, to say that the Customs Union is dependent on the SADC and COMESA is not true. The basis of the Customs Union is the East African Community Treaty and the laws enacted by this House. When it comes to relations, it is a different issue. Probably for emphasis, I would like to repeat that we would take care of the problem of dual membership as we form the Free Trade Areas for the Customs Unions for EAC, SADC and COMESA. However, as per the directive of the heads of state, we are not going to end at the Free Trade Area because that is just a step towards having a Customs Union for SADC, COMESA and EAC. I thank you.

The Speaker: Hon. Ndahiro?

Dr James Ndahiro (Rwanda): Mr Speaker, I am asking a supplementary question. It is very difficult to operate the Customs Union when members of the union feel that they can as well operate in a Free Trade Area at the same time. The issue of dual membership should be before the operationalisation of the Common Market, because we cannot go into the common market when we have not tightened or closed the gaps in the Customs Union. It would be very difficult to pretend to be moving forward as a body when one leg is in a different Free Trade Area and the other one is trying this. If we are truly integrating – *(Interruption)* -

The Speaker: Hon. Ndahiro, please ask your question. We are not debating.

Dr Ndahiro: My question is, when are we going to see the Customs Union fully functioning and members going into the Common Market as a region and the Free Trade Area issues come later to separate the Customs Union and the Free Trade Area because they are quite different? When we hear the Minister saying or giving us a detailed programme, you will find that we do not know where we are or whether we have agreed to – *(Interruption)* -

The Speaker: Hon. Ndahiro, you have asked your question.

Dr Ndahiro: I thank you.

Dr Kamala: Let me respond to hon. Ndahiro's supplementary question as follows.

When you look at the Treaty and the Protocol that establishes the East African Customs Union, they provide five years as a transition period for implementing the Customs Union. We are expecting the East African Customs Union to be effective in the year 2010, which is the final year of the transition period.

Mr Speaker, in a customs union there are three things that make a customs union a customs union. The first is the removal of non-tariff barriers, which we have been able to do. Although there are still some challenges, we are moving forward.

The second is the removal of tariffs between the Partner States. We have been able to do that...Kenya did better from day one, but the rest of the Partner States are also doing it. The third is the implementation of Common External Tariffs. All Partner States have delivered what they promised.

Mr Speaker, the same protocol allows any Partner State - if the Partner State realises that by implementing a certain provision of the Customs Union such a Partner State may jeopardise the economy - to present the case for taking on board, just like how we accepted the Uganda lists.

Rwanda and Burundi have indicated that they may be coming with a list of goods, which in their opinion if we do not take corrective actions on my affect their economies. By doing that, it does not mean that the Customs Union is not working. There are mechanisms for making the Customs Union not to affect the economies of the Partner States. The Free Trade Area is the first stage of integration. I can say simply that it is about removing tariffs among the participating countries, but that does not include Common External Tariffs. The negotiations we have been holding with the European Union on the Economic Partnership Agreements will open up boundaries, and the WTO negotiations, which we hope to conclude one day, will open us up to the world. The exercise we are doing in East Africa is preparation for us to compete globally, when we conclude the WTO negotiations one day.

The Speaker: Hon. Byamukama?

Ms Dora Byamukama (Uganda): I do not have it very clearly. The Council of Ministers -and that time hon. Monique Mukaruliza, who is present today, was the chairperson - came and pleaded with this House in Kampala that we should extend the period for two more years. The two more years expire in December 2010. The question is very simple: have we complied with the provisions of our own law? Secondly, have we made any progress?

I listened to the honourable Chairperson of the Council of Ministers very carefully and he said that we are having distortions arising from dual memberships. He also said that we could not apply two different external tariffs. My question is can we belong to more than one customs union? If the answer is no, then we are either fooling ourselves, or we are just using this House to buy time. This then means that we will not live up to our obligations under the Treaty.

I think this is a fundamental issue, and I would implore that we recommit this question, and perhaps we could put in place a specific committee to interrogate the issue further with a view to get a more sincere answer, if I may put it that way.

Dr Kamala: Mr Speaker, allow me to comment on the two supplementary questions by hon. Byamukama. I do concur with hon. Byamukama on the need for the Partner States to make sure that they do what they can in order to comply with the two years' extension this august House allowed. Given the fact that the Partner States might be listening as I

am responding here, let them listen to what hon. Byamukama has said and work towards making sure that we solve this problem of dual memberships.

