



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Official Report of the Proceedings of the East African Legislative Assembly

67TH SITTING - FIRST ASSEMBLY: FOURTH MEETING – FIFTH SESSION

Wednesday, 20 September 2006

The East African Legislative Assembly met at 2.00 p.m. at 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.

BILLS
Second Reading

The East African Community
Competition Bill, 2004

*(Resumption of Debate interrupted on
March 8 March 2005)*

The Speaker: Honourable Members, it is over a year now since we debated this Bill, and I am not sure how many of you remember the contents. However, I think the most important thing is for the minister to respond and to table the amendments before the Members of the Assembly. For those who wish to comment, I will be generous enough to give them time to comment. Otherwise, more discussions and elaborations can take place in the Committee Stage of the Bill.

I believe you have received copies of the amendments to the Bill, so I invite the Minister to take us through the proposed amendments from the Council of Ministers. Mr. Minister, you have the Floor.

The Chairperson of the Council of Ministers (Mr. John Koech)(Ex-Officio, Kenya): Mr. Speaker, it has been a long time since this Bill was debated, and there was a bit of confusion because I thought initially that I was going to reply, which I think I will do so right now before we go to the Committee Stage.

Mr. Speaker, I wish to thank the hon. Members for the very constructive contribution to this important Bill. You will remember that last year we had a very long discussion on the Bill, and Members expressed a lot of concern about certain sections over which we

later on met. And after a lot of dialogue, the honourable Members were able to make some suggestions, which the Council has accepted. So, I want to appreciate the work of the Committee - what they have done, and for our agreement, as usual, on the amendment of the Bill.

Mr. Speaker, the Competition Bill, as you all know, will make it possible to provide the procedure for the enforcement of the Competition policy, which will make it possible to have successful trading among our sister states. At this juncture, I want to appeal to the Partner States to take the integration process very seriously.

The coming of the Customs Union has enhanced intra- East African trade and we should all support the measures as outlined in the Customs Union Protocol. It is however regrettable that the Partner States, in certain areas, have not shown seriousness in the way of implementing the Customs Union Protocol.

On the Common External Tariff, the ministers for Finance have become culprits in making unilateral decisions on the Common External Tariff. This does not auger very well on the Customs Union. If our intention is to make the Customs Union successful, then we must desist from making unilateral decisions. In case any country feels greatly aggrieved on certain tariffs, there are procedures to follow. So, I urge the Partner States, especially the ministers in charge of Finance, to co-operate to ensure success in the process of integration, and especially in the implementation of the Customs Union Protocol.

The Customs Union Protocol outlines very well the problems of non-tariff barriers, but we have found that the Partner States are delaying the removal of non-tariff barriers and even creating new ones. Is this a sign of progress or are we sliding back? We should not go back!

I urge the Partner States, again, to remove the non-tariff barriers and not to create new ones. We have heard of some tariff barriers being removed but overnight they are reinstated as non-tariff barriers. It is imperative upon us in Arusha to preach a similar language of integration, and any issue a Partner State is feeling uncomfortable about should be handled through established procedures so that we do not send wrong signals to the region.

Article 2(4) in the Customs Union Protocol explains this very well, and I want to read it:

- (a) Customs Duties and other charges of equivalent effect imposed on imports shall be eliminated as provided for in the protocol
- (b) Non-tariff barriers to trade among the Partner States shall be removed, and a common external tariff in respect of all goods imported into the Partner States from foreign countries shall be established.

Mr. Speaker, we have also noted of late that the Customs officials have not been briefed enough on the procedures of the Customs Union, and they are still lagging behind because their mindset is still on the previous tariff regime. So, it is important that the border Customs

officials are briefed thoroughly so that they can be able to implement the Protocol on the Customs Union. But you will find that many of them seem to be still behind, and they are not ready for change.

Mr Speaker, I think it is now time for the Partner States to brief the Customs officials very well so that as we talk of the success of the Customs Union, it will actually become a success rather than a situation where we are back to where we were. Sometimes I ask myself, are we really very serious? We must be very serious on these issues.

The Competition Bill is going to enhance the process of making sure there is sufficient Competition and trade within the region but if we are not going to be serious as Partner States, then I am afraid that we are going to slide back. The seriousness which sometimes I see among us is not strong enough. We have been appointed Ministers in charge of the Community, and I think we should stick to the letter and spend more time in Arusha because that is the only way we can succeed – (*Applause*). The volume of work waiting for us is enormous, and unless we are ready to spend time here, we cannot put things right!

Mr. Speaker, in the past when we have come here to attend the Council meetings, we are given volumes of work but given only one day, which I do not think is enough for us to be able to articulate ourselves on, familiarise ourselves with or assimilate the issues and be able to be of use to the Community. I think it is high time that we all made sure that we spend time here. If we are not going to spend time here, Mr Speaker, then we are not

serious! I think it is high time we spent time here – (*Applause*).

I believe my colleagues will be coming. I was assured by the Minister from Uganda - although you are not seeing him here today - that he will be coming later to continue with you in this House. So, at least that is a good gesture. Of course I am not saying that the ministers are not coming – (*Laughter*). I am only expressing my very strong sentiment that unless we are all serious on these issues, we will not be able to drive the process of integration forward.

Our Heads of State are very serious, and I thank them because they are committed to the East African Community. This has been demonstrated by the appointment of the ministers from each country who are going to be solely in charge of the integration process in the region. That is the commitment of our Heads of State, and I thank them for that. So, I believe that we shall live to the spirit of the Heads of State to ensure that we move along.

We want our people to feel that there is East African Community. We want our business Community, when they are crossing the border, to actually know that there is East African Community, and that we are not going back. So, the spirit should start from this House. I thank the hon. Members because I know that they are totally East African by nature and spirit – (*Applause*) - and I believe that you will be able to put that spirit in us so that we can move along with you.

Mr. Speaker, I believe that we are going to have another Session, so I cannot be able to say much about the Members

who may not be coming back, but whether you are going to come back or not, I know that you have got the spirit of the East African Community.

Mr Speaker, with these few remarks, I beg to move.

The Counsel to the Community (Mr W. Kaahwa) (Ex-Officio): Seconded

The Speaker: You may also wish to Table the amendments.

The Chairperson of the Council of Ministers (Mr. John Koech) (Ex-Officio, Kenya): Mr Speaker, the Council and the Committee have gone through the necessary amendments, and I am very happy to table the amendments as proposed by the Council and agreed to by the Committee.

(Question put and agreed to)

(Bill read a Second Time)

“A Bill for an Act to promote and protect fair competition in the Community, to provide for consumer welfare, to establish the East African Community Competition Committee and for related matters”

COMMITTEE OF THE WHOLE HOUSE

(The Chairperson presiding)

BILLS Committee Stage

The East African Community
Competition Bill, 2004

Clause 1 agreed to.

