



## EAST AFRICAN COMMUNITY

### EAST AFRICAN LEGISLATIVE ASSEMBLY

#### 47<sup>TH</sup> SITTING - FIRST ASSEMBLY: FIRST MEETING – FOURTH SESSION

#### Official Report of the Proceedings of the East African Legislative Assembly

Thursday, 16 December 2004

*The East African Legislative Assembly met at 9.00 a.m. in the Chamber of the Assembly, Ngorongoro Wing, Sixth Floor, AICC Complex, Arusha*

#### PRAYER

*[The Speaker, Hon. Abdulrahman Kinana in the Chair]*

*The Assembly was called to Order.*

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#### BILLS

#### SECOND READING

The East African Customs  
Management Bill, 2004

*(Debate continued from 15 December  
2004)*

**The Secretary General (Mr Amanywa Mushega) (Ex-officio):** Mr. Speaker, sir, hon. Members of this August House, I rise to support the Motion. My main task is to thank and recognise those who have contributed to the process and are not able to thank themselves or even to be heard or to speak for themselves on this Floor or elsewhere. But before I do so, let me congratulate the Hon. Minister who is the Chairperson of the Council of Ministers for his elaborate, articulate and concise presentation of this milestone Bill in the process of integration of the East African Community. Secondly, I would like to

thank and congratulate Chairman Nangale for his moving, balanced and an objective presentation of the position of the House – *(Applause)*.

Mr. Speaker, sir, the journey to this Bill has been long, and at some occasions torturous. But as Mzee Madiba Mandela said, “there is no easy walk to freedom.” Good things come out of long and protracted efforts and struggles and not through easy and quick fixes. Let me now recognise those people and organs that contributed immensely to the making of this Bill.

The consultations on the Protocol have been more protracted, involved many actors, state and non-state, stakeholders, and friendly forces and so on than was the case during negotiations of the Treaty, which is the foundation of this Protocol and this Bill. The integration process has gained and continues to gain speed and momentum.

Mr. Speaker, let me start by thanking and acknowledging the role played by the Summit: their Excellencies President Mkapa, President Museveni, President Kibaki and former President Daniel arap Moi for regularly keeping a sharp eye and keen interest and occasionally intervening at critical moments to keep things on track. I recall in August 2002, we had to travel to Dodoma, Gulu and Nairobi when things appeared to be having difficulties. Honourable members will recall that in June 2003, a special Extra-Ordinary Summit was held in Nairobi to resolve some of the obstacles that had threatened to derail the conclusion of the Protocol, which is the mother of the Bill before us today. At the end of February to the beginning of March 2004, their Excellencies had to sit here in Arusha for two solid days to ensure that the Council got all the necessary materials to conclude the Protocol, which was indeed concluded and signed in the presence of the honourable Members of this House.

We thank the Council of Ministers for burning the mid-night candles many times to push the process of integration forward. I recall on occasions, hon. Minister, calling you on your cell phone and you would inform me that you were either in Iringa or Dodoma, but you would listen and respond to our queries and show us the way forward. We also recognise the Coordinating Committee of Permanent Secretaries which has seen many Permanent Secretaries changed but the momentum has not changed but continues. This is a clear sign that institutions and organs are being built and strengthened, and taking shape. The moving of one or two officers out of place has not affected efficiency and the momentum of integration, clearly

showing that the institutions are strong and firm on the ground.

The technical officials have met several times, many of them not known to you, honourable Members, but their collective efforts have put together the skeleton of the Protocol and this Bill. On behalf of my colleagues, I say to them well done; *asanteni sana!*

I would also like to appreciate and thank the East African Business Council for their frank and informative summits - they have held two summits: At Mt. Kenya Safari Club and the recent one was held at the now famous Ngurdoto, here in Arusha - for building confidence in themselves and their members and for looking forward. As I told them at the Mt. Kenya Summit, there is a Chinese saying that: "A thumb before the eye blocks out a mountain," and when it does so, you think that your thumb is actually much bigger than the mountain. If you want to prove this saying, when we go out for tea-break, look at Mt. Meru and put a thumb before your eye, Mt. Meru will be blocked out. Or, as one Tanzanian minister, the hon. Pius Ngwandu, told the Committee on Fast Tracking the East African Federation when they were in Dar-es-Salaam that: "wise people find opportunities in a problem; those not so wise find a problem in any opportunity." I am glad to report that the East African Business Council has seen opportunities in the so called problem of the integration process. I am sure this august House is on the same track.

The East African Business Council has reduced the tensions and fears and fears, some real while others are imaginary, and created an atmosphere of hope and hence eased the integration process in East Africa. If you read the papers, you would see

that originally some of the business people were saying that integration would bring in unbalanced development, now you see most of the business people are anxious, because they know very well that this wider population of 100 million people and wider resources are big opportunities although they appear to be causing a problem.

I would like to thank the Press for the role they have played in promoting the ideas, ideals and benefits of regional integration. Quite often, they have carried out their own research and it is our duty, as honourable Members of this House, to give to them better materials that promote the way forward – (*Applause*).

I would also like to recognise the role played by our development partners, especially GTZ through the Government of Germany and the EU for facilitating a number of meetings and consultancies. AWEPA also did a commendable job by promoting the EALA tours and workshops that have enabled us to appreciate the role we play in promoting the integration process and appreciate the environment under which we work.

Let me single out these two institutions, organs or people for special recognition: First, my predecessors Amb. Francis Muthaura, Amb. Fulgence Kazaura and Dr. Sam Nahamya who started this Community from scratch but left a firm and solid foundation on which we have been building, for being available and for continuing being part of us and giving us advice, both solicited and unsolicited.

I would also like to appreciate the role played by Members of this Assembly right from the end of November 2001.

The House has been active in outreach programmes, workshops and seminars, especially at Manyara, Tarangire, commonly known as Sopa One, Mara and Naivasha which has enabled you to appreciate the nitty-gritty of integration and the role of the Customs Union. Therefore, it is not fair to yourselves to say that you have only had seven days to look at the Bill. We have spent three years familiarising with the field of integration and the background to the Customs Union and the results are very clear from the contributions that honourable Members made on the Floor of this House.

It is prudent to appreciate the often unnoticed behind the scenes role played by all members of staff of the Secretariat, of the Court and of the Assembly in doing the donkey work that makes things happen.

Mr. Speaker, sir, a question may be asked: what is the purpose of saying all these things that seemingly appear irrelevant to the question of the day? Why am I saying all these? In the area where hon. Kaggwa and hon. Bagalaaliwo come from, they have a saying that “*Atamukute yagamba*.” That means if you see a couple of people wrestling and you are in a hurry to move on, you would think they are delaying the process. But the moment you are invited into the ring, you will realise that things are not as easy as they had appeared.

I have often watched Arsenal playing Manchester United, and I have occasionally scored a few goals on the screen. But obviously if one was on the field, the situation would be very different. They have another saying that “*entasiima embalajuwa*” translated to mean that when you receive support from many friends and

you do not appreciate, one day nobody will support you again.

So, I thought it was my candid duty as the chief executive of this institution to thank those that I have recognised for the role they played that has enabled us to sit for seven days and be able to come out with candid recommendations. I am sure if we had been sent to the field to draft the Protocol or to draft the Bill, the situation would have been a little bit more difficult.

Mr. Speaker, let me now address the Bill. I would like to thank the Members of this House for their constructive, bottom of the heart contributions, and for charting a positive way forward. I trust that you will find us worthy and reliable advisers.

Let me also, at this opportunity, thank and recognise people who have been temporary members of our staff. I recall that when we left the consultative meeting yesterday, we went to have further consultations. And while we were leaving office after 3.00 a.m. these officers were still on duty and by 8.00 a.m. they still at the office. I would like to recognise the role played by the draft persons from the three Partner States, Grace Mfinanga, Thea Mrema, Eland Anonda and Lilian Andama for the role they have played in easing the work of this Community – (*Applause*). To all of you, I say I thank you. I have no budget to thank you, unless I submit a supplementary one to the Assembly. And if you knock the tables then I will definitely look into it – (*Applause*) - but we shall find our own way of recognising your contributions. I am sure my brother the Deputy Secretary General Finance and Administration can write a certificate which can be

signed by the Council of Ministers in appreciation for the job they have been doing. As I said, you will find us reliable and trustworthy friends.

Finally, let me thank the hon. Minister, hon. Jakaya Kikwete who has kept us on our toes and enabled us to work hard. Let me end up by quoting my childhood experience- and hon. Minister you do not have to listen to this one: When I was a small boy I had a paternal aunt who was a very strong lady. Whenever she visited us, as small boys and girls we had to run to meet her before she approached the home to recognise her presence, walking majestically. Hon. Kanyomozi may wonder how she managed to walk without stones in her shoes; she had no shoes to put on. But when she was around we were sure that, first we would work hard, and secondly we would have a good time because our father was now disenabled to put us under pressure.

Hon. Kikwete, since you arrived here we have been on our toes and working hard, and I remember hon. Kaahwa dosing at 2.00 a.m. last night. But is it not a wonder that the Secretariat and the Secretary General will appear in the *Hansard* as often as the Director General of the Customs Union. Quite often we dominate the debates; so your presence here has diverted attention, and we have some peace of mind. And I congratulate honourable Members for having diverted your ammunitions to the ministers and given us the opportunity to prepare for them.

Hon. Members, let us recognise where we are, where we have been in the region and where we intend to go. In my humble opinion, if we work together and realise the forces at play, the people we are working with, some with shoes and others without shoes

and others with shoes with stones, others on bicycles and others in cars but they must all move together. Once we recognise this, we shall find the appropriate speed and the journey will be made much easier.

I would like to thank the honourable Members of the Committee for the cordial exchange we had yesterday but I am sure the minister will have more to say about this. With those many remarks, I thank you for listening and I support the Motion. I thank you.

**The Chairman of the Council of Ministers (Mr. Jakaya Kikwete) (Ex-Officio, Tanzania):** Hon. Speaker, sir, allow me to thank 18 of our colleagues who had the opportunity to contribute to this debate in the House. Allow me to recognise: hon. Nangale, Chairman of the Communications, Trade and Investment Committee, hon. Kanyomozi; hon. Mabere Marando; hon. Med Kagwa; hon. Mwatela; hon. Zubedi; hon. Rose; hon. Sarah; hon. Shamala, hon. Kangwana, hon. Mwakyembe, hon. Abdi, hon. Lydia Wanyoto; hon. Ogalo, hon. Ochieng-Mbeo, hon. Gen. Muntu and hon. Kawamara.

Hon. Speaker, sir, I also thank all the Members of the East African Legislative Assembly who privately gave me very useful ideas and contributions. All these contributions were useful in bringing requisite input to the conclusion of this Bill. I will, in the concluding stages of my presentation, thank, profusely, the Committee.

Hon. Speaker, a number of important contributions were made, important issues were raised, but I have made a summary of some of them. The first one is that the Bill was rushed, contravenes procedures; renders this

august House a rubber stamp; rights of members have been violated, but all in all we might have to recognise the good work done by the House.

Hon Speaker, it is true that the Bill was brought to this House under a certificate of urgency - on a fast track, to use the popular phraseology now - but Council feels sorry about this. We pray that there won't be many of these instances in future. However, on this specific matter, it is really a function of the protractedness of the negotiations on the Customs Union Protocol. The negotiations were complex, they were difficult, and at times they never even looked like we were going to make it. They took longer than expected; in fact the whole of the four years provided for in the Treaty were consumed.

We took a decision almost at the last minute, when we were almost going getting to a point where we would even not have an agreement. This therefore left us in Council and this House with very little time to finish the important tasks required of us: The Council has to prepare the Bill and this House has to debate the Bill. As much as you feel the difficulties of being rushed, we in Council and the Secretariat also feel the pressure to prepare the necessary documentation to beat the important deadline. The people of East Africa need to see the Customs Protocol operational by the 1<sup>st</sup> of January 2005. We had no choice in the Council but do what we did, and likewise, there was no other option for this House.

As for contravention of procedures, the Rules of Procedure of this august House provide good guidance on how to handle these emergency situations when they arise. We invoked, appropriately, the relevant provisions, as all of us will remember.

Allow me, Mr. Speaker sir, to recognize and express my very sincere appreciation to the honourable members for their understanding, cooperation and outstanding contributions. You have demonstrated, on behalf of the people of East Africa you represent, the great sense of sacrifice and commitment to the cause of East African integration. I would like to pay special tribute to the Committee on Communication, Trade and Investment for a job very well done, especially considering the circumstances under which they were entrusted to perform this important task – *(Applause)*. I am sure history will reward all of us handsomely.

The second set of issues is related to “Customs and Trade matters should be separated, Trade issues should be deleted from the Bill and treated separately”. Hon. Speaker sir we have taken note of the concerns raised by the honourable Members; some references to Trade have created undue misunderstanding. We have agreed to take some corrective measures, as you will see in the schedule of amendments we are proposing before this august House – *(Applause)*. We are actually proposing that there should be a separate Directorate of Customs only and not Directorate of Customs and Trade – *(Applause)*. Subsequently, there should be the Director General of Customs and not the Director General of Customs and Trade – *(Applause)*.

It is important to note, however, that the central function of Customs anywhere is to facilitate smooth and orderly movement of goods across borders and collection of revenue thereof. In this sense, therefore, Customs is an instrument of Trade facilitation. In this regard, reference to and mention of roles of Customs related to Trade cannot be avoided. Whereas we have agreed to delete

reference to Trade per se in this Bill, we propose that we retain mention of Trade related issues of Customs. We can not do otherwise.

The third set of issues that were raised here is that the Bill gives undue judicial powers to officials, therefore Trade remedies and settlement of disputes should not be the business of the Directorate of Customs. We are in total concurrence with the proposals of the honourable Members. There are indeed competent organs of the Community to handle such matters. There is the East African Court of Justice and the Committee on Trade Remedies. In this regard we propose the deletion of Clause 4 (1) (h) in the Bill – *(Applause)*.

The fourth issue is the assertion or the impression that there is nothing East African in the Bill; there is no linkage between the Secretariat, the Director General of Customs and the Commissioners of Customs in the Partner States.

Hon Speaker sir, this observation of inadequacy was noted. In Clause 4 of the Bill there has been some attempt to define the role of the Directorate and provide the linkages. However, to be more specific and to further strengthen the linkage, two additional sub clauses have been proposed to be added to this clause. One of these clauses provides for the making of regulations by the Council to elaborate on the requisite linkages, the other provides for the establishment of a Committee to provide the mechanism for linkage. You will also see in the amendments that voluntarism on the part of commissioners on giving information to the Director General of Customs has been made obligatory. We are proposing to replace “may” with

“shall” in clause 10 (1) and (2) in the Bill.

Hon Speaker sir, perhaps it is important to state clearly that by 1 January 2005, if this Bill is passed by this House and later assented to, it will be the only Customs Management law to be used in the three East African States – (*Applause*). That in itself is another big measure of ensuring East Africanness in the Bill.

Number Five: “There is no centralized collection of revenue: this remains the responsibility of individual Member States; disregard the decentralized system and have a centralised one for East Africa.”

Hon Speaker sir, it is true that currently there is no centralized collection of revenue from Customs. It is not because the people who drafted the Bill were Customs Officers who were keen on protecting their empires. The truth of the matter is that we are still three separate entities and sovereignties. We are not yet a federated State, so there is no mechanism or legal framework for centralized collection of revenues. This is a situation that will be there for some time until the dream of East African political federation is realised. My humble appeal to all of us is to sensitise the leadership and people of East Africa to accept the proposals made by the Committee on Fast Tracking the East African Federation. I appeal for our being proactive on advocacy for the East African federation.

Six: “Shorten the transition period to a fully-fledged Customs Union lest we continue *ad infinitum*; Africa is notorious for transitional periods that become permanent; Abridge the period from five to two.”