When I was responding, I said that if we are able to put in place the Free Trade Area and eventually the Customs Union of the three RECs, we shall have solved the problem. However, if the time will come that SADC and COMESA have reached the level of a Customs Union, we shall then have to make serious decisions. Therefore, we have no choice but to comply with this law and to depend on what will be there before the time expires. We shall have to decide and see what to do then. Therefore, I can only say, that let us work towards this good cause, but let us also wait and see, and we shall make the necessary decisions depending on the circumstances.

The last question was whether we can belong to two customs unions. Theoretically, you cannot belong to two customs unions, but technically, you can belong to two customs unions. For example, if customs union A had the same arrangements with customs union B, there would definitely be no problem. For example, COMESA has adopted the CET, which is similar to that of the EAC, although in terms of WTO regulations they would never allow one to belong to two customs unions. AS members of WTO, all Partner States must comply with that regulation. Therefore, we shall have to make serious decisions. I do concur with hon. Byamukama. I thank you.

The Speaker: I think hon. Kwekwe will be the last one, because I think she wanted to say something. Has anyone asked your question?

Ms Safina Kwekwe (Kenya): I think the honourable minister has alluded to the WTO notification that the EAC Customs Union will be effective in 2006. The COMESA Customs Union is up and running and a deadline has been set for it to be in place. If that too is notified, then definitely the four Partner States that now belong to both the EAC and COMESA Custom Unions shall be in a problem because then they will have violated the provisions of the WTO. I want to ask the Minister for his advice henceforth because that is a fact that is fast approaching.

The Speaker: I think the Minister has answered that. I think what he said was that the law comes into effect at the end of this year, and so he is urging the Partner States to comply with the law and the WTO regulations by the end of this year. I think that is what he said. He has agreed that one cannot be in two customs unions at the same time, and so we hope that they will comply with the law.

Question for Oral Answer Reference EALA/PQ/OA/18/2009

Dr Sabine Ntakarutimana (Burundi): Asked the Chairperson EAC Council of Ministers_

“One of the development objectives to be found in the EAC Development Strategy 2006-2010 is “strengthened and expanded collaboration in the health sector.”

Among the many intervention strategies to be adopted by the EAC Partner States are the following:

- (i) Provision of cross border health services for communicable and non-communicable diseases;*
- (ii) Establishment of joint medical research and training activities in dedicated centres of excellence;*
- (iii) Taking joint action towards prevention and control of diseases such as Cholera, Malaria, Hepatitis and Yellow Fever.*

Could the Chairperson, Council of Ministers inform the august House _

- (a) What cross border health services and/or joint initiatives have been provided since 2006, and how relevant have they been in addressing disease control as stipulated by the EAC Development strategy?*
- (b) How have East Africans benefited from this service, and who keeps or stores such data?*
- (c) What are the dedicated centres of excellence in each Partner State?*
- (d) What areas of medical research are being jointly undertaken by the Partner States if any and what successes have they yielded? ”*

The Minister for EAC Cooperation, Tanzania and Chairperson, EAC Council Of Ministers (Dr Diodorus Kamala): Please, allow me to respond to hon. Ntakarutimana as follows:

The EAC Partner States have not yet established the formal administrative, legal and regulatory mechanisms for the provision of cross border health services for communicable and non-communicable diseases. However, the EAC Secretariat is in the process of developing an overall comprehensive EAC regional protocol co-operation in accordance with the relevant provisions of the Treaty.

In addition, the EAC Partner State health experts and the other multi-sectoral stakeholders, including the EAC Partners State national and parliamentary committees on health recently conducted three field visits to the following high priority EAC Partner State cross border sites to assess the need and feasibility of the provision of integrated health, HIV/AIDS, sexual and reproductive health services:

- (a) Kenya-Uganda cross-border areas at Busia and Usenge Beach in Lake Victoria from 19th to 22nd May 2009.
- (b) Tanzania–Kenya cross-border areas at Namanga on 19th August 2009.
- (c) Burundi–Tanzania-Rwanda cross-border areas in Mundiya Province in Burundi, Ngara District in Tanzania and Kerere District in Rwanda from 19th to 23rd October 2009.