Clause 2:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, sir, I beg to move that Clause 2 be amended as follows:

(a) Delete the word “*Community*” from the expression “*East African Court of Justice*” to reflect the proper name of the East African Court of Justice;

(b) Add the following definitions in the appropriate alphabetical order: -

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

“*Nationality*” means “*the status of belonging to a particular nation by origin, birth or naturalization*”;

“*Residence*” means “*the place of general abode, principal, actual dwelling place in fact without regard to intent*”

(Question of the amendment put and agreed to)

Clause 2 as amended agreed to.

Clause 3:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I submit that Clause 3 be amended by:

a) Substituting for the word “*objectives*” in the first sentence the word “*objects*” for purposes of legislative consistency;

(b) Deleting the word “*new*” appearing in paragraph (a)(ii) to ensure elimination of all barriers;

(c) Deleting the words “*foreign direct*” appearing in paragraph (c) in order to create a conducive environment for all forms of investment, and not only foreign direct investments.

(Question on the amendment put and agreed to)

Clause 3, as amended, agreed to.

Clause 4:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 4 by:

“Inserting the words “*within their own jurisdictions*” immediately after the word “*regulation*” in sub-clause (3)”

(Question on the amendment put and agreed to)

Clause 4 as amended agreed.

Clause 5:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 5 by:

“Deleting the words ‘*ten thousand*’ appearing in sub-clause (4) and inserting therefore the words ‘*one hundred thousand*’”

Mr. Ochieng-Mbeo: Mr. Chairman, I am a little bit behind, but I see that – (*Interjection*) - I am sorry we have passed it but for correction purposes, in Clause 3, which we have passed, I am seeing sections (a), (b) and I am seeing another (b) there. Is it a continuation of

that (b)? (*Interjection*) – Okay, we can go on.

The Chairman: Your correction is taken, the subsection should be “(c)”, and it will be corrected.

(Question of the amendment put and agreed to)

Clause 5 as amended agreed to.

Clause 6 agreed to.

Clause 7:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose amendments to Clause 7 as follows:

(a) Delete the words “*three months*” appearing in sub-clause (3) and insert therefore the words “*forty-five days*”;

(b) Insert the following new sub-clause (5):

“If the Authority has not communicated its decision in the period specified under sub-section (3), then the permission for the concerted practice shall be deemed to have been granted”;

(c) Re-number the existing sub-clause (4) as sub-clause (5)

(Question on the amendment put and agreed to)

Clause 7 as amended agreed to.

Clause 8:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 8 by:

“Deleting the word “*also*” appearing in sub-clause (2) for purposes of consistency”

(Question on the amendment put and agreed to)

Clause 8 as amended agreed to.

Clause 9

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose Clause 9 to be amended by:

(a) Deleting sub-clause (2) appearing immediately after sub-clause (2), and substituting for it the following:

“(3) Sub-section (2) shall apply to any undertakings of which small or medium sized undertakings are dependent”;

(b) Re-numbering the existing sub-clause (3) as sub-clause (4) to correct a printing error.

(Question of the amendment put and agreed to)

Clause 9, as amended, agreed to.

Clauses 10 agreed to.

Clause 11 agreed to.

Clause 12:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman,

I propose the amendment of Clause 12 by:

(a) Deleting the words “*three months*” appearing in sub-clause (2) and substituting therefore the words “*forty five*”;

(b) Inserting a new sub-clause (5) to read as follows:

“(5) any person who contravenes sub-section (1) commits an offence”

(Question on the amendment proposed)

Mr. Yonasani Kanyomozi (Uganda): Mr. Chairman, I am just wondering; when we are going through these things, the amendments are given in the format “(a), (b) and (c)” while the sub-clauses are given in numerical numbers. I hope that will be taken care of. I would like to know, since we are not reading the particulars, whether that will be taken care of in the process. I need guidance.

The Counsel to the Community (Mr. Wilbert Kaahwa) (Ex-officio): Mr. Chairman, sir, the “(a)”s and “(b)”s in the second column are for purposes of highlighting the amendments. The substances are indicated in the words themselves and they will be accordingly rectified when the amendments are incorporated.

Ms. Rose Waruhiu (Kenya): Mr. Chairman, the text provides that the words “*three months*” will be substituted with the word “*forty-five*”; it does not specify whether it is months or days.

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, it is “*forty-five days*” (*Interruption*)

The Chairman: So it is forty-five days; it is not written but the Minister is now proposing “*forty-five days*” – (*Interjection*). Is that agreeable? (*Interjection*) Mr Minister you have not said it; can you propose it?

The Chairperson of the Council of Ministers (Mr. Koech): I propose we add the word “*days*” after the word “*forty-five*” to read: “*forty-five days*”. So it is “*days*”; not hours, not years! (*Laughter*)

(Question of 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:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose amendments to Clause 16 by:

“Inserting the words “*or residence*” immediately after the word “*nationality*” for consistency with other provisions.

(Question on the amendment proposed)

Mr. Med Kagwa (Uganda): Mr. Chairman, when you look at Clause 16, the amendment does not show where the word should be inserted; and Clause 16 has subsections (1) and (2) (a) and (b) so it is not clear where the words should be inserted. I think for record purposes it should be shown.

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, the section to be amended is in 2(b) as indicated here: “immediately after the word “*nationality*” in Clause 2 (b).”

(Question on the amendment put and agreed to)

Clause 16, as amended, agreed to.

Clause 17, agreed to.

Clause 18:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I should like to propose amendments to Clause 18 as follows:

“Insert the words ‘*the Community, including all its organs and institutions*’ in sub-clause (1) between the words ‘*States*’ and ‘*and*’ appearing at the beginning of the first line.

(Question of the amendment proposed)

Mr. Calist Mwatela (Kenya): Mr. Chairman, there are two “*states*”, so which “*state*” will apply? In sub-clause (1) we have the “*Partner States*” and thereafter we have again “*Partner States*” – (*Interjections*). It is important to state exactly where to insert the amendment – (*Interruption*).

The Chairman: Honourable members, the question is to the Speaker – (*Interjection*). Has he seen it?

(Question on the amendment put and agreed to)

Clause 18, as amended, agreed to.

Clause 19:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose amendments to Clause 19 as follows:-

(a) Insert the words “*or the Community*” in sub-clause (1) between the words “*State*” and “*shall*” appearing at the beginning of the first line;

(b) Insert the words “*or the Community’s*” in sub-clause (2) between the words “*States*” and “*legislation*” appearing at the beginning of the third line.

(Question on the amendment put and agreed to)

Clause 19, as amended, agreed to.

Clause 20:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 20 by_

“Inserting the words ‘*the Community*’ in sub-clause (3) between the words ‘*inform*’ and ‘*the*’.

(Question on the amendment put and agreed to)

Clause 20, as amended, agreed to.

Clauses 21, agreed to.

Clause 22, agreed to.

Clause 23, agreed to.

Clause 24, agreed to.