Hon Speaker sir, this is a very welcome proposition and caution. It is indeed desirable. However, there could be some difficulties in its feasibility. During the negotiations, there were expressed fears from Tanzania and Uganda in particular, that if their young industries were exposed to competition on a level playing field with long established ones from Kenya they would be no match; they would not survive. There was seen, therefore, the logic of giving them time to grow as a measure of building confidence, and more importantly, as a measure of protection. This was done in pursuit of a built-in principle of asymmetry enshrined in the Treaty. After lengthy negotiations it was agreed that there be a period of five years to give breathing space and time for consolidation to Uganda and Tanzania before full liberalization. I propose that let us keep the transition period as agreed. Even the Committee of the Fast Tracking East African Federation saw merit in retaining this. They did not touch it.

Hon. Speaker sir, this concession would have meaning only if Uganda and Tanzania put in place policies and took actions that are conducive to growth, adjustment and consolidation of their industries, measures that would promote increased production, greater efficiency and cost effectiveness. Five years is not a long time. I am glad to say that this appears to be the trend in the two sister republics.

The seventh set of issues was that traders or goods imported from the Community Partner States should not be subjected to double taxation. If such goods are imported and proper CET tariffs are paid in one Member State, they should not be subjected to

taxation if they are transferred for sale to another Partner State.

Hon. Speaker sir, I must admit that this is something new to us; we honestly need time to reflect on it. I appreciate the problem, I see merit in the need to give due consideration to it. I also realise the difficulties under the present system where duties are supposed to be paid in the country where the product concerned will be consumed or used. In this regard, therefore, paying duties again cannot be avoided because the product will not enjoy the benefit under the Customs Union. It will not meet the criteria of Rules of Origin. We need time, as I said, to reflect and consult a little more and see what can be done.

Number eight: "The problem of Members of the East African Community being members of COMESA and SADC: This extends the benefits of the East African Community Customs Union and the East African market to members of COMESA and SADC. Can one effectively apply the rules of origin? WTO rules prohibit national states from being members of two Customs Union."

Hon Speaker sir, as we all know Kenya and Uganda are members of COMESA while Tanzania is a member of SADC. It is true, as raised by honourable members of this august House, that affording preferential tariffs to COMESA and SADC countries would mean extending benefits of the East African Community to those non-member states. It is true also that international rules and procedures do not allow membership to two customs unions by a country. It is important to note that our Membership of East African Community came after we had already joined these two regional

economic grouping several years before. It is not easy immediately to leave these organisations and remain with the East African Community or Partner States join either or all the two organisations as one entity. It will take time to discuss this matter, agree and implement it.

Fortunately, at the 7<sup>th</sup> Extra-Ordinary Meeting of the Council of Ministers held here in Arusha the 7<sup>th</sup> of September, this matter was discussed and some decisions were taken. The decisions read as follows:

1. "Partner States honour their Membership of COMESA and SADC respectively as they are now.
2. The East African Community Common External Tariffs shall not apply to trade between East African Community Partner States with these blocs.
3. The East African Community shall conclude Trade agreements as a bloc with these two blocs within four years in accordance with Article 130 of the Treaty and Article 37 of the Protocol on the Establishment of the East African Customs Union." In other words, the Protocol provides that in four years we should have concluded these negotiations.

"Sentences are too low and too lenient. They do not have justification and some appear discriminatory; the do not give incentive for integrity and honesty among Customs officials."

Hon Speaker, we are in total agreement with the honourable members that some sentences for some offences that are of a serious nature appear to be too low and too lenient. We are in

agreement also that there is need of rectifying the situation so that sentences become a deterrent to potential offenders. However, this is a matter that needs broader consultation. We feel that in order to facilitate ease of action, we propose – and in fact yesterday we agreed with the Committee – an amendment under Clause 252 of the Bill to provide for making regulations by Council which will make requisite amendments to the penalties. The Assembly will be fully involved since all regulations made by the Council have to be laid before this House.

On financing of the Community: “The Bill is silent on Customs revenues being used to fund the activities of the Community, consequently there is effectively one source, that of equal contribution by Partner States.”

Hon. Speaker sir, it is true that at the moment contribution from the Partner States on the basis of equal contributions is almost the single source of funding the East African Community activities. Getting contributions from Customs revenues is a possible source to explore. Moreover, Article 132(4) of the Treaty provides for that possibility. This matter is also included in the recommendations of the Committee on Fast Tracking East African Federation. It does not appear in the Bill because this issue is adequately taken care of.

The Seal and Flag: Hon Speaker sir, there has to be a Seal and Flag of Customs. Since this requires to be designed, an amendment is proposed to mandate the Council to handle the matter through regulations. The proposal to have a seventh schedule may not be feasible now because the seals and flags are not yet there. There was a proposal to use the old East African Community Customs Seal, but

we discovered that that seal has the crown, which will remind us of the old colonial days so we thought that let us just give ourselves time to design a proper one that really augurs well with independent East Africa – (*Applause*).

“The Bill does not care about the common man but cares for multinationals and industrialists: where is the *juakali* man in this Bill; where is the “donkey man”; where is the *boda* man?”

Hon. Speaker sir, the Bill is not discriminatory; it cares for everybody and takes care of everybody’s interest. It seeks to facilitate the implementation of the Protocol on the Establishment of the East African Community Customs Union, which in turn seeks to eliminate internal tariffs and non-tariffs barriers. These should facilitate trade of goods produced by all East Africans big and small. The producer of oranges in Muheza for example, would now sell his or her oranges in Mombasa duty free. Likewise, producers in Kenya and Uganda can also sell in Tanzania. The Bill protects the East African market from unfair competition from foreign products – (*Interruption*).

(*Prolonged clapping as Mr John Kipsang arap Koech, the newly appointed Minister for EAC from Kenya, enters the House*).

Hon Speaker sir, a Common External Tariff protects the East African market from unfair competition from foreign products. This benefits all producers, big and small.

Number thirteen: “Fear of the past holds us back from making speedier progress towards integration. When are we going to get rid of the fear? Sometimes we look strange; we

encourage a sense of urgency and call for caution at the same time.”

Hon Speaker sir, it is true, as alluded to by honourable Members of this august House that we have never ignored past experience in taking decisions and actions in the new Community, but caution and learning from past experience is not fear but simply being realistic, prudent and pragmatic. We are trying to ensure that this time around we succeed, because we have experience of a similar undertaking having failed. And that is quite significant.

I want to assure this august House that we are trying to be wise and calculative so that we avoid making mistakes of the past that we know too well we have committed and have caused disaster. However, we are also cognisant of the fact that speed is of the essence. It is in this view that our three Heads of State decided to establish the Committee on Fast Tracking the Federation. The primary task of this Committee was to propose ways and means of compressing the time we transit through the agreed phases to the federation. The Committee has finished its good work in record time, and I believe if consensus is reached soon, by 2010 in East Africa we will be breathing air of a federating East Africa.

Let me hasten to add that, compared to what we were in 1996 when we started in earnest the process of cooperation and integration, a lot has been achieved. We have harmonized so many policies, and also sectors and many sub sectors. East Africans have started to feel one again and confidence is ever growing. I think the honourable Members will agree with me that nobody now feels strange here in Arusha. You just live as if you were

one of the Maasai or Meru from this place – *(Applause)*. I am sure this is not how you felt when you came here the first time. The Treaty itself, the Protocol on the Establishment of the East African Community Customs Union, and the many Memoranda of Understanding all reinforce the lofty achievements made to-date. However there is still a lot more that we have to do and perhaps more difficult ones to tackle and handle. But this is the challenge before all of us, in the House, in the Council, at the Summit and among the population, to overcome. This Bill is one of those important challenges.

Hon Speaker sir, I think I have covered many of the issues raised; I have not discussed each and every issue raised by the honourable Members, not out of disrespect but because we may not have time to reply to all of them. However, you will see in the proposed amendments we are moving that we have tried our best to capture all that and to be accommodative.

Before I conclude, Mr. Speaker sir, allow me to thank you for two things: First, for your wise stewardship of the affairs of the East African Legislative Assembly – *(Applause)*. You have provided good leadership since you assumed office; please keep up the good work. I promise Council's and my personal continued support and cooperation to you.

Secondly, I want to thank you for agreeing wisely to my suggestion yesterday that we hold a joint meeting with the House Committee on Communications, Trade and Investment. The meeting was a tremendous success – *(Applause)*. We had very frank, very candid and very cordial consultations. The beauty of it all was the fact that there was

sufficient ambience in the deliberations. All hurdles were overcome, the proposed amendments before us is an outcome of this joint endeavour – *(Applause)*.

Allow me, sir, to thank most sincerely, the Members of this Committee, and of other Committees who joined them, for their high-class contributions. Indeed, they were very knowledgeable and truly committed East Africans.

I acknowledge with great respect, the wise leadership of my twin brother George Nangale, who is the Chairman of this Committee. Hon Speaker sir, after these many remarks, I beg to move – *(Applause)*.

*(Question on the Bills Second Reading put and agreed to)*

## COMMITTEE OF THE WHOLE

### HOUSE

*(The Chairman, Mr A.O. Kinana, in the Chair)*

### BILLS

### COMMITTEE STAGE

The East African Community Customs Management Bill, 2004

**The Chairman:** Honourable members, as you are all aware, at Committee Stage we go through the clauses, but I think we have too many of them; 259. It may take us long. I suggest - and I would like to hear your opinion - that we have the amendments written. You already have the amendments proposed by the chair on behalf of the Committee, so I would propose that we go through parts. The Title will come last, and Part I Clause 1 will come last but one. So we will start with Part I Clause 2, onwards to interpretations.

**Mr Kangwana:** Mr Chairman, in Part I, when it comes to definitions I would like to propose a small amendment. I do not know if we are there yet; if we are I will make that proposal immediately.

**The Chairman:** Well, I will always start with the Council of Ministers, and if you are not satisfied or if you have any additions, the honourable members will also be free to stand up and make proposals, and will have the response from the Council.

### Clause 2

**The Counsel to the Community (Mr. Wilbert Kaahwa (Ex-officio):** Hon Chairperson, in Clause 2, on page 13 it is proposed that the definition of directorate be amended to read as follows:

“Directorate’ means the Directorate of Customs established by the Council under Article 75(3) of the Treaty” - *(Interruption)*.

Hon. Chairman, we have circulated the schedule of amendments, and this is indicated on page one of the schedule.

**The Chairman:** Do all the Members have the two documents? And have you noted the amendments moved by the CTC? *(Members: Yes)* Okay, please go on, CTC.

**The Counsel to the Community (Mr Kaahwa) Ex-Officio):** Hon Chairperson, sir, under Clause two it is proposed that this new definition of a term be included. It should be on page 13:

“Director General’ means the Director General of Customs in the Directorate of Customs.”

This is a new one, which will be included immediately after the definition of “Directorate.”

**The Chairman:** This recognises the proposal made by members that Customs be separated from Trade.

*(Question on the amendment put and agreed to)*

**The Counsel to the Community (Mr. Wilbert Kaahwa) (Ex-officio):** Hon Chairperson, the following amendment is proposed to Clause 3. This is from pages 18 to 19 of the Bill. It is proposed that the present Clause 3 appearing there be substituted – *(Interjection)* –

**Mr Med Kaggwa:** On a point of procedure, Mr Chairman, I thought you said that you would give the Council priority, but now Council is moving to another section when we still have problems with other parts! So, I thought you would guide us here on whether we will run through or we will part by part. Because he is now going to page 18, which is Part II and some of us have issues in Part I.

**The Chairman:** Hon CTC, are you through with Part I?

**Mr Kaahwa:** Hon. Chairperson I am through with Part I.

**The Chairman:** Clause 2?

**Mr Kaggwa:** Thank you Mr Chairman; it is a minor thing on page 12: “an approved place of loading” and “approved place of unloading.” I think there is some inconsistency here. In that paragraph the last phrase “may be

loaded or unloaded”. They started with “unloaded” but when you read throughout the Bill it is “loaded” and “unloaded.” So, I hope they will correct that.

**The Chairman:** We take note and we will do the due correction for consistency.

**Dr Harrison Mwakyembe:** Thank you Mr Chairman. In Clause 2, on page 12, in the definition of “boarding station” the last word is “officers”. If you read this interpretation properly, you realise that maybe the word “officers” is misplaced; maybe it is “crew.” Can the draftsmen look at it later? Instead of “officers”, I think the word should be “crew”. This is the feeling I get.

Also, Mr Chairman, on page 13, in the definition of “Customs laws”, for purely technical reasons there is need to treat Council regulations and directives separately; they should be removed from here. I would propose that a separate section should be inserted somewhere, in whichever form, but which says “the Council may make regulations and directives which, with the approval of the Assembly shall have the force of law”; something like that, but should not have the automaticity here that any directive, any regulation should be law – *(Interruption)*.

**The Chairman:** Honourable Members, I request that anyone who has a proposal should come up with it. Otherwise, if everyone stands up and says “I think this is not proper, or what should have been done is this or that” – please do not give us your opinions and ideas; give us a proposed amendment.

**Mr Mabere Marando:** Hon. Chairman, with all due respect to my good friends, we are now discussing this thing with a possibility of passing it as a law. So if there is any correction of even a comma, it is to be done here and we endorse it right here. We want to go out having done everything, not “corrections later.” Even the “loading and unloading”, we must agree that we start with “loaded” followed by “unloaded”, and we endorse it here, otherwise if we leave it to the drafters to do it later, they may come up with their own thing and it will not be our law!

Secondly, Mr Chairman, if somebody had substantive corrections in mind he should have made it earlier. We can not start discussing phraseology at this stage; we shall not finish, Mr Chairman!

**The Chairman:** Hon Marando has said it all: If you have a proposal or an amendment, please table it; put it forward to all of us to consider.

**Dr Mwakyembe:** Mr Chairman, so what is the way forward?

**The Chairman:** Hon Mwakyembe I want you to propose an amendment.

**Dr Mwakyembe:** I am saying Mr Chairman, and I stand to be corrected, that the word “officers” at the end of the definition of “boarding station” I think is misplaced; it should be “crew”. If the members think it is not, then we can proceed.

**The Chairman:** So what does your amendment on “crew” and “officers” say? *(Interjections)*

**Gen Adan:** I beg to differ with the suggestion that “officers” is referring to the crew of a vessel or aircraft. I

believe it is referring to the Customs officers. And I think it is correct.

**The Counsel to the Community (Mr Kaahwa):** With regard to the proposed amendments to the definition of “Customs laws” we must not be oblivious to the fact that this Bill is subsidiary to the Protocol on the Establishment of the East African Community Customs Union. And according to that Protocol, the definition of “Customs laws” includes regulations and directives by the Council. So in this Bill we do not have the latitude to depart from the provisions of the Protocol.

### Clause 3

**The Counsel to the Community (Mr Kaahwa):** Hon. Chairperson. It is proposed that, Clause 3 which appears on pages 18 – 19 be amended by substituting the following new clause. This is subsequent to the amendments which were indicated by the honourable Chairperson of the Council, with regard to the policy matters on administration. The new Clause 3 will read:

“The Directorate of Customs as established by the Council under the Treaty shall be responsible for the initiation of policies on Customs and related Trade matters in the Community and the coordination of such policies in the Partner States.”

This is indicated on page 1 of the schedule of amendments.

