



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

Official Report of the Proceedings of the East African Legislative Assembly

FOURTH MEETING– FIFTH SESSION – SECOND ASSEMBLY

Thursday, 19th April 2012

The East African Legislative Assembly met at 9.30 a.m. in the Chamber of Kenya National Assembly, Nairobi.

PRAYERS

(The Speaker, Mr Abidrahin Abdi, in the Chair.)

The Assembly was called to order.

LAYING OF PAPERS

The Speaker: Hon. Ndahiro.

Dr James Ndahiro: Hon. Speaker, I bring today on Table the report of the Committee on Trade, Communication and Investment on the Non Tariff Barriers in the East African Region. I beg to lay.

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT (AMENDMENT) BILL, 2012

BILLS COMMITTEE STAGE

Clause 1

The Chairman: Hon. Members, I propose that clause 1 be part of the Bill.

(Question put and agreed to.)

Clause 2

The Chairman: Hon. Members, I propose that clause 2 be part of the Bill.

Mr Munya: Mr Chairman, I would like to amend clause 2 by introducing a new clause 2 that contains the following definitions: one, the definition of arms trafficking which means, “The illegal trafficking or smuggling of contraband weapons or ammunition.” Then counterfeit goods means, “Goods that are an imitation of other goods but do not reach the standards of those other goods (including unauthorised commercial dealings in copyright protected works) and includes any tools used for the purposes of counterfeiting.

Drug trafficking means, “The illicit importation or exportation, manufacturing, supplying, giving, storing administering, conveyance, delivery or distribution by any person of a narcotic drug or phycotrophic substance or any substance represented or handout by such a person to be a narcotic drug or phycotrophic substance or making any offer in respect thereof.”

Intellectual property means, “(a) The rights in respect of a trademark conferred by the trademark laws of the relevant Partner States;

(b) A copyright and written rights in any work or any right protected by the copyright laws of the relevant Partner States.”

Terrorism means, “(a) Any act which is a violation of the criminal laws of a Partner State and which may endanger the life, integrity or freedom of or cause serious injury or death to any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any Government body, institution, the general public or any segment or any of these to do or abstain from doing any act or to adopt or abandon a particular stand point or to act according to certain principles or

(ii) Disrupting public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State.

(b) Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, create, conspiracy, organising or procurement of any person with the intent to commit any act referred to in paragraph a (i) and (ii).”

Mr Gervase Akhaabi: Thank you, Mr Chairman. In the proposed definition of intellectual property rights, I would wish to see the inclusion of patent unless we have to stretch copyright to also include patent. But it would be better if we included a patent as an intellectual property right specifically.

Mr Munya: Mr Chairman, we support that amendment; it enhances and completes the meaning of intellectual property.

Ms Byamukama: Mr Chairman, having noted the omission that has been highlighted by the hon. Akhaabi, I am a little bit concerned in that when we are defining these terminologies, there may be need for us to make reference to internationally recognised definitions. I know all of us are privy to the WTO arrangements as well as intellectual property rights and the arrangements that we have therein. I would feel more comfortable if the hon. Chair of Council could maybe make reference to where these definitions have been lifted from. Otherwise we may omit internationally recognised definitions. I thank you.

Mr Munya: Mr Chairman, these definitions are actually borrowed from WTO definitions because this is one of the definitions that have big definitions; counterfeit goods specifically is borrowed from the WTO definition of counterfeit goods. Intellectual property is also borrowed from there.

Dr. Ndahiro: Mr Chairman, on the definition of counterfeit goods, there is a part they omitted which refers to the intention. All definitions that I have seen end with the words, “with the intention to deceive or forge.” I don’t know whether it was deliberate but according to the WTO definition that definition ends with those words. I have submitted the amendment of that definition to the Clerk. Thank you.

The Chairman: Hon. Ndahiro has submitted that: “Counterfeit goods means goods that are as a result of imitation with intent to deceive or forge.” Can you imagine those two definitions as possible?

Dr Kabourou: Thank you, Mr Chairman. I am just concerned about the minister’s response where he said that most of the definitions have been lifted from the WTO definitions and yet he has accepted to include patents. Wouldn’t that be in contradiction to the WTO definitions in this intellectual property thing?

Ms Kwekwe: Thank you, Mr Chairman. On the definition of intellectual property rights, which hon. Kabura has just been talking about, I think it would be safe for us to go excessively on the WTO-

The Chairman: Hon. Members, let us be a little neater; I think we are jumbling up things. Let us start from the beginning and then come towards the end; let us begin with arms trafficking. Does anybody have a problem with that? It seems not. Counterfeit goods; we have agreed on that one. Yes, hon. Minister.

Mr Munya: Mr Chairman, we agree with hon. Ndahiro's amendment.

The Chairman: We said we would merge it later; I guess we will merge the two definitions. Drug trafficking? No problems. Intellectual property; hon. Safina was on the floor.

Ms Kwekwe: Thank you, Mr Chairman. I beg the Chair of Council to take wholesomely the WTO definition of intellectual property rights because it goes beyond just copyrights and patents. In the region we have specific land marks that are geographical in nature and specific to the region. Those in themselves are an intellectual property. For example, Kilimanjaro is a geographical indication of the region and anybody who purports to produce a product in the region of Kilimanjaro without express authority of Tanzania commits a crime; it is an infringement on the property rights of Tanzania because Kilimanjaro is a geographical indication just like Champagne is a geographical indication of France and that is why all the wines that were bearing the name "Champagne" from South Africa has gradually phased out and assumed more South African names. So, hon. Chairman, I beg that counterfeit goods may not be necessarily manufactured or corporate goods but could also be those protected by geographic indications. And so the definition of intellectual property goods could be wider than what has been provided in (a) and b. I thank you.

Mr Munya: Mr Chairman, I don't really get what hon. Safina Kwekwe is talking about. Is she improving this definition or is she elaborating or giving us examples?

Ms Kwekwe: I am not doing any of what the minister has said. What I have said is that the definition provided is inadequate as it does not provide entirely for intellectual property rights because intellectual property has several categories. But for the purposes of the region, one of the key areas that have been left out is geographical indication.

The Chairman: Hon. Member, could you propose an amendment instead of just saying it so that we could easily know which way you are going?

Ms Kwekwe: I can give you a written one but my proposal is that we have a (c) saying, "Geographical items or products that are protected by geographic indications."

Ms Byamukama: Mr Chairman, we are concerned about this particular definition partly because we know for a fact that all of the East African Partner States are signatories to WTO regulatory framework in particular that on trade related aspects to intellectual property. And this particular aspect, as hon. Safina has said, not only talks about patents, trademarks and copyrights, but also talks about geographical indicators. So, as a way out, I am proposing that instead of confining intellectual property rights to mean adopt the meaning of Partner States, we would rather make

reference to the internationally recognised intellectual property regime and in particular that under WTO related to trade that is also related to aspects of intellectual property. If you gave us a bit of time, I am sure the Clerk's office would be able to pick this one from what is known as TRIPS in short. I thank you, Mr Chairman and since you are still conferring, we did some studies on this at ESAMI and some of us passed with distinction. So, we are very concerned. Thank you.

The Chairman: Hon. Members, yesterday when the minister told you that he was going to refer to Partner States you refused and said he had the definitions. Now that he has brought the definitions, you are again complaining about them; you go one way and the other.

Mr Akhaabi: Thank you, Mr Chairman. With regard to these definitions, they are very important and as hon. Byamukama is saying, I think that we should adopt a definition that is as encompassing as possible.

When we are talking about intellectual property rights, the first point of reference should not be the World Trade Organisation; it should be the World Intellectual Property Organisation (WIPO). So, that is where we should look for the definition of intellectual property and not under WTO.

Secondly, instead of saying it means, we should say, "includes" so that anything else like what hon. Safina is referring to could be included rather than miss.

Thirdly, whereas a geographical indication may be a trademark, it is definitely not an intellectual property. It is a trademark in a sense.

The Chairman: I think you are supporting the minister in this case, isn't it?

Mr Akhaabi: I am saying that the geographical indication could be included in the meaning of a trademark; it be expanded to include a geographical indication. But my point here is that we should look for these meanings from the World Intellectual Property Organisation definition and not the World Trade Organisation. We should use terms that are inclusive and not restrictive.

The Chairman: You have made your point. Thank you.

Mr Kaahwa: Thank you, Mr Chairman. Our entry point in these definitions should be the Bill itself. We should be defining the terms and words with reference to the relevance of those terms and words to the Bill. We should only define terms and words which have relevance to the Bill. So, we cannot extend the definition beyond what is required of the expectations of this Bill. But I entirely agree with my honourable friend, hon. Akhaabi that to be inclusive to the extent required of this Bill, we include the words "Intellectual property rights means and includes as stated here in the definition."

When you look at our statute books, especially with the Common Law tradition, statutes referring to patents, separate sections referring to copyrights and separate statutes referring to trademarks. But within the WIPO and WTO definitions now, trademarks include patents. Therefore, we don't need to include the word "patent" within part (a) of this definition.