Clause 25:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 25 as provided for in the text below:

“Delete the words ‘*of one thousand*’ in sub-clause (2) and insert the words ‘*not more than ten thousand*’ therein.

(Question of the amendment put and agreed to)

Clause 25, as amended, agreed to.

Clause 26, agreed to.

Clause 27, agreed to.

Clause 28, agreed to.

Clause 29, agreed to.

Clause 30, agreed to.

Clause 31, agreed to.

Clause 32, agreed to.

Clause 33, agreed to.

Clause 34, agreed to.

Clause 35, agreed to.

Clause 36, agreed to.

Clause 37:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose that Clause 37 be amended by deleting the entire clause and inserting the following new Clause 37 in place thereof:

“37. (1) *There is hereby established the East African Community Competition Authority.*

(2) *The Authority shall operate on an ad hoc basis for a transitional period of not more than five years.”*

(Question on the amendment put and agreed to)

Clause 37, as amended, agreed to.

Clause 38:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 38 by deleting the entire clause and inserting the following new Clause 38 in place thereof:

38. *(1) The Authority shall consist of three Commissioners, one Commissioner from each Partner State.*

(2) The Commissioners shall be appointed by the Council on the recommendations of the Partner States.

(3) Each Commissioner shall serve for a term of four years, and shall be eligible for re-appointment for a further term of four years.

(4) The Commissioners shall, on a rotational basis, appoint from among themselves a chairperson who shall serve for one year.

(5) A person shall be qualified for appointment to the Authority as Commissioner if that person is a holder of an advanced degree in a field pertinent to trade and competition, and has at least ten years experience in the relevant areas.

(6) The Commissioners shall be paid such remuneration as the Council may determine."

(Question on the amendment proposed)

Mr. Med Kaggwa: Mr. Chairman, I am just wondering: now that we are using "commissioner", is this "commissioner" defined in Clause 2? We are now introducing a new – *(Interjection)* – and "authority". I do not know what the Minister has to say about this.

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, the word "Commissioner" has got to be defined – *(Interjections)* – and "Authority" too. I think those are the areas which we need to add in the interpretation clause. So, Mr Chairman, I propose that we define the words "Authority" and "Commissioner" – *(Interjections)* – and "Registrar" in Clauses 37 and 38 and wherever they appear – *(Interjections)*.

The Chairman: So "Authority", "Registrar" and "Commissioner" – *(Interjection)*. That will be under Clause 2: "Interpretation". The Clerk is saying here that it is consequential, but I think it is important to define them. So, "Commissioner", "Authority" and "Registrar" so far; as we go along we may find others.

Mr. Ochieng-Mbeo: Mr. Chairman, I think since we all agree that clauses 37-45 really cover basically a new topic from what we had in the Bill. As much as we are now approving it, I think it goes by what we had agreed that the new terminologies that are here should automatically be taken up by the

Counsel to the Community and the rest for rectification and for bringing to level because we might not be able to pick them up now.

Mr. Mabere Marando: Mr. Chairman, sir, it is the Assembly that passes the law, including the definitions – *(Interjection)*. It is pertinent upon the Counsel to the Community and the hon. Minister, while we are still proceeding with the other provisions, to sit down with their technical staff and come up later with the proper definitions of these three words.

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I wanted to propose that we go ahead and then at the end, after going through all the clauses, the Counsel to the Community by that time should have come up with the right definitions for these, and then we would go back to Clause 2 to incorporate the definitions in that particular section.

The Chairman: That means “Authority”, “Commissioner” and “Registrar”; that is what hon. Marando has said.

(Question of the amendment put and agreed to)

Clause 38, as amended, agreed to.

Clause 39:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 39 by deleting the entire clause and inserting the following new Clause 39 in place thereof:

39. *(1) A Commissioner may resign from his or her position by giving three months’ written notice of resignation to the Council. The Council shall, before the expiry of the said period of three months, fill such vacancy.*

(2) The Council may remove a Commissioner of the Competition Authority, including the Chairperson, from office at any time if:

(a) the Commissioner is declared bankrupt, takes the benefit of any law for the relief of insolvent debtors or assigns the Commissioner’s remuneration for the benefit of creditors;

(b) the Commissioner is convicted of a criminal offence;

(c) the Council decides that the Commissioner is guilty of gross misconduct, or is incapable of carrying out the Commissioner’s duties because of ill health or physical or mental impairment;

(d) the Commissioner fails to attend three consecutive meetings or at least two-thirds of all meetings of the Authority in any period of twelve consecutive months;

(c) *the Commissioner has committed a material breach of a code of conduct to which the Authority is subject or a material breach of the provisions of this Act.*

(Question of the amendment proposed)

Mr. Calist Mwatela: Mr. Chairman, Clause 39(2) is not very clear...*“The Council may remove a Commissioner Competition Authority...”* I think just *“Commissioner”* would suffice: *“The Council may remove a Commissioner, including the Chairperson, from office at any time if...”*, or, *“a commissioner of the Competition Authority...”* Because the way it is written there, it is not clear.

The Chairman: So what are you proposing?

Mr Mwatela: I am proposing a correction of the language. Either, to insert: *“The Council may remove a Commissioner from the Competition Authority, including the Chairperson, from office at any time if...”* (Interjection) -

Counsel to the Community (Mr. Wilbert Kaahwa): Mr. Chairperson, I think I am seeing the mischief which my hon. Friend is pointing out under Clause 39(2). The offensive words are *“Competition Authority”*, and I propose that the sub-clause should read - to give intent to its meaning - *“The Council may remove a Commissioner, including the Chairperson, from office at any time if...”* and then you continue with the rest - (Interjection).

The Chairman: Have you heard the proposal by the hon. Counsel to the Community?

Mr. Med Kaggwa: Mr. Chairman, I do not have a problem with that, but I now see the introduction of a new title, *“Chairperson”*, which also has to be defined in the interpretation clause.

The Chairman: And in terms of seniority, why do you not start with *“Chairperson”*, then *“Commissioner”*?

So, is the amendment of the hon. Med Kaggwa to the Amendment proposed by the hon. Counsel to the Community accepted - (Interjections) – Okay; it is an addition to the amendment, not an amendment to the amendment.

Mr. Ochieng-Mbeo: We are also seeing *“authority”* in small “a”; could it be a capital “A”?

Mr. Med Kaggwa: Mr. Chairperson, I have a problem with Clause 39 (d) which states: *“...The Commissioner fails to attend three consecutive meetings or at least two thirds of the meetings of the Authority in any period of 12 months consecutively.”* Normally you give opportunity such as *“without authority or permission”*, because somebody may be genuinely sick but by this clause he can go. I think the term we normally use is *“without permission”* or something of that kind - (Interjections).

Mr. Jared Kangwana: Mr. Chairman, I think the words we are looking for are *“without reasonable cause”*. If those could be added at the end of sub-clause (d), I think it would suffice.