*(Question on the amendment put and agreed to)*

*(Clause 3 as amended agreed to)*

**Clause 4**

**The Counsel to the Community (Mr. Wilbert Kaahwa):** Hon Chairperson, it is proposed that that Clause 4 which appears on page 19 of the Bill be amended as follows: By deleting the umbrella wording in sub-clause (1) and replacing it with the following new words\_

“Without prejudice to the generality of Clause 3, the Directorate shall, in relation to management and administration of Customs, coordinate and monitor\_”

That is the first part of the proposed amendment in the opening part of the provision. It is further proposed that in paragraph (c) of that clause, which now appears to read “trade facilitation”, the following words be inserted: “as provided for in Article 6 of the Protocol”. So Clause 4 will read:

“Trade facilitation as provided in Article 6 of the Protocol”

It is further proposed, Mr Chairperson, that paragraph (h) of that clause be deleted in its entirety. This is the paragraph which provides facilitation for trade remedies and dispute settlement processes.

It is further proposed, Mr Chairperson, that paragraph (j) of that clause be amended by deleting the words which appear there “and trade” between the words “Customs” and “related” so that paragraph (j) of the clause will read:

“Customs related negotiations”.

Hon. Chairperson, it is proposed that subsequent to those amendments, consequentially the current paragraphs (i), (j) and (k) be renumbered appropriately. Furthermore, it is

proposed that two new sub clauses be inserted to Clause 4. These will read as follows:

“4(3) For the purposes of this Act, the Council shall make regulations for the working arrangements between the Directorate and Customs.

4(4) The Council shall establish within the Community’s institutional framework, a committee charged with facilitating\_

- (a) the Directorate’s formulation of policies and programmes on Customs management and administration;
- (b) exchange information between the Directorate and commissioners; and
- (c) any other matters on the working arrangements between the Directorate and the Customs.”

Hon. Chairperson that is the content of the proposed amendments to Clause 4.

**Amb. Isaac Abraham Sepetu:** On page 19 paragraph 4(1) (g), I did not hear the honourable CTC mention the deletion of the word “and Trade” there. I thought we had agreed yesterday that it should be deleted. It must have been an omission on the part of the CTC.

**The Chairman:** If I understood well, the whole item is deleted!

Hon Chairperson, I am sincerely apologetic for the inadvertent oversight on paragraph (g) of Clause 4. It was amended: it will now provide\_

“(g) training in Customs related matters.”

*(Question on the amendments put and agreed to)*

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

## Clause 6

**The Counsel to the Community (Mr Kaahwa):** Hon. Chairperson, it is proposed that Clause 6, which appears on page 20, be deleted and the following new clause be substituted for it:

- “6(1) There shall be a Seal of the Customs, which shall be officially and judicially noticed, and whose design and description shall be prescribed by regulations.
- 6(2) There shall be a Flag of the Customs whose design and description shall be prescribed by regulations.
- 6(3) The flag of the Customs and the flag of the Community shall be used to distinguish vessels employed in the service of the Community from other vessels.”

*(Question on the amendment proposed)*

**Mr. Kangwana:** Mr Chairman, it is just a clarification I am seeking. I am in agreement with the amendment, but in relation to the Flags, is it being implied by this amendment that each Customs entity of a Partner State will have its own flag? If you looked at the definition of Customs, I think it would be possible to interpret this amendment to give rise to the point I am raising.

**The Counsel to the Community (Mr Kaahwa):** I am sorry, hon. Chairperson, I must be frank. I am not seeing the mischief my hon. Friend is referring to.

**The Chairman:** Are Partner States going to have separate flags, or one flag of the East African Customs?

**The Chairman Council of Ministers (Mr Kikwete):** Hon Chairman, sir, there is going to be only one flag of the East African Community.

**Mr Calist Mwatela:** On the same issue, the problem is from the definition of “Customs” as stated, which states: “Customs means the Customs departments of the Partner States”. So, I think it is necessary - in order to distinguish and to have a clear view - to perhaps state that there shall be a seal of the East African Community Customs, so that you are clear that it is not the Partner States.

**The Chairman Council of Ministers (Mr Kikwete):** Hon. Chairman, as I said before, with the passing of this Bill and it being assented to later and thereby becoming a law, we are going to have only one law governing Customs in East Africa, and we are going to have one flag for East African Customs. So, as Council is going to make the regulations, we will make sure that that is going to be carried in the regulations.

**Mr Yona Kanyomozi:** I am grateful to the Minister. Yesterday in the course of our discussions, he actually made us a bit pleased about it. I do not know whether we will now have to revisit the definition of the word “Customs” to mean customs departments of the East African Community. If we did that, the issue now bothering us would not arise.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, I appreciate the proposed amendment. Having read the definition of “Customs” in Section 2, I think the mischief being addressed here is the need to avoid confusion between the Community and the Customs departments in respect of the seal and flag.

I propose that to avoid confusion in this provision we add the words “East African Community” before the word “flag” so that sub clause (2) of the proposed amendment now reads: “There shall be an East African Community flag of the Customs.” I am hesitant to say “Community Flag” because the word “Community” is not defined here. The word “Community” is defined in the Interpretation Act of the East African Community, 2003.

Consequently in sub clause (3), I propose we add the word “Community” before the word “flag” to read: “The Community Flag of the Customs and the Flag of the Community.” These are two different flags. That will address the problem.

**Ms Mahfoudha Hamid:** Hon Chairperson, I think that the whole sentence should be reconstructed because it does not sound right. “There shall be a Community flag of the Customs and the flag of the Community, which shall distinguish\_”, because they are two.

**Mr Med Kaggwa:** Mr Chairman, I want to propose that while we can not do the drafting here, and I understand there are drafts people around; they have got what we want so let them draft it while we move on. And when they come up with the legal thing, they can bring it back, rather than each of us becoming a drafts person!

**The Chairman:** Okay they make a proposal and bring it to us. Let us move on.

**Mr Kangwana:** Mr Chairman that should apply to the seal also.

**Mr Kanyomozi:** I still do not know whether it solves the problem of the definition of “Customs” that started up this problem in the definition on page 13. Are we also resubmitting it to the drafts people and they bring it back to us?

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, in my humble opinion, the definition of Customs as indicated in Section 2 does not have any problem. The Committee is just referring to it in relation to the problem apparent in the proposed amendment to Clause 6.

**The Chairman:** Are there any more amendments to Clause 6? Well, we will skip it and when we get the written amendments then we will come back to it.

*(Clauses 7 agreed to)*  
*(Clause 8 agreed to)*

## Clause 9

**Maj. Gen. Mugisha Muntu:** Thank you Mr Chairman. On Clause 9, and all the other related clauses later which deal with penalties, we are made to understand that at a later point, an amendment is going to be proposed by the Council to the Community to Article 252 to enable Council to make regulations for adjustment of any penalties under this law. Now I would like to understand, for purposes of record, within what time frame that is going to be done.

**The Chairman Council of Ministers (Mr Kikwete):** Hon Chairman, we can not give a specific time frame. Of course in the discussions we had, we said we appreciate that the sentences are too low and too lenient, therefore they do not really act as deterrents. But we also appreciated that there is a process where you have to do a lot of comparison in terms of the criminal laws of Member States and so on. So we need to do some consultation and do some work. That is why it was agreed in the Committee yesterday that let us bring flexibility to this and give Council the possibility of changing.

Also the other was the fact that a fine of US\$ 3,000 today may be nothing 10 years down the road. So if you get into a situation where if you want to change that fine you have got to propose an amendment and bring it before this House, that would be a bit cumbersome. So we thought we would bring in some flexibility by giving that responsibility to Council, where it is going to be a lot easier because Council will be working with this Assembly.

So what we will do in Council, we will immediately look at the fines. If there are any specific proposals from members, please give them to us. We will certainly take care of this one immediately the Bill is passed and the regulations are made.

**Ms Sarah Bagalaaliwo:** Mr Chairman then I would suggest that we delete the penalties and sentences and further subject them to the regulations by Council. Otherwise, if we leave them here they will remain the law and we can not change them afterwards!

**The Chairman:** We have two proposals: one is to leave them as they are until Council makes the regulations. The second one is, if you

leave them they will become a law, so remove them and leave the regulatory work to the Council of Ministers.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, while appreciating my honourable friend's proposal that in the circumstance where we find ourselves, there is need to delete the provisions on penalties pending the conclusion of the necessary regulations under Clause 252, we should not be oblivious of the fact that when the Bill becomes law, it will apply to Customs administrations, and certainly there will be offences; offences live with us.

Now, between the time the Bill becomes law and the time the regulations are finalised and adopted, is a period – (*Laughter*) - of months. We are not talking of a period of days. And we need to have the basic provisions. Yesterday I indicated to the Committee that there are grounds that led to the provisions to appear as they do. These are based also on precedents which obtain within the Partner States at national level, and also in other customs unions. I would urge the Committee to consider these considerations, the reasons and the philosophy behind providing for penalties and the fact that we need to ensure that there is provision to address this part of Customs administration, so that we do not leave a gap pending the conclusion of the regulations.

**The Chairman:** I am informed by the Clerk that the Council of Ministers yesterday had a meeting with the Trade Committee and the Legal Committee, and in their wisdom, they thought that while the sentences remain here, the Council of Ministers will make regulations. So, can we just accept that wisdom and move ahead?

**Maj. Gen. Muntu:** Mr Chairman we were seeking comfort from the Council of Ministers to know by what period that would be done. Because if it is left open-ended we can get there by 2020 or ahead before any amendment is done.

**Ms Rose Waruhiu:** Mr Chairman, our understanding was that if the regulations change anything substantially we will come back to this House at some stage and amend the law, but we can not pass a law that does not enable a judge to carry out proceedings in a court.

**The Chairperson:** Let me appeal to Gen. Muntu that I believe the Minister has seen the spirit and sense of urgency in the debate and in the Committee, and I am sure they will act expeditiously.

**Maj. Gen. Muntu:** I concede!

**Mr Kangwana:** Mr Chairman, on 3(b) I agree with what has been decided, but on the proviso, the last sentence reads: "execution of the duty of such officer commits an offence and shall be liable on conviction to imprisonment of a term not exceeding three years." I am just seeking clarification, not an amendment because Clause 3 is subject to national laws. In other words, laws in Kenya, Tanzania and Uganda dealing with corrupt practices have been admitted as part of the law to be applied and consequently, I hope that the sentences and fines that have been imposed by those Acts are in line with what is being stated here, otherwise you create a conflict. I just needed clarification.

Hon Chairperson, the provisions on penalties in this Bill is based on what obtains at national level and elsewhere.

They address so many matters which guide the provision on penalties: gravity of offences, frequency of offences, economic means of offenders, the need to deter offenders from committing offences and so on. I am told he has yielded, Hon. Chairperson, but maybe for record purposes and for the benefit of the Committee, after having indicated that, let me also indicate that the law we are enacting here in tandem with Article 8 of the Treaty for the Establishment of the East African Community is the law of the Community. It is this law which will apply, and will have precedence over similar national laws on similar matters. I thank you.

**Mr. Mwatela:** Mr. Chairman, the problem I have is that since this is going to be the Community law, the Clause 9 there starts with: "Subject to any other written law in force in Partner States", we should not subject this law to the laws of the Partner States because in any case this will take precedence. So we should simply say "any officer who\_" This should also apply to any other provisions because this is the Community law and it will take precedence over the others.

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, the use of the words "subject to any other written law" is based on the fact that there is a transition period for the implementation of the Protocol, and during that transition period, the officers of the Customs in the course of the discharge of their duties may be subject to other laws under the national jurisdictions.

**Mr Kanyomozi:** Mr Chairman, I do not see the transition period. Once the law is assented to, it becomes effective. And if it becomes effective,

the Partner States laws will no longer apply! *(Interjections)*

**The Chairman:** I would like to ask, honourable Members, that whoever wants to take the floor to please propose something; do not open a debate. If you have a proposal, please put the proposal before the Committee.

**Ms Bagalaaliwo:** Mr Chairman I had earlier suggested that the penalty clauses are likely to bring more problems. When they become law either we subject them to regulations being made by the Council and Council deems it urgent as it has been calling us to do urgent work, to get the penalties done. Otherwise there will be no penalty. The CTC has just told us that we can not have the law without the penalties, then he says that but we are still in a transition. I can not see how penalties will be in a transition!

**The Chairman:** I will expect honourable Members to come up with proposals. Otherwise we will debate every clause here and it will be difficult.

**The Counsel to the Community (Mr. Wilbert Kaahwa):** Hon Chairperson, let me come up with a solution. After consultations and taking into account the views of the Committee, the mischievous phrase “subject to any other written law in the Partner States” will be deleted, and Clause 9 will now read:

9(1) “Any officer who\_

(a) directly or indirectly...”

This one will apply consequentially throughout the Bill to avoid any discrepancies between this law of the

Community and – *(Thank you, thank you)*

*(Question on the amendment put and agreed to)*

*(Clause 9 as amended put and agreed to)*

## Clause 10

**The Counsel to the Community, Mr. Wilbert Kaahwa (Ex-officio):** Hon. Chairperson, with regard to Clause 10 on page 22 of the Bill, the following amendments are proposed.

The first amendment is that the words “subject to the Protocol” which appears at the opening of sub clause (1) be deleted, so that the clause will read:

10(1) “The Commissioners may furnish each other with such information, certificate, official report or document on matters relating to\_”

Secondly, it is proposed that for emphasis, and in line with drafting requirements, the word “may” which appears in sub clause (1) after “Commissioners” be deleted and be substituted for by the word “shall”, so that it has mandatory effect.

Thirdly, under the same clause, and in tandem with what I have just said, it is proposed that the word “may” which appears immediately after the word “Commissioner” in sub clause (2) be deleted and be substituting for by the word “shall”.

*(Question on the amendment put and agreed to)*

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

**Clause 12**

**Mr. Med Kaggwa:** Mr. Chairperson, there is just a small typographical error in Clause 12(2). In line four, just to be consistent in the drafting, after the words “conditions as he” we should add the words “or she” because that has been the drafting style throughout the Bill but here it was omitted.

*(Question on the amendment put and agreed to)*

*(Clause 12 as amended agreed to)*

*(Clauses 13 agreed to)*

*(Clause 14 agreed to)*

*(Clause 15 agreed to)*

**Clause 16**

**Mr Mwatela:** On Clause 16(f) “Goods on board any aircraft or vessel whilst within any part or place in a Partner State”, I propose an amendment to include “vehicle”.

**Mr Kaggwa:** Mr Chairman, there are distinctions dealing with vehicles and related *eiusdem generis* and then vessels and aircraft; and we went through this. You will see where vehicles are dealt with separately and vessels and aircraft separately.

**The Chairman:** This means land, sea and air transport; they are all different.

**Clause 17**

**The Counsel to the Community (Mr. Wilbert Kaahwa):** Hon Chairperson, the Council proposes that Clause 17 be amended by deletion and substitution as follows: That the following new wording be inserted

“Where any loss or damage is occasioned to any goods subject to Customs control through the wilful or negligent act of a Commissioner

or an officer, then an action shall lie against the Commissioner or such other officer in respect thereof.”

**Mr Shamala:** Mr Chairman, I note that the new wording helps the people of East Africa to deal with the culprit, but the claimant may not be able to recover his or her goods from that officer. If the goods were, say, Shs20 million, and now you are just going to deal with that officer or the commissioner and not the State. I propose we retain the original draft of Clause 17.

**Dr Mwakyembe:** Mr Chairman I propose that the word “other” before “officer” should be deleted. It should simply read, “The Commissioner or such officer in respect thereof” because the word “other” gives the impression that the Commissioner is also an officer when he is not.

**The Counsel to the Community (Mr. Wilbert Kaahwa):** Hon Chairperson, we accept that further amendment to the amendment I have indicated so that the last sentence reads:

“...shall lie against Commissioner or such officer in respect thereof”

It will carry the same meaning as had originally been intended in the clause. The whole clause will now read as follows:

“Where any loss or damage is occasioned to any goods subject to Customs control through the wilful or negligent act of an officer, then an action shall lie against the commissioner or such officer in respect thereof.”