Initial findings of the field visits and assessments show that the local populations informally cross the borders and seek health services for minor ailments only in either side of the neighbouring countries. However, if a person has a major ailment or requires a referral, they usually seek individual treatment within their own countries since the neighbouring country regard them as foreigners.

Currently, the respective health facilities within each EAC Partner State keep the data for the provision of cross border health services, and these cannot be analysed effectively at the regional level by the EAC Secretariat. In this regard, the value and benefit of the provision of cross border health services cannot be evaluated or measured until such a time that the EAC Partner States develop and establish a sustainable mechanism for an EAC regional, integrated e-health and disease surveillance information system with appropriate links to compatible systems at national level within each country.

The EAC Partner States, except the Republic of Burundi, have dedicated centres of excellence in health research as described follows: The Centre for Treatment and Research on HIV/AIDS, Malaria, Tuberculosis and other Epidemics in Kigali; the Uganda Virus Research Institute in Entebbe; the Kenya Medical Research Institute in Nairobi; and the National Institute for Medical Research in Tanzania. In addition to the United Republic of Tanzania, there is also the Pemba Public Health Laboratory - Ivo de Carneri, which is a smaller scale national health research institute, based in Pemba, Zanzibar.

The 18th meeting of the Council approved the EAC regional guidelines for the inspection and recognition of both medical and dental schools in the East African Community Partner States in August 2009. The EAC national medical and dental practitioners' boards and councils commenced their first joint inspection of various medical and dental schools in the EAC Partners States in September 2009. Since then, joint inspections have been carried out in the United Republic of Tanzania from 6 to 12 September 2009, and in the Republic of Kenya from 2 to 6 November 2009. The exercise was continued in the Republic of Uganda in January 2010, and it will be concluded in the Republic of Rwanda and Republic of Burundi in March 2010.

The East African Community established the EAC Health Research Commission in 2007, and its operationalisation is awaiting the ratification of the protocol by the EAC Partner States. Once functional, the Health Research Commission will co-ordinate and map out regional agenda on collaboration in health research and exchange of research findings and information within the EAC Partner States.

In the year 2008, the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania received donor funding under the regional East African Community Policy Initiative Project, and it was used to identify and prioritise areas of joint research. The identified priority health research and policy questions are in the field of communicable and non-communicable diseases, including nutrition and lifestyle disorders. However, all the five EAC Partner States will jointly conduct the actual research on these areas once adequate funds are available. Furthermore, the EAC Partner

States hold, on rotational basis, an East African Community Health and Scientific Conference.

The first, second and third annual EAC health and scientific conferences were respectively hosted by the Republic of Uganda in 2007, the United Republic of Tanzania in 2008 and the Republic of Kenya in 2009. The Government of the Republic of Rwanda will host the fourth annual East African Community Health and Scientific Conference from 31 March to 2 April 2010 in Kigali. The Government of the Republic of Burundi will host the fifth annual East African Community Health and Scientific Conference scheduled for 13 March to 1 April 2011, in Bujumbura.

This annual East African Community Health and Scientific Conference has proved quite effective and stimulating for national level health research and evidence based health policy formulation and practice, as well as for enhancing capacity building and sharing of best practices among various health institutions, health workers and scientists within the East African Community Partner States.

Mr Speaker, I beg to submit.

Mr Wandera Ogalo (Uganda): Mr Speaker, I did not get the answer very clearly. This question says, “What areas of medical research are being jointly undertaken by the Partner States, if any, and what successes have been yielded?” I want to ask the Minister to specify particular areas and say, “In this area a, b, or c, we are doing medical research jointly.” I have not heard that. I would like the Minister to help me with that.

Secondly, the second part of the question is asking about “Establishment of joint medical research and training activities in dedicated centres of excellence.” What I have heard from the Minister is a list of those centres of excellence in four countries, but the question is calling for joint training and research in those places.

I would like to know what action taken, for example, in Entebbe, which involves all the five Partner States, but not merely listing them and saying that there is a centre of excellence in Entebbe, another one in Dar-es-Salaam and another one in Kigali. No! Tell us, Mr Minister, how the countries are collaborating. Can we find all the five countries in one country? Thank you.

The Speaker: Let the Minister answer that and then we will get back to you. Mr Minister, do you want to answer one by one?