Mr. Chairman: Hon. Counsel to the Community, any problem with that? *(Interjection)* So you go along with it? *Sawa.* “Without reasonable cause”...is that sufficient, hon. Kangwana? Okay.

Mr. Yonasani Kanyomozi: Mr. Chairman, when we say “without reasonable cause”, reasonable to whom? *(Interruptions)*

The Chairman: Hon. Members, the hon. Kanyomozi has the Floor – *(Interjections)*. Can you educate the hon. Members, hon. Kanyomozi?

Mr Kanyomozi: Mr. Chairman, I am wondering, because, if the Commissioner has a reasonable cause, would that free him or her to stay and not be punished because, say he or she was sick, although he or she did not have a medical or any other permission from anybody. What would happen? *(Interjection)* Is it the Authority or...who will judge?

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, much as I agree with my hon. Friend that reasonable cause may be subjective, we must go back and be guided by the opening of this provision. It is the Council which handles the removal of the Commission, including the Chairperson. So it is the same Council which will be determining when any of these grounds indicated in (a), (b) and (c), including establishment of reasonable cause, may apply.

The Chairman: I can see hon. Kanyomozi is satisfied – *(Interjection)*.

Mr. Yonasani Kanyomozi: Mr Chairman, although it is minor, the

numbering of Clause 39 should be (a), (b), (c), (d), and (e). You should make the last one (e) and not (c)

(Question on the amendment put and agreed to)

Clause 39, as amended, agreed to.

Clause 40:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 40 by deleting the entire clause and inserting the following new Clause 40 in place thereof:

“40. *The Authority shall prescribe rules for the conduct of its affairs.*”

(Question on the amendment put and agreed to)

Clause 40, as amended, agreed to.

Clause 41:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose that Clause 41 be amended by deleting the entire clause and inserting the following new Clause 41 in place thereof:-

“41. (1) *There shall be a Registrar of the Authority.*

(2) *The Registrar shall be appointed by the Council.*

(3) *The terms and conditions of service of the Registrar shall be determined by the Council.*

- (4) *The Registrar shall hold an advanced degree in a field pertinent to trade and competition, and possess such professional experience as the Council may specify.*
- (5) *The Registrar shall resign from any post or activity that is incompatible with the performance of his duties, and he must refrain from accepting any gift, payment or anything of value from any interested party.*
- (6) *The Registrar may, on three months' written notice, resign from his or her position. The Council shall, before the expiry of the said period of three months, fill the vacancy.*
- (7) *The Registrar shall not be removed from office except the Council for gross misconduct in the course of performing his or her duties, or for inability to perform the functions of his or her office due to infirmity of body or mind.*
- (8) *The Council shall employ such other staff as may be required to enable the Authority to perform its functions.*

(Question of the amendment proposed)

Mr. Med Kaggwa: Mr. Chairman, I think we should adopt the language that is used in the Treaty, that is, "his or her" so that in one place we have "his or her" and in another we have "he or she", just to be gender sensitive. I do not know where else it appears, but at least I have just seen it in Clause 41(5).

The Chairman: Hon. Counsel to the Community, any objection?

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, sir, I have no objection to that whatsoever.

Mr. Mabere Marando: *Mwenye Kiti*, under Clause 41(7), if you read the first sentence, between the word "except" and the word "the", I think you should insert the word "by".

(Question of the amendment put and agreed to)

Clause 41, as amended, agreed to

Clause 42:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose that Clause 42 be amended by deleting the entire clause and inserting the following new Clause 42 in place thereof:

"42. The Authority shall have all powers, express and implied, necessary for and conducive to the implementation and enforcement of the East African Community Competition law.

- (1) *In the performance of its functions under this Act, the Authority shall have powers to:*

- a) gather information;
- b) investigate and compel evidence, including the search and seizure of documents;
- c) powers to hold hearings;
- d) issue legally binding decisions;
- e) impose sanctions and remedies;
- f) refer matters to the Court for adjudication;
- g) recommend to the Council to make regulations;
- h) engage in competition advocacy, consultations and participation;
- i) formulate by-laws for the operation of the Authority;
- j) collect data, undertake and publish studies and reports;
- k) co-operate with regional and international organizations as well as with foreign competition authorities.

(2) *Any person who wilfully fails to comply with an order of the Authority with respect to availing any information or production of any document or appearing before the Authority proceedings commits an offence and shall be liable to a fine not exceeding five thousand dollars, or to imprisonment for a term of not more than six months, or both.*

(3) *The Authority shall be authorized to reduce penalties for, or grant amnesty*

to anyone that co-operates with the Authority in the enforcement of the East African Community Competition Law by submitting full and correct information."

(Question of the amendment proposed)

Ms. Rose Waruhiu: Mr. Chairman, sir, under Clause 42(1)(c), the words "powers to" may not be necessary because the introduction reads: "*In the performance of its functions under this Act, the Authority shall have powers to...*" and the others are verbs. So you may wish to delete the "powers to" under (c).

The Chairman: So you are proposing to delete "powers to"? *(Interjections)*

Ms. Sarah Bagalaaliwo: Mr. Chairman, I am just wondering; is the Authority being given all powers to the exclusion of the courts also? "*All powers shall...*" it is a mandatory "all powers"!

Mr. Jared Kangwana: Mr. Chairman, I think if it was the intention to exclude the courts from exercising jurisdiction over the exercise of powers of the Council, it would have been expressly stated so. In other words, the powers of the courts are not excluded by this provision.

The Chairman: So you propose it to remain as it is?

Mr. Jared Kangwana: Yes!

(Question of the amendment put and agreed to)

Clause 42, as amended, agreed to.

Clause 43:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 43 by deleting the entire clause and inserting the following new Clause 43 in place thereof:

“The Authority and the Partner States shall mutually co-operate in the implementation of the East African Community Competition Law. The Partner State shall support the activities of the Authority.”

(Question of the amendment proposed)

Mr. Jared Kangwana: Mr. Chairman, the second sentence says “the Partner State...” I think it should be “states”. So I propose that the word “state” should be amended to read “states”.

(Question of the amendment put and agreed to)

Clause 43, as amended, agreed to.

Clause 44:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose the amendment of Clause 44 by deleting the entire clause and inserting the following new Clause 44 in place thereof:

“44. (1) The determination of any violation of this law is within the exclusive original jurisdiction of the Authority

(2) Regulations and decisions of the East African Community Competition

Authority shall be legally binding upon Partner States’ authorities and courts’ Partner States are obliged to apply such decisions to legal disputes before them.

(3) Where a case or legal dispute to be decided by a Partner State’s competition authority or court is also pending before the Competition Authority or the Court, the Partner State’s competition Authority or court shall stay such proceedings until the Authority has made a decision.

(4) Where a case or legal dispute within the scope of application of this law is not yet under consideration by the Authority, Partner States’ authorities or courts shall refer the case or the legal dispute to the Authority.

(5) Decisions made by the Authority shall be enforceable by Partner States’ enforcement authorities Partner States are under the obligation to enforce decisions of the Authority.

