



## **EAST AFRICAN COMMUNITY**

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### **Official Report of the Proceedings of the East African Legislative Assembly (EALA)**

#### **20<sup>TH</sup> SITTING – SECOND ASSEMBLY: FIFTH MEETING – FIRST SESSION**

**Thursday, 21 February 2008**

*The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the Assembly,  
Ngorongoro Wing, Sixth Floor, AICC Building, Arusha*

#### **PRAYER**

*[The Speaker, the Hon. Abdirahin Haithar Abdi, in the Chair]*

*The Assembly was called to Order*

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#### **PAPERS**

The following Paper was laid on the Table of the House:

(by the Chairperson, General Purpose Committee (Ms Lydia Wanyoto Mutende)

Report of the Study tour of Committee Chairpersons to the European Parliament  
and the Belgium House of Representatives

#### **QUESTIONS FOR ORAL ANSWERS**

**Question Ref. No. EALA/PQ/OA/03/2008**

**Ms. Dora Byamukama (Uganda)** asked the Chairman, Council of Ministers:

The Summit of the East African Community Heads of State held on 30 November 2006 in Arusha, Tanzania granted the East African Community membership to the Republic of Burundi and the Republic of Rwanda effective 1 July 2007. The Council of Ministers subsequently amended some provisions of the Treaty with a view of facilitating effective participation of the two Partner States. According to Article 150(6), “*any amendment to the Treaty shall be adopted by the Summit and shall enter into force when ratified by all Partner States.*” This had not had not yet been done and as such, the Assembly was prompted to adopt a resolution passed at its 4<sup>th</sup> Meeting urging all Partner States to expedite the process of ratification of the amendments and to deposit their respective

instruments of ratification with the Secretary-General as per Article 152 of the Treaty. Bearing this in mind, could the Chairperson of the Council of Ministers update the Assembly on the status of the ratifications?

**The Chairperson, Council of Ministers (Mr. Eriya Kategaya (Ex-Officio, Uganda):**  
Mr. Speaker, sir, I beg to reply.

It is true that at its historic Summit, which was held on 20 August 2007, the Summit of the EAC Heads of State adopted the Council of Ministers' proposals to amend Articles 1, 15, 17, 19, 48, 62 and 65 of the Treaty for the Establishment of the East African Community. The main purpose of the amendments was to facilitate participation of the Republic of Burundi and the Republic of Rwanda in the activities of the East African Community, including representation in this august House.

It is also true that according to Article 150, read together with Article 152 of the Treaty, all such amendments come into force when ratified by all the Partner States.

Mr. Speaker, sir, the process of ratification is a process of governments of the Partner States. However, being aware of the Partner States' legal commitments to implement the Treaty, the Secretary-General and I have taken initiatives to expedite this process.

As the Council of Ministers reported to this august during the 4<sup>th</sup> Meeting in Zanzibar, the Secretary-General, by his letter reference PRO/65 dated 21 August 2007 and 22 October 2007, did communicate the fact of the amendments and the need for urgent ratification of the same by the Partner States. The Secretary-General followed up with further correspondence on 16 December 2007 and 31 January 2008. Apart from correspondences, I and the Secretary-General have on several occasions verbally interacted with ministers and Permanent Secretaries responsible for East African affairs on the urgency of ratification of the amendments.

In this regard, the hon. Rosemary Mseminari, Rwanda's Minister of State for Regional Co-operation and the hon. Dr. Wilfred Machage, Kenya's Minister for East African Community Affairs have assured the Secretary-General that their respective countries' processes of ratification are under way.

Mr. Speaker, sir, I am, however, happy to report to this august House that:

- (a) The Republic of Uganda deposited her instruments of ratification with the Secretary-General on 11 December, 2007.
- (b) The United Republic of Tanzania deposited her instruments of ratification with the Secretary-General on 8 January, 2008.
- (c) According to the hon. Veneran Bakevyamusaya, Burundi's Minister responsible for East African Affairs, the ratification process was handled by the National Assembly of Burundi on 25 January 2008 and by the Senate on 31 January 2008. In Burundi, it is now the signing of the instrument of ratification by His Excellency the President of Burundi and its deposit with the Secretary-General

that is remaining. We, therefore, await the deposit of Burundi's instruments of ratification.

Nevertheless, the Republic of Rwanda and the Republic of Kenya, as well as the Republic of Burundi have once again been reminded, through the coordinating ministries, to expedite deposit of the instruments of ratification. Besides, the Sectoral Council of Ministers responsible for the East African Community Affairs is scheduled to meet tomorrow, Friday, to discuss, among other matters, the urgency required to finalize this process.

Mr. Speaker, sir, the Council has decided that in order to avoid delayed ratification of East African Community instruments, target dates for ratification and deposit of instruments of ratification will be set at the time of concluding and signing of the protocols and other East African Community instruments.

**Ms. Byamukama:** Mr. Speaker, sir, I want to thank the Chairperson, Council of Ministers for that succinct answer. But I would like to know concisely when the Members from Burundi and Rwanda will join us, because, as you may note, it is coming to seven months since this was supposed to be put into effect. Moreover, this renders our work very difficult, especially when it comes to issues of budgeting, and even for purposes of feeling wholesome. So, I would like to have a more concise answer.

In relation to that, I would also like to bring up what was discussed yesterday in the question raised by the hon. Ogalo on the issue of time frames. The Treaty for the Establishment of the East African Community entered into force on 7 July 2000. When you consider that seven years later we are still grappling with modalities and steps which should be taken before we can actually effect what we have agreed upon, it is like marrying somebody and waiting for six months or more to consummate the marriage – (*Interjection and Laughter*). It would really be very difficult for the bride to appreciate this kind of situation. Mr Speaker, sir, I would like a more concise answer for that matter.

**Mr. Kategaya:** Mr. Speaker, sir, if you look at the Treaty, the implementing agencies of the Treaty provisions are the Partner States. As for ratification, as you have seen, each State has its own procedures and we cannot dictate the speed at which they go through those stages from the centre, even at the level of Council of Ministers. Therefore, the fully joining of Rwanda and Burundi will follow immediately after the amendments have been effected and the instruments of ratification deposited with the Secretary-General.

Now the second part of it - the consummation, I think it depends. We started this new Community in 1999 and the Treaty was signed in 2000. But we have been going slowly to bring people together. The Republic of Rwanda and Republic of Burundi joined only last year, and, as I said, they have their own procedures and political issues to take into account. I think we should be patient with them to finish the processes and have the consummation of their joining us.

**Maj-Gen. Mugisha Muntu (Uganda):** Mr. Speaker, considering the observed culture in this part of the continent - or if I may say, possibly in the whole continent - the culture of lack of appreciation for the management of time, which is one of the biggest impediments to progress in this continent, does the Chairperson of the Council of Ministers appreciate, or, does he and the Council intend, as a way of managing time, to put time frames that must be observed by those who are supposed to do things?

My question is: was there a time frame within which all these countries were supposed to have ratified the amendments? If there was a time frame within which to ratify, then we would be holding each country to account as to why they have not acted according to the time frame given. I think it is now seven months since the amendments to the Treaty were made, the thing I get is that we are all waiting and depending on the pace at which each of the Partner States decides to act.

This is not an act in isolation. We have seen, for example, that when the Customs Management Protocol was negotiated it was given a four-year time frame, but it was signed at midnight on the last day; close to a crisis – (*Interjection*). Another example, which is actually part of the second question that is coming, is that of the EPAs (Economic Partnership Agreements). So, my question to the Chairperson of the Council of Ministers is: in view of all this, does the Council consider making Partner States appreciate management of time? I thank you, Mr Speaker.

**The Speaker:** Honourable Minister, before you answer, I would also like to add that if you look at Article 16, I think you can issue directives which are binding to the Partner States. Why do you not use that to hurry up this issue?

**Mr. Kategaya:** Mr. Speaker, sir, giving directives and being obeyed are two different things. Yesterday when I was contributing to the debate on the Report of the Committee on Accounts, I made it clear that the feeling one gets up to now is that there are some organs of the Partner State governments that are actually not even aware that there is a Treaty, leave alone obey it. I cited the example of the East African Customs Management Act, which you passed here. In some parts of our Partner States, people are not even aware of the existence of that law, let alone implement it. So, the Council, of course, is supposed to implement the decisions of the Summit and any other organs of the Community, but sometimes issuing idle directives is not proper, in my view. For record purposes it may be there but in practical terms, talking, cajoling and the like may be the best way forward.

Mr. Speaker, sir, I share the concerns of the hon. Muntu about time management. I think that this is a problem in Africa as a whole, except perhaps in a few countries where you find that time management is observed by all. But as I said in the last part of my written answer, there is no time frame given to Partner States to ratify any amendments. But I said, “*The Council has decided that in order to alleviate delayed ratification of the East African Community instruments, target dates for ratification and deposit of instruments of ratification will be set at the time of concluding and signing of protocols and other*

*East African Community instruments.*” In other words, the Council is proposing that there should be a time frame in which these matters should be finalized.

**Dr. George Nangale (Tanzania):** Mr. Speaker, the Chairperson of the Council of Ministers has tried to elaborate on the procedure of ratification, but my question is this: since the ministers responsible for regional co-operation from each Partner State are Members of the Council and are also ex-officio Members of the Assembly, Rwanda and Burundi are full Members of the East African Community and I am aware that they attend Council of Ministers’ meetings, why have not seen the ministers joining East African Legislative Assembly to-date? Are they also awaiting ratification?

**Mr. Kategaya:** Mr. Speaker, sir, the short answer is yes; they are waiting for the ratification.

**Question No. EALA/PQ/OA/04/2008**

**Ms. Dora Kanabahita Byamukama (Uganda):** asked the Chairman of Council:

Members of the East African Legislative Assembly participated in a workshop on the EPAs (the Economic Partnerships Agreement) negotiations in Entebbe, Uganda. This workshop produced a report that strongly recommended for EPAs negotiations to be halted in light of critical concerns that had been raised by the stakeholders. The recommendations notwithstanding, the EAC Partner States signed the interim framework on EPAs. Considering the importance of the concerns raised and the need to take into account laws of the Community coupled with the on-going integration process could the Chairperson of the Council of Ministers brief the Assembly on the content and implications of the interim EPAs framework?

**Mr. Kategaya:** Mr. Speaker, sir, I beg to reply.

I am aware that on 11 April 2002, the EAC Heads of State, during their Summit in Kampala, Uganda, directed that the Partner States should negotiate on matters of relations between the African, Caribbean, Pacific countries and the European Union (ACP/EU) as a block. For some reasons, however, our countries were not able to immediately coalesce into a block and therefore separately negotiated EPAs under Eastern and Southern Africa (ESA), and Southern Africa Development Community (SADC).

In early 2007, the EAC Secretariat brought to the attention of the Partner States the potential dangers to the East African Customs Union of concluding different EPAs under dissimilar configurations. As a result, on 11 October 2007, while meeting in Nairobi, the Ministers responsible for Trade matters resolved that the EAC countries should make an offer for a joint market access on trade in goods with the European Community in Brussels during their meeting of 14 November 2007. From there, matters picked up, leading to the initialling of the framework agreement between the Partner States and the European Commission on 27 November 2007 in Kampala, Uganda.