Thirdly, I heard the hon. Dr Kabourou asking whether we are not infringing our commitments on the WTO and other international conventions when we make amendments to these definitions. We always make reference to WIPO and WTO in this case, for purposes of precedence and we bring them here for purposes of our participation in WIPO are already defined. But for purposes of our Bill here, we need to sort of use those as precedents and conform them to our requirements. I thank you, Mr Chairman.

The Chairman: Mr Minister, I think the CTC has taken care of your issues now.

Dr Ndahiro: Mr Chairman, the definition of terrorism in Part 2 of Section 2 (a) where it includes public service, I am of the view that they delete those two first words because the definition will be open ended if we included public service because even accidental hooting of a horn might be tantamount to terrorism. So, I thought that probably if they deleted those two words and leave in the disruption of essential services. The amendment is sent to you, Mr Chairman. Thank you.

The Chairman: Hon. Minister, you hear that even hooting might be taken as terrorism.

Mr Munya: Mr Chairman, you need to read the whole definition because Part 1 and 2 right from a. So, you have to read a, which is an act of violation of the criminal laws of a Partner State, and which may endanger its security. So, if it is not violating any law, then it cannot be defined as terrorist act. So, you start with that first statement that “it is a violation of “a certain law and then you are defining the acts that come there. If you are treading it in isolation then it will not make sense; you will include anything like even building a house.

Dr Ndahiro: Mr Chairman, I don’t agree with that explanation because one can go to jail not on a full article but a section of that article. Thank you.

The Chairman: Then you must have a lawyer who doesn’t know the law. (*Laughter*) Okay, let first finalise with it. Hon. Members, is there anybody else who agreed with what hon. Ndahiro is saying?

Ms Hajabakiga: Thank you, Mr Chairman. The amendment of hon. Ndahiro doesn’t remove the public service but just tries to clarify by deleting “any public service” and instead keeping the second part which is “disrupt the delivery of any essential services to the public or to create a public emergence or create general insurrection in a Partner State.”

The Chairman: Maybe the hon. Minister could tell us what a “public service” is? And is the definition you got for terrorism internationally acceptable, is it from a dictionary or some international organisation?

Mr Munya: Mr Chairman, a “public service” is for example, if you disrupt public transport or water pipeline or an oil pipeline that is a “public service.” So, if it is disrupted, that is terrorism. If we remove that, we shall completely water down the definition.

The Chairman: But hon. Minister, does it mean that if I am driving and I hit a pipeline and it causes death, I am a terrorist?

Mr Munya: Mr Chairman, it doesn't mean that you are a terrorist because that is taken care of by Part a; intentions-what are your intentions? If you accidentally hit a pipeline or an electric pole, you are not a terrorist because it has happened inadvertently. But when you do it with calculation, you will have planned to do it intentionally to damage that public service.

Ms Hajabakiga: Thank you, Mr Chairman. We agree that delivery of public service is right but the way it is written. It begins, "disruption of public services," how do you disrupt public services? So, that is the reason we were amending and removing any "public service" and maintaining "disrupt the delivery of essential services to the public." That includes transport, pipes and whatever kind of delivery of services. It is very difficult to understand the first part.

The Chairman: Hon. Minister, if you look further, you say, "disruption of any public service" and then you go on to say, "The delivery of any public service."

Mr Munya: Mr Chairman, what I am arguing is that this inclusion of "disruption of any public service" only enhances the definition because an essential service may not necessarily be a public service. So, if we remove it, we will not improve the definition but only water it down.

Ms Byamukama: Mr Chairman, I am sorry, I don't know whether this one will help but each Partner State has definitions on terrorism. And each Partner State has over time evolved a specific law which deals with the issue of terrorism. My challenge here is that when we were making the Terrorism Act of Uganda, I don't remember inclusion of this particular aspect of public service. So, if, for example, intellectual property's definition has made reference to the laws of the relevant Partner State, why don't we, since we are asking that this law enables collaboration, leave this to mean and include the definition accorded to it by the relevant Partner State?

What I am trying to say, Mr Chairman is that if you define it here, you stand the challenge of either including or excluding some aspects which may not be in the Partner State laws because each Partner State has a specific definition, which I think has an international angle, we will be better off saying, "it means and includes the definition accorded to it by the relevant Partner State." Otherwise, for example, the issue of public service is an area, which is also relatively new even the realm of the Partner State where I come from. I thank you, Mr Chairman.

The Chairman: Hon. Byamukama, I thought that you were one of the people who are very good at community law and that they supersede national laws. Why don't we do something whereby they now follow the law passed here instead of going for the definition of the Partner State as the Treaty also calls for?

Ms Byamukama: Mr Chairman, they say, "If you can't beat them, you join them."

(Laughter)

On intellectual property rights, I made reference to WTO that we adopt the definitions under WTO, which includes WIPO. And we didn't do that. This means – I am sorry to take you back-when you are talking about jurisdiction on the issue of intellectual property rights, which is vested with the East African Court of Justice, we shall be limiting the East African Court of Justice because we shall be obliging it to apply the Partner State law, which may not be

applicable in that case. That is why we wanted to make reference to WTO, WIPO and TRIPS. So, since that fell by the wayside, I thought now this would be consistent with the kind of proposals they are making. But I agree with you, Sir that we need to harmonise and make sure that when we make laws at the East African Community level, the definitions that we adopt, especially on issues like intellectual property rights or terrorism, which is now an international issue, we make reference to international instruments that we have recognised and ratified. I thank you, Mr Chairman.

Mr Kaahwa: Mr Chairman, in coming up with this proposed definition of terrorism, we referred to other texts pertinent and operative within the East African Community. We referred to the Protocol Cooperation in Defence, which has already been approved for signature by the Heads of State since terrorism is a matter of interest to defence.

We also referred to the Protocol on Peace and Security which is concluded but yet to be approved both of which have get definitions along these lines.

I would caution this august House not to refer to definitions that obtain at Partner State level because when we legislate here, we are trying to come up with legislations that are regional. If we are to fall in the temptation of defining it in such a way that you refer to the Partner State definitions, then you risk having definitions for purposes of implementation which are different. You may find the definition of terrorism under the relevant legislation in Burundi different in material aspects from the definition in the relevant legislation in Tanzania. So, when we legislate for the Community, let us go with the Community standards using the precedence of the Community. And I will encourage the House to take this definition which is based on the precedents already determined by the Community in other areas which are relevant to this matter.

Mr Chairman, let me also add that when we define these terms under those other protocols, which I am referring to, we also made a reference to relevant existing international conventions to which we are party or subscribe. So, I encourage the committee to adopt this definition.

Mr Samuel Sitta: Mr Chairman, my contribution is based on the reading of this definition and I contend, Sir that you can't read Roman I and II without considering (a) because trafficking is a matter of construction. Under (a) you have the following elements: first of all whatever is intended to be done has to be criminal and two; there must be either a calculation or intention at the end. If you read it that way, there is absolutely no problem with Roman I and II.

If I may go the other way, let us try to read Roman I in exclusion of (a). Sir, every morning teachers intimidate children in school but that is not terrorism. If you read this and say, "Intimidate a section of the public," they intimidate our children - (*Laughter*) - but they are not committing terrorism. So, unless you read (a) – you know we can go on endlessly- (*Interruption*)

Mr Akhaabi: Is the hon. Minister right to insinuate that teachers instead of teaching terrorise our children?

The Chairman: Hon. Akhaabi, I think it is you who is out of order for not listening to the minister when he is on the floor. Hon. Minister, continue.

Mr Sitta: On the contrary, I have a lot of respect for teachers; my wife is a teacher. But most Members are reading this Roman I and II of the proposed amendments in isolation and that is where we are getting into trouble. I could go on giving a lot of examples, police traffic give a lot of fear if you are driving along the road and you are not sure whether the lights are working etcetera but you cannot go to court and say “This fellow is committing terrorism” because there is lack of the criminal intent and also the act is not calculated to cause fear and all that. So, I would urge hon. Members to always include the (a) because that is where the definition is. After all Roman I and II are components of (a). I don’t think any court would sit in session and remove (a) and condemn people merely by Roman I and II. I beg to submit.

Mr Chairman: Thank you, hon. Sitta. Hon. Members, I think we have been guided by the Minister, CTC and Minister Sitta as well. I hope that explains it because it is also in all other instruments signed – protocols. So, is that okay now?

Okay I will put to vote hon. Ndahiro’s proposal of removing articles.

(Question put and negatived.)

Mr Dan Ogalo: Thank you, Mr Chairman. Mr Chairman, you suggested that we give proposals as we deal with this and I am on terrorism. I have been trying to link the definition with trade so that I can make some suggestions but I am failing to do so. I can see that there is, for example, arms trafficking is something to do with trade and customs, the same with counterfeit, drug trafficking and intellectual property rights. But I am looking at terrorism and I don’t see any relationship with customs and trade. Before I give support to the Council of Ministers, can I have some clarification about how this links to trade? I don’t want to be party to approving rendition through backdoor.