(6) In case of disagreement between the East African Community Authority and Partner States’ authorities or courts, the matter shall be referred to the Court of adjudication.”

(Question on the amendment proposed)

Mrs. Rose Waruhiu: Mr. Chairman, under 44(5), I think there is a typographical error. There is an “s” missing at the end of the first sentence - I expect the word to be “authorities”, so that it reads: “Decisions made by the Authority shall be enforceable by Partner States’ enforcement authorities.”

Ms. Mahfoudha Alley Hamid: Mr. Chairman, in Clause 44(2), the word “authority” in line two should be with a capital “A” – (*Interjections*).

Mr. Chairman: When you talk of “the Authority”, you are taking of the Authority administering this Bill but “authorities” means other authorities. It is clear to me and to hon. Mahfoudha.

Ms. Kate Kamba: Mr. Chairman, in the same sentence in the third line, after “courts” we need a full stop – (*Interjections*).

Mr. Chairman: I think here we need technical advice – (*Laughter*).

Mr. Mabere Marando: Mr. Chairman, hon. Kate Kamba is suggesting that on the third line after the word “courts” we should remove the apostrophe and add a full stop so that the other sentence starting with “Partner States...” should stand alone.

Mr. Chairman: Is it clear to everybody? (*Interjections*)

Hon. Members: No, it is not clear.

Mr. Chairman: Hon. Marando, can you take us through 44(2) slowly?

Mr. Mabere Marando: Mr. Chairman, according to hon. Kate Kamba’s amendment it should read: “*Regulations and decisions of the East African Community Competition Authority shall be legally binding upon the Partner States’ authorities and courts. Partner States are obliged to apply such decisions to legal disputes before them.*” (*Interjections*) - It has a lot of elegance.

Mr. Chairman: Is it now clear to all of us?

Hon. Members: No!

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, I think we must go into the intention of this sub-clause. The intention is to make decisions and regulations of the Competition Authority legally binding upon Partner States’ authorities and courts. They are binding on courts and authorities, in which case I take the intention here to be the second sentence, which is Partner States’ authorities and courts being obliged to apply such decisions to legal disputes before them. It is not Partner States that are obliged, but Partner States’ authorities and courts, because it is them that will be applying these decisions on legal disputes before them. So, I am proposing that after deleting the hyphen and including the full stop, the next sentence will read: “*Partner States’ authorities and courts.*”

Mr. George Nangale: Mr. Chairman, in Clause 44(6) there is an “f” missing in the word “East Arican” in the first line. Also, the word “Community” should be replaced by the word “Competition”. It is not “*East Arican Community Authority*” but “*East African Competition Authority*”

Ms. Sarah Bagalaaliwo: Mr. Chairman, sir, when I raised the issue of the courts in Clause 42, I think I was over reading, but I would seek the interpretation of the learned Brothers if this is not the same thing happening again here in 44(2), where you are saying the courts are obliged. So, are the authorities now obliging the courts to take decisions?

The Chairman: Hon. Counsel to the Community...or anyone who wishes to help? She appealed to the Learned Brothers; the hon. “Learned Brother” Medd Kaggwa? (*Laughter*)

Mr. Med Kaggwa: Mr. Chairman, I find it strange for a law to tell court what to do. Court has its jurisdiction at all times. I do not know why in this particular law they chose to advise it to do its work. What was the rationale? I think telling court what it is supposed to do should be out!

Mr. Yonasani Kanyomozi: Mr. Chairman, although I am not a lawyer, I think the intention in that section is to give...if there is a ruling, for example, in a Partner State court, and there is a decision of the Authority, the decision of the Authority should take precedence over the decision of that local Partner State court – (*Interjection*). Otherwise it will be difficult for the Authority to enforce any decisions at a higher level for the case of the region! (*Interruptions*)

Mr Chairman: It looks like a few members are opposed to this proposal. Can we go back to the honourable Learned Brothers?

Mr. Mabere Marando: *Mwenye Kiti*, while I agree with what hon. Med Kaggwa is suggesting, I think we should try to bring out the distinction between superior courts and subordinate courts. I would not imagine a decision of this Authority binding on any high court in the Partner States, but now that he has said it, if we could as well insert the words “*subordinate courts*”, it would be clear. It would qualify the “*court*” with the word “*subordinate*” so that at least the decision is binding on the

subordinate courts, but no judge of a High Court would entertain any other body. Let us qualify the court with the word “*subordinate*”.

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, sir, much as there is some persuasion in what my hon. Learned Friend is saying, I am not yet seeing any distinction between “*courts*” and the term “*subordinate courts*”, because courts are courts; they are judicial organs. To me it does not seem to imply that decisions and regulations shall be binding. The intent is to have the authorities and courts in Partner States having a bearing on them when they are deciding on legal disputes relating to competition. I do not think it has any undue overbearing on the court systems in the Partner States – (*interjection*).

Mr. Mabere Marando: *Mwenye Kiti*, in Clause 42(2) when you say the courts of the Partner States are obliged, it means that decision is obligatory. The high court is a court of record, and as a court of record, it is only obliged by the decision of a superior court but not any other court or tribunal. The judge will simply refuse and say, whatever that law provides I am not bound. So, instead of creating conflicts between this tribunal and the high courts, the best thing is to qualify the courts because we are in those corridors every other day and we know how judges decide on these things.

Ms. Bagalaaliwo: Mr. Chairman, could we give the Counsel to the Community time to revise sections 42 and 44 and reconcile them to the normal judicial practice? I think there is something wrong.

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, I think the mischief is on 44(2) because Clause 42(1) qualifies the magnitude of the Authority's powers. It opens with the words: *"In the performance of its functions..."* And that is where the Authority shall have powers to gather information, investigate and so on. I think the mischief is on 44(2). And that is the one I will need a bit of time to go through - the very last sentence of 44(2).

Ms. Kawamara-Mishambi: Mr. Chairman, just like an "unlearned person", Clause 42(d) to me is almost the same as 44, because they will issue legally binding decisions!

Mr. Daniel Wandera Ogalo: Mr. Chairman, I think it would do no harm if the Counsel to the Community acceded to the suggestion by hon. Bagalaaliwo to consider both clauses 42 and 44, because this Authority is like an administrative tribunal, and you are subjecting it to be at the same level with the courts. It will definitely create some problems. So, I would really suggest that you look at both 42 and 44 to try to redo the hierarchy of the decisions.

Mr Chairman: I see the honourable Counsel to the Community nodding, which means he is agreeable; he is going to review Clauses 42 and 44. So we leave them pending.

Ms. Mahfoudha Alley Hamid: Mr. Chairman, I am also not a "Learned Brother or Sister" but can I be enlightened on what is the difference, because under Clause 44(3) the "court" here is in initial capital and before that it has a small "c" and then it reverts back to small "c". So what is the difference?