Dr. Kamala: Let them ask more questions and then I will answer them at ago.

The Speaker: Yeah, he says yours is very easy; he wants more. *(Laughter)*

Dr Ntakarutimana: Mr Speaker, I appreciate the efforts made by the Chairperson of Council, but as hon. Ogalo has said, I am not feeling very satisfied with the answer. I have two supplementary questions.

The Minister has said that the EAC Secretariat is in the process of developing an EAC regional protocol on cooperation in health, can we have the timeframe, because you have not specified it in your answer?

Secondly, do you know why there is no dedicated health centre of excellence in the Republic of Burundi? I think hon. Ogalo has asked the other questions that I had. Thank you, Mr Speaker.

Dr. Kamala: Mr Speaker, let me start with questions by hon. Ogalo. He wanted me to state clearly the areas in which joint research is undertaken. As I said when I was responding to the substantive question, we expect the centres to undertake joint research when there are adequate funds available. However, let me say that every answer creates room for another question, and the way he has asked the question shows that he would like to know more. So, let me ask for more time so that I can get more details on his question.

Hon. Dr Sabine would like me to state the framework on which we will conclude the protocol. One very bad thing about inter-governmental co-operation is that Partner States always take their time to consult, and that is the problem with this protocol. You will agree with me that we have the problem of slowness in doing things, and I think that we need to find a cure for this. Most of the issues are undertaken very slowly. Therefore, even if I give you a framework and commit myself, I will just be changing it repeatedly because at the end of the day, the Partner States will have another thing.

Let me call upon the Partner States to know that EALA Members are working better than they are – (*Laughter*) - and I congratulate you for that. (*Applause*) Therefore, Partner States should learn from you how to do things. Otherwise, most of the issues of integration are going to be very slow.

I am afraid I cannot state it here, but let me assure you that, as the Chairperson of the Council I will try my best, through relevant meetings, to urge Partner States to fast track this process because we need this protocol today rather than tomorrow.

On why there is no centre of excellence in Burundi, I want to inform the member that every Partner State may apply for a centre of excellence. For a place to be appointed a centre of excellence, the whole region must support it, and the centre must be able to help the whole region in performing, especially, that aspect for which it has been appointed.

The good thing about having a centre of excellence is that it is easy to raise funds internationally for it. That is the only advantage I can see. Therefore, I will urge Burundi to appoint one or bring a request for one so that we can have one centre of excellence there. Moreover, having a centre of excellence does not mean that it has everything; no! A centre of excellence is about decisions. A place can become a centre of excellence just by a decision for it to become one. Therefore, I will urge Burundi not to hesitate to make a proposal for a centre because you do not have one. By proposing one, the EAC will

help you to make it a centre of excellence for East Africa because every country should have one. *(Applause)* Thank you.

Mr Ogallo: Mr Speaker, I am seeking some guidance from the Chairperson of Council...or anybody who can help me. The Minister has indicated that he requires some time to answer my question at a later stage. I am going through Rule 21 of our Rules of Procedure about answers to questions, and I do not find a provision, which allows for an application by the Council, not only an application but to simply say, "Your answer will come next time when I am ready." Could I have some guidance about this since I do not see it in our rules?

The Speaker: I think the hon. Minister was saying the answer he has is not sufficient and so he would like to some time to go and prepare another answer. Therefore, the best thing for him to do would be to ensure that in our next meeting he gives a proper answer before this House. You should have noticed that for the last two questions in August, the same minister, when he was answering for his colleague, found that the answer was not well prepared, and he requested his technocrats to go and prepare another answer. I think he did answer well today, so perhaps we should give him time to take back this answer and prepare a proper answer for our next sitting.

Question for Oral Answer Reference EALA/PQ/OA/019/2009

Dr Odette Nyiramilimo (Rwanda): Asked the Chairperson, Council of Ministers_

"On 4 September 2008, at the Fourth High Level Forum on Aid Effectiveness held in Accra, Ghana, the ministers of both donor and developing countries and the heads of multilateral and bilateral institutions endorsed the Accra Agenda for Action on Aid Effectiveness. This was a follow-up on the Paris Declaration on Aid Effectiveness of February 2005.