Mr Munya: Mr Chairman, first of all we passed the Second Reading stage where we were supposed to seek clarifications in this Bill. Now we are passing the third stage. But Mr Chairman it is very clear when you read 249 (a); sometimes you have to give these things their natural simple meaning when we are looking at them. The Bill is intended to assist Customs collaborate with other agencies that deal with these crimes because they are closely linked with Customs. So, it is a provision to provide collaboration between Customs and other Government agencies that are involved in suppressing these criminal activities and that is why this one reads, “The Customs shall collaborate with the relevant authorities in the Partner States to prevent and suppress money laundering, drugs and arms trafficking, dealings in counterfeits, infringement of intellectual property rights and terrorism.”

Mr Chairman: I think what hon. Ogalo was asking is that he doesn’t mind money laundering, drug trafficking etcetera but he is asking in terms of terrorism, how does it fit in this? That is what he asked. Isn’t that what you wanted to know?

Mr Ogalo: Yes, Mr Chairman and if I am satisfied, then I will not have to oppose that particular part when we come to the clause in the Bill.

Mr Munya: Mr Chairman, you can use Customs to do terrorist activities; you can put anthrax in goods even bombs are also packaged in goods. So, terrorism is very closely linked with Customs.

Mr Ogalo: Mr Chairman that is the link I would like the Chairperson, Council of Ministers to educate me on. It is not just to stand up and say, "Because packaging of customs goods is under Customs, therefore, there is terrorism." I mean if, for example, you say what the House was discussing about hon. Ndahiro's amendment shows clearly how this can be dangerous. What is disruption of public service if I am walking to work and then because we are several of us, buses stop when I am crossing the road and we are many, which is disrupting that public service.

(Laughter)

Are you going to hang me for that? No.

Mr Chairman: I think it remains what your intention was. Did you intend to disrupt that public service? I think the minister went through that.

Mr Ogalo: And exactly that because Uganda has a law on that. Now, why does East Africa want to turn it –

Mr Chairman: Hon. Member, people have already talked about those Partner States laws, we are not going to take them. We are going to define the laws according to what we have here. So, this will supersede what they have.

Mr Ogalo: Much obliged. Then it will supersede and I will only plead with the House that this is a very dangerous amendment because I will be in trouble.

Mr Chairman: You will only be in trouble if you have intent, hon. Member. If you don't have intent, you will have no trouble. Hon. Members, I think we have finished with that; I don't think there is anything else on that. So, I now put the question that a new clause 2 be part of the Bill.

(Question put, and agreed to.)

Clause 2

Mr Chairman: I propose that clause 2 be part of the Bill. I think the committee had a proposal; let the committee come first and then hon. Safina will come.

Dr Ndahiro: Mr Chairman, we would like to amend the word "suppress" and replace it with the word "eliminate." Thank you.

Mr Kaahwa: Mr Chairman, I have read the proposal by the committee to substitute the word "suppress" with the word "eliminate." The word "suppression" is one which is used by the Protocol on the establishment of the Customs Union. Article 9 of the Protocol provides for prevention, investigation and suppression of Customs offences. The word used in the Protocol is "suppression" rather than elimination.

When we go to the parent Act, which is being amended by this Bill, with particular reference, for example, to Section 10 the words used with reference to the obligations of commissioners are

“prevention, investigation and suppression of offences.” So, it is not without a purpose that the word “suppress” was used rather elimination. I, therefore, oppose the proposal for the reasons given. Thank you, Mr Chairman.

Dr Ndahiro: Mr Chairman, I would go with the CTC’s proposal if he also agrees to remove “prevent” because if it is my English, you are saying, “Prevent and suppress.” Now, suppression is a process or it is one aspect of prevention. If the maintains the word “prevent” then we are suggesting that we include eliminate because suppression is also included in prevention. If he wants to maintain the word “suppress” then we should delete even the word “prevent “so that suppress remains. Thank you.

Mr Chairman: Maybe what I know is that hon. Ndahiro you are a doctor though not of medicine. But in medicine you try to prevent and also cure; I think it is possible. But hon. Minister, I think the SG can help us in that aspect.

Mr Munya: Mr Chairman, elimination is impossible. You can’t eliminate these crimes and so if you put the word “eliminate” there, you will be claiming to be able to do something that you won’t be able to do. You can only suppress and prevent because you cannot anticipate that for example, someone will do certain acts of criminality in advance. So, you cannot eliminate them but can only use the law to suppress and prevent in cases where you are able to. But if you use elimination, you will be saying you are able to do something impossible to do.

Ms Byamukama: Mr Chairman, I would like to support the hon. Counsel to the Community and hon. Chair because – and I would like to request hon. Ndahiro to take on this definition because when you look at the international instruments which deal with this particular issue, we have, for example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons and this is a Protocol to the United Nations Convention and against transnational organised crime, which transnational organised crime includes aspects of counterfeits and money laundering.

This terminology of preventing and suppressing, and punishing, if you so wish, is borrowed partly from the international regime and, therefore, I think that there is no harm in using this terminology even in this particular Bill. So, I would like to urge hon. Ndahiro that this is internationally recognised and, therefore, we should maybe take it as that.

Mr Chairman: Hon. Members, even before we go international, the CTC even explained to you and we already have precedents if you look at the CASSOA Bill. We can’t amend the Protocol using this law. So, if it is in the Protocol like the CTC has said, we have to go by it.

Dr Ndahiro: Mr Chairman, I agree.

Ms Kwekwe: Mr Chairman, I propose an amendment to clause 2(1) such that after the words, “drugs and arms trafficking,” we include the words “trafficking in human body parts.” The justification being that human body parts are in the category of goods and, therefore, should be subjected to laws that deal with trade and immigration. This will also be in line Article 124(5) of the Treaty.

Mr Chairman: Can you define body parts?

Mr Munya: Mr Chairman, I am not against the amendment but I just need a definition of body parts because if you are transporting beef from Kenya to Saudi Arabia for sell; those are body parts. So, what are these body parts?

Mr Chairman: I think hon. Kweke said human body parts.

Ms Kwekwe: Yes, I said human body parts.

Mr Munya: I apologise for that.

Mr Chairman: So, what do you say hon. Secretary General?

Amb. Richard Sezibera: Thank you Chairperson. Human body parts and the trafficking thereof is certainly a problem and I would agree with hon. Safina. But it is the first time I hear that human body parts are goods that should come under the Customs Act. I stand to be educated; this is a new thing for me and I would urge that this House does not rush to pronounce itself on this until we are sure. It is the very first time that I hear that human body parts are goods that are tradable; that are taxable; that fall under Customs regimes. My understanding is that human body parts and the treatment thereof has its own separate regime separate from trade and customs regimes.

Mr Chairman: Hon. SG, I don't know whether you are reading the papers, maybe your neighbour there, hon. Sitta can explain to you. We had a situation during the elections when body parts of certain communities were being traded and were even brought from Kenya to Tanzania and vice versa and that even human beings were being sold. I think that is what the hon. Member is talking about. But anyway let me leave the Member explain to us.

Ms Kwekwe: Mr Chairman, I would like to inform the hon. SG that indeed movement of a live human being is subject to the immigration law when it crosses a border. Movement of a human body part whether illegal or legal, when it crosses the border will be subject to the Customs law if it is being trafficked. Therefore, customs shall collaborate with the relevant authorities in the circumstances to prevent and suppress the illegal trafficking of human body parts just as the proposed Act is intending to do to collaborate with the relevant authorities in the Partner States to suppress and prevent the trade in human body parts. Because it is a reality that these body parts are crossing borders illegally. I thank you, Mr Chairman.

Ms Byamukama: Mr Chairman, I would like to support hon. Kwekwe's proposed amendment and I would like to propose a friendly amendment that we do not confine ourselves to trafficking in human body parts but we adopt the terminology which is trafficking in persons. This terminology has a definition, which includes the aspect of removal of organs as well as sell of persons like you have alluded to. And I think it would also encompass this and help us to get away from what the hon. SG said whereby we may not need to define the human body parts as a good.

Mr Chairman, I think this particular proposal is very important in that when you look at the parent law, it provides for other related matters. And at this point in time when we are looking at the issue of movement of persons and human rights under Article 6 and 7 of the Treaty, I believe that this would be a group list to also include it and we adopt the definition, which we have

already signed onto as Partner States, which is in this Protocol that I have alluded to before. So, if we maybe said trafficking in persons and then these agencies help us collaborate and give information as is provided under Article 124 (5) of the Treaty obliges us to communicate on issues of a criminal nature so that we can help each other and this takes us to the fact that the Partner States agreed to help each other in the handling of cross border crime.

Trafficking in persons is a cross border crime, which could also be done internally and I think it would enhance this particular Bill if we included it so that we can collaborate to give information and be able to prevent and suppress this particular crime. I believe that this will be supported by the hon. Chair, Council of Ministers.

Mr Chairman: Hon. Kwekwe, do you mind that phraseology in your amendment or you still stand by your amendment?