Mr. Jared Kangwana: Mr. Chairman, I think her concern is genuine, but I believe it will be taken on board in the re-drafting that we are awaiting from the Counsel to the Community.

Mr. Med Kaggwa: Mr Chairman, perhaps when they are re-looking at Clause 44, I think they should also look at Clause 44(5). I do not why in that particular clause, after the word "authorities" the word "courts" was omitted. I do not know whether it was deliberate or it was just an omission. In all the other clauses above it has been "authorities and courts" but when it comes to this one, "courts" is missing. I do not know whether it was intended.

The Chairman: So I propose that Clauses 42 and 44 remain pending. Can we move to Clause 45, hon. Chairperson?

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I wanted to propose that as we continue with these amendments, the Legal Counsel should take note of the issues so that at the end of the deliberations we come up with some solutions, together with the earlier cases for definition.

The Chairman: Why do we not go through to the end? We can leave the other two clauses and the interpretation pending until tomorrow. So, can we move to Clause 45?

Clause 45:

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, I propose that Clause 45 should be amended by deleting the entire clause

and inserting the following new Clause 45 in place thereof:

“45. (1) In order to develop and promote the public awareness and understanding of competition in the Community, the Authority shall carry out competition advocacy.

(2) With regard to its regulatory activities, the Authority shall develop appropriate procedures for consultation with the participation of the parties affected by the East African Community Competition Law.

(3) In order to improve the development or review of Partner States’ or the East African Community’s sectoral regulatory regimes, and to enhance their compatibility with the requirements of the East African Community Competition Law, the Authority will participate in the Partner States’ and East African Community’s regulatory processes. For these purposes, Partner States, as well as the East African Community organs and institutions, are obliged to communicate relevant information to and to enter into consultations with the Authority at an early stage of any regulatory project as well as during the entire legislative process. The Partner States shall provide the Authority with all relevant information. The Authority shall communicate its comments or position to the Partner States or the East African Community organs or institutions in due course, and it shall be allowed to provide formal testimony at legislative hearings.”

(Question of the amendment proposed)

Maj. Richard Ddudu: Mr. Chairman, under Clause 45 (1) I propose that the word “*the*” in front of “*promote*” be deleted so that it will read: “*In order to develop and promote public awareness...*” and not “*...the public awareness.*”

Mr. Mabere Marando: *Mwenye Kiti* I am also proposing change of the last word of the second line of Clause 45(2). Instead of “*a*” it should be “*the*”.

Ms. Hulda Kibacha: Mr. Chairman, I wanted to have a better understanding of what is really meant by “competition advocacy” in Clause 45(1) where it says: “*...the Authority shall carry out competition advocacy*” - *(Interjections)*

Mr. Chairman: Hon. Counsel to the Community, what is that “competition advocacy”?

Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, let me undertake to explain and define that when I am presenting the definitions – *(Interjections)*. It is not exactly a legal term; this is a term which is borrowed from – *(Interjections)* -

Hon. Members: NGOs! *(Laughter)*

A Hon. Member: Gender issues!

Counsel to the Community (Mr. Kaahwa): - I do not want to say it – *(Interjection)* - but it is not a legal term. So we will consult.

A Hon. Member: But you have said it!

Ms. Mahfoudha Hamid: Mr. Chairman, can I be enlightened on this second sentence which reads: “*...For*

these purposes Partner States as well East African Community organs and institutions are obliged to communicate relevant information to and to enter into consultations...” I am baffled there!

The Chairman: I do not see any problem there!

Mr. Jared Kangwana: I have a slight problem. You know, I share the concerns of Members, but those concerns should really have been confined to the time of debate not the Committee Stage. Granted that we dealt with this Bill more than one and half years ago, I can well understand why confusion is arising, but I do hope that we do not have this problem in future.

Ms. Kawamara Mishambi: Mr. Chairman, just where you stopped in Clause 45(3), in the middle, I think there is the word “the” missing. “...consultations with the Authority...” for consistency

Mr. Chairman: In any case Clause 45 has a problem so we should leave it to the Counsel to the Community. But hon. Mahfoudha wanted an explanation on the second sentence of Clause 45(3).

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, the purpose of the sentence is to create obligations between the East African Community organs and institutions on the one hand *vis-à-vis* the Authority on the other, and they are in the categories of communicating relevant information with the East African Community organs and institutions, being obliged to communicate relevant information to the Authority. Secondly, they are obliged to enter into consultations with the

Authority. So, those are the two obligations created. But I entirely agree with hon. Sheila Kawamara that we need an article “the” before the word “Authority” in that sentence.

Mr. Med Kaggwa: Mr. Chairman, I want to persuade the Counsel to the Community to break this sub-clause. I do not see any harm in stopping at “regulatory processes” and starting another sub-clause. Otherwise it is too windy and you tend to lose the meaning. But if he has no particular objection I think we could break it so that...after all, the next sentence starting with “For these purposes...” is now directing what should be done, and I do not think it would do any harm if we gave it another sub-clause.

Prof. Margaret Kamar: Mr. Chairman, I think it is just a question of breaking that sentence. If we have a coma after the word “to”, it would give it meaning. Otherwise, the way it is, it does not give it any meaning. So it would then read: “...For these purposes, Partner States, as well as the East African Community organs and institutions are obliged to communicate relevant information to, and to enter into consultations with the Authority at an early stage...”

Mr. Calist Mwatela: Mr. Chairman, looking at that Clause 45, in one way you can see it is spelling out some kind of functions that the Authority is supposed to carry out, and that is also reflected in Clause 42. So, I believe that there is some kind of mix-up. I think the whole thing should be revised so that if it is functions, they are all listed under one Clause. If it is Clause 42, then we add the functions that are being spelt

there under Clause 42. They are functions of the Authority.

Ms. Rose Waruhiu: Mr. Chairman, I submit there could have been temptation to borrow language outside the legal circles. I would propose that this whole sentence be deleted. It just expounds on how the work is to be done, which does not add any value. If the paragraph ended with the first sentence, it says what work is to be done. If you delete that whole sentence and continue, you will still have the meaning. I think in the other clauses they have not been told how to do what they are supposed to do. I think the sentence just adds bulk and confuses the meaning. It should be deleted.

Mr. Chairman: Honourable Counsel to the Community, you have heard of the comments and proposals made. You may wish to comment.

Counsel to the Community (Mr. Kaahwa): Hon. Chairperson, sir, I have heard of the comments and the suggestions. Sub-section (3), if we look at it, is supposed to provide for something – *(Interjections)* – why do you not let me proceed and – something substantial, which is not exactly provided for in the general provisions of the functions of the Authority. And this is what I am proposing now for consideration by the Committee:

“In order to improve the development or review of Partner States or the East African Community sectoral regulatory regimes, and to enhance their compatibility with the requirements of the East African Community Competition Law, the

Authority will participate in the Partner States and the East African Community regulatory processes.”