By June, 2007, it had become clear that the EPAs negotiations would not be concluded by 31 December 2007. This called for measures needed to avoid disruption of trade between the Partner States and the European Union (EU). Such measures were also aimed at meeting the World Trade Organisation (WTO) principle of reciprocity in trade between the EU and the ACP countries.

While preferential treatments such as the “Everything but Arms” initiative to the Least Developed Countries (LDCs) and the generalized system of preference for developing countries are provided for in the Cotonou Partnership Agreement, it is pertinent that EPA and ESP are still options to negotiating a full EPA. The EDA and GSP rules of origin are more stringent and unfriendly as compared to CPA rules of origin; Partner States would therefore be worse off under the available preferences. Developing countries such as Kenya would have to pay taxes on their exports to the European Union, a situation that would make them un-competitive.

On the account of the overwhelming odds and potential disruption to their trade with the EU, the East African Partner States configured and issued a framework agreement on the 27 November 2007, as a bloc...and I want to emphasise that one; as a bloc – (*Applause*). The framework agreement provides for trade in goods, stock market access, development co-operation and fisheries. This agreement is deemed to be an appropriate tool for ensuring non disruption of trade between EAC and EU, and has the dual advantage of providing a mechanism for preservation and the continuation of negotiations beyond 31 December 2007. This framework agreement will be applied provisionally with effect from 1 January 2008, until such a time that a comprehensive and full EPA is negotiated and signed by both parties; that is EAC and EU.

Mr. Speaker, sir, in the framework agreement with the EU, the EC granted the EAC a market access offer consisting of duty free and quota free arrangements for rice and sugar. The EAC Partner States will also gradually open their markets to goods from the EU over a period of 25 years.

On fisheries, both the EAC and the EC recognize that fisheries constitute a key economic resource for the EAC Partner States, and have great potential for future regional economic development and poverty eradication. It is also an important source of food and foreign exchange. They further recognize that fisheries resources are also of considerable interest to both the EC parties and the EAC Partner States and agree to co-operate for the sustainable development and management of the fisheries sector in their mutual interest, taking into account the economic, environmental and social impacts. Consequently, the EAC and the EC agree that the proper strategy to promote economic growth of the fisheries sector and to enhance its contribution to the economy of the EAC Partner States while taking into consideration its long term sustainability is through increased value addition activities within the sector.

Mr. Speaker, sir, on economic and development co-operation, both parties affirmed their recognition and development needs for the EAC region and the commitment to ensure that EPA is an adjunct for development that will promote and consolidate regional

integration and aid the integration of the EAC into a global economy. The parties agreed to work together to define and address development needs associated with EPA in order to promote sustained growth, strengthen regional integration and foster structural transformation and competitiveness to increase production, supply capacity and value addition of the EAC countries. The EU confirmed that it would contribute towards resources required for development under the 10<sup>th</sup> ADF regional indicative programme, aid for trade and the EU budget.

The framework agreement has an elaborate coverage on development issues under which both parties affirmed their recognition of development needs for the EAC region, and their commitment to ensure that EPA is an adjunct for development to promote and consolidate regional integration and aid the integration of the EAC into a global economy.

Mr. Speaker, sir, as I said earlier, the framework agreement is provisional and its tenure will expire after a full EPA is concluded and signed. Now that both the EAC and the EU have initialled the framework agreement, the way forward is to continue with negotiations in order to achieve full and comprehensive EPAs by July, 2009. Towards this end, we are seeking the support of this august House and all citizens of the EAC and relevant stakeholders in accomplishing the onerous task of negotiations. The Secretariat has assured me that mechanisms are in place to ensure that all stakeholder views are taken into account when negotiating the EPAs.

**Ms. Byamukama:** Mr. Speaker, sir, I thank the Minister for his reply. Under Rule 21(2), it would be prudent, although we did not specifically ask for a written response, for us to get a written response so that we can internalize these issues and, therefore, be able to ask questions which are relevant to the answers that may have been given. May be this is an issue you may rule on.

Secondly, I would like to say that Members of this House are very proficient in issues of trade and development having attended an EASAMI course and by virtue of their different backgrounds. Therefore, I would like to propose that the Minister tables the documents so that the relevant Committee can look at it and report to this House at the time you will assign it to do so. I mean the EPAs interim framework which we have never received as a House, and the Minister's response to this particular question. I thank you very much – (*Applause*).

**Mr. Kategaya:** Mr. Speaker, we shall do that very willingly. The copy of my reply is here, and the copy of the interim framework, which was signed between the EAC as a block and the EU, will be made available to the Members of this House.

**The Speaker:** I hope they will be tabled so that they can be sent to the relevant Committee; not in the pigeon holes.

**Mr. Kategaya:** I will follow your guidance on how to avail them to the House.

**Ms. Margaret Zziwa (Uganda):** Mr. Speaker, sir, I think we shall benefit greatly when we get the response of the Chairman, Council of Ministers. I just wanted to follow up on his statement in regard to the fact that this House, at its 4<sup>th</sup> Meeting in Zanzibar, passed the Joint Negotiations Act. I want to find out how the Council has gone with regard, particularly, to Article 62(2) of the Treaty, and how aspects of this joint framework are related to the Act, which I guess the honourable Minister must have had an opportunity to look at – *(Interruption)*.

**The Speaker:** I think you should be asking me that question, not the Minister, if you read all the – *(Laughter)*. It is in process; I do not think it is a question for the Minister.

**Ms. Zziwa:** Okay, I would be glad to do that of course since the Minister is going to give us copies of the interim framework. I had actually read on the internet comments with regard to the fact that the signed framework was of a lesser strength on non-reciprocity than the existing arrangement...whether to accept this situation of reciprocity, which many less developed countries were really objected to. So I want to hear some assurance from the Chairman, Council of Ministers – *(Interruption)* –

**The Speaker:** Honourable Members, I think we have asked the Minister to lay the document before the House. It is going to go to the relevant Committee, and the Committee will then report back to this House. From there we will know what to do. So, I think we can rest this matter and go to the next question.

**Question Reference Number: EALA/PQ/OA/07/2008**

**Ms. Safina Kwekwe Tsungu (Kenya)** asked the Chairman, Council of Ministers:

Over the years, the EAC Secretariat has attracted funding to carry out development projects. One such project is the Namanga-Athi River Road Project. This is a trans-border road project that is to cost about US\$175 million. It is noted that there has been undue delay in the execution of this important project, which has raised serious concerns in the EAC. Could the Chairman Council of Ministers brief the Assembly on the status of the works on the Namanga-Athi River Project and provide information on schedules, and specifically the projected date for completion?

**Mr. Kategaya:** Mr. Speaker, sir, this is the answer:

It is true that the Secretariat has over the years attracted funding for both the preparation of projects and implementation. Some of the major regional projects currently being funded include the Arusha-Namanga-Athi River Road Development Project and the East African Trade and Transport Facilitation Project.

For the Arusha-Namanga-Athi River Road Project, the African Development Bank (ADB) has been the lead financier and began its assistance in the year 2002 with the provision of a US\$1.2 million grant to the East African Community for feasibility studies and designs for the road project. The procurement process for the study consultancy was



concluded in April, 2004 and the consultants, GIBB Africa Limited were engaged. The final report of the consultants relating to economic and feasibility studies, detailed designs and environmental and social impact assessments were approved by the bank in September, 2006. In 2007, ADB with funding from its multinational window and with co-financing from the Japanese Bank for International Co-operation (JBIC) agreed to finance a reconstruction of the road. These were in the form of loans to the government of the Republic of Kenya, which is US\$75 million and the government of the United Republic of Tanzania of US\$60 million. The loans represented 65 per cent of the project costs, with the remaining 25 per cent to be met by both governments through counterpart funding.

Mr. Speaker, sir, regarding the implementation of the Arusha-Namanga-Athi River Road Reconstruction Project, the status is as follows:

- (a) The procurement for contractors and supervision consultants commenced in October, 2006 with advertisements in the regional newspapers for both sections, and bids were evaluated in April, 2007. Negotiations with the winning bidders commenced soon thereafter and on the Kenyan side, they were concluded in October, 2007.
- (b) The Namanga-Athi River section in Kenya, which is 135 kilometres long, has been cleared by ADB to proceed to the construction stage. The contractor mobilized in December, 2007 and actual physical works are expected to commence in March, 2008, after allowing for 90 days for the contractors to mobilize and ship equipment.
- (c) For the Arusha-Namanga section in Tanzania, which is 105 kilometres long, the procurement process is in its final stages. The ADB gave its no objection on 5 February 2008 to the evaluation of bids, and approved the signing of the contract between the government of the United Republic of Tanzania and China GO Engineering Corporation. Therefore, negotiations with the contractor are expected to commence before the end of February, 2008, and the signing of the contract by the end of March, 2008. It is expected that the works will commence in July, 2008 after allowing 90 days for the contractor to mobilize.

Both sections of the road were expected to be implemented concurrently with contract schedules of 36 months each. Now that the projects are not moving in tandem, the expected completion dates are March, 2011 for the Kenyan section and July, 2011 for the Tanzanian section. Mr Speaker, sir that is the answer.

**Ms. Tsungu:** Mr. Speaker, sir, I would like to thank the honourable Chairperson for that response. My supplementary question is as follows: From that response, the implementation period is three years, and from the records, this is a soft loan that the EAC Partner States concerned, namely, Tanzania and Kenya, have been given a grace period of 10 years and a repayment period of 30 years thereafter. My question is, when does this grace period begin; is it on commencement of the works or from the date when the funds were released, because then that will in a way have implications on the time that Tanzania and Kenya will have to meet their repayment obligations.

**Mr. Kategaya:** Mr. Speaker, sir, I have just been advised that the grace period starts after signing the contract. I am not personally knowledgeable about the details, but my advice is that it starts – (*Interruption*) -

**The Speaker:** Honourable Minister, you have to stand up when speaking in the House – (*Laughter*).

**Mr. Kategaya:** You know your microphone is too short for me; I do not know how you manage!

**The Speaker:** I also have the same problem - (*Laughter*).

**Mr. Kategaya:** Thank you for sympathizing with me on that issue.

I said, Mr Speaker, sir, that the advice I am given by the Secretariat is that the grace period starts when the agreement is signed.

**The Speaker:** Honourable Members, before I allow anyone else to ask a question, could you please switch off your phones? Do not put them on silent, just switch them off. We are having problems with the *Hansard* recording; kindly switch off your phones. Yes, Hon. Kwekwe?