*(Question on the amendment put and agreed to)*

*(Clause 17 as amended agreed to)*

*(Clauses 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 jointly agreed to)*

#### **Clause 42**

**Mr. Kangwana:** Mr. Chairperson, in Clause 42(1), on the third line, which starts with “commissioner shall give notice by publication”, I would like to propose that after the word “publication” we insert the words “in the gazette”.

**The Counsel to the Community, Mr. Wilbert Kaahwa:** Mr. Chairperson, the proposed amendment is appreciated and we will take care of it.

*(Question on the amendment put and agreed to)*

*(Clause 42 as amended agreed to)*

*(Clauses 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 jointly agreed to)*

#### **Clause 55**

**Mr. Med Kaggwa:** Mr. Chairperson, I think the second sentence of Clause 55(1) which reads “...be delivered for that purpose to any an aircraft or vessel...” does not sound very neat. I propose to delete the word “an” so that it remains “any aircraft or vessel”.

**Ms Rose Waruhiu:** Mr Chairman, can we have the clause read?

**Mr Med Kaggwa:** Mr Chairman it will read:

“Where any warehoused goods have been entered for use as

stores for an aircraft or vessel, they may be delivered for that purpose to any aircraft or vessel proceeding to a foreign port.”

**Mr Kangwana:** Mr Chairman, I am in agreement with that, but I am raising an issue for purposes of bringing to the attention of the drafts people what was agreed yesterday in our afternoon meeting. The proviso to 55(1) which says: “Provided that warehoused goods shall not be entered for use as stores for a vessel of less than two hundred and fifty tons register or to be delivered for that purpose” is discriminatory against owners of small vessels as opposed to the owners of bigger vessels. And the Minister did promise that he would ensure that the drafts people take care of this – *(Interjections)*.

**The Chairman:** Hon. Waruhiu you seem to have some information that could be useful to the Committee!

**Ms Waruhiu:** Mr Chairman, this reference to vessels of less than two hundred and fifty tons appears in many places in this Bill, so our concern was that it discriminates, as was mentioned by Hon. Kangwana, and the minister conceded but I do not think we actually adopted an amendment; we just expressed concern.

**Mr Marando:** Mr Chairman, I also go with what Hon. Waruhiu has just said. I remember we discussed this and several of us expressed sentiments on this discrimination, but several of us also found sympathy with the explanation given by the experts, namely the Commissioners and the Director of Customs with whom we were yesterday. I do not think we arrived at a conclusion; we thought it should be left as such.

**Mr Kanyomozi:** Mr Chairman, we actually did discuss this matter and we were made to understand that it was part of the international maritime laws, and we asked whether those laws allow that type of discrimination. I must say that the Chairman of the Council of Ministers was sympathetic to our proposition. We were of the view that the punishment and anything that happened to the small vehicles should also apply to the bigger ones, especially when it comes to forfeiture. And I think it should be reflected in the understanding, otherwise it goes against reason and it is part of what I called yesterday and the other day, the Christian ethic: to those who have, more will be added unto them, and the small ones, even the little will be taken away. And we were of the view that something was going to be done about this, and I think it should be done. Thank you.

**Mr Med Kaggwa:** It is true Mr Chairman we discussed this, but when we were advised by the Director Customs, we were made to understand that the Customs Department has powers of seizure; and we said that as regards forfeiture, the Minister, Chairman of Council will at an appropriate time look into this and bring an appropriate amendment after research.

The Chairman: It looks like this is not something that can be easily decided here; it seems like the Legal Committee and Trade Committee which met the minister was satisfied with the way it is pending some action later.

*(Question on the amendment put and agreed to)*

*(Clause 55 as amended agreed to)*

## Clause 57

**Mr Kangwana:** Mr Chairman, in Clause 57 (2) in the third line after the word “publication”, it is left to the discretion of the Commissioner to deem which form of publication he or she should adopt, and I am proposing we insert an amendment that that publication be in the Gazette.

**The Chairman:** The Hon Member is proposing that the word “gazette” be inserted after “publication” and the rest be deleted.

**Ms Kate Kamba:** Mr Chairman, I am asking myself, is this not related to the media? So I think it should be left as it is.

**The Counsel to the Community (Mr Kaahwa):** Hon. Chairperson, when it comes to publication, much as we have a gazette, we must also bear in mind that there is need for urgency in respect of some of these publications, and with regard to the addressees of whatever is published. We may be emphasising the official gazette and publication therein while at the same time losing out on time for purposes of informing all interested parties and stakeholders and whomsoever is meant to be informed. It would, in my humble opinion, in some of these provisions wherever publication appears, be expedient to leave it as wide as possible.

**Mr Med Kaggwa:** I just wanted to add that we are dealing with matters of auction, and the ordinary people normally do not look at the gazette. In fact even many officials do not see them. But courts have taken judicial notice that certain dailies are accepted and they normally put the publications there.

*(Clause 57 agreed to)*

**Clause 58**

**The Counsel to the Community (Mr Kaahwa):** I am very sorry, Hon Chairperson. At the risk of being accused of disregarding procedure with this issue on publication, now with the views which the Committee has noted, you will recall that when it came to Clause 42 we also limited publication to the gazette, can we say that what we have just said with respect to Clause 57 will apply generally – *(Interjections)* - Hon. Chairperson I am just seeking clarification.

**The Chairman:** I think it is clear, the two are different: one refers to the official gazette and the other one is the media.

*(Clauses 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87 agreed to)*

**Clause 88**

**Mr. Kangwana:** Mr. Chairperson, Clause 88(2) reads: “The master or agent of any an...” I propose we delete the word “an”.

*(Question of the amendment put and agreed to)*  
*(Clause 88 as amended agreed to)*  
*(Clauses 89, 90, 91 agreed to)*

**Clause 92**

**Mr Kangwana:** Mr Chairman, I am not clear about the second line of Clause 92(1) which reads “...shall bring to at ...” I think the word “at” should be deleted even in the marginal note.

**Ms Sheila Kawamara-Mishambi:** Mr Chairman, how does it read? Could the Hon Member please read it out?

**The Chairman:** 92(1) reads: “The master of every aircraft or vessel departing to a foreign port shall bring to at the boarding station.” His proposal is to delete the word “at”, and the same applies to the marginal note.

**Mr Calist Mwatela:** I think we should not rush to make that amendment because if you read the whole statement, the “at” has a function. “The master of every aircraft or vessel departing to a foreign port shall bring to at the boarding station for the purpose of disembarking any officer on such aircraft” and you put a comma.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, the purpose of this provision is to get the master of every vessel or aircraft to bring any officer to the boarding station for purposes of disembarking. This explains the issue being raised.

**The Chairman:** So the amendment is not to delete the word “at” but to put a comma.

*(Question on the amendment put and agreed to)*  
*(Clause 92 as amended agreed to)*  
*(Clauses 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 agreed to)*

**Clause 112**

**Maj. Gen. Mugisha Muntu:** Mr Chairman, I had earlier on intended to move an amendment to Clause 112(a) seeking to insert a time period of 31 June 2005, but now with the benefit of the information given by the Chairman Council of Ministers, I intend to move an amendment at the end of 112(a) that “for a period not exceeding 31 December 2008”. The Chairman Council of Ministers indicated to us

that they have already sat and discussed and they intend to implement this within four years, and we need to build it within the law – *(Applause)*.

**The Chairman:** Hon. Kanyomozi has a concrete amendment to this one – *(Laughter)*.

**Mr Kanyomozi:** Mr Chairman, I intend to reduce the period, given that by 2008 anyway we would have been forced by World Trade Organisation (WTO) rules to conform to being out of these different blocs. So I intend to modify, if my colleague agrees, that we move it to 31 December 2006.

**Maj. Gen. Mugisha Muntu:** I am even happier that way! I concede.

**The Chairman:** And I can bet that any proposal to make it even tomorrow Gen. Muntu would be even happier! *(Laughter)* So, hon. Gen. Muntu or hon. Kanyomozi do you have any formulation on how this clause should read?

“The preferential tariff treatment shall be applied to goods\_

- (a) imported under COMESA and SADC arrangements in the Partner States for a period not exceeding 31 December 2006.”

Can we give some few minutes to the Council? So I am giving the honourable members 15 minutes to have *chai* and for some administrative issues.

*(The House was suspended at 11.20 a.m. for a Tea Break and resumed at 11.45 a.m.)*

**The Chairman:** Hon. Gen. Muntu had made an amendment of a definite date of five years, and hon. Kanyomozi had made an amendment of a definite date of two years. And the matter was left to the Council of Ministers.

**Maj. Gen. Muntu:** Mr Chairman, I had conceded to hon. Kanyomozi’s amendment and we have harmonised our positions and we are amending the period to 31 December 2006.

**The Chairman, Council of Ministers (Mr Jakaya Kikwete):** Hon. Chairman, when the Members of this August House were having *chai na kahawa*, the Council met! *(Laughter)* Today we are all here, and we handled the request that we come down to three years because we have a lot of work the whole of next year with the operationalisation of the Customs Union, so we have so many Bills that we are going to bring to this House and it is going to keep us occupied, so we think that 2008 is too far, we concede, and 2006 may also be too short. So if the House could accept, we propose to make it 2007.

**Maj. Gen. Muntu:** Thank you Mr Chairman. With all due respect to the Council of Ministers, I believe they do realise what pressure can do. We are going to manage to actually pass a Bill within one week, which ordinarily would have taken one month. I also realise the magnitude of work that the partner states will embark on, but we believe that two years is enough. In any case, we realise that if the two years are not enough, the summit will still be there, the Council of Ministers will still be there, this House will still be there, an amendment will be carried out then. We would like to stick to 31 December 2006 – *(Applause)*.

**The Chairman:** Is hon. Kanyomozi of the same opinion?

**Mr Kanyomozi:** Yes, I am of the same opinion, but maybe the only compromise one can give to the Council of Ministers is to make the period up to June – (*Interjections*) – I will give a reason for it – so that the change is effective with the national budgets of our Partner States. So we reduce the period from three years and the change comes effective with the national budgets. Otherwise, I think two years is a long enough time, and – (*Interjections*) – I am saying, for flexibility and to allow the budgets to reflect these changes, let us take end of June 2007 instead of December.

**The Chairman:** Do you get hon. Kanyomozi's proposal? Well, he had first proposed 31 December 2006, now he is proposing 30 June 2007.

**Mr Kangwana:** Mr Chairman you must have read my lips because I am proposing 31 June 2006 so that these honourable members of this House shall be here! (*Laughter*) By December 2007, some of us might not be here, Mr Chairman.

**The Chairman:** I hope that does not indicate in any way that I will not be here! (*Laughter*)

**The Chairman Council of Ministers (Mr Jakaya Kikwete):** Mr Chairman, the previous member's proposal of June 2006 would be a little subjective. If he is only thinking about himself and Members of the Assembly – (*Laughter*) – that becomes really subjective. Normally, if hon. Kanyomozi is the one who moved for 2006 and then he amended his proposal to June 2007, then we stand by that because he has amended his own proposal. Therefore, I really wish

to persuade members that, because of the reasons he has given, like the budget cycle that it would really be in order that we move to June 2007.

**The Chairman:** We have three proposals on the table in response to the original of two years proposed by Gen Muntu and hon. Kanyomozi: The Minister is proposing three years, Gen. Muntu says no, let us remain with our two years and hon. Kanyomozi says two and a-half years.

**Maj. Gen. Muntu:** Mr Chairman, why we are proposing 31 December 2006 is simply to be consistent with this Customs Management Bill, which is going to start on 1 January 2005; so there is nothing strange in it starting by the beginning of the year. It does not have to start by the financial year. So we are saying that 31 December 2006 would be consistent with the beginning of the Bill. And I would really like to persuade our colleague and comrade hon. Yona Kanyomozi to concede on 31 December 2006, and then we let the day pass.

**Mr Mwatela:** Mr Chairman, I just want to say that since we have indicated that an amendment can be brought, I think the amendment of 31 December 2006 is indeed reasonable because it is possible to achieve that. But in the event that we have a problem and we have to go to June, then we will bring the amendment. Let us put pressure; we have to fast-track! And Think with all due respect to the hon. Ministers I think we are honoured today to have the full Council sitting in this House. That should be the motto: We want to fast-track! Thank you.

**The Chairman:** That another way of sneaking in other agendas also – (*Laughter*). Hon Minister, would you like to conclude?

**The Chairman, Council of Ministers**

**(Mr Kikwete):** Mr Chairman, I have had consultations again here, and in view of what my good friend Hon Gen Muntu has said that just in case there are difficulties then amendments can be brought before this House, I think let us agree on December 2006 - *(Applause)*. When Council was looking at the four years, we were looking at the complexity because we want really to come up. If we are really going to negotiate with COMESA and SADC, we should not be led to get a raw deal. We should really get a deal that is going to benefit us; a win-win situation and if we can win better than the others, then that is the aim. And, we may need time but if there is this understanding I think it is okay.

**The Chairman:** Honourable members, you can see how decisions can be made quickly when Council is around - *(Applause)*. So what is the formulation of the Amendment? Do you have a formulation Bwana CTC or we leave it to the drafts people and we come back to it? *(Interjections)* Okay let us leave it and come back to it later.

*(Clauses 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145, agreed to)*

**Clause 146**

**Mr. Jared Kangwana:** Mr. Chairman in Clause 146(3) on the last line, I propose to insert the word “to” after the word “refuse”.

*(Question on the amendment put and agreed to)*

*(Clause 146 as amended agreed to)*  
*(Clauses 147 and 148 agreed to)*

**Clause 149**

**Mr Mwatela:** Mr Chairman in Clause 149(3), I propose that instead of the last word there “require” we put the word “demand” - *(Interjections)* - to read as “...the proper officer may demand...”

**The Chairman:** I caution the honourable members before you attempt to challenge the hon. Mwatela.

**Mr Kanyomozi:** Mr Chairman, I suggest that the word remains as it is for the reasons which are clear even in the expression of the meaning of that clause.

**Mr Mwatela:** The only reason I felt “demand” is more appropriate is because demand is compelling, while “require” is not necessarily compelling.

**Mr Med Kaggwa:** Mr Chairman, the two words have different meanings: “demand” will connote that it is just leisure, “require” arises out of a need to continue doing some work on that vessel. That is why it must remain “require”. I submit.

**Mr Dan Ogalo:** Mr Chairman, I think the word “require in this context is really the same as “demand”; I see no difference. If an officer says “I require you to do something”, it is the same as demanding you to do it! I think we should just leave it where it is. It is not a request; it is demanding!

**Mr Mwatela:** I know I am right, but in this case I yield.

**Mr Kangwana:** Mr Chairman on Clause 149(1), in line two, after the word “to” we should put a comma and also after the word “boarding” we

should put a comma, so that it will read:

“The master of any vessel within a Partner State shall bring his or her vessel to, for boarding, on being signalled to do so...”

**Ms Mahfoudha Hamid:** Mr Chairperson, to be consistent I think we should go back to the sub clause (3) which hon. Mwatela wanted corrected, and also, in line two of sub clause (3) “bringing in for boarding” should also have a comma.

**Mr Marando:** Just for clarification, I do not see what the word “to” be there for in both sub clauses (1) and (3). “Bring to” - I thought it should be deleted in fact. What is it for? To me it does not make sense so it should be deleted.

**Mr Kangwana:** Mr Chairman, if we deleted the word “to” in line two of Clause 149(1) and line two of Clause 149(3), I would be happy. But if they are to be retained, we have to insert commas – *(Interjections)*.

**Capt. Ddudu:** Mr Chairman, I would suggest that we leave that “to” because when you are talking in terms of aircrafts and ships and what not you actually talk in terms of “bringing them to”. “Bringing to” has a connotation of stopping; the way they stop. So if you remove that “to” you will distort the meaning of the whole sentence.