And then we would want to say:

“For these purposes_

- (c) the Partner States as well as the East African Community organs and institutions are obliged to communicate;*
- (d) the Partner States shall provide the Authority with all relevant information;*
- (e) The Authority shall communicate. All these are meant to enable the improvement of the East African Community sectoral regulatory regimes.”*

That will improve on it, and the reading will be simple.

Ms. Bagalaaliwo: Mr. Chairman, I think the Counsel to the Community should be given time to review this clause. It has got a number of different connotations...where they make their provisions mandatory and so on. I think he needs to revisit it so that he comes back tomorrow with a better organised paragraph.

Mr. Chairman: Definitely he will be given more time, but if the Members also have some ideas, they can come up with them so that he may include them in the proposal he is going to submit tomorrow.

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I agree that the Counsel to the Community, maybe with some Members of the Committee, can look into these problematic clauses so that we come tomorrow with better refined clauses.

Secondly, on Clause 45(1), we have been asked about the competition advocacy. I thought that instead of waiting for more information, I should offer some explanation. I think advocacy is sensitisation; creating more awareness. I think it is a very simple thing. You sensitise the public and make them aware of the Authority's functions. I think that is what is meant.

Mr. Chairman: We will give more time to the Counsel to the Community, but my concern is that the honourable Members will also maybe participate or contribute in some way some how so that when we come back tomorrow we do not have to take a lot of time. But I hope the Counsel to the Community has heard the views of the Members in this meeting.

(Clause 45 was left pending redrafting)

Clause 46:

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I propose the amendment of Clause 46 deleting the entire clause and inserting in place thereof the following new Clause 46:

"The Authority shall be funded from the budget of the Community."

(Question of the amendment put and agreed to)

Clause 46, as amended, agreed to.

Clause 47:

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I propose the amendment of Clause 47 by deleting the entire clause and inserting in place thereof the following new Clause 47:

"47. Any question with respect to any action of the Authority under this Act or anything done with respect to the Authority under this Act shall be determined by the Court."

(Question of the amendment put and agreed to)

Clause 47, as amended, agreed to.

Clause 48:

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairperson, I propose to amend clause 48 amended by deleting the entire clause and inserting in place thereof the following new clause:

"48. (1) The Authority shall submit, through the Secretary General, submit to the Council an annual report

(2) The Council shall publish the report submitted to it in the Gazette.

(3) The Authority may publish such other reports as it considers necessary."

(Question of the amendment proposed)

Ms. Rose Waruhiu: Mr. Chairman, in Clause 48(1) I propose that we remove the first “submit” so that it reads: “*The Authority shall, through the Secretary General, submit to the Council...*”

Mr Chairman: Is that understood? Is it clear to all of us? Is it agreeable? No objection to hon. Waruhiu’s proposal?

Hon. Members: No!

The Chairman: Fine.

Mr. Med Kaggwa: Mr. Chairman, in Clause 48(2), I think that word “report” is naked. I do not know whether they meant the annual report – (*Interjections*).

A hon. Member: What does he mean “naked”? (*Laughter*)

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, it is “annual report”. The report flows from 48(1), which is talking about the annual report. So, it is now closed.

The Chairman: Hon. Med Kaggwa, it comes from sub-section (1). If you read Subsection (1), there is “an annual report”; subsection (2) says “the report”, referring to annual report. So is it clear that 48(2) is annual report?

Hon. Members: Yes!

Mr. Calist Mwatela: Mr. Chairman, I propose that instead of the Council just publishing the report submitted in the Gazette...first of all, there does not seem to be any value in publishing the report in the Gazette. I propose that the Council shall lay this report in the Assembly, because that is where it can have value.

Publishing it in the Gazette is not very important.

Mr. Jared Kangwana: Mr. Chairman, on sub clause (1), I subscribe to what hon. Mwatela is saying, and, really, in order for this House to exercise its oversight functions properly, it is necessary that all institutions of the Community do bring their reports and accounts to the House. So, I think that needs to be clarified or specifically stated.

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, we are guided by the provisions of Article 49 (2) of the Treaty, which empowers this House to have an oversight role over the activities of the Community. So, this sub-section will be amended to require tabling of the annual report before the Assembly – (*Applause*).

The Chairman: So, when you bring the corrections next time, they should read: “*Gazette and submit the report to the Assembly*” – (*Interjections*) - anyway he will find the language and bring it to us. We should not quarrel over the language now.

Ms. Rose Waruhiu: Mr. Chairman, if we accept that, then we will have a problem with subsection (1) because, if we accept that it is the Assembly that should get the report. Are we therefore saying that it is submitted to the Council and then to the Assembly through the Secretary General? (*Interjection*) If it is the Council that will bring it to the Assembly, then it is alright.

The Chairman: So the *baraza* has decided now! (*Laughter*) Hon. Counsel to the Community, I hope it is clear now.

Ms. Kawamara Mishambi: Mr. Chairman, Article 48(3) says “*the Authority may publish such other reports as it considers necessary.*” Is it again publishing them in the Gazette or just publishing them anywhere?

The Chairman: First and foremost, what is this “such other reports”, and secondly, “any other”?

Mr. Abdirahim Abdi: Mr. Chairman, it is any report which is not the Annual Report.

The Chairman: Responding on behalf of the Council of Ministers, hon. Abdi says it is any other report which is not the annual report – (*Laughter*). Kenya has started implementing the proposal that ministers should come from the House! That seems to be agreeable. So, amendments have been made to sub clauses (1), (2) and (3).

(Question of the amendment put and agreed to)

Clause 48, as amended, agreed to.

Clause 49:

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I beg to propose that Clause 46 in the Bill becomes Clause 49, and be amended as follows: -

(a) *Delete the words “less than” appearing at the end of the second line and substitute in place thereof the words “more than” ;*

(b) *Delete the words “less than six months” appearing at the end of the*

third line and substitute in place thereof “more than two years”

(c) *Insert a new sub-clause (2) to read as follows:*

(2) The national courts in Partner states shall have jurisdiction in relation to criminal offences under this Act

(d) *Correc the word “tem” in the third line to read “term”.*

Mr Mwatela: Mr Chairman, arising from that, there is need to amend the marginal note on page 4 of the Schedule of proposed amendments by the Council of Ministers to read “*Clauses 37 to 48*”. (*Interjections*)

The Chairman: If you read the last sentence or article of the schedule of amendments, it proposes renumbering of all the clauses accordingly, and we will also put a vote on that. So I put the question on Clause 49 – (*Interjection*).

A hon. Member: Which is Clause 49?

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, the current Clause 49 is Clause 46 in the Bill. Originally we only had up to Clause 47, but with the amendments, which were agreed in the Committee after taking on “the Authority” instead of “the Committee”, we now have additional clauses to the Bill. That is why now we have more clauses. This Clause 49 is a new clause. But I want to propose, Mr Chairman, we go through this one and then we go to the last item in the schedule, “Numbering”, which will make

everything clear. I beg that we be patient and wait until the last item.