**Ms. Tsungu:** Mr. Speaker, sir, I beg your indulgence for being persistent. The hon. Chairman says that the grace period starts immediately after the signing of the agreement. I am making a presumption that this agreement is either the one between the EAC, the ADB and the Japanese bank or the one with the contractors. I see the Chairman shaking his head, which means that the agreement is with the contractors. Anyway, I would wish for him to clarify which agreement this is that he is talking about, and, secondly, if, for example for the case of the Kenyan side, the mobilization by the contractor was done in December, which means that there must have been a signed agreement for the contractors to do the mobilization and work will commence in March, which is about four months later. I would like a clarification on those two issues.

**Mr. Kategaya:** Mr. Speaker, sir, I think the agreements are between the Government of Kenya and the Government of the United Republic of Tanzania on this construction of the road. What was the second issue...the agreements between the Republic of Kenya and the United Republic of Tanzania or – (*Interjection*) -?

**The Secretary-General of the EAC (Amb. Juma Mwapachu):** Hon. Speaker, I would like to reinforce the response from the honourable Chairman of the Council of Minister by drawing the attention of the honourable Member to the statement as read by the Chairman which reads: “*In 2007, ADB, with funding from its multinational window and with co-financing from the Japanese Bank for International Co-operation agreed to finance the reconstruction of the road. These were in the form of loans to the government*

*of the Republic of Kenya of US\$75 million and the government of the United Republic of Tanzania of US\$60 million.”*

In other words, Mr Speaker, these agreements only come into force in 2007. Even though there were certain procedures and processes that dated back, they were not actually part of the contracts that were signed. The ADB had already given some soft money for all the earlier works to be done, like the commissioning of the engineering studies, getting consultants and so on. But the actual timing from when the contract begins to run is when the contracts were signed by the ADB with the governments of Kenya and Tanzania, and that was only last year.

**Mr. Daniel W. Ogalo (Uganda):** Mr. Speaker, sir, and I want to thank the Chairman, Council of Ministers for his answer. Now, these works began in the year 2002; that is when the whole project came on board with a study, and we hope to commence in the year 2008, that is six years later. Does the Minister consider this a reasonable period within which the countries will have to wait before you just begin on a road?

Secondly, if the Minister thinks six years is not reasonable, is it not time that the Council considered having these projects carried out by the Secretariat here rather than them being implemented differently, so that we do not have the Kenyan and Tanzanian governments beginning at different times? Has the Minister considered the fact that time has now come for some of these projects to be centrally implemented?

Finally, if the consultants who were engaged to do the study on this road took two years – 2002 – 2004, which is a very long time, does the Minister consider that instead of contracting out these studies, time has now come when we should build capacity within the Secretariat here to do these studies rather than giving them to outsiders who will take two years?

**Mr. Kategaya:** Mr. Speaker, sir, I do not I do not know whether the honourable Ogalo has been involved in begging for money – (*Laughter*). If he has, I do not think he would be wondering what is happening. My experience with the negotiations with the ADB, with the World Bank and the IMF is that this is the type of thing we go through. I think what we should work on is to have our own money – (*Applause*). Once we have our own money, we will not have these problems. Of course, six years is not reasonable; I agree with the honourable Member, but the problem is that if you are a beggar, you are not a chooser. For example, building our headquarters, how many years have we been tossed up and down because we do not have our own money?

On the question of studies to be controlled by the Secretariat of the Community, my answer would be that at the moment, it is not possible. I do not think we have the capacity. In my view, the Secretariat is not equipped to supervise this nature of works, because you must have engineers, architects, consultants; we do not have those currently in the Secretariat. So, I think it would be better to have these projects planned by the EAC but executed by the various governments.

Mr Speaker, sir, for example, if the hon. Ogalo can check, we have a road from Mutukula to Bukoba and somewhere else in Tanzania. It was one project but executed by the various governments. I think it is much better that way at the moment. That is my personal view.

Capacity, yes; if the Community becomes more effective and we actually start planning as one for the whole region, we shall build capacity. But at the moment we are not doing that because we are still planning separately, except that some projects are done in such a way that they link up the region. These are my short answers.

**Mr. Christopher Nakuleu (Kenya):** Mr. Speaker, sir, part of my question coincidentally goes along with what the hon. Ogalo has just asked. Now that one year is gone since the agreement was signed between ADB and the Japanese bank, the implication is that it has eaten into the grace period. And now that the grace period has already been eaten up, we might be forced to start paying for this loan before we start enjoying its benefits, and that has an implication on us as the East African Community.

Secondly, I would like the Minister to table the contract agreement for the consumption of the Assembly.

**Mr. Kategaya:** Mr. Speaker, sir, I cannot table what I do not have. The agreements are between the two governments; the government of the Republic of Kenya and the Government of the United Republic of Tanzania. The documents are not in our custody, they are in the custody of the two respective governments.

On the issue of the grace period and starting to pay, I want to repeat that if you want to control your money and get value for it, do not go begging, because in my experience once you do not have your own money, you cannot control the process; the process is controlled by so many other forces. This is the unfortunate part of getting into these loans. They are good for the time being. If you can use them as stop-gaps in order to be self-reliant, it would be good. But for the time being, you have to suffer these indignities and inconveniences until we work towards having our own resources to run our affairs.

**The Speaker:** Honourable Members, when the Minister said “between the two governments” I think what he was saying is that the contracts were between the Government of Kenya and ADB and between the Government of Tanzania and ADB. So even though we are calling it an EAC project, technically it is actually a Partner States project – *(Interjection)*.

**The Minister for East African Community, Kenya (Dr. Wilfred Machage (Ex-Officio):** Mr. Speaker, sir, may be to avoid more questions on this road, I have some progress report from the Ministry of Roads and Public Works in Kenya which I think is worth sharing with you. The contract on the Kenyan side is called China Overseas Engineering Corporation. The total cost for the 136 kilometres is Kshs6.2 billion – *(Interruption)* – Mr Speaker it is a very short statement! *(Laughter)*

**Ms. Byamukama:** Mr. Speaker, sir, I reluctantly rise on a point of procedure because I cannot clearly follow what is transpiring in this august House. A question was raised by the hon. Safina Kwekwe, the Chairman, Council of Ministers has answered the question, there were supplementary questions asked, and now we have another honourable Minister, a Member of this House, who is also supplementing the answer.

Mr Speaker, I would like to ask for your guidance on how we should take the statement that is coming up from the Minister now, because they could and I think they should have harmonized within their ranks.

**The Speaker:** I think the Minister was just giving information. I hope he is not reading a statement or giving a country position; it is just information he is giving, which I think he is entitled to do as any other Member of the House.

**Dr. Machage:** Mr. Speaker, sir, I think this is important information, which the Chairman might not have know because this is an agreement signed between the Government of Kenya and the contractor. Anyway, in a nutshell – (*Interruption*) -

**The Speaker:** Honourable Minister, you are getting me into trouble now.

**Dr. Machage:** No, no, please – (*Laughter*). In a nutshell, what I am trying to say is that the mobilization period of three months ends in February. And for those who use the Namanga-Athi River road, you can actually see the camp at Isinya is nearly completed, and the machinery is already moving in. My Ministry will be updated quarterly on this project.

**The Speaker:** I think what the hon. Byamukama was saying is that it is the Secretariat that is co-ordinating all these and therefore we should have had a co-ordinated answer from the Chairman Council of Ministers.

Now we will have the hon. Mulengani with the last question.

**Mr. Bernard Mulengani (Uganda):** Mr. Speaker, sir, having listened to the answers, I want clarification on what percentage of that project is under the control of the East African Community. If the two Partner States signed the agreements with the African Development Bank, then what is the role of the East African Community in this particular project?

**Mr. Kategaya:** Mr. Speaker, sir, there is no percentage under the EAC. In my statement, I think I said that the Community was just facilitating the project, because this road is one of the roads under the strategic plan of the Community; one of them is infrastructure. Now, if the road is done it will be an East African road although done by separate Partner States. The little money that came here was for consultancy and the rest, but the actual work with the contractors is with the governments of the Republic of Kenya and the United Republic of Tanzania. So when the negotiations were completed, we were out.

**The Speaker:** I think the Minister has tried to answer. I do not know whether he is saying that the EAC was just a busy body...we have been talking about this project for the last seven years as an EAC project, but it looks like we are not really doing much – (*Interjection*). You know you can not call a point of order when the Speaker is talking – (*Laughter*).

Honourable Members, before we go to the next question, I would like to recognize the presence of the Deputy Minister for EAC, Tanzania, the hon. Mohammed Abood, who is in the Speaker's Gallery - (*Applause*). I would like to say that he would be sitting here with us if the amendments to the Treaty were ratified. I can see his Minister is not here, so if the ratification had been done, he would be here with us.

**Question No. EALA/PQ/OA/08/2008**

**Mr. Abdullah Mwinyi (Tanzania):** asked the Chairman, Council of Ministers:

Article 9 of the Treaty establishes the East African Court of Justice as an organ of the Community. The Treaty further vests in the Court the power to ensure adherence to the rule of law and the application of and compliance with the Treaty. The Judge President, the Vice President and Judges of the Court are only appointed by the Summit. The Assembly having noted that His Lordship Justice Moiwo M. ole Keiwua and His Lordship Justice Augustino Ramadhani ceased being judges of the East African Court of Justice, their term of office having come to an end in November, 2007, adopted a resolution in December, 2007 urging the Summit to immediately appoint a Judge President and such number of Judges to ensure a full bench of the Court and to determine their comprehensive terms and conditions of service. The Assembly also urged the Summit to appoint Judges of the Appellate Division.

Could the Chairman, Council of Ministers inform this august House on the status of implementing the resolution?

**The Chairman, Council of Ministers (Mr. Eriya Kategaya (Ex-Officio, Uganda):** Mr. Speaker, sir, I beg to reply.

The Council is fully seized of the important role the East African Court of Justice plays within the institutional framework of the Community in general, and with regard to ensuring the adherence to law in interpretation and application of and compliance with the Treaty, in particular. The Council, therefore, appreciates the need to always have the Court as effectively constituted as the Treaty requires.

The constitution of the bench of the East African Court of Justice for purposes of filling any existing vacancies starts with the recommendation by the Partner States of persons who fulfil the requirements stated in the Treaty. It is from such recommended persons that the Summit of Heads of State appoints judges.

In this regard, the Secretary-General took efforts to follow on relevant decisions of both the Summit and the Council of Ministers. In his letters Ref. DRO/65 dated 21 July 2007, another one of 14 August 2007, another one of 26 October 2007 and lastly of 31 January 2008, the Secretary-General informed the Partner States' co-ordinating Ministries that at the 5<sup>th</sup> Extra-Ordinary Summit of Heads of State which was held in Kampala on 18 June 2007, the Summit decided that:

- (a) The 1 July 2007 should be the date of commencement of the reconstituted East African Court of Justice.
- (b) During the interim period pending its full operationalisation, the reconstituted Court of Justice will have five judges in each of the divisions. In this regard, each Partner State shall re-designate and appoint one of the current judges of the Court of Justice to the Appellate Division.
- (c) The re-designation of the constituted Court of Justice and appointment of judges to be tabled at the next meeting of the Council for consideration and presentation to the Summit for approval.