Can the Chairperson, Council of Ministers inform this House_

- (i) Whether the Partner States of the EAC are signatories to the Paris Declaration on Aid Effectiveness? If yes, what have they done so far in terms of compliance with the declaration?*
- (ii) Why the Council of Ministers has not been involving the Assembly in the agreements on donor financing to EAC institutions so as to facilitate its full participation in its oversight role."*

The Minister for East African Cooperation and Chairperson, EAC Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, the Paris Declaration on Aid Effectiveness resulted from the High Level Forum held in Paris from 28 February to 2 March 2005. Ministers from both developing and developed countries responsible for promoting development of multilateral and bilateral development institutions attended the forum. All the EAC Partner States participated in the forum and are, therefore, signatories to the declaration.

The signatories to this declaration committed themselves to accelerate progress in implementation, especially in the following areas:

- (a) Strengthening partner countries' national development strategies and associated operational frameworks, planning, budgets, and performance assessment frameworks;
- (b) Increasing alignment of aid with partner countries' priorities, systems, procedures and helping to strengthen their capacities;
- (c) Enhancing donors' and partner countries' accountability to their citizens and parliaments for their development policies strategies and performance;
- (d) Eliminating duplicating efforts and nationalisation of donor activities to make them as cost effective as possible;
- (e) Reforming and simplifying donor policies and procedures to encourage collaboration behaviour and progressive alignment with partner countries' priorities, systems and procedures;
- (f) Defining measures and standards of performance and accountability of partner countries' systems in public financial management, procurement, judicial safeguards and environmental assessments in line with broadly accepted good practices and their quick and wide spread application.

Mr Speaker, regarding progress to date:

- (a) I wish to inform this august House that generally in all the countries, aid is directly linked to the development plans, which clearly spell out the priorities and existing financial gaps;
- (b) Support from development partners is also factored into national plans and national budgets. It is no longer ad hoc;
- (c) There is co-ordination of donor aid at country level, and even at inter-ministerial level to ensure coherence and development strategies in order to avoid duplication;
- (d) In all the countries, there are strategies and authorities established to ensure transparency and accountability of funds. EDPMS, anti-corruption authorities and desk officers in the Ministry of Finance to co-ordinate external support;
- (e) Countries in the region have embraced performance contracts, which ensure clear division of targets and performance standards;
- (f) There are strategies in the partner countries to develop institutional capacities to develop and implement results driven national development strategies;
- (g) Countries have translated their national development strategies into prioritised results oriented operational programmes and expressed in their medium term expenditure frameworks and annual budgets;

- (h) Partner states have initiated reforms such as public management reform that may be necessary to launch and fuel sustainable capacity development processes;
- (i) Countries have reinforced participatory approaches by systematically involving a broad range of development partners while formulating and assessing progress and implementing national development strategies;
- (j) The Secretariat has prepared a matrix for measuring progress per country and there are defined targets by 2010 on the following areas: ownership, alignment, aid harmonisation, managing for results and mutual accountability.

I have the honour of laying this matrix on the Table.

Mr Speaker, the second question is why the Council of Ministers is not involving this Assembly in the agreements for donor financing to the EAC institutions to facilitate its full participation in its oversight role.

The EAC and the respective development partners sign the agreements on donor financing. The Secretary-General, as the principal executive officer and chief accounting officer of the Community as provided in Article 65 of the Treaty, signs for the East African Community. The Counsel to the Community reviews the agreements before the signing. The agreements are accessible to all stakeholders, and copies can always be availed to this august House to facilitate its oversight role.

The Council of Ministers will welcome any proposals on how best this House can participate effectively in the process of mobilising funds and working on these agreements rather than working on already signed agreements. Thank you.

Ms Jacqueline Muhongayire (Rwanda): Hon. Speaker, in reference to Article 142 (v), the Treaty stipulates that: *“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.”* So, what mechanism can we establish to ensure that the Assembly approves every agreement that has a financial implication on the budget of the Community before passing the budget? I think approving the Budget Bill is not enough to inform and involve the Members of the Assembly in the negotiation process. I particularly think that we should establish a clear mechanism to ensure follow-up and oversight of these agreements negotiated by the Secretariat.

Mr Speaker, what is the exact role of the Council in this whole process of negotiations and signing of agreements? We would like to have a clear explanation from the Council as to what their exact role is in signing and negotiating these agreements. I thank you, hon. Speaker.