Ms Kwekwe: Mr Chairman, actually making reference to what hon. Byamukama also made reference to, when you define trafficking in persons that is in the Protocol that she alluded to, if I can educate the House, it says, "*Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or force.*" and there are many others... "*...for the purpose of exploitation, forced labour or services, servitude or the removal of organs.*" The issue of human body parts which hon. Byamukama was alluding to would be when the person is trafficked for the intent of having their body organs harvested at the destination. That is one way of trafficking body organs.

But there is also another way of trafficking body organs where they are harvested and then transported to a destination. And that should also be a matter that this Act should address itself to. So, I propose that what hon. Byamukama is saying is okay but it will leave out the scenario where body parts are not moving with the human body but are already harvested. I beg to submit, Mr Chairman.

Mr Munya: Mr Chairman, to the extent that human body parts can be packaged like goods and exported, then an element of customs comes in. So, I really have no problem with the original proposal. But hon. Byamukama's amendment now brings problems because trafficking in human beings is not a customs matter; it is an immigration matter. Yes, it is across the border but it doesn't make a human being a good because they are crossing borders. You use your passport and go into the plane or bus and then cross. You are not packaged as good and, therefore, there is no customs element involved in trafficking in human beings. For the body parts, I can see an element of customs because the parts may be packaged as goods and, therefore, have to be cleared and approved at the customs. But human trafficking has no customs element at all.

The Chairman: Hon. Minister, let me help you out. There are people who are trafficked in containers from one country into another. It happens when, for example, illegal immigrants are coming from France to the UK packaged in containers to cross borders.

You also find kidneys packaged and iced and sent across borders. If you have DSTV you can watch this border control where there always showing us how they stop trucks – we have it on the Kenyan and Tanzanian borders where people are shipped in goods and also from Ethiopia to

Kenya where people are shipped in trucks across borders. So, people are, if I may help. I don't know whether it is applicable here but people are packaged and carried across borders.

Mr Kaahwa: Mr Chairman, I think we are trading on a very dangerous ground now. It is international practice to separate some of these "goods" into simply criminal behaviour and not bring them into customs otherwise the East African jurisdiction will be recognising as normal practice to transport organs of human beings and human beings. It is not normal; it is so unusual and it is so much linked to murder and assassination and other problems that you really don't want to announce to the world that in the East African jurisdiction, body parts are like pistols; like coffee; like any tradable goods. It is just the impression that is created. There is no country in the world that includes persons and body parts as part of exportable or transported across borders goods. They always classify them under a different law as crimes.

So, the danger here- I mean logically, anything that can be packaged is some good. But when the goods are derived from such a heinous crime like murder and mutilation, for a jurisdiction in this world to insist that this should be part of their tradable goods, I think we are trading on a very dangerous ground. I think we leave it to the other laws.

Ms Byamukama: Mr Chairman, I think we couldn't have put it better; I would like to just make a comment on hon. Sitta's contribution. Although these are heinous crimes, we do have a trafficking in persons as an internationally recognised law. This is the Palermo Protocol and I know for a fact that Uganda has a specific law on trafficking in persons. As hon. Safina says, this is not only selling of persons; this is modern day slavery but it also goes on to include selling of human body parts.

Right now we are talking of a cross border element whereby you have people hidden in boxes, you have people illegally crossing the borders. There is also a new crime, which is coming up like cyber crime, which I thought that would actually be included because now the Customs Union has also included the element of E-Governance. So, if we don't name these crimes, hon. Chairman there is no way you can prescribe punishment and there is no way you can collaborate effectively because this is a cardinal principle of criminal law. If you don't mention specific mention of a crime, then you cannot even prescribe punishment and, therefore, we shall have inhibited ourselves. So, I would like to implore the hon. Counsel to the Community to take into account these aspects because it is very clear that you could have these frozen and taken aboard; you could have people hidden and taken in containers and money is made. Remember that each of our Partner States has an element on these aspects. I thank you.

The Chairman: Hon. Members, I think we have two issues here. Hon. Safina brought up the issue of body parts and the other one was in relation to persons but the Minister says he doesn't agree with persons but agrees with body parts. Do you want to go with that one or? He was on the floor and didn't have any change of mind here.

Mr Munya: Mr Chairman, I was persuaded by hon. Sitta to change my mind about the inclusion of body parts. I think his explanation was very good and since we have other laws dealing with these matters, it will not give a good impression for our jurisdiction if we start including those kind of things in our law. It will look like our customs also deal with body parts and other related matters. So, I am persuaded to withdraw the support and give it to the original.

The Chairman: Hon. Safina, do you agree with what has been said or you want to continue with your amendment?

Ms Kwekwe: I will not drop it.

The Chairman: Hon. Members, I think we vote on hon. Safina's article because we have taken very long on this issue. Let us vote on it and then see what happens and then I will open the floor for everybody to clarifications.

Mr Kaahwa: Mr Chairman, I crave for your indulgence before you put the matter to vote. Once again, I would like to advise the committee and remind them where we are coming from. We are amending the East African Community Customs Management Act, 2004 whose purpose is to make provisions for the management and administration of customs and other related matters. Now, in that Act, which we are amending, the term "goods" is defined under Section 2 to mean all kinds of articles; wares, merchandise, livestock and currency and where any such goods are sold under this Act and the proceeds of such a sell. That is where we are coming from.

I know it is very prevalent that you have illegal trade in goods, in people's parts or in persons and skins of people but that could be the subject of another piece of legislation. Indeed we have been referred to the Palermo Convention – I have not yet cited it- maybe you were all subscribing to it. So, I urge this committee to confine itself to amend the Act with regard to those offences which relate to customs management and administration. And those are the ones we have included in the object of the Bill, in the debate during your second reading and in the Bill as approved. I thank you, Mr Chairman.

Ms Kwekwe: Thank you Chair, the clarification I am seeking is what is the intention of this particular amendment, which talks of "shall collaborate with the relevant authorities in Partner States to prevent and suppress"? What are you preventing and suppressing under customs? Anything that is packaged in disguise of the goods, how will you handle in case there came a situation that as you are doing verification of goods, you find a box of human body parts packed amongst the goods? What is the intention because I believe that the intention is that when you are doing verification in customs and you find such goods, you collaborate with the relevant authorities to be able to suppress this particular upcoming? So, I am seeking a clarification whether this clause will definitely be relevant if you are refusing to include anything that may be disguised to be goods and they are in the hands of the customs.

The Chairman: I hope the hon. Minister will not say that he will call the Police. I think we have heard from both sides, hon. Members and we have heard the CTC as well. Hon. Safina, do you go with that or you drop it?

Ms Safina: I am not dropping it, Mr Chairman.

The Chairman: Hon. Members, I think there is no other alternative, we have to vote on the two; we can't go around it the whole day. Hon. Members all those in favour of hon. Safina's amendment which wants to include body parts.

(Question put, and agreed to.)

Mr Ogalo: Thank you, Mr Chairman. Hon. Members, I beg to move an amendment to delete the words “and terrorism” appearing in clause 2. I am persuaded in moving this amendment first and foremost by the able arguments of the ministers with Mr Sitta and the chairperson when they say that when something is not related, it should be subject of other laws and even the CTC has asked us to really allow other subjects to be dealt with other laws.

Mr Chairman and hon. Members, the matter of terrorism is provided for under Article 124 (6), which deals with political affairs. So, there is another regime through which the law on terrorism can be brought. For us now to bring terrorism under a regime of Article 74, which deals with trade would be defeating the argument which the ministers have ably brought to us. Let us have trade matters dealt with under the regime of Articles 74 and 75 and have terrorism dealt with under Article 124. So, I hope that the Council of Ministers seeing that I am agreeing with them on this argument will support my amendment.

Mr Chairman and hon. Members, the other argument I would like to use to justify this amendment is the argument of the CTC who has urged us to restrict ourselves to the objects of the parent Act. Now the parent Act as he has ably told us provides that this is an Act for the administration of customs. Now if we take the advice - and I am fully willing to take the advice of the CTC - that the object of the law is to provide for administration of customs then it will be wrong for us and we shall be going against the advice of our Counsel to the Community on legal matters not to mix the two. So, let us not mix trade matters with terrorism. I, therefore, hon. Members request that you support me on this amendment and that we remove the words “and terrorism” appearing in the Bill. I thank you.

Mr Kaahwa: Mr Chairman, as the Council of Ministers has been consistently arguing, the purpose of this amendment is to suppress those crimes which hamper the customs administration and management irrespective of where they emerge from or irrespective of salient provisions of the Treaty where they may have been addressed as matters of cooperation.

Terrorism is a matter that is addressed under Article 124 of the Treaty and not under Article 74 of the Treaty which relates to trade and customs. If we were to take the argument from my hon. friend, we would water down a Bill that has already been passed by even excluding infringement of intellectual property rights which doesn't feature within Article 74 but features within Chapters 12 and 13 of the Treaty. So, I wish to advise the committee that we look at the object of the Bill, which is to suppress those crimes irrespective of their separate provisions under the Treaty but which affect customs and their administration.