He further informed the Partner States that the implementation of these decisions required:

- (i) The Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania to propose the re-designation of their respective judges currently serving in the Court of Justice for appointment to each of the two new chambers.
- (ii) Each of the Republic of Rwanda and Republic of Burundi to recommend two persons of proven integrity, impartiality and independence and who fulfil the conditions for holding high judicial office or who are jurists of recognized competence for appointment as judges of the East African Court of Justice.

The Secretary-General also duly informed the United Republic of Tanzania and the Republic of Kenya that the hon. Justice Augustino Ramadhani and the hon. Justice Moijo ole Keiwua completed their six-year non-renewable tenures of service on 29 November 2007. These two judges have to be replaced by two new judges to be appointed from the United Republic of Tanzania and the Republic of Kenya, respectively. The Secretary-General requested the Partner States to submit names of persons for appointment as judges.

Besides communication in writing, the urgency of this matter has been brought to the attention of the co-ordinating Ministries through all the relevant Sectoral and other meetings.

Today, I am afraid to report, that it is only the Republic of Kenya that has communicated Kenya's nominee for appointment as a judge in replacement of the hon. Justice Moijo ole Keiwua. Mr. Speaker, sir, I however wish to inform the House that the appointment of the President and other judges of the reconstituted East African Court of Justice was an item on the agenda for the EAC policy organs meetings, which were earlier planned to take

place in November, 2007. Currently, it is an item on the agenda for the 9<sup>th</sup> Summit of Heads of State, which is scheduled to take place on 19 March 2008.

**Mr. Mwinyi:** Honourable Speaker, I would like to thank the Chairman of Council of Ministers for his response, although I would like to state that it has not shed any light on the matter. What happens to the ordinary East Africans and institutions when they wish to access justice? Are there any timelines as to the implementation and operationalisation of a key organ of the Community?

**Mr. Kategaya:** Mr. Speaker, sir, once again let me read the last paragraph of my statement. I said, *"I wish to inform the House that the appointment of the President and other judges of the reconstituted East African Court of Justice was an Item on the agenda for the EAC policy organs meetings, which were planned to take place in November, 2007 - but the implication is that it did not take place. Currently, it is an item on the agenda for the 9<sup>th</sup> Summit of Heads of State, which is scheduled to take place on 19 March 2008."* So, in terms of time, we are aiming at 19 March 2008 to complete the process.

**Mr. Gervase Akhaabi (Kenya):** Mr. Speaker, sir, in my supplementary question, I would want the Minister to tell this Assembly whether the time lapse from April – or is it May - last year when the Appellate Division of the East African Court of Justice was established to-date, that time lapse before the actual constitution of the Court, is reasonable in his opinion?

Secondly, I would want to have an answer to the other part of the question, which is on the issue of the terms and conditions of service for the judges. Has the Council made recommendations to the Summit in terms of Article 25(5) with regard to the terms and conditions of service for the judges of the EACJ? If so, what are these terms and conditions?

**Mr. Kategaya:** Mr. Speaker, sir, on the last question, there are terms and conditions of service which are going to be tabled before the Summit and before they are passed and confirmed by the Summit, I do not think I am in a position to give proposals to the House. I think I should give them exactly what has been finalized by the Summit.

On the time lapse, again, sometimes these are issues beyond our control. The appointment of these judges...at least in Uganda it has to go through the judiciary, and then the President is informed, he says yes or no, and then it goes back and forth until the final list is agreed. I do not know what other countries do, but the process is not as short that you can do it quickly. So, this time lapse of March up to now, in the circumstances, I think I would say is reasonable.

**Mr. Bernard Mulengani (Uganda):** Mr. Speaker, why should we allow such situations to occur in the judiciary as if the respective Partner States are not aware of the time when the judges finish their terms of service? This is creating gaps in the institution of the



Court. So why should the Partner States allow such situations to occur? How can we avoid such situations in the future?

**The Speaker:** I think he is asking: why did you create an Appellate Court when you were not ready for it?

**Mr. Kategaya:** No, we are ready, sir – *(Laughter)*. What is left is the process of constituting it; that is all. As to the second part of his question, I do not think I am in a position or competent to answer on behalf of these big republics, the Partner States, how they conduct their business. As I said, each country has its own processes. For example, even for the ratification of the Treaty, Tanzania has to go through Parliament, others go through the Cabinet, and others go through the Cabinet plus Parliament. Sometimes, it is the urgency with which the authorities that are consider these matters. So, in short, I am not competent to answer on behalf of the five big republic Partner States of this Community.

**Mr. Daniel W. Ogalo (Uganda):** Mr. Speaker, sir, first of all I want to thank the Secretary-General for the letters he wrote to the Partner States to ask them to comply with the Treaty. I am also glad that the Chairman of Council of Ministers is an advocate of the High Court of Uganda. We have rubbed shoulders with him in the corridors of those courts and so he will understand that when there is no mechanism for people to settle their disputes, or if there is no confidence in the courts, the people will resort to extraordinary measures. They will kill themselves; they will burn down property and cause mayhem in the region just because there is no place where they can go for peaceful settlement of disputes.

So my question, therefore, is what mechanisms does the Council of Ministers have or propose to put in place to ensure that there is no time when there is no Court? Right now, without the two judges, you cannot have a full bench, and as an advocate, the Chairman knows one cannot proceed. So, what are you putting in place to ensure that these big five republics do not put our citizens in a situation where they will resort to anarchy?

**Mr. Kategaya:** I think my learned friend, the hon. Ogalo, is exaggerating the situation. I do not see East Africans taking up spears and pangas to kill each other because there is a lack of a constituted Court. In any case, the matters he is referring to are not even a subject of the Court. If you kill somebody or you steal property, those are crimes that are not under the purview or the authority of the East African Court of Justice.

But having said that, I think the honourable Members should really look at the Treaty and see how it works. Who are the implementing agencies of this Treaty? And Mr. Speaker, sir, you used your good office to shut me up, but the way the Community moves will depend on the Partner States seriousness in handling issues. There is no way we can run away from that, because at the centre here, the Secretariat or even the Council, there is no mechanism to push the Partner States governments to work. All our decisions are implemented by the Partner States in as far as the Treaty is concerned. They are the executing agencies on behalf of the Community. Therefore, one has to take the

idiosyncrasies or differences of each Partner State on how they handle their own matters when we push them to do something on behalf of the Community. The best the Council can do is merely to propose...that is all.

This gap in the constitution of the Court; I must say that when the Court was constituted, there was a lot of heat, but subsequently the heat went down. Mr. Speaker, sir, I am sure you know that and we are all aware. We know why there was this excitement to create this Court, but afterwards, the heat was taken off and people starting saying let us constitute it as we go along.

So, Mr Speaker, these are some of the problems that jointly we could consider but still, we cannot run away from the fact that it is the Partner States which actually determine how fast we can go into integration and put institutions in place. Sometimes...I do not think I want to say that; let me stop there - *(Laughter)*.

**The Speaker:** I think we will take the last two questions from the hon. Muntu and the hon. Byamukama...I would like to say the hon. Minister was a victim of that situation – *(Laughter)*

**Maj-Gen. Mugisha Muntu (Uganda):** Mr. Speaker, running through the three questions raised on this Floor today, the first one by the hon. Byamukama on the amendment of the Treaty, the second one on EPAs, and this last one by the hon. Mwinyi, is a critical issue of mismanagement of time. You have heard the Chairman of the Council of Ministers clearly - and I think rightly so - saying that the Community or the Secretariat is a hostage to the practices of Partner States, and yet we expect efficiency in the management of the affairs of the Community as a basis for further progress.

Einstein said that insanity is doing the same thing over and over in the same way and expecting different results. On a light note, considering that it is our tendency to keep doing things the same way over and over and expecting different results, Mr Speaker, does the Chairman of Council therefore think that we might be insane in this region? *(Laughter)*

But on a more serious note, Mr Speaker, considering the impediments caused by the mismanagement of time; the causes that it delays and the costs that impact on the development process in this region, is the Council of Ministers seriously considering a strategy on how they can make the Partner States act? Governments are in place to serve; the individuals in governments are not running their own home affairs. Considering that the Chairman of Council of Ministers has already noted that there are some countries that have managed to change the cultures in their own countries, is it, therefore, possible to draw from such lessons and ensure that the Community is run on similar lines? Is there a strategy in place?

**The Speaker:** The Chairman is not insane – *(Laughter)*.

**Mr. Kategaya:** Mr. Speaker, I do not think we are insane, but also the Community cannot be better than Partner States, which compose that Community. I think that should be the reality. There is no way you can say the Community can be better than the Partner States themselves in whatever they are doing.

Mr. Speaker, the hon. Muntu has been in the struggle; he knows it does not take a day or two to change things. For me, the integration of East Africa must definitely go at a pace at which the Partner States want to move. There is no short cut. We cannot be in a hurry because if we are in a hurry, as somebody said, you may run fast but find that there is nobody following you. You turn a corner and find that nobody is following you. So, I think we need to all work together to... granted, the Council of Ministers is there, but it cannot move things alone; it is not possible. I think we should all work together to urge and cajole our Partner States to move.

If we were to ask ourselves, what is the agenda of each Partner State on integration? How seriously is taken? If you are going to talk about it, it is a very serious matter. Maybe when the Chairman of Summit addresses us next Tuesday, perhaps those are some of the questions that we could discuss. How serious is our agenda on integration? How much attention are we paying to this programme? Or, is it still something for newspapers and cameras? Nevertheless, there is commitment but the process of the whole system is the problem. The Presidents may be committed but the people who move things may not be as committed as we think. Bureaucrats, for example; we can deal with them, but how? Do you throw them in the lake - (*Laughter*) – do you shoot them, or do you try to talk to them and convince them that this is something good for the future? I think this needs a joint effort by all of us, not just the Council of Ministers, to make sure that the programme of integration is understood, believed and implemented by the Partner States. This is how it should be done.

I share the zeal and concern of the hon. Muntu, but let us see how we can sensitize the engines of the integration, which are the Partner States; this is how I look at it. This Council of yours and this august House are not the engines. The Partner States are still the engines of integration. How it moves fast, how it becomes efficient, it is still the Partner States' view of the project that we are talking about of integration. This is my simple answer, Mr Speaker, sir.

**The Speaker:** The last question is from the honourable Dora; I think we have delayed.

**Ms. Dora Kanabahita Byamukama (Uganda):** Mr. Speaker, I want to thank the Chairman, Council of Ministers for his candid response. However, in responding, he – (*Interjection*) – Mr Speaker, can I be protected; I am not sure whether I am being pointed at – (*Laughter*).

Mr Speaker I was saying that the Minister in his response actually made some very important statements, which we must take into consideration. The first statement he made is that the Community cannot be better than the Partner States. But when you relate this to what he said yesterday that being part of the Community is like being in a marriage,

now, my question is, and would this marriage therefore be held hostage by the parents of the bride and bridegroom? I think we have problem.