The Minister for East African Cooperation and Chairperson, EAC Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, let me respond to the two or three

question by hon. Muhongayire. One, what mechanism is in place? Currently, apart from the normal procedure of the Assembly debating the budget, I do not see a very well established mechanism involving the Assembly. I do not see it in place now. That is probably why the Speaker...I do not know what the rule says, but are we allowed to talk about what we discuss in the Business Committee?

The Speaker: I think you should answer the question.

Dr Kamala: Yeah, I think let me say this: we have already seen this as a problem, and we had discussions with the Speaker and other Members and agreed that there is a need to come up with a very good mechanism to make the Assembly participate effectively in the process of these agreements. In fact, it is not only the Members of the Assembly; there is even a need for a mechanism for the Council of Ministers to monitor, but this is yet to be effective.

Currently we are in the process of developing a policy on raising funds for the EAC. We have ordered the Secretariat to make sure that the policy takes care of all the stakeholders of the EAC so that everybody can play their role. I hope there will be another meeting for the Secretary-General to address this issue of ensuring that all stakeholders participate. The Council of Ministers will invite you to make your proposals, which we will put forward. I think that is it.

On the issue of agreements, there are so many agreements that the Council of Ministers does not know about some of them. At one time when we were following up on this issue, they told us that a previous Council of Ministers made the decision that the Secretary-General or his deputies could sign for a certain amount of money. However, we are yet to get a decision on that, although we have requested for it. That is the reason we are saying that we need to review the whole process. Therefore, as the Assembly is advising on the issue, the Council of Ministers also calling for us to work together and put a good mechanism in place.

What we would like to see happening is that we should use every shilling donated to the EAC for the purpose intended for it. We would like to achieve that and have a clear and transparent system.

Dr Nyiramilimo: Mr Speaker, I first want to congratulate and thank the Chairperson of the Council of Ministers for the elaborate response he has given to my question. I want to ask about the matrix that was laid on the Table, is it the same one that the hon. Counsel to the Community sent to me when we were already here? I think it is a matrix of progress made, which a commission put in place by the ODA and other donors designed. If it is the one, I think that the Secretariat did not prepare matrix as the Minister stated in the answer. Therefore, I would like to urge the Council of Ministers to prepare a matrix for the EAC, which complies with the Paris Declaration and the Accra Agenda for Action, to which he has said that our Partner States are signatories. Thank you, Mr Speaker.

Dr Kamala: Mr Speaker, I do concur with the proposal by the honourable member, and as the Chairperson of the Council of Ministers, I would like to pronounce that we should work towards that end. *(Applause)*

The Speaker: I think the honourable member is satisfied with that proposal. I did not want to refer to that issue, but the Minister has referred many things to the Business Committee, and we are trying to work on the best mechanism to address this issue of agreements between development partners, donors and the EAC. This is something that we are working on. Like hon. Muhongayire has said, if you look at the Treaty and the way EAC is utilising the funds, you will find two parallel budgets: one approved and one not yet approved, and you will say it is illegal. Therefore, we are still working on that issue.

Question for Oral Answer Reference EALA/PQ/OA/020/2009

Mr Christopher Nakuleu (Kenya): Asked the Chairperson, EAC Council of Ministers_ *“During the Third Meeting of the Second Session of the Second Assembly, the House considered the report of the Accounts Committee on Various Audited Accounts of the East African Community for the financial year ended 3 June 2007, including the accounts of the respective institutions and projects;*

It accordingly adopted a number of recommendations, including the need to institutionalise the timeframe within which to table the Report of the Audit Commission on the East African Community Audited Report.

Could the Chairperson, Council of Ministers:

(i) Explain to this august House why there was a delay in tabling the report on the 2007/08 East African Community audited accounts;

(ii) Set a deadline by which the East African Community audited accounts for each financial year should be in the House?”

The Minister for East African Cooperation and Chairperson, Council Of Ministers (Dr Diodorus Kamala): Mr Speaker, the Secretariat submitted the draft financial statements of the EAC for the financial year ended 30 June 2007 to the auditors general of the Partner States on 15 October 2008. The EAC proposed then that the audit commences on 10 November 2008.