**Ms Mahfoudha Hamid:** Mr Chairperson, I just want to support hon. Ddudu because this is a technical term used to bring in vessels. Coming from an island, I know it – *(Laughter)*.

**Ms Waruhiu:** Mr Chairman, if in fact that is the English meaning, then the comma should come after “boarding”, not before, which shall then read: “shall bring his or her vessel to for boarding,” otherwise you can not have the comma before. English is a difficult language.

**The Chairman:** So what is the proposal? Hon. Rose Waruhiu, can you take us through?

**Ms Waruhiu:** Mr Chairman going by the explanation, “to bring to” has a technical meaning. The verb means therefore that: “The master of any vessel in a Partner State shall bring his or her vessel to for boarding, - if you want, then put the coma there – on being signalled to do so...”

**The Chairman:** So we have reached a compromise; leave the word “to”, do not delete it, and then remain with one comma instead of two, after the word “boarding”. And sub clause (3) remains the same.

*(Question on the amendment put and agreed to)*

*(Clause 149 as amended agreed to)*  
*(Clauses, 150, 151, 152 jointly agreed to)*

### Clause 153

**Maj. Gen. Muntu:** Mr Chairman, Clause 153(1) seeks to have an authorised officer stop and check any vehicle at the expense of the owner of the vehicle. And yesterday, I indicated that I intended to move an amendment that it should only be at the cost of the owner of the vehicle if and only if the owner is at fault. If you check a vehicle and you find nothing wrong there is absolutely no reason why the owner should bear the cost!

Clause 153(1) says:

“An officer may, if he or she has reasonable grounds to believe that any vehicle is conveying any un-customed goods, whether or not in transit, or being transferred from one Partner State to another, stop and search any such vehicle; and for purpose of such search, such officer may require any goods in such vehicle to be unloaded at the expense of the owner of the vehicle.”

Now, my problem is: if you are stopped and searched and actually it is found that you are not at fault, why should you still meet the cost of the unloading?

**The Chairman:** Now having got his argument, can someone propose an amendment? (*Interjections*) Is there anybody in support of Muntu; hon. Abdi? (*Laughter*)

**Mr Haither Abdirahim Abdi:** Mr Chairman I declared my interest but, after you have offloaded your vehicle and it found there is nothing wrong, why should the person pay?

**Mr Marando:** Mr Chairman, I am afraid I do not support the motion for amendment because, I remember in the discussion yesterday we had a senior officer from Customs explaining to us the necessity of giving Customs officers the ability to decide on reasonable suspicion to stop a vehicle and search. Now if we put this thing at the expense of the State, first of all they would be scared to stop and search a vehicle; they would not exercise their discretion reasonably and the expenses for paying court and compensation may be so much as to even erode the very revenue that we

are collecting for the Customs. I think they have always done this, and I also believe that those who will be searched and subjected to costs of reloading are far too few to necessitate the transfer of these costs.

**Dr Mwakyembe:** Mr Chairman, I think yesterday we discussed this matter thoroughly, and over and above what Marando has said, if you look at this section critically, it only allows the Customs people to stop a car and check it only when he or she has reasonable grounds. That is where the State has no liability but if you can prove that there were no reasonable grounds to stop you, I think you can proceed against the Customs officers. So we should not really bother with this section right now.

**Maj. Gen. Muntu:** I concede Mr Chairman.

**The Chairman:** I think the majority view is that we leave it as it is?

**Hon Members:** Yes!

(*Clause 154 agreed to*)

## Clause 155

**Ms. Kawamara-Mishambi:** Mr. Chairperson, in 155(1) I am concerned by the use of “reasonable force” because I find it a bit arbitrary; perhaps our learned friends could help rephrase it.

**The Chairman:** What do you propose, “Minimum force”? (*Laughter*)

**Ms. Kawamara-Mishambi:** Mr Chairman when you say use “all reasonable force”, I think we have witnessed the use of “all reasonable force”, which has even led to the death of some East Africans. So

perhaps we could just say “reasonable force” but the word “all” to me gives somebody the mandate to even go the extent of killing.

**The Chairman:** So the proposal is to delete the word “all” and remain with reasonable. But let me assure hon. Kawamara that that is also enough for them to use maximum force! *(Laughter)*

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, we agree with the proposal to delete the word “all”.

**Ms. Kawamara-Mishambi:** Mr Chairman, I would also propose that it be deleted wherever it appears, because it also appears in subsequent clauses.

**The Chairman:** I think let us deal with them as they come, but also let us keep in mind the proposal you have made that we deal it wherever it appears. But let me assure you they will have enough and sufficient force – *(Laughter)*.

**Mr Kangwana:** Mr Chairman, 155(2) is discriminatory against women! *(Laughter)* Mr Chairman, If there is any pleasure derived from a search, it looks like we have allowed a female to search a male but we have not allowed the same pleasure to a male to search a female! So I am saying we are discriminating against women.

**The Chairman:** Well, until men complain about being searched by women, there is no problem.

**Ms. Kawamara-Mishambi:** Mr Chairman, I would like to agree with hon. Kangwana though not in his connotation. I propose we add the phrase “and vice versa” so that even

males are searched by males! *(Interjections)*

**The Chairman:** This is what I had said earlier: men are not complaining! *(Applause)*

**Ms Mahfoudha Hamid:** Mr Chairman, only the men in this Assembly are not complaining but the common man in the streets is complaining.

**The Chairman:** Well, the Chair is supposed to be impartial but let me assure you that men in here represent men outside – *(Laughter)*.

**Ms Waruhiu:** Mr Chairman, I would like to find out whether it is the word “pleasure” or “pressure” – *(interjections and laughter)*. The honourable member was confusing two words. Can he clarify, because he is looking for more than is provided for by this law! *(Laughter)*

**Mr Kangwana:** Mr Chairman, I understand the honourable member to be saying that we should insert the words “pleasurable pressure”! *(Laughter)*

**Mr Mwatela:** On 155 (3), we have: “Where any officer informs any person that he or she proposes to search him or her, if he or she requires, be taken forthwith before a magistrate, the Commissioner, or any other superior officer...” Now, my difficulty here is, is the “superior officer” we are talking about here superior to the Commissioner?

**Hon. Members:** No; to the officer making the arrest!

**Mr Mwatela:** Now I am clear. Thank you.

**Clause 156**

**Ms Kawamara Mishambi:** Mr Chairman I propose the deletion of “all” in the phrase “all reasonable force”.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson, much as I am opposed to giving unlimited magnitude to the issue of force, we have to be very careful. In Clause 156(1) we are talking about powers of arrest, and it should be the intention of this August House to enable any officer arresting to have wider powers of arrest. I think the word here “all” is qualified by “reasonable” unlike in Clause 155, when it comes to arrest we should empower an officer to use all reasonable force; all force within his command which is reasonable.

**Ms Kawamara Mishambi:** Mr Chairman, maybe the CTC could explain what he means by all, because we have seen people who have been arrested using all reasonable force ending up dead!

**The Counsel to the Community (Mr Kaahwa):** Hon. Chairperson, in all the three Partner States we have Police Acts, which empower Police officers and any other persons with stipulated powers to effect arrests. We should be very careful here, when we are legislating for this matter not to impinge on those general powers of such officers. That is why I am saying there are provided wide powers to arrest because arrest here should be in the interest of the Customs Union. We are talking about smugglers and other offenders. The word “all” is now qualified by “reasonable” and “reasonable” is also delimited by the provisions of the powers such officers normally have.

**Ms Kawamara Mishambi:** Mr Chairperson, the CTC has quoted the laws of our Partner States and in some of the Partner States, the Police laws and acts have been said to be arbitrary, archaic and very abusive to human rights. So I do not know why we are promoting, at the East African level, something that is going to really infringe on people’s human rights.

**Mr Shamala:** Mr Chairman, I personally understand “all reasonable force” to include persuasion. You can persuade an individual by saying “If you do not do what I am telling you, I will invoke the Act and put you in jail!” So that is reasonable force in my opinion. And you can actually physical arrest using force depending on the individual you are handling: If you are handling hon. Kawamara, you will not use a force that you would apply to hon. Mwatela!

**The Chairman:** What hon. Shamala is saying is that let the clause remain as it is, and hon. Kawamara you have been assured that the force used on Mwatela would not be used on you.

**Ms Kawamara Mishambi:** Mr Chairman I yield!

*(Clauses 156 agreed to)*

*(Clauses 157, 158, 159, 160, 161, 162)*

**Clause 163**

**Mr Med Kaggwa:** Mr Chairman, I just wanted to be clarified on the meaning of that word “just” in the phrase “provide office accommodation and just weights”.

**Capt. Ddudu:** Mr Chairman, I suggest we leave it as it is because most of the times, these scales are not standard.

**The Counsel to the Community (Mr Kaahwa):** Mr Chairman, the intention here is that the weights, scales and measures used are the due ones allowable in the circumstances, and hence the use of the technical words “just weights”.

*(Clause 163 agreed to)*

*(Clauses 164, 165, 166, 167, 168, 169 and 170, agreed to)*

#### **Clause 171**

**Mr. Kangwana:** Mr. Chairperson, under Clause 171 there is a definition of “outward processing” and on the second line which reads “which are in free circulation in Partner State” I propose to insert the article “a” before the word “Partner State”.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson I want to indicate that the Council is agreeable to the addition of the word “a” before “Partner State” in that definition.

*(Question of the amendment put and agreed to)*

*(Clause 171 as amended agreed to)*  
*(Clauses 172, 173, 174, 175, 176, 177, and 178, agreed to)*

#### **Clause 179**

**Mr. Jared Kangwana:** Mr. Chairperson, I propose that in Clause 179(1) in the first line which read: “compensating products shall be imported into Partner State” we insert the article “a” before the word “Partner”.

**The Counsel to the Community (Mr Kaahwa):** Hon Chairperson on behalf of Council I indicate no objection.

*(Question on the amendment put and agreed to)*

*(Clause 179 as amended agreed to)*

*(Clauses 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191 and 192 jointly agreed to)*

#### **Clause 193**

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, the Council wishes to propose the deletion of Clause 193 in its entirety, and substituting for it the following words:

“A person who conspires with another person to contravene any of the provisions of this Act commits an offence, and shall be liable on conviction to imprisonment for a term not exceeding five years.”

**Mr Dan Ogalo:** I wish to seek some clarification from CTC. It seems that the policy from this is to stop people from assembling to contravene provisions of the Act. I can see that from the marginal note. How does that relate to conspiring now? Are you now leaving out the offence of assembling?

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson I apologise. I should have indicated that the marginal note will change to “Conspiring to contravene provisions of this Act”. And this is indicated on page 3 of the schedules. The Council discussed this matter with the Committee and we noted the need to do away with the connotation for the assembly. One does not need to assemble to conspire to commit a crime. And that is the mischief we addressed when we proposed this amendment.

**Ms Waruhiu:** Mr Chairman, although I am a member of the Committee, I did not see this meaning as I see it now. If

you say “A person who conspires with another person” it is rather vague. We should foresee conspiracy in plural than rather just two people.

**Mr Kangwana:** Mr Chairman I agree with what hon. Waruhiu is saying and I am proposing that we add the words “or persons”

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, I am about to concede, but let me point out that under the interpretation rules, when you use a term like “person” it also has its cognate connotations when it becomes plural. If you look at some of the national legislation like the Penal Code of Uganda section 216, there is a provision on conspiracy reading “any person who conspires with another to contravene a law” and that is sufficient within the meaning of the Interpretation Acts.

**Mr Ogalo:** Mr Chairman, I still seek some clarification here. We can conspire at here in Arusha but then we can assemble at the border to smuggle. Now are you saying that we are forgetting the offence of assembling, so that you only punish conspiracy?

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, in this provision the mischief we are looking at is the crime of conspiracy. Whether you have for this purpose assembled or not, so long as you have conspired, then you have committed an offence contrary to the provisions of this Act. Under the old clause we were confining the circumstances to assembly so that people could conspire to commit a crime other than through an assembly and go off with their conspiracy. That is what we were addressing. Now as we have it in the new clause, my honourable friend hon. Ogalo can leave this August House and

go to Namanga and conspire, which God forbid, other than in an assembly, he will be deemed to have conspired. You can conspire on telephone; we are trying to avoid a situation where people may gather for a wedding meeting, for example and then be dispersed having been deemed to conspire to contravene provisions of this law! So conspiracy is the wider context of what we are trying to address.

**Mr Abdi:** Mr Chairman, on a point of information I would like to tell hon. Ogalo that when you smuggle you do not have to assemble; people will then know you are smuggling! *(Laughter)*

**Ms Waruhiu:** Mr Chairman, it is important record that we associated the word “assemble” with those old laws like the Public Order Act, and in this era of democracy, free association and assembly we did not want this word retained in this Act.

*(Question on the amendment put and agreed to)*

*(Clause 193 as amended agreed to)*

#### **Clause 194**

**Dr Mwakyembe:** Mr Chairman, Clause 194 carries the heaviest jail sentence in the entire Bill, of up to 20 years. But If you look at 194 (1) (c), it says “commits with violence any of the offences referred to in subsection (4)”. If you look at subsection (4), you come across offences like: (a) “staves, breaks, destroys or throws overboard from any aircraft, vessel or vehicle...” or (d) “in any way obstructs any officer in the execution of his or her duties...” So what I am saying is that these should be provided different penalties. We should remove (c) from this section because (c) carries very light offences compared to those in (a) and

(b), which involve use of firearms. It should be removed from this section but we will find it later and then we can propose a penalty for it, of may be five years, but we should not mix it with these other serious offences here, with use of firearms.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, I appreciate what my honourable friend is saying with regard to sub clause (c) under Clause 194, paragraph (1). The intention of including the provision of sub section (4) here is based on the use of violence. The use of violence here is the common denominator for including those offences under sub clause (4) within (1) for purposes of a stiffer penalty.

**Capt Ddudu:** Mr Chairman, I think it should be left as it is because (c), though it refers to violence just like the others, has a connotation of the instrument that one may use. In the first two cases there is use of a gun, but in this other one you may use a club or a *panga*!

**Mr Ogalo:** But, Mr Chairman, be that as it may, violence is defined under (5), and it includes a threat. So if I am throwing some contraband out of a vehicle, and I utter a threat, I am liable for 20 years! I think I support hon. Mwakyembe's suggestion that we provide different sentencing for the offences under (4). The alternative would be to redefine what we mean by violence and specifically say when we say "violence" it means use of a gun or some other instrument!

**Prof. Kamar:** Mr Chairman I am silent because I am not a lawyer, but I am wondering about deleting that (c) in 194 and actually stipulating what the offences of (4) should result in because we not some of the arrests are very violent in themselves and you can even

conclude that you are rescuing that person from being killed violently also. So I thought that maybe that (c) should be out and actually stipulate how to deal with (a) (b) (c) in (4).

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, let us look at "violence" as our bottom line, and we stand guided by the wording of sub clause (5) because it brings out what "violence" for this purpose is:

"For the purpose of this section, the expression "violence" means any criminal force or harm to any person, or any criminal mischief to any property, or any threat or offer of such force, harm or mischief, or the carrying or use of any dangerous or offensive weapon..."

This is where I want to lay emphasis, and this is what relates to 194(1) (a) and (b), which mentions malicious shooting. Any use of force in the commission of those offences under sub clause (4) is deemed to be violent warranting a similar penalty as that provided for offences of malicious shooting of aircraft, or at an officer.

**The Chairman:** Hon. Members, as you can see, we only have about ten minutes left so I suggest that the House resumes so that one honourable Member can propose that we continue until we finish because we need at least an hour or less to finish, rather than breaking for lunch and resuming at 4.00 o' clock.