Mr Speaker, if the vows that were made by the Partner States are in the Treaty – and this was asked yesterday – do we still subscribe to these vows, or, is it not time for us to go and revisit these vows and see whether they are operational? I am asking this very candidly, and I would like to hear more. I would also like to thank the Chairman for the suggestion that we should put it to the Chairman of Summit when he comes here.

Relevant to this particular issue at hand is a question which I would like to raise, and this is very serious. Being an advocate of the High Court of Uganda and also being very interested in practicing here are the East African Court of Justice, is this not a lesson for us to change the procedure of appointing judges by removing it from the Summit, which sometimes does not meet because, for example, one country is having elections?  
*(Interruption)*

Mr. Speaker, sir, I would like to stop there, but I would also like to support what has been raised about the sanity or insanity of the region, because when you promise to do something and you do not put into account a time frame, then you would have signed onto an open-ended document, which I do not know whether you truly believe in. I think these are questions which we should give due attention and the seriousness they deserve.

**The Speaker:** That was actually more of a statement than a question; but hon. Minister...

**Mr. Kategaya:** Mr. Speaker, in this case I think the only difference I have with the hon. Byamukama is that the marriage between States, there are no fathers-in-law or mothers-in-law in this marriage – *(Interruptions)*. It is a marriage of Partner States under the Treaty.

Secondly, on the issue of appointments, it is not a question of the judges alone. I think there was one meeting in which somebody suggested that we should have an East African Public Service Commission so that we can also remove them from the pressures from their Partner States. I agree – *(Applause)* – because it does not only affect the judges but all the staff that we have in the Community. So, there was a suggestion but somehow we have not actively participated. But, also, if we are going to have an East African Public Service Commission, we have to convince the Partner States to surrender that power to some other body. But that is a suggestion that somebody put forward and I found it attractive, but, once again, we have to go back to our Partner States to persuade them that this is a good way of handling the matter.

## MOTION

**For the Consideration and Adoption of the Report of the Goodwill Mission to Kenya**

*(Resumption of debate interrupted on Wednesday, 20 February 2008)*

**Ms. Lydia Wanyoto-Mutende (Uganda):** Thank you, hon. Speaker for giving me the opportunity to contribute to the Motion on the Report of the Goodwill Mission to Kenya. Straightaway, I would like to thank our colleagues who represented us in this Mission and for availing us the report early enough to read and appreciate the whole tour and their recommendations.

Mr. Speaker, I am very excited by this report. Although it was a mission of a sad occasion, I am excited by the spirit behind it that the East African Community has reached this level where we are able to reach out to people in need and to perform our role as Members of Parliament at a regional level.

Hon. Speaker, at the inauguration of this Assembly in November, 2001, we made commitments -and they are on record in the *Hansard*- that we are not only here to legislate but we should be able to take the Community to the people; that we should make a difference, among many other things. This was in line with Article 5 of the Treaty that enjoins us to look at the objective of the Treaty to promote peace and security.

Article 5(3) (f) says that we have a duty to promote peace, security and stability within, and good neighbourliness among the Partner States. So, it is within that line and also within the same line of Article 7(1)(a) of the Treaty that talks about being a people-centred and market driven co-operation.

So it is in that spirit, hon. Speaker, that I remember being part of a delegation to Uganda, to Gulu, specifically, to reach out to the people there. As an Assembly we were led by the then honourable Speaker, and we went to Gulu to meet the people of the Acholi sub-region, to find out what the Assembly could do to end the insurgency that was being inflicted upon the people of that region. We also met His Excellency President Museveni at that time. We said we could not be in Arusha and talk about the Customs Union and the East African Community when a part of us were living in camps and on the streets. We found children sleeping on the streets in Gulu town, and the president was not resident in the State House in Kampala; he was in Gulu. So it was an unusual situation. Therefore, this House, from the onset has had the spirit of reaching out to the people.

We went to Gulu, and I remember candid questions put straight to the President by Members of this House from the three Partner States. The current Chairman of Summit took them graciously, and even welcomed any contributions that we could make to see that the problem in northern Uganda could come to an end. EALA went ahead to make a contribution to one of the internally displaced people's communities in northern Uganda through an organisation called GUSCO. I can not tell you how much we were earning at that time, but we were able to reach into our small pockets as usual, and we made that contribution. So we have been able to reach out. To me the Kenyan situation has made it even bigger; it has made it more institutional, but this Parliament has been committed from its inception to go beyond the boundaries of these chambers. We have also made a contribution as an Assembly to Tanzania when they had problems of famine. In fact this is the second time we are contributing to Kenya.

Hon. Speaker, I am giving the history of what this Assembly has been able to do in relation to what the hon. Dr. Machage was saying yesterday, that he was summoned for the first time to talk about his country yet he had never been called to go to Uganda or to Zanzibar. The Assembly has gone to all these places. So, if the Council has not been able to go, I think it is high time you lived within the times and moved with speed at the times when people need us so that we are speaking on the same bench. For us we have been there, and if you have not been there, then that is a very serious record in the *Hansard* of this Assembly. I think in the agenda of Council in future, you should be visibly seen. For us we were visible in Gulu, we have been visible in Kenya and Tanzania. For us we have been there as an Assembly, and I hope there will be more calls to you, after the Kenyan situation, to rise to the occasion so that you deliver what is needed by East Africans.

Hon. Speaker, when this Assembly got to know that Rwanda and Burundi were in the process of joining the Community, we strongly supported them, among other reasons, to ensure stability in the region. I have heard statements from some of our leaders saying that one of the critical reasons that Rwanda and Burundi joined the Community was not only for economic gains, but also for stability. Others have even dared to say that if Rwanda had joined the Community before 1994, maybe they would not have had the genocide, or that the instability that the people of Burundi have suffered may not have occurred. So, we must rise to the occasion, and because these are statements that we make as leaders, we must live up to them.

Otherwise we will be out of fashion, and then we will become irrelevant to the times and then we become more intolerant to our voters, and then we cause conflict. Any good leader must be loved, popular; people must celebrate when they see you. But when people begin fighting and dying because of an election, then you begin asking yourself, are we in the right times? Are we the right people? Are we doing the right things? Are we relevant to the people? These are questions we should ask ourselves as leaders. To me, if I won an election, or if there was an issue of leadership, I would want to see drums; people dancing and celebrating. When I see people crying and dying and fighting, these are questions we have to ask ourselves as leaders.

Mr. Speaker, as I conclude my support of this goodwill mission report, I want to say that we should do more as an Assembly, but even more with the support of Council and Summit. We should be a little more visible in our actions in terms of stability and peace in the future. We cannot continue to have instability in our Community. We have been suffering with a lot of poverty issues and under-development, and we cannot afford to see people fighting, dying and killing one another anymore. So, I hope we will put in place mechanisms to ensure that what happens in our communities in terms of conflict is a matter of the past.

Hon. Speaker, allow me to just raise an issue for record purposes in the *Hansard*. Yesterday I personally took exception when the honourable Minister Dr. Machage dared us to make a comment on the Kenyan situation without us being bound by the constitution of Kenya. In the spirit of this House, we welcomed the Dr. Machage, and this being his inaugural session – (*Interruption*) -

**The Minister for East African Community, Kenya (Dr. Wilfred Machage)(Ex-Officio):** On a point of order, Mr. Speaker, sir I think the Member should move a substantive Motion if I have to be discussed in the House. That is the procedure.

**The Speaker:** I do not think you are being discussed, Hon. Minister. I think the honourable Member made a comment on what you said yesterday.

**Ms. Wanyoto-Mutende:** Mr. Speaker, for purposes of record in our *Hansard*, I just want to say that the rules of this House empower us, honourable Members...I want to quote Rule 3, which gives Members of this Assembly privilege and immunity to exercise their mandate independently without being bound by any orders or instructions from any person or authority regarding the exercise of their mandate. We have a mandate as Members of this Legislative Assembly elected to represent East Africa, to talk about any matter within the Treaty; of security, stability, any East African matter and the welfare of our people.

Mr. Speaker, therefore, I want to stand before this House and put it on record that as long as there is a problem in Tanzania, Uganda or even in Kenya, as a leader, I will not be bound by anybody daring me; I will have to speak on behalf of East Africans – (*Applause*).

I come from the border of Uganda and Kenya, I might not be Kenyan by identity or paper work, but I am a Kenyan naturally because I have relatives across the border. Our people vote in Sirisia and have been voting for the hon. Wetangula – (*Laughter*). Officially it is wrong, but his relatives across the borders vote for the area Member of Parliament from our side! Therefore, to come here and draw for us the geographical boundaries which we are trying to remove so that we live as East Africans, is incorrect. Hon. Speaker, I will speak on behalf of Kenyans because I am a Kenyan naturally. I will speak on behalf of Ugandans, Tanzanians, Rwandese and Burundians; I will speak for East Africa, within the boundaries of the Treaty which I swore to uphold.

Hon. Speaker, while we support our colleagues and the leadership of Kenya during the mediation process - and we also gave in our goodwill mission report - we appreciate what the Minister said yesterday about Kenya having outgrown its constitution. We participated in the process of reviewing the Kenyan constitution in our different capacities, and as we look forward to a grown constitution that lives to the aspiration of the Kenyans, we also hope that the leadership will bear with us when our emotions are out to see Kenya stable, because some of us really do not believe in boundaries.

Before the end of January, I was in Busia and Malaba because the Bishop of my diocese issued an order during the service and said: “all politicians in this church, you are not going to leave because you are the cause of problems in Kenya; stay behind while everybody goes to celebrate the weekend of the New Year.” We stayed behind and we all drove in our own vehicles, using our own fuel to the borders, to see the influx of refugees. I made a call to the hon. Akhaabi two days later. So, to me, there is nothing

wrong about speaking about a situation in my home. The people you call refugees to me are my relatives. When they came, we were housing them in churches until government took over. So, this is a passionate issue, and I hope this honourable House will appreciate where I am coming from.

I have seen these people; they live with us in our homes, we vote together, we cry or laugh together, we go for circumcision ceremonies together, and so we cannot come here and begin to say written documents in some legal office should stop me from expressing my views within the aspirations of East Africans.

Mr. Speaker, as I conclude on this report of the goodwill mission, I hope that in the next five years, God willing, we should have a spirit of open debate. If the whole Assembly travelled to Gulu and told off President Museveni to rise up to the occasion and call neighbours to fight Kony and he was gracious enough to say, we have gone far with this problem, please come and support Uganda, it should be the same open heart with everybody else. So, I do not see any problem with us talking about a problem within the boundaries of East Africa – (*Applause*).

**Ms. Catherine N. Kimura (Kenya):** Thank you, hon. Speaker. Let me take this opportunity to thank you personally for the initiative you took to send a goodwill mission to Kenya – (*Applause*). At that time it may probably have been a very difficult position for you because, as the hon. Minister said yesterday, it was regarded as an internal matter at that time. But you took the bull by the horns and decided that whereas the Assembly may not be involved in any other area, a goodwill mission cannot be refused and cannot be taken negatively. Therefore, I join my colleagues in thanking you – (*Applause*). Coming from Kenya, I may be an East African – and I am an East African - but at this particular moment I wish to acknowledge that indeed, I represent the Kenyan constituency and, therefore, I speak as a Kenyan when I say I am thankful to the Speaker and the Assembly for the initiative, and also for the amount of money contributed to help the internally displaced people.