However, the Controller and Auditor-General of the United Republic of Tanzania wrote back to the Secretary-General indicating that upon the admission of the Republics of Rwanda and Burundi, the Auditors-General of the Partner States needed to meet to see how best the Auditors-General of Rwanda and Burundi would be integrated into the audit process of the EAC accounts before the audit exercise took place.

The meeting of the Auditors-General, including representatives from Rwanda and Burundi, took place on 13 November 2009. The meeting came up with several recommendations and resolutions, including having a lead auditor and modalities of the

audit exercise. They agreed to prepare a memorandum of understanding between themselves.

One of the issues on which they agreed was that three Partner States would always undertake the audit exercise on a rotation basis. However, the Council of Ministers is of the opinion that, that agreement is contrary to the Treaty because it requires every Partner State to participate. Therefore, we are going to advise them to abide by the Treaty. We have not yet known how they arrived at that decision, but we are going to inquire and advise them accordingly so that they do not work contrary to the Treaty.

Finally, they agreed that the audit exercise for the accounts of the Community for the financial year ending 30 June 2008 should commence in January 2009. The audit commenced on 12 January 2009.

When the auditors went to audit Mt Elgon Regional Eco-System Conservation Programme on 3 February 2009, the International Union for Conservation of Nature (IUCN), the venue managers of the medicine programme, informed the auditors that the management contract between EAC and the International Union for Conservation of Nature had been terminated. They then requested for an extension of the audit of the programme to be to cover a 15-month period. They set the 31 March 2009 as the final date of the termination of the management contract. This necessitated a shift of the audit programme to March to allow for the completion of the books of accounts as at 1 March 2009.

The March audit commenced on 1 April 2009 and ended on 19 April 2009. Afterwards the Director of Audit, National Audit Office of Uganda reviewed the audit reports from his Kampala office and corresponded with the EAC accountants on the adjustments that they needed to make to the accounts. After completion of the audit by the technical team, the Auditors-General set 5 June 2009 as the date for the signing of the audited accounts by them, but they later shifted the signing ceremony to 17 June 2009.

The Controller and Auditor-General of the United Republic of Tanzania, the Auditor-General of the Republic of Uganda and the Deputy Auditor-General of the Republic of Rwanda met on 18 June 2009 in Arusha, and after reviewing the draft audit reports, signed the audited financial statements on 18 June 2009. Subsequently, in August 2009 in Dar-es-Salaam, the Council of Ministers laid before the Assembly, the audited financial statements.

In respect of the deadline by which accounts should be tabled before the Assembly, the Financial Rules and Regulations, under Regulation 79 stipulate that: *“The draft financial statement shall be submitted to the Audit Commission within 90 days from the end of the financial year. The Audit Commission shall undertake the audit exercises within 30 days from the list of draft accounts.”*

The rules are silent as to when the audit report should be ready. However, Article 134(3) of the Treaty stipulates that: *“The Audit Commission shall submit the audited accounts to*

the Council, which shall cause the same to be laid before the Assembly, within six months of listing for debate and for such other consultations and action as the Assembly may deem necessary.”

Mr Nakuleu: Mr Speaker, I wish to say that the Minister’s response to the question is satisfactory to me. *(Laughter)*

(Hon. Byamukama rose in her place)

The Speaker: I think the hon. Member is satisfied. Therefore, I do not know what you are asking. What is the question about? The hon. Member does not even have a supplementary question! *(Laughter)* Hon. Byamukama, are you questioning the ruling from the Chair?

Ms Byamukama: No, but I stand on a procedural matter. The Chairperson of the Council of Ministers has replied very well, and I agree with the Chairperson of the Committee except on a procedural note. I was wondering whether we could have that directive of the Council of Ministers on when to lay the accounts before the Assembly, because when you look at the dates, there is a discrepancy.

Secondly, he was reading some parts of the report, which we do not have, and somehow we got lost. Maybe we need to get a comprehensive report. On that note, I support the chair but on the other note, we need to have that directive and the chronology of events, which is not very clear to me. Otherwise, I am in total support.

The Speaker: Perhaps you have not read it the way hon. Nakuleu has read his, because he understood the response very well and he is satisfied with it.

ADJOURNMENT

The Speaker: Honourable Members, I think we have come to the end of business today. I now adjourn the House until Tuesday, 16 February 2010.

(The House rose and adjourned until Tuesday, 16 February 2010, at 2.30 p.m.)