In that regard, I would advise you to go back to what you have already agreed on in the second reading where the House agreed to adopt the motion on the Bill as it is.

Mr Chairman: Hon. CTC, I think you are the Counsel to this Community. And I think it is not good for you to mislead this House and I heard the Minister also alluding to it earlier. When we pass a Bill for second reading, it doesn't necessarily mean we passed it. Then what are we doing here? The reason why we are here is to make sure the House goes through the Bill clause by clause and passes or rejects amendments or brings amendments to this Bill. So, there is no Bill that has been passed until we go through the third reading until we finish the committee stage.

So, there is no Bill that has been passed; we went through second reading and now we are going to the final details of the Bill.

Mr Kaahwa: I am sorry, Mr Chairman. The last part of my submission arose out of an understandable enthusiasm to advise the committee on the need to leave the Bill containing those crimes relating to customs and institutional management. So, I withdraw that last part of my immediate past contribution and maintain the first part.

Mr Munya: Mr Chairman, most of the materials and goods that are used in terrorism are actually tradable goods. Guns are tradable and are traded in most cases. Explosives are traded and are even used for other purposes in industry. So, you cannot say terrorism is not closely linked to customs because the materials that are used for terrorism are actually tradable customs goods. And, therefore, if you remove that, you will be making it very difficult for Partner States and even making it very difficult for us to arrive at what you are calling a single customs territory because you cannot have a single customs territory when you cannot collaborate in handling criminal activities that are customs related. So, I would like to persuade my Learned Friend, hon. Ogalo to withdraw this amendment for the common good.

Ms Byamukama: Mr Chairman, I would like to support hon. Ogalo's amendment because indeed terrorism is a not a good and it cannot be packaged. But if we want to bring terrorism in, then we can maybe talk about related matters. And I cannot see how, for example, we would agree to terrorism and not agree to trafficking in persons. We need to be consistent and clear if we are making laws with "eyes," these laws will turn around and catch us. So, I fully support hon. Ogalo; I think this issue of terrorism has been smuggled into here and you should bring a substantive amendment so that we can discuss it fully. Otherwise I am uncomfortable just like I was uncomfortable with the definition. I support hon. Ogalo.

Ms Hajabakiga: Thank you, Mr Chairman. I have a problem that if we read the Treaty and going one by one article there is no consistency in the entire Treaty, which is going to make us remove many things. The same Article 124 talks about concluding the Protocol on combating illicit drugs trafficking and yet we have put it in this particular Bill. I believe that as the hon. Minister has said, terrorism is an act but in order to commit terrorism, there are goods which are used in order to commit it and those are traded goods.

I could also comment on the human parts which we have already gone through.

Mr Chairman: Please, hon. Member you didn't get an opportunity. We are now talking about terrorism.

Ms Hajabakiga: Mr Chairman. I just wanted to remind Members that we need a definition for human parts because it was not defined.

Mr Chairman: No, we didn't say we have to. Hon. Ogalo, do you agree with the minister or you still hold onto your amendment?

Mr Ogalo: No, I don't agree with the Minister and I would like to give my reasons why I don't agree with him. One, let me first take care of the argument the hon. Patricia to the effect that we would remove very many things if we went my way and she give an example of drug trafficking.

Hon. Members, we have just passed clause 2 and we have said drug trafficking means the importation, exportation, manufacture, supplying ... of these things. So, there is an element of customs-exportation and importation. So, drug trafficking is likely here. And we have said so in our definition.

Mr Chairman and hon. Members, on materials he used for terrorism, a gun can be used in murder; guns are used to shoot people and when you shoot somebody using a pistol, it is murder; it is also tradable and so it can also be packaged but we have a murder charge and terrorism. So, the state will choose and charge you under murder here. Are you going to change and bring murder here because a gun is tradable? Are you going to bring murder in this Bill because a gun can be packaged as a good? If we go that way, then almost all goods will end up being in this Bill.

On intellectual property rights, if you look at the definition we have gone through, intellectual property rights is deliberately linked to trade but not so with your terrorism. I don't see anything here which links it to trade.

Lastly, Sir I disagree with the argument of the CTC that the object of the Bill is to prescribe. The object we go by is the object of the parent Act. Suppression of crimes is a marginal note on what you are introducing but the object is simply one, administration of customs. How do you administer our customs? So let us be consistent. You told us we should limit ourselves to administration of customs. Let us do so by removing terrorism. I thank you.

The Chairperson: Hon. Members, now that hon. Ogalo has not withdrawn his amendment; I put the question to hon. Ogalo's amendment to remove terrorism.

(Question put and agreed to.)

The Chairperson: This means that the definition will be removed from the new clause. Hon. Ndahiro, you had another amendment under 2(a)?

Dr Ndahiro: Mr Chairman, we are proposing that in the first part where we have 'Partner States' we include 'Partner States and at regional level' and then at the end we delete the last words 'when requested'. The reason is simple. If we are collaborating to suppress crime, you do not need the other party to first of all identify the crime and ask you about it so as to provide the information. We thought it would be the other way when detected, to provide information to everybody. Thank you.

Mr Munya: I have no problem with that amendment.

The Chairperson: Hon. Ndahiro on 2(b)?

Dr Ndahiro: Mr Chairman, we wanted to delete in the next section the word 'in any' to insert a word 'relevant'.

Mr Kaahwa: Thank you, Mr Chairperson. I have heard the proposal by my good friend hon. Ndahiro to substitute the word 'relevant' for the word 'any' in Clause 2(b) of the Bill. With that clarification, Mr Chairman, I do not intend to proceed because I thought the proposal was to substitute the word 'any' with the word 'relevant'. If it is to add 'relevant' to the word 'any', I do not have to proceed.

Mr Munya: Mr Chairman, the amendment is okay.

The Chairperson: Hon. Ndahiro you have an amendment in sub clause 3. Hon. Patricia, maybe you can help and read it out.

Ms Hajabakiga: Thank you, Mr Chairman. The amendment is in sub clause 3, by replacing the words 'a Partner State' with the words 'the Community'.

Mr Minister: We are okay with that amendment, Mr Chairman.

The Chairperson: Hon. Members, I now put the question that Clause 2 as amended be part of the Bill.

(Question put and agreed to.)

The Title, agreed to.

MOTION FOR THE HOUSE TO RESUME

Mr Munya: Mr Chairman, I beg to move that the House do resume and the Committee of the Whole House reports thereto.

The Chairperson: Hon. Members, I now put the question that the Whole House do resume.

(Question put and agreed to.)

The Chairperson: The House resumes.

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

Mr Munya: Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled the East African Community Customs Management (Amendment) Bill, 2012 and passed it with amendments.

MOTION FOR ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

Mr Munya: Mr Speaker, I beg to move that the report of the Committee of the Whole House be adopted.

The Speaker: Hon. Members, I now put the question that the report of the Committee of the Whole House be adopted.

(Question put and agreed to.)

BILLS'
THIRD READING

Mr Munya: Mr Speaker, I beg to move that the East African Community Customs Management (Amendment) Bill, 2012 be read the Third Time and do pass.

Mr Kaahwa: Seconded

(Question put and agreed to.)

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT (AMENDMENT) BILL,
2012

A BILL FOR AN ACT ENTITLED THE EAST AFRICAN COMMUNITY CUSTOMS
MANAGEMENT (AMENDMENT) ACT, 2012

BILLS'
COMMITTEE STAGE
THE COMMUNITY EMBLEMS (AMENDMENT) BILL, 2012

Clause 1

The Chairperson: Hon. Members, I propose that Clause 1 be part of the Bill.

The Chairperson, Committee on Legal, Rules and Privileges (Mr Frederic Ngenzebuhoro (Burundi): No amendment on Clause 1, Mr Chairman.

The Chairperson: Hon. Members, I put the question that Clause 1 be part of the Bill. Hon. Members, I know it is still early in the morning and maybe it is tea time but I said, hon. Members, I put the question that Clause 1 be part of the Bill.

(Question put and agreed to.)

Clause 2

The Chairperson: Hon. Members, I propose that Clause 2 be part of the Bill.

Mr Ngenzebuhoro: Mr Chairman, on Clause 2 the committee proposes first of all for practical and realistic reasons and for easy assessment of this Bill that the protection of the court cannot be

the one we have in the parent Act because in the parent Act, court refers to the East African Court of Justice and here, we would like to see the court defined as any court which is competent in the Partner States. That is why we are proposing an amendment here.

Mr Munya: Mr Chairman, we accept the amendment.

The Chairperson: Hon. Members, I now put the question that a new Clause 2 be part of the Bill.

Original Clause 2

The Chairperson: Hon. Members, I propose that Clause 2 be part of the Bill.

Mr Ngenzebuhoro: Mr Chairman, on Clause 2, because English is the official language of the Community, the committee proposes to say, ‘The Council of Ministers shall cause the English version of the anthem to be made available’. That is the first amendment we would like to insert in Clause 2 beside the other amendments moved by the Council of Ministers.