#### MOTION FOR THE HOUSE TO RESUME

*(Question put and agreed to)*  
*(House resumed)*  
*[The Speaker in the Chair]*

**Mr. Daniel Ogalo (Uganda):** Mr. Speaker, I beg to propose that we do continue with the sitting, notwithstanding the fact that we should at this time be breaking off. And that instead of commencing our business at 4.00 p.m. we should finish our business before then. I beg to move.

**Hon Members:** Suspend the Rules!

**The Speaker:** That is what he said!

**Mr. Mwatela:** Seconded.

*(Question on the motion to suspend the rules put and agreed to)*

*(The House resumed the Committee of the whole House)*

#### COMMITTEE OF THE WHOLE HOUSE

*(The Chairman, Mr Kinana, in the Chair)*

**Lt. Gen. Adan:** Mr Chairman, I do agree with the observation that there seems to be a dealing between the magnitude of offence and section 194(1) and under section 194(4). So I would like to suggest that we delete sub clause 194(1) (c), and provide for specific punishment under 194 (4) (a) (b) (c) and (d).

I am in agreement in one way with the general, but we really do not have to delete (c) because (c) is clear that you are committing the offence violently, but I agree that under (4) there should be penalty prescribed specific for that particular sub section. So, we leave the (c) there and probably redefine the "violence" because on the other hand I think that violence is too big.

**Ms Waruhiu: Mr Chairman,** in my reading, if you remove (c) then what happens to the other offences which are not defined? Because (a) defines shooting at aircraft, or vessel; (b) defines shooting or maiming an officer. So if you do anything else violently which has not been defined here, you do need a general clause. I would not mind if they are saying we remove this from here and put it somewhere, but if they are suggesting that you delete then who is going to provide for other acts of violence which are not in (a) or (b)? I am asking the mover to be more explicit. For instance, with all due respect to what Prof. Kamar said, you can actually go violently to rescue someone who has been captured. So, are you saying delete or move it from here, because you cannot delete?

**Mr Ogalo:** Mr Chairman if you remove (c) and put it under (4) and say "a person who commits with violence any of the following offences\_" then you would have dealt with the problem of hon. Waruhiu.

**Prof Kamar:** But Mr Chairman we should not loose sight of the fact that (4) was originally talking about offences with violence. We need to improve on what hon. Ogalo has given so that we deal with both violence and non-violence. If you rescue somebody without being violent, then the offence should be different. So perhaps you could improve on the proposal.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, this is a last ditch attempt to use all reasonable persuasion to get the Committee to appreciate the need to relate Clause 194 (c) to sub clause (4). In sub clause (4) we are talking about real examples: rescuing or breaking or destroying an aircraft or a vessel during these days of

possible terrorist attacks; using violence in such circumstances. I would very much like to hear what hon. Mwakyembe has to say with regard to the kind of penalty he is proposing when we shift sub clause (c) to a separate provision all together without any relationship to sub clause (1) of this clause.

**Mr Nangale:** Mr Chairman, the problem I see here is that section 194(c) talks about violent actions, but item (4) does not talk about violence, and actually item (4) does not provide any punishment.. So I support deleting (c), taking it to (4) and qualifying it for violent with a maximum sentence of five years.

**Mr Kangwana:** Mr Chairman, this problem has arisen from provisions relating to sentence in case of conviction and hon. Mwakyembe has rightly talked about a punishment of 20 years. The way the terms relating to punishment have been phrased is such that it fixes a maximum of 20 years, it does not fix a minimum. It is a term not exceeding 20 years so it can be one day! Mr Chairman given that fact, there is plenty of flexibility for the courts to play around with, we should therefore leave sub clause (c) where it is. It is a serious matter Mr Chairman, but it is true to say that more violence is committed by people armed with weapons other than guns, so much so that I know in some cases for security reasons people prefer a person armed with arrows because he is more lethal, rather than a person armed with a pistol. Guns are not the only dangerous things Mr Chairman. So I am proposing that we leave (c) as it is and the courts have discretion, depending on the circumstances of each case, to fix the sentence. The wording here gives the courts that flexibility.

**Mr Ogalo:** Mr Chairman it would appear that the problem is because we do not have any policy behind sentencing, and this has been dogging this house for some time. What hon. Kangwana is suggesting is really to run away from the problem, and I think the way forward would be, if CTC could concede, to redefine (5); redefine what “violence” means because, using the example I gave under (4), if I am travelling in a vehicle and I want to prevent a Customs Officer from seizing the goods I have by throwing them overboard, and in the process I issue a threat, that should really not attract the same kind of sentence with a person who maliciously shoots at an aircraft. Really there must be some distinction.

Although the courts can have some discretion of up to 20 years but at least there should be some limitation on the courts because you may say that it can be one day but the courts may give you 18! So if CTC could concede to redefine “violence” to remove things like “threat”, with a threat you do not use any arms! (*Interjections*)

Mr Chairman I propose that in (5) we delete the words “or any threat or offer of such force, harm or mischief” and leave “the use of any dangerous or offensive weapon” but delete “carrying” and “or such conduct of a person likely to cause in any person a reasonable apprehension.” If we narrow that, then we leave real force in the commission of this offence.

**Mr Kaggwa:** Mr Chairman, since we can not come to an agreement, the general rule is that we start with the extreme position, we vote until we come to the proposition of the Bill as it is. Otherwise we are just going round and round.

**Mr Shamala:** Mr Chairman, our learned friends are not agreeing, and I would like to rely on the wisdom of the people who drafted this Bill in the initial stages. I therefore suggest we leave it as it is.

*(Question put and agreed to)*

#### **Clause 195**

**Mr. Mwatela:** Mr. Chairperson, “A person who wilfully removes any Customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in accordance with the regulations” sounds as if somebody who is removing the seal accordance with the regulations is wrong. Now we need to correct that, so that we say “contrary to regulations” then that would be an offence. So it should read:

“A person who wilfully removes any Customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or contrary to the regulations...”

**Mr Zubedi:** I think that the emphasis here, if we leave it we have to understand one thing, that wilfully removes without authority or in accordance with the regulations is correct!

**Ms Waruhiu:** Hon Chairman, I would like clarification from CTC. Is this Customs seal the one we deferred decision on earlier? What is the seal? We discussed a seal earlier and deferred decision on it. I am just seeking clarification: which seal is this?

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Customs seal we are talking about here, for the benefit of hon. Waruhiu in particular and the Committee at large is the seal for fastening for Customs use, and the other one is the seal for embossing.

**The Chairman:** I think it is now clear. And as we have agreed, there is a schedule coming for the seal and flag.

**Ms Waruhiu:** Mr Chairman, so long as it is understood, otherwise is the other seal defined or am I being too pedantic? The lawyers should tell us.

**Mr Marando:** *Mheshimiwa mwenyekiti*, since a decision has not been made on the proposal made by hon. Mwatela, if you carefully read Clause 195 and pause after the word “officer” in line two, then you are likely to come up with the meaning that this person is being taken to have committed an offence for wilfully removing the Customs seal in accordance with the regulation. And I think that is not correct.

I think what hon. Mwatela proposed should be more what we want to convey, that is that if you do that without the authority of the proper officer, or if you do that contrary to the regulations. That brings in an offence, Mr Chairman. I think we should condescend to what hon. Mwatela is saying, not just because he is a teacher of English, but it makes sense. It conveys the message which I think the Counsel to the Community wants to put in the law. If it reads:

“A person who wilfully removes any Customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer, or contrary to

the regulations or he wilfully alters, defaces, obliterates or imitates any mark placed by an officer..."

If we use the words "contrary to" instead of "in accordance with", we shall be enacting a proper criminal offence.

**Prof Kamar:** Mr Chairman, this time it is just proper English. I think hon. Mwatela is correct because we are saying "without...in accordance" which makes no sense. So it is either "without proper regulations" or what has been contrary, and for myself I had put in "without proper".

**LT. Gen. Adan:** Mr Chairman, I believe if anybody removes the seal in accordance with the regulations he has not committed any offence! Only contrary to the regulation is an offence. So that must be corrected.

**Capt. Ddudu:** Mr Chairman, we can only see a correct version of this if we jump some words. If we say, "a person who removes a seal from any ship without the authority of the proper officer, or in accordance with the regulations", it becomes clear; this wording is correct! (*Interjections*)

**The Chairman:** Because the regulation will say how you should remove it and how you should not remove it!

**Mr Marando:** *Bwana* Chairman, if we want to concede to what hon. Ddudu is proposing, then we should use the word "and" instead of "or" after the word "officer". That will make sense.

**The Chairman:** The drafts people can not participate but they are not in agreement. They are shaking their

heads from West to East; not up-down – (*Laughter*).

**Ms Waruhiu:** Hon. Chair, we would like confirmation if nonverbal communication is permissible on the floor of the House!

**The Chairman:** Only with the permission of the Chair, yes! Hon Mwatela, do you want to make an appeal?

**Mr Mwatela:** I only hope that this does not appear as if I am adamant; I am not. "A person who wilfully removes a Customs seal in accordance with the regulations" that is what you are saying, and you are making it an offence! The other one is "A person who wilfully removes any Customs seal without the authority of the proper officer"; that is an offence. So, you have to be able to grammatically separate these because if you are charged of contravening the regulations, you will be told you went there and removed the seal contrary to the regulation, not in accordance with the regulation!

**Mr Marando:** If I may just add on that, Mr Chairman, sometimes you may remove the seal – (*Interjections*) – Mr Chairman, I am envisaging a situation in criminal law where you may conspire with the proper officer to remove the seal but contrary to regulations, which means both the proper officer and yourself would have committed an offence, and both of you will be charged. He will have given you the authority but you would be doing it contrary to the regulations. Both of you would be charged with criminal offence. If you leave it like this, then I will not be guilty because I would have done it "in accordance". But if you put it as my honourable friend here is proposing then you have the possibility of charging both of

them criminally and sending them to jail.

**Mr Kangwana:** Mr Chairman, my understanding of this clause is that it is creating offences. And if it is creating offences, we have to start counting those offences. Now if you remove a seal in accordance with regulations, you are not committing an offence, therefore this section would not be creating an offence. So, I would like to agree with my colleagues; if we want to create an offence, we have to rephrase this. You create an offence by either acting contrary to regulations, or without authority.

**Capt Ddudu:** Mr Speaker, the key in this Clause 195 is in the word “without”: The word “without” confers it meaning on “authority” and on “accordance to regulations”. So the whole thing remains absolutely correct – *(interjections)*.

**The Chairman:** Honourable members, before you clarify, I would request the Counsel to the Community to consult the draft persons and get us the best proposal, and we will come back to this later.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, much as I would like to take advantage of your generosity in giving me time, I would like to propose something because I know the Committee is pressed for time. May be it will bail us out. Taking into account all that has been contributed in support of hon. Mwatela’s proposed amendment, if we could have this wording substituted for the phrase “in accordance with regulations”; “in circumstances contrary to the regulations.” It would then read:

“A person who wilfully removes any Customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in circumstances contrary to the regulations...”

Reluctantly I am trying to assist the Committee because I respect the Committee on this matter but as it was I think it was adequate.

*(Question on the amendment put and agreed to)*

*(Clause 195 as amended agreed to)*

*(Clauses 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209 and 210 jointly agreed to)*

## Clause 211

**Mr Kanyomozi:** Mr Chairman, Clause 211 is where we had difficulty on discriminatory treatment. I hope the Council and the people who are drafting will take note. Mr Chairman, Clause 211(1) takes the vehicles by weight, which makes it discriminatory against the small vehicles, which are normally the ones our people use, and leaves the bigger vehicles not to suffer punishment even when they break the rules. We are suggesting that we are going to leave it as it is but the amendment should come so as to give similar treatment to all vehicles which break the rules.

**Capt. Ddudu:** Mr Chairman I think we should leave it as it is. This one is particularly referring to the vehicles that use small paths; in fact here even animals are mentioned. You will not find a lorry passing where animals may be passing. It will obviously pass at Namanga; the main road! So they are

exclusively referring to small vehicles or bicycles that can be used in those *panya* routes.

**Mr Ogalo:** As a matter of procedure, I would like some clarification from the Counsel to the Community and the Chairman of Council of Ministers. This is one of the provisions we discussed yesterday and my understanding was that you were taking them on and that you would come with other versions of them. I understood this to mean that you would be coming with an amendment to this, because by the time we ended I think we had agreed that we could provide for seizure, although we could not go as far as forfeiture. I was expecting the CTC to be moving an amendment to that effect to give effect to what we agreed yesterday in the meeting!

**Mr Med Kaggwa:** Mr Chairman, we said it is normal procedure to seize any vehicle or whatever. As regards forfeiture, which was a centre of controversy, we agreed that they go and do research, even on other provisions related to this, and then at an appropriate time they will come up with an amendment – (*Interjection*).

**Ms Waruhiu:** Mr Chairman I recall that in the Committee sitting this morning we went through this issue, and reason it was left in doubt is that we were advised as if it is a standard cut-off line. And much as we are concerned about the harassment of our people, we needed to do some more homework! We were told that it is quite possible to get on our lakes within the borders of the East African Community with small vessels. So the research needs to be done, the amendment must be brought but we did not insist it must be today.

(*Clause 211 agreed to*)  
(*Clauses 212 and 213 agreed to*)

#### Clause 214

**Mr Kangwana:** We have a problem with Clause 214 (1). We are trying to understand what the second line means. It says: “Where anything has been seized under this Act, then unless such thing was seized in the presence of the owner of the thing...” What is this “thing”, Mr Chairman? (*Laughter*)

**Mr Zubedi:** Hon. Kangwana wants to know what this “thing” is, so I am telling him it is anything! It is here: “where anything” is the “thing!” (*Laughter*)

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, the noun “thing” here is used in its normal English sense to mean a thing which can be seized; anything capable of being seized – (*Laughter*).

(*Clauses 214, 215, 216, 217, 218 and 219 jointly agreed to*)

#### Clause 220

**Ms Waruhiu:** Hon Chair, listening to colleagues yesterday I am wondering whether the words “subordinate court” should not be defined. It appears on the third line of Clause 220 and it applies under 220(2). From what I understood yesterday reference to subordinate courts in our Partner States would be different, but I stand to be corrected.

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, in our Statute Book at the East African Community we have an Interpretation Act. Now that Interpretation Act, like under all jurisprudences, is supposed to guide us in interpreting all laws. This is a law enacted by the Community,

and under the provisions of this Interpretation Act, the term “subordinate court” just like the term “court” is well-defined. So when it comes to implementing this Act, we stand to be guided by the Interpretation Act. So the use of it here is adequate; it will not raise any problems in interpretation and perception.

**Mr Kangwana:** Mr Chairman, on 220(1) the proviso reads:

“Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant legislation in the Partner States.”

So that there is no confusion about what that means, I wanted to make it clear that it will be “in accordance with the civil procedure rules”, so that we do not take anything else from the statutes of the Partner States which might contravene the provisions of this Bill.

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, I want to appreciate my honourable friend’s proposed amendment, but I thought it was clear that if proceedings are of a civil nature, then inevitably you have to use the relevant Act, which is the Civil Procedure Act. There is no way, for example, that you can be enabled, or you can pretend, to use the Criminal Procedure Act. All civil proceedings will proceed in accordance to the relevant Act, the Civil Procedure Act. It may, with due respect to the Committee, be superfluous to add “in accordance with the Civil Procedure Act”.

**Mr Marando:** Mr Chairman I would also not wish to add the words “laws related to civil procedure” because

there are other matters which are of a civil nature but not falling under the Civil Procedure Act. So the best thing would be to add “provisions of the relevant procedural legislation”. So that if it is Civil Procedure, fine; if it is Prerogative Order, it still also falls in there. So it should read:

“Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant procedural legislation”.