Hon. Speaker, I want to associate myself with the comments made by our hon. Minister, Dr Machage yesterday that, indeed, the East African Community, through the Chairman of the Summit, has been involved in the peace process, and whether visibly or not, we want to acknowledge the part that has been played by the EAC – (*Applause*). I personally met our Chairman of Council; we happened to be on the same flight when he was going to Kenya and when I asked him how long he would be there, he told me he would be there for as long as he was needed. So we really want to appreciate the time that our Partner States personnel have spent in trying to resolve this crisis – (*Applause*).

Hon. Speaker, it is a very sad situation that we been caught up in. For me personally, I used to see these things on television. I think just before it happened, I was looking at Darfur on Television, and I was very saddened and asked myself, how can this be happening? How can these people do this? Little did I know that in a matter of days, I would be seeing it in Kenya!



For those of you who have been watching international news on television, you will remember seeing Kosovo, Afghanistan, Pakistan or Darfur, but this time we were right there in the headlines. So, that can indicate the gravity of the situation that the country has gone through.

We are grateful that the international community has come to our aid. I am not sure whether in trying to help us they are not also trying to help themselves but, nevertheless, we appreciate their perceived presence and pressure for us to come to terms with our problem.

Hon. Speaker, let me support our Minister from Kenya, Dr. Machage, when he says that the mediation process can only take root if it is grounded in the country's constitution. Nobody has a right to tell us to set aside our constitution; something they cannot do in their own countries. Therefore, it is important for us as East Africans to support a process that honours and adheres to the rule of law and the constitution under which these institutions are set up. If we do not do it, we can never tell whose turn it will be next to be told to set aside their constitution in order to resolve a crisis. So it is important that even as we debate this issue here, and even as we sympathise and commiserate with Kenya, that we stand together in asking our leaders to honour the constitution in the peace process.

Hon. Speaker, it is an emotional issue for me because I visited several of the camps for the internally displaced persons in various capacities, either from my church or with other groups that I am associated with in Kenya where we went to see the displaced people. It is a very sad situation to see people who have lived peacefully, people who have had their lives and shelter to be reduced in one day to people who are homeless and destitute. Therefore, it is our prayer that the issues will be resolved - and we need to support the process- and that indeed, peace will be seen.

However, let me say that even as we support the peace mediation process, to me there can be no lasting and sustainable peace unless we deal with the issue of the displaced people. To sit down and pretend that sharing of seats in Parliament and positions is all there is in a peace-making process would be making a mockery of the so-called peace process – (*Applause*). What Kenyans would like to see are people out of the camps and back in their farms, in their businesses and living their normal lives.

The situation of people being tracked to their so-called ancestral areas...being tracked from Central to Kisii, Nyanza or Western because that is where you supposedly come from, but for the last more than 20 years you have worked and lived in Central or wherever else and you probably do not even know where your relatives are, I think, is doing a disservice to the peace process. I hope that our leaders will see to it that this is not sustained. It does not matter whether you are tracking them from this place to the other, tracking of people across provincial or tribal lines, to me, is, in fact, violating our constitution, which provides that you can live and work anywhere in Kenya. So I hope that as part of the peace process, the settling of people in the places where they have worked lived, and owned property will be key.

Mr. Speaker, as I finish, since this report will form part of the *Hansard*, I wish to make one clarification on a piece of historical fact that has been misrepresented in this report.

If you look at paragraph (d) on page four of the report, these are comments that came from Bishop Cornelius arap Korir, a man whom I have great respect for, a man who has been at the centre of trying to put people together, a man I know has been meeting with other religious leaders from other communities to try and get people from different tribal and ethnic groups to meet, I have a great deal of respect for Bishop Korir but there is a historical fact here that he seems either to have left out, which is important and which, maybe the Committee may not have been aware of, but it is the issue of how people from Central Kenya came to settle in the Rift Valley.

The settlement of people from Central Kenya in Uasin Gishu and the Trans-Nzoia District dates back to the 1920s up to the 1930s; in fact I think it was from about 1915 to the 1930s. There was what was called the indentured labour programme, under which the big European farms were recruiting labour from Central and from wherever else to go and work in the European farms.

What the Europeans did was to introduce a hut tax in these areas - at least in Central Kenya - so that whether you liked it or not, you had to go and work in order to earn wages to be able to pay your hut tax. This is a historical fact, and it is documented. That is why you will find that even as we went to the Internally Displaced Persons' camps, I met people who were 80 years old who did not know anywhere else but where they were born. And because they were either born or they went as very young children to the Rift Valley, they are second and third generation residents who went there under this programme. So, it is not a programme that started in the 1960s and the 1970s as the report implies.

What started in the 1960s was what you would call land-buying companies. These are people who got together, who lived there as what you would have called "tenants-at-will" in the European farms, and when the Europeans were leaving they had the opportunity to buy these farms. These were not economically well-off people, I would say, because they were labourers, but they got together with whatever little they had, and in groups they bought land through the land-buying companies that are mentioned here.

Now when you consider land-buying companies or any buyer, it is willing seller, willing buyer. So, let us not pretend for one moment that the majority of these people were people who were settled by the Government. I do not deny that there may have been some, but the historical facts are there that the majority were people who settled there earlier, such that by the 1930s, there were already about 150,000 Kikuyu living in the Rift Valley.

Mr Speaker, this is an important historical fact because after all this crisis is over, and as we sit down as part of our peace process, the issue of land is central to this whole issue and it has to be resolved, but it must be looked at within its historical perspectives.

Mr. Speaker, sir, I thought it was important for me to say that because this report is part of the *Hansard*, and I felt constrained to correct some of the historical facts.

I thank you honourable speaker.

**Mr. Reuben Onserio Oyondi (Kenya):** Mr. Speaker, sir, I want to thank you for the opportunity you have given me to thank the goodwill mission which visited Kenya, and also to thank them for the contribution they made of Kshs1 million; that was a lot of money – (*Applause*).

Mr. Speaker, sir, we are all East Africans and we love one another. I would like to see all our countries in East Africa peaceful. It is my prayer that what is going on in Kenya stops, and that the people there come to their senses and understand that for us leaders, as much as we would want to be bosses over the others, the people who suffer are those people on the ground; the people down there.

Mr. Speaker, sir, much has been said about these skirmishes and much of it is related to land. The hon. Kimura has said a few things concerning what Bishop Korir said. I do not want to go back to the period before independence, but let me say this: immediately after independence, quite a number of European farmers wanted to go away because of one statement Mzee Kenyatta made when he was Prime Minister. He said: “*Tutawasamehe, lakini hatutasahau*” which simply means, we will forgive but we will not forget. That did not go well with some European farmers. They wanted to run away and many of them in areas like Kitale, where we grow a lot of maize, left. And because of that, Mzee Kenyatta had to appoint one *Mzungu* known as Bruce Mackenzie as the Minister for Agriculture. That made some white farmers to stay and continue farming. The hon. Bruce Mackenzie was eventually killed in Uganda by Gen. Amin – (*Interruptions*).

Mr. Speaker, sir, what has been going on about land is that the Government took over some land from European farmers, and that land was given to people as settlement areas. I have a farm in a settlement area at Borabu where people have been fighting now and again. These farms were not given for free. Those who were allocated land had to pay for a number of years. Other farms were sold by the white farmers who wanted to go. Either they approached the people separately or they informed the Government, and people came together, contributed money and bought the land. So, in essence, the land was not given free.

When we talk of certain communities occupying some fertile land or areas in the Rift Valley, it is not correct. Yes, they are there, but they are there rightly; they did not steal or take advantage of the political leverage that was available to them. They either bought the land or they were allocated land as settlement areas. In fact, some of the areas talked about were not even settlement areas; they are pieces of land that people bought using their own money.

Now, for people to claim that land at this moment is not right. As much as I would want to clear a certain area and leave a certain community there, the constitution of Kenya allows us to stay wherever we choose to stay. I know some people from my community

who were working on the railway line from Mombasa, who have settled there. They met Kamba or Taita girls, and married there and settled there. They are still there. We cannot bring them back to Kisii and tell them “come here now; we are going back to the *Majimbo* System. Where will they go? There will be no land for them!

So, what we are saying is that we really need support from the Community to convince some of the leaders. And, I must say, the Opposition leaders are the people bringing the problems. Yes, elections were held, all of us went to elect our leaders. I voted, though I will not say whom I voted for, but I did vote. We have asked for two things: we do the tallying, but we start from the grassroots; the constituencies. Some people have said no, that they want only the Presidential votes tallied again. So, how will we come to an answer?

Mr. Speaker, sir, I can talk on and on about this because I feel so disturbed when I see people hurting. For example, my community, the Kisii community is out there in thousands because it is a community of hard working people. They go out there and work for money, buy land, build houses and now they are being told to go back home. Some of them are now living in churches because they left their original homes a long time ago. Maybe some even sold off their land because they had got other pieces of land elsewhere, and now they are told to go back home!

So, really, what we are saying is that, any good settlement plan must consider the people who have been displaced. They must be allowed to go back to their land that they had occupied for years. That is when we can talk of peace. I am not threatening anybody, but as far as I know, if that is not well tailored into whatever agreement they want to make, there is still going to be a problem in Kenya, which we are not praying for.

So, Mr. Speaker, sir, the leaders of East Africa, including the Members of the East African Legislative Assembly, as one of the honourable Members said, we want to talk and we are going to talk...at least, talk sense sometimes. We do not want to talk words which can incite others; we want to talk something which can bring the people together.

So, Mr. Speaker, sir, I want to call upon the Council of Ministers, they have a role to play. They should tour Kenya. I want to thank the Chairman of Council of Ministers. He was in Kenya for a whole week. I need to meet him and I think he will tell me what he did. The Council of Ministers should tour, and meet all these leaders. Maybe they might not accept the hon. Machage because he belongs to the Government, but the two from Uganda and Tanzania should visit Kenya once again, instil some understanding in this political situation or into the Opposition group so that whatever they are discussing and whatever Mr. Annan is leading can come to some conclusion, which will satisfy everybody.

With that, Mr Speaker, I beg to support the Motion – (*Applause*).

**Mr. Dan Kidega (Uganda):** Mr. Speaker, let me join the rest of my colleagues to thank the goodwill mission for the good work they did.

Mr. Speaker, sir, I have a very heavy heart this evening, just carried forward from last evening. I am actually sad because the debate of yesterday just re-awakened my feelings of my personal experience as a person born around the 1970s when the country I come from was under the dictatorial regime of Iddi Amin. Barely at the age of four, was I displaced! That was in the late 1970s, and that memory has never gone out of my head.