Mr Munya: There is no harm in the amendment, Mr Chairman.

The Chairperson: Hon. Minister, before I put the question I can see that you have amendments that you have on this particular Clause. Maybe you could move them please.

Mr Munya: Thank you, Mr Chairperson. After Section 4 (e), I want to introduce 4 (b) which reads as follows, ‘The East African Legislative Assembly shall have a logo which is specified in Schedule six’. Of course the marginal notes will read ‘the East African Legislative Assembly logo.’

Then I also want to introduce 4 (c) which will read ‘The East African Court of Justice shall have a logo which is specified in Schedule seven’. The marginal notes will read, ‘East African Court of Justice logo’.

In 4 (d) will read, ‘Every institution of the Community shall have a logo which shall be approved by the Council and published in the Gazette’. The marginal note will be ‘Community institution logo’. Thank you, Mr Chairman.

The Chairperson: Anybody has anything to say on that? Hon. Members, I now put the question that Clause 2, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 3

The Chairperson: Hon. Members, I propose that Clause 3 be part of the Bill.

Mr Ngenzebuhoro: Mr Speaker Sir, because of the new insertions made by the Council of Ministers, I am wondering if 3 will not also include the East African Legislative Assembly logo, the East African Court of Justice logo and any Community institution logo? So any persons who

show disrespect in speech, manner or writing with reference to the anthem and the three others inserted here commit an offence and shall be liable, on conviction-

The Chairperson: Honourable, just read your amendment please. It will make it easier for all of us.

Mr Ngenzebuhoro: I will come back to this. What we have here is to amend Clause 3 (3) (b) by saying, 'Any person ... the original lyrics of the anthem and plays and sings any intention of those lyrics commits an offence and shall be liable, on conviction, to a fine not exceeding \$ 1000 or the equivalent in local currency or imprisonment not exceeding one year or both'.

The Chairperson: Hon. Members, maybe to help the Chair, I think the actual amendment he is bringing in is, 'or equivalent to local currency'. In essence what he is saying \$ 1000 or equivalent in local currency meaning it is not the East African Court of Justice which was in dollars but now it is in the Partner States so they can be in Kenya shillings or Uganda shillings or Burundi Francs. That is all he is really saying.

Mr Munya: Mr Chairman, I don't have any problem with the amendment. The only problem is that you will need to introduce definitions to explain what local currency is. Local currency in itself is not enough. I mean you are the ones who have been insisting on definitions of terms. Now that I am saying we define a term, I see hon. Dora opposing. So I do not know how to handle hon. Dora in this House, Mr Chairman.

The Chairperson: Hon. Minister, I think you gave your proposal so you can wait for people to say whether they will accept or not accept. You do not look at their faces to determine whether they are accepting or not.

Mr Munya: I accept your advice, Mr Chairman. I think I read too much from the faces.

The Chairperson: I think maybe hon. Dora should move behind you. Hon. CTC, maybe you can help us in the language.

Mr Kaahwa: Mr Chairperson, before I help with the language, I was trying to see the style of enactment of our legislation and I have not yet succeeded but we have not been in the habit as an Assembly to provide for a penalty in US dollars or equivalent currency. I think the problem there is with regard to determining the equivalent currency and so on in a principle Act so you would rather leave it in US dollars because that is the style we have always used in enactment. I am trying to get the proper guidance from the Acts of the Community Act which I am not succeeding. I am just seeing the practice and it is to provide for US dollar.

The Chairperson: I think what the committee was trying to say is, in most of our Acts we talk about the East African Court of Justice. In this particular case, they have defined the court to be the Partner State courts and I think that is why they are saying the currency in the local Partner States- That is the only mischief that they are trying to get rid of.

Mr Kaahwa: Mr Chairperson, again we have to be very careful. The currency for the Community under the provisions of the Treaty is the US dollar and that is what we should provide for. Now when it comes to handling of penalties, the courts of competent jurisdiction will know how to translate US dollars into local currency. We cannot put it in the Act and they have not failed in any way with regard to other laws where the currency is stated as per the Treaty in US dollars. So the committee should not pass the proposed amendment.

The Chairperson: Maybe the committee chair can concede.

Mr Ngenzebuhoro: Mr Chairperson, I think we must be realistic and see how this Bill can be enforced. If we say only in US dollars, how can a person from my constituency be obliged to pay dollars? It will be impossible. In any case, he will pay in Burundi Francs. That is why I say we must be realistic.

The Chairperson: I think the CTC guided and said the courts themselves can say \$ 1000 and they can say it is so and so Burundi Francs. I don't think there would be a problem with the court to say that. Unless somebody in Burundi does not know what the dollar is or they can convert dollars to- I think everybody in the region- I think you are paid in dollars. When you go there you do not say, my constituency does not know dollars, I want Burundi Francs. I think the CTC has guided that the courts can help us out.

Mr Ngenzebuhoro: Mr Chairperson, we have already agreed that it will be the competent jurisdiction in the country.

The Chairperson: Hon. Members, I now put the question that Clause 3 be part of the Bill.

(Question put and agreed to.)

Schedule 4

The Chairperson: Hon. Members, I propose that Schedule number four be part of the Bill.

Mr Ngenzebuhoro: In Schedule 4, we just propose to include the English version of the anthem. It is to take into consideration the official language of the Community.

The Chairperson: Hon. SG, do we have the English version of this anthem?

Mr Sezibera: Mr Chairperson Sir, we do not currently have the English version of the anthem.

The Chairperson: So what do we do? Do we create one and put it in? How do we go about it hon. Minister?

Mr Munya: Mr Chairperson, we have already said we will include it in the body of the bill so I think it is okay. Once it is ready, it should be included.

Ms Kwekwe: I have an amendment to Schedule 4 and it is very simple, that the words and the lyrics of the anthem should be in consonance. Therefore I propose that in verse one of the anthem in words we have '*uwilinde*' not '*ulinde*' as it currently is.

In the lyrics, the chorus has '*tuajibike*' instead of '*tuwajibike*'. So I propose that they be in consonance so that we have '*uwilinde*' and '*tuwajibike*' running through both the words and the lyrics.

The Chairperson: Honourable, if you could clarify why. Just repeat that again.

Ms Kwekwe: Okay. If you look at the words of the anthem, in the first stanza, you have '*emungu tuwawomba ulinde*' but when you go to the lyrics of the anthem, it says '*emungu twaomba uilinde*'. There is an 'i' between 'u' and 'l'. Now if you go to the chorus of the anthem, the words of the second line read '*tuwajibike tuimarike*'. The lyrics on the other hand say '*tuajibike tu imariche*'. So there is lack of consistence in the wording and the lyrics of the anthem. For the '*tuwajibike*' and '*tuajibike*', the meaning of '*tuajibike*' and '*tuwajibike*' is different.

'*Tuajibike*' in old Swahili means to succumb to defeat. '*Tuwajibike*' is to be accountable. So the wording should be consistent both in the lyrics and the anthem. That is what I am moving, Mr Chairman.

The Chairperson: Hon. Sitta, maybe you can help us. Hon. Safina is teaching us Swahili and most of us it is not our first language. Maybe you can help us in this one.

Mr Sitta: Thank you, Chair. Hon. Safina is perfectly right. Even in the no terms sort of notes starting on page six, the word is '*tuilinde*' not '*tulinde*'. Even in the musical- And '*tuwajibike*' is the same. It has to be consistent. Thank you, Mr Chair.

The Chairperson: Thank you, hon. Sita.

Mr Kaahwa: Mr Chairperson, as an East African with a very deep understandings of Kiswahili, can the committee assure me that when you cause that change, the music will come out as intended still?

The Chairperson: Hon. CTC, I think you are the one who brought this document on behalf of Council and I think you went through this document. You don't even have to- Look through the words and the music and see. You will find the music has the correct- But the words are different. Where the words here are correct, the music is different. So if you could look through our document, from my understanding the honourable with the guidance of hon. Sitta, I think your Swahili understanding might not be as good as you think but-

Mr Kaahwa: I am assured, Mr Chairperson.

Mr Munya: Mr Chairperson, we agree with the amendment because what is being amended is the text to reflect the music so there is no problem in the amendments.

The Chairperson: Hon. Members, I now put the question that Schedule 4 as amended be part of the Bill.

(Question put and agreed to.)

Schedule 5

The Chairperson: Hon. Members, I propose that Schedule 5 be part of the Bill.

Mr Ngenzebuhoro: Mr Chairman, we propose to delete the words ‘who shall sing or play the anthem’ because in Schedule 5(1) we will come back to this as a consecutive amendment.

The Chairperson: Before I call the Minister, maybe hon. Frederic can explain to us why the committee wants to delete ‘who shall sing or play the anthem’.

Mr Ngenzebuhoro: Mr Chairman, we want to remove this small umbrella which says ‘who shall sing or play the anthem’ because if you see 5(2), it is the version maybe played or maybe sung. It is who sung but if we remove this, we will be able to go straight to – It will be consequential and say ‘it will be sung or played one, two, three, four until five’. That is why.