*(Question on the amendment put and agreed to)*

*(Clause 220 as amended agreed to)*

## Clause 221

**The Counsel to the Community (Mr. Kaahwa):** Hon. Chairperson, when the Council and the Committee had a meeting, the Council proposed that the last words of Clause 221(1) be deleted and the Committee was agreeable. These are the words:

“unless the right of action is specifically given in any other provision in this Act”

The Council proposes that we delete these words.

**Ms. Mahfoudha Hamid:** I think we have to add a full stop after “tort” and the comma should be deleted.

*(Question on the amendment put and agreed to)*

*(Clause 221 as amended agreed to)*

**Mr Med Kaggwa:** Mr Chairman I just want to make this observation that Clause 221 in the copy of the Bill we were given earlier does not have the words that we are reading to be deleted from the printed copy. I am therefore

requesting that after this the Counsel to the Community and the drafts people will take time to marry the two versions.

**The Counsel to the Community (Mr. Kaahwa):** Mr Chairperson we appreciate the caution and take note and we shall act accordingly.

*(Clause 222 agreed to)*

#### Clause 223

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council of Ministers proposes the amendment of Clause 223 by deleting sub clause (a) in its entirety.

**Mr Marando:** Mr Chairman, the hon. Counsel to the Community must have inadvertently forgotten about the numbering; after removal of (a), then (b) (c) (d) and so on change in numbering.

*(Question on the amendment put and agreed to)*  
*(Clause 223 as amended agreed to)*  
*(Clause 224 agreed to)*

#### Clause 225

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council of Ministers proposes the creation of a new sub clause (2) to 225. The current one will be sub clause (1) and the new sub clause (2) will read as follows:

“Notwithstanding subsection (1), a person charged with an offence under this Act may apply to be tried in another place other than the place in which the offence was committed.”

This arises out of the deliberations we had with the Committee.

*(Question on the amendment put and agreed to)*

*(Clause 225 as amended agreed to)*

#### Clause 226

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council of Ministers proposes that Clause 226 sub clause (1) be deleted and a new sub clause (1) be inserted as follows:

“It shall not be a requirement in any proceedings under this Act to disclose the fact that any person received any information relating to any Customs matter, or the nature of the information, or the name of the person who gave that information.”

*(Question on the amendment put and agreed to)*  
*(Clause 226 as amended agreed to)*  
*(Clauses 227 agreed to)*

#### Clause 228

**Mr. Kangwana:** Mr. Chairperson, I am seeking a clarification. When you say “subject to any law in force in any Partner States”, what are we talking about? I am asking that because we should make a law that is applicable, and that is a matter that relates to a transitional period.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, we had addressed ourselves to similar provisions, and I propose that in line with what we agreed, we delete the words “subject to any law in force in any Partner States”

*(Question on the amendment put and agreed to)*  
*(Clause 228 as amended agreed to)*  
*(Clauses 229, 230 agreed to)*

**Clause 231**

**Mr Mwatela:** The same problem that we have had before, but in this case it looks a bit more complex: Clause 231 reads:

“Subject to any law in force in the Partner States with respect to tax appeals, each Partner State shall establish a tax appeals tribunal for the purpose of hearing appeals against the decisions of the Commissioner made under section 229”

We can see clearly here that we may need different Acts to establish these tribunals.

**Mr Marando:** Mr Chairman, maybe we do not need section 231. We may do that by simply adding to section 230(1) by saying: “to a tax appeals tribunal established in accordance with laws existing in Partner States” because they are already there. That is, if you are not satisfied with an appeal to the Commissioner, if he decides contrary to what you want and you want to appeal to a tax tribunal, which, in the case of Tanzania do exist, so this law may recognise the existence of those appeal tribunals and empowers someone to appeal to them.

**Mr Kanyomozi:** I am really seeking clarification. Unless those laws have been harmonised, treatment of people will be different. I would like to get it from the Council of Ministers whether these issues have been harmonised, and the treatment of the East African citizens is similar. If not, maybe we may have to take the direction of hon.

Mwatela and have our own laws regarding the appeals.

**Mr Medi Kaggwa:** My understanding of this provision is that despite the fact that there may be other tax appeals tribunals in the Partner States, once this law comes into force, they are compelled to establish tribunals which will be dealing with this law.

**Mr Kangwana:** I am also seeking clarification on that section. Would an appeal relay from the Partner States highest courts to the East African Court of Justice, which, under the Treaty is the one that is really supposed to interpret the laws of the Community?

**Ms Waruhiu:** Mr Chairman, for me I see this law as being on its own, so every time there is an effort to remove things from it when there are no other supporting legislations at the Community level. I would rather the lawyers gave some answers. Now they foresee difficulties but we are not really getting how to get out of this difficulty. So you pass one law, you say it is East African and it should apply at the East African level but at this level there is no other law. So how do we relate issues that fall under subordinate courts in Partner States with the provision that appeals on this matter go to the East African Court of Justice? So we need a statement on how this is envisaged to work before we get to the legal drafting stages. Speaking for myself, I think they are not making clearer.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, taking into account all the contributions and issues and questions on this particular clause, I must concede I need to consult with the experts in this area, and without appearing to take too

much of the time of the Committee, I undertake to do that as we consider other clauses so that towards the end of the Committee's consideration of the Bill, we will come up with an explanation.

**The Chairman:** So Clause 231 remains pending.

*(Clauses 232, 233, 234, 235, 236, 237, 237, 238, 239, 240, and 241 jointly agreed to)*

#### **Clause 242**

**Maj. Gen. Muntu:** Mr Chairman I would like to know whether the Committee considered the issue I raised yesterday on Clause 242 (b) and (c). Yesterday I raised the matter of not letting the Commissioner retain the prerogative of reward. I wanted a percentage to be set. If they did not consider it, I am going to go ahead and propose and amendment on (b) and (c).

**The Chairman:** Well, the Counsel to the Community does not have any amendment on that, so you may proceed and propose your amendment.

**Maj. Gen. Muntu:** Mr Chairman, I propose that for both (b) and (c) the award be 25 percent of the revenue recovered, or 25 percent of the worth of the goods seized.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, much as I appreciate the provision of the quantum of award here, I stand to be guided by the Committee on the percentage proposed by the honourable General, before I indicate the Council's agreement or otherwise.

**Mr Kaggwa:** Sir, my problem with percentages is that you may have situations where the amounts are so big, and yet the Commissioner would

persuade the person to take a lesser sum. So you would have avoided that. Secondly, I want to feel some degree of confidence in the Commissioner, that he or she can use good judgement in this matter. But to put a percentage really worries me.

**Capt Ddudu:** Mr Chairman, I would prefer we put in the percentage for the reason that whoever reports such a situation knows exactly what he is going to get, so that we avoid a situation where the Commissioner suggests you take 10 percent and he himself takes 2 percent. To block that gap for corruption, we need to put in the percentages. In fact for me I would have proposed 50 percent because, after all whatever has been recovered would have been lost!

**Lt. Gen. Adan:** Mr Chairman, I think here there is also the desire to have information forthcoming. So a reward, to my mind, is appropriate, I should be encouraged. And I would suggest maybe less than 25 percent but 10 percent would be fair.

**The Chairman, Council of Ministers (Mr Kikwete):** Hon Chairman, I would propose that let us leave this one as it is; this is the practice. In all these institutions they have money for informers, and it has never been the practice in any law to specify the percentage to give to informers. So I think let us leave it here, it is always there: the Police have it; the Customs have it; and for the Intelligence that is the rule – *(Laughter)*. I would really request that let us try not to be too prescriptive on this one. We may be doing something that is unconventional because it is always there but it is never 1 percent or 2 percent because if you look at the sums, for example 25 percent of a shipload of crude oil that is about US\$ 30 million, he will get

something but not to the extent of him getting US\$ 5 Million out of that! I am saying, I see merit in it but it is never the practice. Let us have a piece of legislation that is conventional; the normal practice in the world.

**Hon Abdi:** Mr Chairman, I agree with the Minister. We will have a situation where we have 90 million East Africans, one million will be doing business and the 99 million will be informers looking around warehouses – (*Laughter and Applause*). Mr Chairman, we will be encouraging idleness and *fitina*. So we should not agree to this.

**Maj Gen. Muntu:** Mr Chairman, I am ready to concede on the percentage; I agree it is high, it can be lowered. But I also know that most of our Customs departments – well let me not talk about Kenya and Tanzania because I do not know, I know about Uganda where I come from. I know there is a time when they set rewards, and they mention the percentages. My colleagues from Uganda may correct me if I am wrong.

The whole purpose of this is to encourage those who are in the know to come up with information, and if the revenue lost is high, like 1 billion shillings, if someone knows that by giving a report they are going to recover 10 billion shillings and he is going to take 10 percent which is 100 million shillings, it encourages him to go ahead. Otherwise, I know that most of these Customs departments and the revenue authorities are leaking; all of them are leaking! And this is consistent with the lenient sentences they are giving to the Customs officers! So, you are being lenient with the sentences of Customs officers and being mean with the people who could provide information to have them

arrested. So at the end of the day, what are you trying to do? On the one hand we are being lenient with sentences, on the other we are being mean with reward, how will you break through the mafia that normally builds up in these departments and creates a lot of haemorrhage?

**Ms Waruhiu:** Mr Chairman, if we were to extend hon. Muntu's argument, we are talking about officers who are in the course of their duty – (*Interjection*) – in any case all we are saying is, if you are going to provide information, you will do so because you want to; I do not think you would be doing it because of the reward. Otherwise, if you put a percentage you would actually encourage conniving! I am just extending the other side of the argument, that the offer of a reward can in fact lead to conniving because you can see the value. You can actually even arrange for your own goods to be lost if they are very expensive and then arrange for them to be found and walk away with one quarter of it.

**Mr Marando:** *Myenyekiti*, in the meeting yesterday I mentioned something that sounded at a certain stage as a joke, but I would like to repeat it. I think it is not the philosophy of a Customs system to pose itself as if it is at war with businessmen for purposes of collecting revenue. And it should not pose itself as if it is all the time hunting them to put them in jail.

The philosophy of a Customs system is to get revenue from as many businessmen as possible, and it is some kind of partnership between the Customs system and the businessmen. So, if a businessman is found to be at fault, the philosophy should make him pay the statutory revenue and fine rather than confining him in jail and

thereby loose revenue for three or ten years. If you make him pay the revenue and fine, he will go back to the field, continue to contribute, make another offence and pay the fine again - because they will always keep on making offences: they are for profit, it is their business. And in respect of this one here, the two sides of the coin are the same, Mr Chairman.

My good friend hon. Muntu is saying we should encourage informers to come forward, but at the same time I also foresee a possibility of lots of opportunists coming forward; as the businessman hon. Abdi said, one million businessmen doing business and 99 million after them. So the only balance is what has been the tradition and practice that has maintained the Customs system going on, and has apparently worked until this time. Of course corruption will be there but the Customs system is to police for the purpose of earning revenue, not to haunt the businessmen all the time. And there is also a symbiotic relationship between the Customs officers and these businessmen who are also – *(Laughter)* -

**The Chairman:** I am sure hon. Zubedi and hon. Abdi have immediately become clients for hon. Marando! *(Laughter)*

**Mr Kanyomozi:** Mr Chairman, much as I sympathise with the percentage, I look at the possibility of abuse, because we have even seen it with people doing auctions! A person fails and becomes bankrupt intentionally and he goes behind other people and arranges for an auction! And this one could be even worse! When I know there is a reward of 20 or 25 percent, it may encourage things. I think all we need to pronounce in this law is that there is a reward if you give

information. Let us not fix it in percentages; otherwise it may lead to abuse. I would suggest to hon. Muntu to look at it from that angle and reduce even the possibilities of colluding and corruption at a higher level when this thing is given in percentages.

**The Chairman:** I think the general opinion is that it remains as it is – *(Yah! Yah!)*

**Maj. Gen. Muntu:** I can see the direction of the tide but before I concede, let me give some information. Privately study some of the countries that have developed what they call the “Whistle Blower Act”. They have gone to the extent of creating Acts that even protect insiders who give information. If you look at some of the biggest, like the United States of America, recently there was a multi-billion dollar business that went down, the ENRON, and after that, the audit firm that was supposed to audit ENRON – anyway, if you study that case you will realise that the rest of the world knows that if you do not have protection for people who bring up information that protects the public, you will get into a problem.

I concede, but we are moving to a future that is not as easy as you think.

**The Chairman:** Your caution and advice have seriously been taken by the Committee.

**Ms Waruhiu:** On a point of information, I want to inform hon. Muntu that we have already started moving in that direction of creating protection for whistle blowers as per Article 226 as now amended. We had a discussion on this yesterday.

### Clause 243

**Mr. Daniel Ogalo:** Mr. Chairman, I would like to seek some clarification from the Counsel to the Community. Clause 243 says:

“Where any goods are sold under this Act – and of course they are being sold in the Partner States – then the provisions of any legislation of any of the Partner States relating to auctioneers shall not apply to such sale.”

So, my query is which law will apply?

**Mr. Kangwana:** Mr. Chairman, I would like to propose an amendment to that Clause by removing the word “not” in the second line, which then will read: “

“Where any goods are sold under this Act, then the provisions of any legislation of any of the Partner States relating to auctioneers shall apply to such sale.”

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council is agreeable to the proposed amendment. Hon Chairperson, I am taking into account the fact that we do not have any law relating to auction sales. Now we have two options: either we sell under this Act or, pending the enactment of a Community law, get the legislation of the Partner States to apply.

*(Question on the amendment put and agreed to)*  
*(Clause 2 43 as amended agreed to)*

#### **Clause 244**

**Mr. Med Kaggwa:** Mr. Chairman I think there is a typographical error in 244 sub clause (2) on the fourth line.

There are two “of any” and I think one of them should be deleted.

*(Question on the amendment put and agreed to)*  
*(Clause 244 as amended agreed to)*  
*(Clauses 245, 246, 247 agreed to)*

#### **Clause 248**

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council proposes the deletion of Clause 248 in view of the provisions of Article 8 of the Treaty and Clause 245 of this Bill. This will consequentially change the numbering in the Bill.

*(Question on the amendment put and agreed to)*  
*(Clause 248 as amended agreed to)*  
*(Clauses 249, 250, 251 jointly agreed to)*

#### **Clause 252**

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson with respect to Clause 252, the Council proposes amendment by inserting a new paragraph (l) after (k) to read:

“(l) the security to be given in accordance with section 107”

And secondly, by inserting a new sub-clause (3) after the present (2) to read:

“(3) The Council may, by regulations, adjust any penalty prescribed by this Act”

Hon. Chairperson this is to cater for what we have been discussing with regard to the adequacy of the penalties in respect of the offences created by this Bill. And then of course after the deletion of Clause 248, these provisions will be renumbered so that this clause 252 will become Clause

251 and the rest will follow accordingly.

**Mr. Kangwana:** Mr. Chairman, I am just seeking clarification on these regulations. I know we discussed about them yesterday, but the way they have been drafted does not indicate to this House whether they will be brought to the House for approval, unless of course they are being made under the Protocol on the Establishment of the East African Community Customs Union. We also said that they should be brought to this House for approval. Now under Article 39 of the Protocol, ministers may make regulations and directives which need not come to this House and which in fact will for part of the laws of the Community. I am anxious that any change of penalties should come to this House for approval. So, Mr Chairman, what I am suggesting is that we redraft this amendment to indicate that that change should be approved by the House.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson. I appreciate the contribution made by my hon. Friend, and the Council is agreeable to that proposed amendment of the amendment as indicated. We will redraft: "The Council may, by regulation, adjust any penalties prescribed by this Act." We will have the drafting to reflect those sentiments of the Committee.