It is very sad for the children and women - and especially the children - who are displaced because of politics in which they have no say. Mr Speaker, the majority of the people suffering are below the voting age. It is very sad, and I would want to appeal to the political players throughout this region that there is no amount of power that can make you feel comfortable when people are dying – (*Applause*). There is no amount of comfort in State House drinking wine, eating whatever amount of meat that can make you comfortable when people are dying!

Some countries erect monuments to keep fresh memories of bad occurrences of either natural disasters or bad politics. The Americans have a very huge memorial cemetery to remind them of the Vietnam War. There are even some cemeteries in this region - I saw one in Dar-es-Salaam - to remind us of those who died in the World War II. I think it is about time we Africans started erecting monuments to remind our leaders of how many people have died because of their way to power. In fact, we should gazette public cemeteries next to State Houses so that all victims of the violence of war are buried next to the State Houses, to act as a constant reminder to those who are enjoying power so that as they drive in and out of the State Houses, they see that innocent people have died for them to be there.

Mr. Speaker, the hon. Wanyoto talked of the EALA mission to the northern Uganda, and...in fact, to my brothers and sisters from Kenya, if they want some experience on how to live in an Internally Displaced People's (IDP) camp, I have some time to offer to you. I lived in an IDP camp for some time, and it is a bad thing.

I would like to appeal to the Government of Kenya to be on top of the issues in the IDP camps. It should not be left to the development partners and the civil society organizations and the charitable organisations like the Red Cross – (*Applause*). It paints a very dangerous precedence in the hearts and minds of the people. The people remove their allegiance from Government and put it to civil society organizations. I strongly appeal that the people and the government of Kenya and the people of East Africa should work with the speed it requires to dismantle those IDP camps.

The impact of living in an IDP camp is very long lasting. From a perspective of health, you know that this region is suffering immensely from the scourge of HIV and AIDS. The young men and women who are now packed up together in the IDP camps are exposed to the danger of contracting this disease. The lifestyles that young people acquire out of living in IDP camps are always manifested in the lives of those people. So, it is very important that the dismantling of the IDP camps in Kenya should take priority in the negotiations going on other than power sharing, and the people now living in those camps

should be resettled as fast as possible. The people who are suffering today, some of them do not even know who the President of Kenya is.

So, Mr Speaker, my heart is heavy because to me, this thing is like a fisherman who has seen the lake becoming so turbulent to the extent that fishing becomes impossible. The fishermen get so worried because that is his destination. I am in politics, and this turbulence and confusion...the Bishop summoned them and told that "you politicians are responsible for this whole confusion!" I feel sad that I am a politician, and all this suffering and loss of lives is associated with politicians. I do not feel nice about it.

Mr. Speaker, there is a strange thing happening in the world today. The rate at which the world is shrinking is so fast that when a Kalenjin or a Kikuyu sneezes in Eldoret, a Lendu from eastern Congo starts coughing. I did not like the experience of queuing for fuel in Uganda. I did not like the experience of prices of items going up in Uganda. It is now impossible for any nation state to act in any direction and think that the whole world is going to sit back and watch – (*Applause*). Globalisation is a reality.

There is a governance system that is being developed in the world, which is very autocratic. It is not elected government, but it is full swing governance, which we all subscribe to. In fact, I am very excited because nobody is going to misbehave in Rwanda, Burundi, Uganda or anywhere else and think that the world is just going to sit back and watch. You will not have to invite people; it is not a dinner now. It is an issue of concern to everybody, because my mother in an IDP camp in Gulu would like to take aspirin which must be brought through Mombasa. So, it is not an issue of the people or Government of Kenya only.

I would like to thank the Minister for his statement, but I think the statements that we need to send to our people are strong statements of reconciliation. As long as we the leaders continue chest-thumping and sending messages like "you dare do this, I will show you; we the people of this or that place..." I do not think our people are excited to hear such statements. As politicians, we need a bit of humility. I am humbled to comment like this, because I know the local people will always stay together and very peacefully.

I was impressed by a story in the report that in one of the IDP camps, the majority ethnic groups are the Kikuyu and the Luo, who are living together. If they can live together in an IDP camp, what stops them from living together outside there? I think it is we the leading class who are throwing spanners into the *wananchi*.

Mr. Speaker, the last point I want to comment on is the question of land. I do not know whether the land issue in this region is an economic or more of a political issue. For 120 million people, and if you look at the population density, I do not think we have a very serious land crisis. I think the land issue in this region is more of a political issue than an economic issue. Because of the absence of serious ideological distinction between political groups, people roll back to trivial issues to get themselves political eminence – (*Applause*). Because there is no serious divide along which we politicians can market ourselves, so I must go and remind you of how your grandfather was buried in a certain

place and the other person's grandfather was buried in another place. I think we need a bigger picture to deal with this land issue. It is not an issue in Kenya only, apparently; it is an issue in the region.

Mr Speaker, I think one of the things that can be done to deal with the land issue is to improve on the urbanization process. If my son tomorrow got married to, say, your daughter, Mr. Speaker, sir – (*Laughter*) - and we decide to buy for them a flat somewhere in Nairobi, and they are well educated, doing consultancy, what business do they have to do with land? So, I strongly believe that if we develop the human resources of the region and we educate our people effectively and urbanise this region, we shall pull people out of the villages and ease the pressure on land, people will find other things to do – (*Applause*). There would be no reason to struggle!

Finally, Mr Speaker, I would like to condemn the killing of our innocent people in Kenya – (*Applause*). Nobody should be allowed to walk free because of this killing. Thousands of people...I think the watchdogs and the people who are standing for human rights and justice should come clear in the case of Kenya and any other case in Africa to make sure punitive actions are taken against perpetrators of such killings so that in future, we desist from doing such. I thank you, Mr Speaker, and I beg to support the Motion - (*Applause*).

**Mr. Daniel W. Ogalo (Uganda):** Thank you, Mr. Speaker, for giving me the opportunity to contribute to the debate on the Motion on the Floor.

Mr. Speaker, sir, I want to begin by thanking the Members of the goodwill mission who travelled to Kenya on our behalf. As you know, we had just come out of the session in Zanzibar. Prior to that, some of them had just been to Brussels on EALA matters, and prior to that we had just been here for a session. So, it was a big sacrifice for them to put aside all that they would have done to travel to Kenya. I thank them because some of them had actually spent their Christmas in Kenya observing the elections. So, we are seeing Members of this Assembly spending six months on the business of the Assembly. Some people may wish to call them part-time – (*Interruption*) - but it is obvious that they were on the work of the East African Legislative Assembly, and they cannot be regarded as part-time. I thank the honourable members for that sacrifice.

Secondly, Mr Speaker, I wish to thank you for your leadership, and for showing the way in East Africa by sending the goodwill mission and for putting together the humble contribution of the Assembly. I am proud to be part of this Assembly, which under your leadership, was able to show leadership in the region – (*Applause*).

Mr. Speaker, sir, on page seven of their report, the goodwill mission recommends as follows:

*“Given the confidence expressed by the parties to the conflict regarding the role of the East African countries and EALA in helping to resolve the conflict, the Mission recommends that:*

1. *The Summit should appoint a team of eminent East Africans acceptable to the parties in order to facilitate reconciliation among the parties.”*

In other words, all the sides are willing to reconcile. What the recommendation is saying is, let us have some eminent people from the region who the parties can have confidence in to broker a peaceful resolution of this conflict.

Mr. Speaker, sir, this reminds me...and here I wish to say that some statements were made yesterday to the effect that if you see your neighbour being forcefully shaven, you should prepare yourself for your turn. But, Mr Speaker, sir, the Assembly has heard these matters before. The problem is not really putting in place mechanisms to resolve inter conflicts. The problem is the lack of the East African Community to have sufficient goodwill to do this. Unfortunately, there is lack of political goodwill to put in place mechanisms which can resolve conflict.

Mr. Speaker, sir, following the visit of the first Assembly to Gulu, the Assembly made efforts to ensure that mechanisms are put in place to address exactly what we are now seeing is happening in Kenya, but the leadership of the region did not rise to the occasion. Instead, they took the resolution of the Assembly and threw them in the dust-bin. I will quote from that resolution. It was passed by the House on the 21 May 2003. The present Vice-President of the Republic of Kenya was the then Chairman of the Council of Ministers, seated where the hon. Kategaya is seated while we were debating this Motion. The Assembly said:

*“...NOTING THAT Article 123(4)(d) of the Treaty provides that the Partner States shall pursue the objective of a common security policy by, inter-alia, peaceful resolution of disputes and conflicts between and within Partner States,*

*THIS ASSEMBLY, having visited the district of Gulu in the month of March, 2003, and having met with His Excellency the President of Uganda, local leaders and other stakeholders who expressed willingness to work with the East African Legislative Assembly and other organs of the East African Community in seeking a resolution to the conflict,*

*AWARE OF the conditions under which the people affected by the conflict are living; and,*

*FURTHER AWARE Of its devastating impact to the peoples and economies of the sub-region and consequently on the development of Uganda and East Africa as a whole;*

*NOW THEREFORE, do resolve that the Council of Ministers recommends to the Summit the following measures aimed at bringing an end to the conflict, that:*

- (a) *Each Partner appoints eminent persons to form the East African Community Peace Committee for Uganda;*



- (b) *The Speaker nominates three Members of the East African Legislative Assembly to be part of that Committee*
- (c) *The Summit appoints a technical team to assist the peace committee*
- (d) *The Council appoints, with the approval of the Summit, a Permanent Peace Commission for the East African Community.” (Applause)*

These resolutions were certified by Mr. Kenneth Madete, Acting Clerk, dated 21 May 2003.

When we were debating this, the then Minister for Foreign Affairs and Chairman of Council, now Vice-President, assured the House that this was a very important matter, and that it would form the agenda of the next Summit in November. We had not actually even included it, but he told us that “no, no, you are not being very serious; you must put it there that this must be on the agenda of the Summit, and I will make sure that it is there so that we set up a Peace Commission for East Africa to resolve conflicts in East Africa.” We clapped and said, “Here is a man!” – (*Interjections*). Mr Speaker, that was in May, 2003.

The Summit did sit in November, 2003, but we did not see any outcome towards the formation of a peace commission for East Africa to resolve conflicts in our countries. Either of two things must have happened: either the then Chairman, Council of Ministers did not present it in the agenda of the Summit, or he presented it and the Summit thought it was not an important matter. That is why I am submitting, sir, that these are matters that have been there before. We have tried to find solutions to them, but there has been no sufficient political will to galvanise the Community into solving the problems of East Africa.

If the conflict was going to begin in Kenya, as it did, there would already be a structure, and we would not be waiting to see where Kofi Annan or Desmond Tutu is coming from – (*Applause*). There would already be a structure ready to move immediately. And if all the parties in Kenya are saying they want to reconcile, we would not be having all these people dying and property destroyed.

We can sit and debate and say the constitution is like this or we must do this or that, but the ordinary person does not care. As the hon. Kidega said, tell this to a mother of four children gazing at the grave of her husband. These pictures we saw on television of bodies in the mortuaries...tell that to the relatives while we are debating about power sharing. The ordinary person in Kenya just wants peace to live on, but we the leadership of the Community have let them down.