Mr Munya: Mr Chairman, we agree with that amendment. We need to make other amendments also to reorganise ... because now they will remain as guidelines for use. So guideline one, two, three, four and then we have to amend the other one to delete ‘occasions when the anthem shall be played or sung so that we make it 5’ - Guideline number five and then again we delete also ‘application of the anthem’ and we make it guideline number six.

The Chairperson: I think the minister has conceded to remove the heading. Now I think the committee has other amendments, maybe they can move them and then we will see from there.

Mr Ngenzebuhoro: We totally agree with the minister because what he has done is exactly what we have planned so for us, Schedule 5(1) will be read as follows, “The Community anthem shall be sung or played on Community occasions and every occasion when the national anthem is played or sung.” The rest-

The Chairperson: Hold on. You see these are the guidelines. We remove the heading, correct? You agree to that one. Guidelines for use will be there. Then it says, we shall sing- We have removed that one. Then it goes to number one. It says, the East African citizens shall sing... Now they want to amend that, correct? To read, “The Community anthem shall be sung or played...” It says, “The Community anthem shall be sung or played on Community occasions and every occasion when the national anthem is played or sung.” That will be guideline number one.

Mr Munya: Mr Chairman, we are okay with that amendment but we are saying to make it clearer, "...when the national anthems of the Partner States are sung or played."

The Chairperson: I think we put singular because when we say national anthems it means we have to play all five. I think maybe 'national anthem is sung or played'. Is that fine?

Hon. Frederic, if you could move your proposal on 4?

Mr Ngenzebuhoro: Mr Chairman, on Schedule 5(4), we propose an amendment to read as follows, "The ... be shall be observed whenever the anthem is played or sung. Every person present at the occasion shall stand up as a sign of respect for the anthem except for the disabled who cannot do so." This provides for disabled persons.

Ms Hajabakiga: Thank you, Mr Chairperson. This is an amendment on behalf of hon. Ndahiro. He is requesting that we replace the words 'the disabled' and say 'persons with disabilities'.

The Chairperson: It does not say so. I think it says 'disabled.'

Ms Nyiramilimo: Thank you, Mr Chairman; I don't know if aging people are also people with disabilities. People who are old might not be able to stand up so if we could just say-

The Chairperson: I think if they cannot stand up they have some sort of disability. If we start classifying everybody in these things then we have a problem.

Ms Nyiramilimo: We can say persons who are not able to stand up.

The Chairperson: That is a disability if you cannot stand up.

Ms Byamukama: Mr Chairman, I think hon., Odette has a point but persons with disabilities-disability has a definition and therefore we should go with that rather than now try to expand it to the elderly and others because it may actually be offensive if you say the elderly are exempted from standing when they really want to stand. So I think let us leave it with persons with disabilities. Disability is defined and I think that will be clearer. I thank you.

Mr Munya: Mr Chairman, we agree with the amendment. We only wanted to make it better by saying 'except for persons who cannot do so due to disability or any other reason because you could be sick and you are not disabled and you cannot stand. That is why we are saying 'for any other reason'. Then you could also be disabled but you are able to stand. Disability is not only your legs. You could be disabled and you are able to stand. So you have to specify that you are not able to stand because of disability. You cannot say all disabled persons. We are assuming all disabled persons have problems with their legs.

The Chairperson: Can you repeat that for us, honourable?

Mr Munya: I was saying except persons who cannot do so due to disability or any other reason because that takes care of people who are sick, who are maybe feeling dizzy at that particular time but are not necessarily disabled people.

Ms Nyirahabineza: Thank you, Mr Chairman. In fact this brought a very string discussion in the committee. If the minister says except for disability, I do agree with that but for any other reason, there are some persons, due to some- They belong to a faith based organisation called Jehovah's Witness. They cannot stand because they do not believe in that. So if we say for any other reason, we are giving room to some people for them not to stand and thereby show disrespect to the anthem.

If we say for any other reason, we are also going to expand the list and then also say maybe pregnant women-

The Chairperson: I am tired-

Ms Nyirahabineza: Exactly, Mr Chairman. Thank you.

The Munya: Mr Chairman, I concede. So we amend it to read 'for any medical reason'. You can have a headache that makes you not able to stand. You would be feeling maybe dizzy and if you stand you can fall down. So for any medical reason unless you are saying it is only disabled people who should be excused and somebody who is sick cannot be excused. If you argue like that then I will agree with you.

Ms Nyirahabineza: Hon. Chairman, I was thinking of physical conditions and not medical.

The Chairman: Hon. Members, we are getting lost now because where are we going to stop?

Ms Byamukama: Mr Chairman, since we have agreed that the Community anthem shall be sung after the Partner State anthems, I think what we should do is also adhering to the demeanour or the practices which are attributed to the practice of singing the national anthems of the Partner States. I think it is better for us to remain silent on this although I am a member of the committee because now if you start making exceptions, these exceptions become very complicated. So let us attribute the practices which we atone to the singing and playing of the national anthems to the Community anthem otherwise as you say, we may get lost. I thank you.

The Chairperson: Hon. Members, I think my work is a bit easy because I think there was only one amendment in terms of – We said 'except for persons with disabilities'. I do not have any other amendment so I am going to go with this one. If we go by the rules, I think it is the easiest way out of it unless someone brings an amendment, which they have not.

So hon. Members, I now put the question- Before I do that-

Mr Ngenzebuhoro: Mr Chairman, as already proposed or accepted by the Council of Ministers, we propose to delete the words 'on occasions when the anthem shall be played or sung' and

except number five which reads, and this has already been accepted by the Chairperson of the Council, 'the anthem shall be played or sung on the following occasions' and then we enumerate.

Mr Munya: Mr Chairman, this was actually my amendment and the chair of the committee is assisting me with it so I agree with him.

The Chairperson: I think we have to put it singular though. I think we will go with the singular part is it? 'Partner State'

Mr Ngenzebuhoro: The last amendment we propose as the committee is to have only Schedule 5(4) (h) and say, 'When national anthems are sung and played in the Partner States.'

The Chairperson: The minister finished to read that just now. Do you have anything else on 5? Honourable, I don't want to do your work for you but you still have another amendment.

Mr Ngenzebuhoro: In 5 the second last sentence, delete the words 'application of the anthem' and we propose to insert 6 and say 'at every occasion, the three stanzas of the anthem shall be played or sung'. We thought that those words are not necessary.

Mr Munya: Mr Chairman, I agree with the amendment.

The Chairperson: Hon. Members, I propose that Schedule 5 as amended be part of the Bill.

(Question put and agreed to.)

The Chairperson: Hon. Minister, you are supposed to introduce Schedule 6, 7 and 8. You aired introduced them earlier.

Mr Munya: Mr Chairman, I already introduced the Schedules.

The Chairperson: That is what we wanted to know so that people who are in the *Hansard* will know why the Schedules are there. Just read. Schedule 6 will be-

Mr Munya: The Legislative Assembly logo will in Schedule 6. The Coat of Justice logo shall be in Schedule-

The Chairperson: Can we do it one by one? Have you circulated the logo? It is in the report. Hon. Minister, even though you moved them, you proposed earlier that there should be Schedule 6 which will be the logo. So what we are saying is that we want Schedule 6 to be part of this Bill so that we could vote on it. Could you propose that Schedule 6-

The Munya: Mr Chairman, I move that Schedule 6 be part of the Bill.

The Chairperson: Hon. Members, anybody has a problem with that? I now put the question that a new Schedule 6 be part of the bill.

(Question put and agreed to.)

Mr Munya: Mr Chairman, I move that Schedule 7 be part of the Bill, which is the East African Court of Justice logo.

(Question put and agreed to.)

The Chairperson: Hon. Members, we are allowing the Council of Ministers some time. There is an important amendment they want to bring to the original Bill so let us give them time.

Mr Munya: I want to thank you, Mr Chairman for your indulgence in allowing me to introduce a new amendment which was not originally mentioned. This amendment is introducing a new Clause 4 to amend Section 7(3) of the original Act. Clause 7(3) of the original Act reads as follows, “For the avoidance of doubt, any institution, private or public or any person may raise the Community flag.” So I am amending that to read as follows, “For the avoidance of doubt, (a) all public institutions in the Partner States shall host the Community flag at all occasions where the national flag is hoisted.”

In (b) “private institutions or any person may host the Community flag.”

The Chairperson: Hon. Members, I propose that a new Clause 4 be part of the Bill. Debate is open. Hon. Members, I put the question that a new Clause 4 be part of the Bill.

(Question put and agreed to.)

The Title

The Chairperson: Hon. Members, I propose that the Title be part of the Bill. I put the question.

(Question put and agreed to.)

The Chairperson: Hon. CTC, we voted already so I don’t know what you can say now. You can’t say anything anyway unless it is something else.