**Mr. Med Kaggwa:** "The Council may, with the approval of the Assembly, make regulations to adjust any penalty prescribed in this Act" because, Mr Chairman, the laying and approval are two different things

**The Counsel to the Community (Mr. Kaahwa):** Mr. Chairperson, sir, the Council is agreeable to that further amendment.

*(Question on the amendment put and agreed to)*

**Mr Kangwana:** I seek guidance Mr Chairman. The question you proposed in relation to Clause 252 presumably related to the amendment to the Amendment. In that case, I would like to place another issue under 252.

There are two issues that arose during this Committee's sittings; one is the tonnage of vessels which the Council said they are going to consider, the other issue which was referred to in the Chairman's speech refers to taxation, and I would like to suggest that we have an additional clause to require the Council to bring those amendments and any other amendments deemed necessary to enrich this Bill.

Mr Chairman, I have only raised this because Clause 252 deals with regulations, and I wanted to add two additional regulations which will govern those issues.

**Mr Kanyomozi:** Mr Chairman, in support of the suggestion, we want to tie these things together, and I think it would be proper to have the suggestions by hon. Kangwana included in 252 so that we leave the others for a later stage.

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, I take it that the proposal is meant to include within the categorisation of areas in respect of which the Council will make regulations generally. I take it that the proposal is meant to include the area of double taxation as one of the areas in respect of which the Council may make regulations, and that can come appropriately as sub clause (m). We already have a new sub clause (l); we can have a sub clause (m) in this regard.

**Ms Waruhiu:** Mr Chairman, the difficulty I have is that these are two issues we can foresee at the moment, that is double taxation and the issue of tonnage. Is it not easier to expect that there will be regulations in other areas rather than being very specific? And just because we have foreseen two areas and we provide for those two, what are we doing about the others?

**The Chairman Council of Ministers (Mr Kikwete):** Mr Chairman, I agree with hon. Rose Waruhiu in that we should have regulations for issues that are long standing, but if we have regulation to solve only the issue of double taxation, we can have an enabling clause that will give Council latitude to handle such issues. But to have a clause specific for double taxation appearing in this Act, and then after you have solved that problem, that will never be required for life, almost.

I see the need to deal with the issue of double taxation as we have promise but I would really appeal to this House to take our word, since it is there, we made it public, that we will handle the matter. But I do not think we need to have a special regulation for that or special regulations on bringing to book the larger vessels rather than the small ones. I think there will be just too many regulations! Since Council has these powers or if we think we can create a general kind of regulation that will give Council the powers and latitude to handle such issues as they arise, I do not think it would be good to have a specific regulation for a specific item that is a one short item and once we have finished it that regulation will not be required for life.

**Mr Zubedi:** Mr Chairman I think I would agree with the hon. Chairman of Council because Customs laws change continuously, and as we implement the

Customs Union. At the moment we have seen the double taxation problem; we have seen the problem of the size of the vessels but I am sure in the implementation stages and the transitional period, we will come across a lot of other issues, which will lead to change as they arise. So, yes, we should give the Council some general latitude rather than specifying one by one because we can only see two or three at the moment but we will see so many more.

**Mr Kangwana:** Mr Chairman, first of all, I am obviously aware that provisions to make regulations are made for Council, not only in this Bill, but also in the Treaty. So there is no problem with that and in order to make matters easier, I am willing to accept Councils undertaking that they will be bringing these amendments under the general provisions of the Treaty and the Act, to make amendments by way of regulations which they will be bringing to this House and I am just anxious that those amendments are brought as soon as possible, especially in relation to double taxation because that starts on 1<sup>st</sup> of January.

So, I am willing to concede that we do not make specific provisions for those two, provided the Council undertakes to bring those amendments as soon as possible. Because I know they are concerned about it, so I am willing to accept their undertaking.

**The Chairman Council of Ministers (Mr Kikwete):** Mr Chairman, I undertake on behalf of Council that we will look into the matter of double taxation and the issue of the matter related to large vessels as soon as possible – *(Applause)*.

*(Clauses 253 and 254 agreed to)*

*First Schedule agreed to***Second Schedule**

**Ms Kawamara:** Mr Chairman, I have a query on item (3) about pornographic materials in all kinds of media. Do we have the capacity to really restrict or prohibit, given the advanced state of information technology, because I know pornography is even within our living rooms on the television and on the internet! So how is this going to be prohibited and restricted?

**Mr Kangwana:** Mr Chairman, all that we have done is to create offences. And if we do not have the capacity now, that is not to say we will not have the capacity tomorrow. And you, the way the law operates is that if you are caught, you are charged, and that does not mean there are no other people doing what you have been caught and charged for! (*Laughter*)

**Mr Nangale:** Hon. Chairman, I would like to get clarification on item (7) on narcotic drugs under international control. As far as I understand, for example *miraa* is legalised in Kenya but it is prohibited in Tanzania. Can the Chairman Council of Ministers clarify on these items?

**Mr Abdi:** Mr Chairman, *miraa* is not a narcotic; it is not a drug. It has been tested and actually it is an agricultural product. It goes to the United Kingdom, and maybe the Chairman can take it to the Tanzanian Parliament and they remove it. It is an herb.

**Mr Marando:** Mr Chairman, may I take this opportunity to inform the Committee that when we came from Kenya, on behalf of our chapter chairman, I wrote to the Ministry of Home Affairs conveying the feelings

of our brother people of Kenya, and the people of Meru in particular, about the *miraa* and I received a reply from our Minister for Home Affairs, which was also copied to the other chapter chairmen, that this matter of *miraa* falls under the docket of the office of the Prime Minister dealing with narcotics and the minister asked the minister concerned to react to the queries raised from Kenya, and we are still waiting for the outcome of the correspondence.

**Mr Kangwana:** Mr Chairman, under item (11) there is a long list of agricultural chemicals, and I am raising a query on DDT, which I know is banned in some countries within the Community but I think it is used in one of the Partner States and advocated for. I know once we pass this Bill then it will be prohibited. So I am drawing the attention of those who may be using it to this.

**Ms Kawamara:** Mr Chairman, I think let us be uniform; let us maintain it as a prohibited good.

**Capt Ddudu:** Mr Speaker, I would rather we delete it from this list for the reason that we as a House went to some parts of Kenya where we say the merits and demerits of using DDT, and after one of our trips it was the view of this House that DDT could be used – (*Interjection*) – so our judgement should be influenced by what we saw in the field.

**Mr Abdi:** Mr Speaker, DDT is banned in Kenya; I do not know where the honourable Member saw it – (*Laughter*).

**Mr Med Kaggwa:** Mr Chairman I think we must make a distinction. The provision says: “The following agricultural and industrial chemicals.”

My understanding of this is that when it comes to agricultural matters, DDT is banned but when it comes to other matters, it may be used. So we must make this distinction.

**The Chairman Council of Ministers (Mr Kikwete):** Hon Chairman, this Bill has been prepared by the Judicial Committee of Council, which is the highest legal advisory body of the Community because at the apex of the Judicial Committee, we have the Attorneys General of our three Partner States. The attorney General of Uganda is part of this Bill, so I do not think there is anything for you to worry about.

**Mr Ogalo:** In addition to what was raised earlier on (7) “Narcotic drugs under international control”, these prohibited goods we can not import, so what are these drugs which are under international control? Is the word “control” misplaced? I think it should be “narcotic drugs prohibited by international convention”?

**Mr Kangwana:** Mr Chairman, you know some countries in Europe now have removed offences related to *sativa cannabis* – *bhang* – but it is still an offence to smoke *bhang* in East Africa. So what hon. Ogalo is asking makes sense because to me it would have been useful to have a list narcotic drugs under international control, not necessarily for inclusion in here, although that would be even better, but at least so we know the scope of this control!

**The Chairman:** I think the word “convention” would provide comfort to most of us.

**The Chairman Council of Ministers (Mr Kikwete):** Hon. Chairman, maybe we should leave (7) as it is because I am not sure if all the narcotic drugs are

prohibited under international conventions. Some of them may be just international agreements or understanding. So you may use the word “conventions” but “international control” is much wider: it covers agreements or understandings or even conventions. So I think let us leave it as it is.

*(Question that item (7) of the Second Schedule remains as it is put and agreed to)*

**Mr Nangale:** Mr Chairman, in Part B – Restricted goods item (8) reads: “ivory, elephant un-worked but simply prepared but not cut to shape”. I propose to insert the word “of” between “ivory” and “elephant” so that it reads: “ivory of elephant un-worked but simply prepared but not cut to shape.”

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, before the Committee considers amending these lists, the Committee stands advised that these lists are based on some agreed standards, some of which are international. If you look at item (8) which hon. Nangale is referring us to, and (9) and (10) and all those others which honourable members are identifying, the wording is similar and standard. You may find that this particular description which for purposes of restriction and prohibition is used as it appears. We may imagine that this was a mistake, that they should have referred to “elephant ivory” or “hippopotamus teeth” and in the process restrict the listings contained in here.

*(Question on the Second Schedule put and agreed to)*

### Third Schedule

**Mr Marando:** Mr Chairman, under the Third Schedule, in Part B “Restricted Goods” I want clarification on why under item (1)(d) “fresh unprocessed fish” we have only Tilapia and Nile Perch when we also have other types of fish?

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, we may have to go back to the whole philosophy behind restricting and prohibiting certain exports. You may find in this case that there is need to restrict exportation of certain fish species we have, and in this regard, Nile Perch and Tilapia. May be these are endangered species; may be they are such a species in respect of which we are seeking some further protection, because Nile Perch and Tilapia are natives of the East African region.

**Mr Kangwana:** Mr Chairman, I have not bought the explanation given by CTC in respect of fish. In fact when we visited Lake Victoria, out of the 300 species of fish, it is only about two of them that have remained there in plentiful numbers, and that is Nile Perch and the Tilapia. I have a suspicion that the reason why it is this Tilapia and the Nile Perch that have been put here as restricted goods is because our people fish there. Like the vessels that we talked about earlier, it appears to me that we have left all our sea fish species open for any body, they are not restricted because international vessels fish there. Whenever our people are doing some business, whether it is fishing or rowing, we tend to restrict them. So, I am saying, Mr Chairman, if we are going to include fish as restricted goods, I would be happy to see Nile Perch and Tilapia left, but I would like to add other sea fish which have not been mentioned here so that we are

consistent, because there are many species I know in the sea that are more endangered than the Nile Perch and Tilapia, and some of them have been depleted.

**Mr Mwatela:** Mr Chairman, my interpretation of singling out Nile Perch and Tilapia is that it is for the purpose of protecting our fish industry - because here you are talking about the unprocessed fish – so that you add value. Already fish is a big business for East Africa, particularly to Europe. So if you allow people to export unprocessed fish, it means you are killing your own industries. I would, of course, agree with hon. Kangwana that indeed we have other fish which we are allowing to go wholesome instead of restricting and creating more jobs for our people, but because we do not have the facts as to which fish fall under that category, maybe the Council of Ministers can find out and probably include those fish in the schedule so that we get these fish being processed in Mombasa Dar es Salaam and so on.

**Mr Shamala:** Mr Chairman, the honourable members contributing on this item, I do not know them as experts in this area, and in the absence of experts to tell us why we are restricting certain fish from being exported, I would rather go with what there is in here because I imagine the experts have looked at it, and that is why they have put it here. Next time when a Bill is introduced and there is sufficient time, we will go through this kind of thing and inquire from the experts and come with reasonable knowledge so that we can agree to either add something or subtract. But for the time being, I propose we go by this schedule as it stands.

*(Question on the Third Schedule put and agreed to)*

*(Question on the Fourth Schedule put and agreed to)*

### **Fifth Schedule**

**Mr Kanyomozi:** Mr Chairman on 176 “Rally Drivers”, the tendency worldwide now is to reduce the entry of these people into countries because of the impact they have on the environment and misuse of resources. I am wondering whether we should provide a special treatment for them. I wanted to delete it completely.

*(Question on the amendment put and negated)*

**Mr Nangale:** Mr Chairman, I would like to seek clarification on Part A-Specific Exemptions, item (2) “Partner States Armed Forces”. By “armed forces” do we mean defence forces, do we mean Prisons, do we mean Police or do we mean the militia?

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, I am sorry I do not have my copy of the interpretation Act here but “Partner States Armed Forces” means the armed forces of the Partner States.

**The Chairman Council of Ministers (Mr Kikwete):** Mr Chairman, hon. Nangale was making reference to the people’s militia. The people’s militia are not part of the armed forces; they are part of what we call the irregular forces, or civil defence institutions.

*(Question on the Fifth Schedule put and agreed to)*

**Mr Kangwana:** Mr Chairman, I was not here during the last meeting but I was made to understand that the Council of Ministers took over a Private Member’s Bill on immunities and privileges of Members and Community officials. And I recollect

clearly that in that Bill we had proposed that Community officials and the Community as an international organisation could be exempted from certain duties on certain goods like cars. Mr Chairman, in the absence of that Bill being enacted, and also knowing that this Bill we have now will become law in January, what will happen to the Goods that will be imported by members of the Assembly during that time, in other words, from 1<sup>st</sup> of January and before the Immunities and Privileges Bill becomes law?

### **The Chairman Council of Ministers**

**(Mr Kikwete):** Mr Chairman, my view is that maybe it would have been easier to take care of the issue of immunities here. That one is broader and it talks about immunities and this one is about exemptions. We could have taken care of the issue of immunities for the East African Community as well but the schedules are easy to amend, because according to paragraph 114 (3) “The Council may, by notice in the Gazette, amend the Fifth Schedule.” So since it takes a lot of wording to accommodate an institution in this category, we will try as much as possible to bring the Bill on the Immunities of the East African Community which will take care of all this. We could also at the same time get the possibility of including the exemptions using the powers given to Council under Article 114 (3).

**The Chairman:** So we would have a dual track approach: One is to include us here, while at the same time expedite the Bill on privileges and powers of the Assembly.

*(Sixth Schedule agreed to)*

### **The Title**

**The Counsel to the Community (Mr. Kaahwa):** Hon Chairperson, the Council proposes that that the title of the Bill be amended by inserting the word “Community” between the words “African” and “Customs” wherever the phrase “the East African Customs Management Bill” or the East African Customs Management Act” appear.

*(Question on the amendment put and agreed to)*

*(Title as amended agreed to)*

*(Clause 1 agreed to)*

#### **MOTION FOR THE HOUSE TO RESUME**

**The Chairperson of the Council of Ministers (Mr. Kikwete):** Hon Chairperson, I beg to move that the House do resume and the Committee of the whole House do report its consideration of the East African Community Customs Management Bill, 2004.

*(Question put and agreed to)*

*(The House resumed, the Speaker in the Chair)*

#### **BILLS REPORT STAGE**

**The Chairperson of the Council of Ministers (Mr. Kikwete):** Mr. Speaker, sir, I beg to report that the Committee of the whole House has considered the East African Community Customs Management Bill, 2004 and approved it with amendments.

#### **MOTION**

#### **FOR ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE HOUSE**

**The Chairperson of the Council of Ministers (Mr. Kikwete):** Mr. Speaker, sir, I beg to move that the report of the Committee of the Whole House be adopted.

*(Question put and agreed to)*

#### **BILLS THIRD READING**

The East African Community Customs Management Bill, 2004

**The Chairperson of the Council of Ministers (Mr. Jakaya Kikwete):** Mr. Speaker, sir, I beg to move that the East African Community Customs Management Bill, 2004 be now read the Third Time and do pass with amendments.

*(Question put and agreed to)*

*(Bill read a Third Time and passed)*

A Bill for an Act entitled the East African Community Customs Management Act, 2004

#### **ADJOURNMENT**

**The Speaker:** I wish to thank all of you; the hon. Minister, the honourable members of the Assembly, the support staff who have worked tirelessly to make this Bill a success. I thank you all and I adjourn this House *sine die*.

*(The House rose at 3.45 p.m. and adjourned sine die)*