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

Clause 49, as amended, agreed to.

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I beg to move that a new clause under the marginal heading “Precedence” is inserted as the final clause to read: -

“This Act shall take precedence over Partner States’ laws in respect of any matter into which its provisions relate” in line with provisions of the Treaty.”

(Question on the amendment proposed)

Ms. Kate Kamba: Mr. Chairman, I do not know whether we have skipped Clause 47 or not, but if it is still there, then we have to vote on it and make it 50 before we can go to the final clause on precedence.

(Question on Clause 47 put and agreed to)

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I propose the inclusion of the following new and final clause, which will be Clause 51, I think.

“Precedence”:

This Act shall take precedence over Partner States’ laws in respect of any matter into which its provisions relate” in line with provisions of the Treaty.”

(Question on the amendment proposed)

Ms. Kawamara Mishambi: Mr. Chairman, I just have a problem with that clause. Are there any laws passed by this Assembly which do not take precedence over the national laws?

The Counsel to the Community (Mr. Kaahwa): First of all, Mr. Chairperson, the proposal should read: *“This Act shall take precedence over the Partner States’ laws in respect to any matter to which its provisions relate.”* The word there is not “into” but “in”.

Now, with regard to the precedence referred to here, it is the Partner States’ laws and legislation on matters similar to what we are legislating on, because the Partner States have had legislation. The purpose of this new clause will be to emphasize Article 8 of the Treaty that Community laws take precedence over national ones in similar matters.

Mr. Med Kaggwa: Mr. Chairman, I think we should be wary of setting precedence and being inconsistent. It is clear they are referring to Article 8 and it has made it specific that laws made under this Treaty on that particular matter do take precedence. Why do you want to include it here and yet you have not included it in all other laws? What is the purpose? I just want to be educated, Mr Chairman.

Mr. Jared Kangwana: Mr. Chairman, to underline what hon. Med Kaggwa has said, if we accept this and adopt it, then what we will be saying indirectly is that the other laws that have been passed by this House do not take precedence over similar national laws, and that would be a very dangerous precedence - *(Interjection)* - including the Customs Management Act!

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, what my honourable Friends are pointing out is correct. Article 8 of the Treaty should be seen as part of the primary law of the Community – *(Applause)* – No, no. Let me proceed first; you will be more excited if you...but this same august House, during the time it passed the Customs Management Act, found it necessary to provide a provision in Section 253 which reads: “*This Act shall take precedence over the Partner States’ laws in respect to any matter to which the provisions relate*” – *(Interruptions)* Now, if Members are talking of consistency, then we must be consistent with the primary law on the Customs administration and management – *(Interjections)*

The Chairman: What do they call it; yielding or submitting or...what is it?

Mr. Jared Kangwana: Mr. Chairman, to me this is a very serious matter because we were rushed through the Customs Management Act - *(Interjection)* – and we are being rushed through this Bill also, and in the process we make mistakes. We must be given time to go through Bills. It is not right, and I feel really embarrassed at the way we are going through this Bill. I am really very uncomfortable, Mr Chairman. So, what I am saying is that if the provision that he has read is there, really it was included because we were not given time to look through the Bill, and I think an amendment should be brought, along with the others, to remove that – *(Laughter)*.

Mr. Chairman: After sitting with this Bill for one and half years, can we say we have been rushed? *(Interjections)*

Mr. Med Kaggwa: Mr. Chairman, on top of what my colleague has said, I think there are two things here: One, we do not have to persist in an irregularity. Secondly a court can review its decision. If we made a mistake in the other Act, I do not think we should continue with that in this Act when we have realised it.

Mr. Chairman: But the question to the Counsel to the Community is, if it is provided for in the Treaty, what is the problem in removing it from here?

The Counsel to the Community (Mr. Kaahwa): Mr. Chairperson, I have already responded by saying that the Treaty is the primary law and Article 8 is all encompassing. But what I was trying to do, because Members alluded to consistency, was to try and remind them that they are not consistent in the consistency – *(Laughter)*.

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Chairman, while I see a different sentiment by the hon. Members, I think it would not cost anything if we left out this clause. And if we come to amending the Customs Management Act, we could also drop that one, so that we are in accord with the law. Because this is superfluous; it is not actually necessary – *(Applause)*.

The Chairman: So we have agreed that we are dropping it?

Hon. Members: Yeah!

Ms. Sarah Bagalaaliwo: Mr. Chairman, I just wanted to correct the impression that we have been sitting on this Bill. We have not, and we also only received the amendments today.

The Chairman: The minister has dropped the clause; is that okay; is that agreeable?

Hon. Members: Yeas!

(Question of the amendment put and agreed to)

Clause 51, as amended, agreed to

The Chairman: The final one is on renumbering.

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I beg to move that all the clauses be re-numbered accordingly.

(Question of the amendment put and agreed to)

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I wanted to propose that the Members of the Committee who had worked on this Bill before meet with us tomorrow morning so that we can work together, so that when we come back in the afternoon tomorrow, we shall not be having problems again – *(Interjections)*.

Mr. Chairman: No, I do not think it is now a Committee problem; it is a problem of the Council of Ministers. But you can invite some of the Members if you want. Once we resume the House, I will invite the Minister to propose that the work is not completed and he is requesting for more time.

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Chairman, I beg to move that the House do resume and the Committee of the whole House reports thereto.

(Question put and agreed to)

(The House resumed, the Speaker in the Chair)

BILLS **Report Stage**

The East African Community
Competition Bill, 2004

The Chairperson of the Council of Ministers (Mr. John Koech): Mr. Speaker, I beg to report that the House has considered “*The East African Community Competition Bill, 2004*” and has not completed the Committee Stage of the Bill. I therefore beg to move that the House do adjourn until tomorrow.

The Speaker: Hon. Members, before I take any action, I would like to recognise the presence, in the gallery, of the following honourable Members of Parliament from the United Republic of Tanzania:

Mr. Bernard Membe, Deputy Minister for Public Security and the Member of Parliament for Mtama; Dr. Raphael Chegeni, the Member of Parliament for Busega; hon. Samir Lotto, Member of Parliament for Morogoro South-east; hon. Victor Kawawa, the son of the veteran politician Mzee Rashid Mfalme Kawawa. He is the Member of Parliament for Namtumbo – *(Applause)*

Honourable Members, as you have all heard, the Minister has requested for the adjournment of the House – *(Interjection)* - hon. Waruhiu, do have something to say?

Ms. Rose Waruhiu: Mr. Speaker, I am seeking clarification. Do we have a Motion for Adjournment on the Floor,

and in which case there should be debate? *(Laughter)*

The Speaker: Debate will only come with the permission of the Speaker.

ADJOURNMENT

The Speaker: I now adjourn the House until 2.30 p.m. tomorrow when we resume.

(The Assembly rose at 5.00 p.m. and adjourned until Thursday, 21 September 2006 at 2.30 p.m.)