Mr Kaahwa: Mr Chairperson, I crave your indulgence. Did I hear the Chairperson of the Legal, Rules Committee move an amendment on Schedule 7(a) which is contained in his schedule of amendments? There is a proposal there on the schedule for amendments. The committee has referred to Schedule 7(a).

The Chairperson: This will be a penalty, it is not a schedule so the drafters will work it out and put it in the original. It will not be in the schedule.

Mr Kaahwa: Yes, Mr Chairperson. Now in that writing can we also include disrespect to the logos of the institutions because we have already covered it.

The Chairperson: They have already been done.

Mr Kaahwa: Thank you, Mr Chairman.

The Chairperson: I think the CTC needs to be reading the Roils of the House as well as the Treaty and other laws.

MOTION FOR THE HOUSE TO RESUME

Mr Munya: Mr Chairman, I move that the Committee of the Whole House do resume and report thereto.

Mr Kaahwa: Seconded.

The Chairperson: Hon. Members I put the question that the Whole House do resume.

(Question put and agreed to.)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

Mr Munya: Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled the East African Community Emblems (Amendment) Bill, 2012 and passed it with amendments.

MOTION FOR ADOPTION OF THE REPORT OF COMMITTEE OF THE WHOLE HOUSE

Mr Munya: Mr Speaker, I beg to move that the report of the Committee of the Whole House be adopted.

The Speaker: Seconded. Hon. Members, I now put the question that the report of the Committee of the Whole House be adopted.

(Question put and agreed to.)

BILLS' THIRD READING

Mr Munya: Mr Speaker, I beg to move that the Community Emblems (Amendment) Bill, 2012 be read the Third Time and do pass.

The Speaker: Hon. Members, I put the question that the Community Emblems (Amendment) Bill, 2012 be read for the Third Time and do pass.

(Question put and agreed to.)

THE COMMUNITY EMBLEMS (AMENDMENT) BILL, 2012

A BILL FOR AN ACT ENTITLED THE COMMUNITY EMBLEMS (AMENDMENT) ACT,
2012.

THE EAST AFRICAN COMMUNITY HIV AND AIDS PREVENTION MANAGEMENT
BILL, 2012

BILLS' SECOND READING

MOTION

Ms Lydia Wanyoto (Uganda): Thank you, Mr Speaker. I beg to move that the East African HIV/AIDS Prevention Management Bill, 2012 be read for the Second Time. I beg to move.

Ms Wanyoto: Thank you, hon. Speaker and Members. I beg to lay on the table the committee report-

The Speaker: Honourable, justify. The committee can do it on its own.

Ms Wanyoto: I beg your pardon. I beg to move that this House do move to debate and pass the Second Reading of the Bill on HIV/AIDS Prevention Management Bill, 2012. Hon. Members, this is an important Bill as you did grant me permission and leave to go and work on it. We were able to move and I think it is an important Bill that we should move on very fast because it is in line with the Customs Union Protocol but also it is in line with our endeavour to ensure that the Social Sector is not left behind as we move towards the other integration phases.

Hon. Speaker, I think I am talking to the converted and without further ado; I would like to request that Members and the whole House support the Bill in its Second reading. I thank you and beg to move.

The Speaker: Honourable, in terms of justifying maybe you can give us the intention of the Bill. There are some who were not in the committee and who might want to- And then we can have the committee come and give its report after you have finished.

Ms Wanyoto: Thank you, hon. Speaker and hon. Members. This is a Private Members' Bill which seeks to create a common and responsive legal framework for HIV and AIDS in the region applying the rights based approach to and combating provision of good standards, in HIV/AIDS prevention, treatment, care and support.

As I said earlier, it is an important Bill in terms of timing because it is in line with the on-going debate but also operationalization of the Common Market and I thought that this is an important socio support system for us as people cross borders in terms of free movement of people as they do their businesses. As I said earlier, this is an important piece of legislation and we need to be able to support our people in terms of health services and access as they cross borders to do their business and as we integrate the EAC agenda. I thank you and beg to move.

The Speaker: Hon. Members, the proposal on the floor is that the East African Community HIV and AIDS Prevention Management Bill, 2012 be read for the Second Time. Debate is open. I would like to call the Committee on General Purpose to come and read their report. Honourable, I know you are also a member of that committee but you are the mover of the Bill. If somebody from your committee could read the report. Hon. Odette.

Ms Odette Nyiramilimo (Rwanda): Thank you, Mr Speaker Sir. The report of the General Purpose Committee on the EAC HIV/AIDS Prevention and Management Bill, 2012. The East African Community HIV/AIDS Prevention and Management Bill, 2012 is a Private Members' Bill that seeks to create a common responsive legal framework for HIV and AIDS in the region applying the rights based approach and incorporating proven good standards and practices in HIV prevention, treatment, care and support.

Further, it intends to facilitate greater access to commodities and services relating to HIV and AIDS for all within and across the region.

The committee is guided by the provisions of Chapter 21, Article 118 of the Treaty for the Establishment of the East African Community with respect to cooperation in health activities whereupon the Partner States undertake to among others, take joint action towards the prevention and control of communicable and non-communicable diseases and to control pandemics and epidemics such as HIV/AIDS that might endanger the health and welfare of residents of the Partner States.

The mover of the Bill, hon. Lydia Wanyoto Mutende sought and was granted leave to table the Bill in February 2012 and after the First Reading it was committed to the Committee of General Purpose.

Acknowledgement.

The Committee on General Purpose would like to extend its appreciation to the Ministries of East African Community that facilitated the public hearings and the East African national

networks of AIDS services organisation for partnership and cooperation with the committee on this Bill.

The committee would also like to extend its appreciation to the hon. Speaker of EALA for leave to carry out the public hearings and consideration of the Bill, the Office of the Clerk of EALA for facilitation of the committee.

Methodology

The committee adopted the following methodology. First of all, the General Purpose Committee had meetings with all stakeholders, CSOs, officers from Ministries of Health from the five Partner States and organisations of people living with HIV/AIDS. The committee carried out public hearing in all Partner States on 12th April 2012 and held consultations with members of relevant parliamentary committees in the national Parliaments, officials from the Ministries of health, Public Health, Social Protection and Ministries in charge of HIV/AIDS, officials from commissions responsible for HIV/AIDS matters and national AIDS Control Commission, representatives of people living with HIV and AIDS as well as their associations, officials from the Attorney Generals Chambers responsible for EAC sectoral Council on Legal and Judicial Affairs and the Bills, representations of academic institutions and professional associations directly dealing with HIV/AIDS, civil society organisations including IANASO.

The committee in consideration of the Bill considered the views from stakeholders and also considered the amendments which were later received from the Attorney General's Chambers from the Republic of Uganda. The committee considered the Bill on 13th April 2012 and hereto attached are the amendments scheduled as annex to the report.

Consideration of the Bill in HIV/AIDS prevention Management Bill, 2012.

Preliminary provisions, short title.

The committee made a correction to the year 2010 to 2012.

Interpretation

The committee, in order to accommodate the emerging trend where anti-retroviral drugs are a form of treatment but also act as a form of prevention from transmission and infection amended the interpretation of post exposure prophylaxis to mean the administration of anti-retroviral drugs to a person after a high risk of exposure in order to prevent HIV infection and transmission in that person.

Health care provider was amended to health care provider who meets the profile to qualify the necessary standard for the provider means hospital, nursing home, maternity home, health care centre, dispensary, pharmacy or other institution whether private or public where health care services are rendered and includes the persons rendering health care services in these institutions.

Prevention of parent to child transmission was amended to mother to child to imply the present form of usage and formulation for the same by UNAIDS.

Vulnerable groups is amended to allow inclusiveness and avoid omission that may arise as a result of listing vulnerable group means any group including but not limited to whose members may have special needs or may experience poorer outcomes.

HIV and AIDS prevention measures-

The Speaker: Hon. Odette, I was looking through your report and most of what hon. Odette is going to do now is talk about the proposed amendments, which I think are annexed to this report. I think we have seen it and maybe she could move for the report to be- She can submit her report because most of these other things we will see when we come to the actual Bill. I don't think it will add a lot of value right now for her to read all the proposed amendments when they are going to come up later on. So maybe you can go to the last bit of your report and submit.

Ms Nyiramilimo: Thank you, Rt hon. Speaker for the guidance. The committee presents the report to the House and begs the Assembly to support the report with the various amendments hereto attached to the East African Community HIV and AIDS Prevention and Management Bill, 2012. Mr Speaker Sir, I beg to move.

The Speaker: Hon. Members, as you are aware, we are using this Chamber with the Kenya National Assembly who are also in session later on this afternoon and currently they have to prepare the Chamber for the next session which starts at 2.00 p.m. So it gives you more time to go and read the report and also the Bill which is also a rather large Bill. So you can have the weekend to go through it and I now adjourn the House until Monday.

Before I adjourn, I would like to make an announcement that the House Business Committee is meeting right after the session. We will meet in the committee room intercontinental. I now adjourn the House until Monday 2.30 p.m.

(The House rose at.... p.m. and adjourned until Monday, 23 April 2012 at 2.30 p.m.)