Mr. Speaker, sir, sometime in June, 2002, when the Assembly was sitting in Nairobi, I made a suggestion during the debate that we should create an authority, a body in Arusha, which would be capable of resolving conflicts arising in the region, and therefore pushing the integration process forward. And I also said that if we had such an authority of eminent persons, we would be able to resolve very many things and deepen the integration process faster. I did suggest then that since the then President Daniel Arap

Moi was retiring in 2002, he would be the first here in 2003, detached from the local politics of the country. I did then suggest that in 2005 when His Excellency President Benjamin Mkapa would be ending his term, he would also come here. I did suggest, that in 2006, as President Museveni was ending his last term – (*Laughter*) - he would also come here and we would have persons with vast experience in the matters of this region; people who would lift a telephone and tell any President in the region, “*Bwana*, what you are doing is not right” and they would be listened to because of the eminence they had achieved, because these are the very people who put the Community in process.

I saw that as an authority which would assist us, because it would be divorced from the local politics. Unfortunately, that matter did not go very far. The Members of the Assembly decided to pull back from it, and each one I approached said, “Ah, *bwana*, that thing is too hot; you leave it first.” The reason being that they read in the newspapers His Excellency President Museveni’s reaction; he was angry with the matter. He said he was not looking for a job, and that therefore for him he could retire – (*Laughter*). So Members of the Assembly told me, “Ah, *bwana Ogalo, acha hayo maneno yako*; your President does not want this thing and but you want to push it, what is your agenda?” But if we had that Committee of eminent persons here, these are the people who would be listened to by East Africa.

At least Benjamin Mkapa, the former President of the United Republic of Tanzania is there on the ground. So, it would have been good and even easier for the people of Kenya if the other two had also been there. So, I would think that it is time to put in place institutions that can ensure that we resolve our conflicts. There is nothing new; it is a question of us putting in place mechanisms.

Mr Speaker, sir, decades ago when I was in secondary school, I was doing literature and one of the plays I was doing was called *The Crucible*, by Arthur Miller. In it, man said, life is God’s most precious gift. No principle, however glorious, can justify the taking of life. So all the principles we are talking about in the settlement of these conflicts, none of them can justify the taking of life. I agree with the hon. Kidega that as leaders in East Africa, we should be ashamed that we have not lived up to the expectations of the people of East Africa.

Mr. Speaker, sir, as I conclude, I think we should concentrate on the way forward; on how to get a settlement. The more we emphasize areas of conflict, the more people dig in. We should be moving faster into and emphasize those areas on which people agree and we move on.

I will disagree with the hon. Kidega when he says that you cannot be comfortable as a leader when people are dying. Well, people are different – (*Laughter*). There are others who can be very comfortable and they would not mind. That is why it is necessary to put in place institutions to stop those kinds of people, the bad people, because they are there. You are not going to wish them away by praising us that we cannot be comfortable when people are dying. No; that is not true! There must be in place a mechanism which can pull

those bad people back and tell them that you cannot go beyond this; your badness should stop here, so that people can live in peace.

Mr. Speaker, sir, I think there is a bigger role for the East African Community to look at this problem as an East African problem. I come from Sugulo Islands; I neighbour Budalangi in Kenya on one side, and on the southern side the island borders Tanzania. So, to me, like the hon. Wanyoto said, it is not an issue of Kenya, it is an issue of East Africa. I cross the borders; I do not know where they are on water, but I go by boat into Kenya, I come back into Uganda, and I am not alone; all of us – *(Interjection)* - Mr. Speaker, sir, can I be protected; this man is saying that I am a smuggler! *(Laughter)*

**The Speaker:** Well, I did not hear it. They say the guilty are always afraid, but continue - *(Laughter)*.

**Mr. Ogalo:** Mr. Speaker, sir, this is a matter for East Africa to which we should give serious attention at the Assembly, the Council, the Secretariat and as the Summit. Because this is a situation that can happen anywhere, we should try to put in place mechanisms to address such conflicts before they get out of hand.

I wish to sympathise with our colleague, *Mheshimiwa* Karan and also to salute him, because when you see results showing that 99 per cent of one region voting so and so, and you see that *Mheshimiwa* Karan's region voted heavily for a party he did not support, it gives us hope that there are people of principle; people who will not just go along with ethnicity, but people who will stand for what they believe. I salute him for that - *(Applause)*.

Mr. Speaker, sir, I thank you for the opportunity, and I support the Motion – *(Applause)*.

**The Speaker:** I now call upon the hon. Masha to wind up debate.

**Leader of the Goodwill Mission to Kenya (Dr. F. Lwanyantika Masha) (Tanzania):** Mr. Speaker, since yesterday I have witnessed some very serious debate on a matter that is truly important and serious, and it deserves the kind of seriousness that has gone with the statements which I have heard. I am sure it was not the intention of the Mission, in drafting the report, to invoke the kind of emotions that have been expressed, but I realize this is a very emotional matter and very close to the hearts of the honourable Members. So, I am not surprised at the kind of oratory and emotion that has been expressed.

I wish, on behalf of my colleagues who were in the Mission, to thank all the honourable Members who have contributed to the debate and to tell them that we share the feelings they have expressed in this House for the people of Kenya, particularly the people in the IDP camps. If I was younger, I would have cried listening to the hon. Kidega, but I have run out of tears with age.

And again, listening to the hon. Ogalo, I must thank him for reminding us of similar efforts in the past. We thought we were being original in the recommendations we made,

but I believe in repeated hammering of issues which are difficult to be acknowledged. Maybe some day those in power, those who have to make the final decisions will listen. So let us not despair because in 2003, you passed a resolution which appears to have been ignored. We are going to pass another resolution, hopefully, and let us keep doing it because I think this is the right direction to go and it makes a lot of sense for the people of East Africa – (Applause). My colleagues who were on this Mission should feel proud for both the sacrifices they made and for the recommendations we came out with.

Mr. Speaker, most of the comments made by those who participated in this debate were really not critical, except one or two additional to what was in the report. So, I will not have much to say to the individual comments that were made in the course of the debated.

Mr Speaker, let me reserve a comment on the statement of the Minister from Kenya in respect of it being a continuation of his Maiden Speech. I will just have a small comment on it at the end. I want to say to the hon. Kimura that in my statement, which I understand has been distributed, I note that there might be some typos here and there, but in paragraph 22 on page 5, I did state that *“This was neither a fact-finding mission nor a mission of inquiry into the crisis which followed the elections in Kenya. Given the time and the resources that were available to the Mission, it was only able to visit a few of the affected areas as indicated in the report - and I want to stress the following - It was also not possible to explore exhaustively the causes of the conflict and the other aspects related thereto.”*

That is why the Mission did not pronounce itself on what we were told in some cases. But we felt that what we were being told might have some implication to the crisis and that is why we noted it as given. I am glad that both the hon. Kimura and the hon. Oyondi have clarified a little further on this aspect. Had we had the time had it been a fact-finding mission, I am sure more elaboration would have come out, including the aspects which they have put forward.

Mr. Speaker, there have been a number of requests in the course of the debate, and may I take note of the requests, for example, from the hon. Oyondi who called on the Council of Ministers to tour Kenya. Perhaps, the Council will respond to that one, but I do indeed share the sentiments by the honourable Members that the East African Legislative Assembly should be visible in these kinds of occurrences –hopefully they will not occur again, but who knows. We should be there on the ground with the people, otherwise we will become irrelevant.

The recommendations which we have put forward are self-explanatory. But perhaps I should say that the first one, which calls upon the Summit to appoint a team of eminent East Africans acceptable to the parties in order to facilitate reconciliation among the parties, is vital. As I did indicate in my opening remarks, this was done before the mediation mission by the former Secretary-General of the United Nations, Mr. Kofi Annan. I am not sure what would be the right timing for the Community to actually implement this kind of decision without confusing the effort on the ground, but I believe it is still relevant as an indication of the readiness of the Community to render support to

any mediation efforts that may be acceptable to the parties. So, I would urge that it stays in, if for the reason I have just stated.

As to the mechanisms that we put in place, yes indeed, as the hon. Ogalo has said, the first Assembly had called for one but it did not take place, and we are calling for one in recommendation 2(b): *“The Community should set a criteria and establish a mechanism to respond to situations of breakdown of peace in Partner States.”* We are also recommending on page 12 that: *“EALA should commission an in-depth study into the underlying causes that led to the eruption of violence in Kenya, and as a practice should commission studies as and when they are required into any situation of potential conflict in any Partner State as a way of pre-empting conflicts.”*

Now, listening to the debate - and without consultation with my colleagues, let me say that it might be useful to perhaps consider a Select Committee of the Assembly to develop this criteria for the House; to work out the arrangements and operations of such a mechanism for further consideration perhaps by our Committee on Conflict Resolution and eventually to be brought to the House – (*Applause*). Otherwise, if we leave it in the air or if we should leave it to the Summit, given the history we have been given, nothing may ever take place and come another five years later, they will still be looking at the history.

So, my suggestion, Mr Speaker, would be that perhaps we appoint a Select Committee of the House to develop these criteria and to work out the mechanisms as a proposal to the Committee on Conflict Resolution, which will eventually bring it to the House for further consideration. If it is acceptable, as I gather it is, I will make a written note in accordance with the rules so that it is included in our recommendations.

Mr. Speaker, as I said, I will not go to individual comments because most of them were complimentary on the work we did, with some additions and improvements to the substance of the report. But let me thank Dr. Machage for his statement in connection with the report. As I do share the sentiments of the hon. Wanyoto, who was quite correct, I would also want to say that every Member ought to have the same right as the hon. Wanyoto, and even the hon. Dr. Machage, who is a member of this House, ought to feel free to say what he feels in this House – (*Applause*). He has the same right as anyone of us to express himself, and indeed, with the added advantage that he is talking as a Minister from a government, hopefully with some inside knowledge of some of these matters.

In matters of conflict, Mr Speaker, the little experience I have is that sometimes it is not a question of being right; it might be a question of appreciating the sensitivities of the parties involved. And among us here, who better to give us that sensitivity on one of the sides than the hon. Dr. Machage. So, I want to thank him, and to tell him not to worry if he felt he was being put on the carpet – (*Applause*).

Mr Speaker, I listened to the hon. Dr Machage very, very carefully - and this is not a comment on the extension of his Maiden Speech. I do not want to question his Maiden

Speech, but if you will allow me to support one of the statements he made, to agree with him where he said that the events in Kenya underscore the need for a political federation. And I think he said that had there been a political federation, probably these things would not have happened. I heard a similar statement from some of the comments made here. I fully agree with the hon. Dr. Machage, and not just for Kenya, but I believe even for the other areas of conflict in East Africa. If there is a political federation, it will neutralize all these isolated incidents of rebellion and fighting.

Now that brings me to Article 123(6) of the Treaty. I think the framers of the Treaty had a lot of foresight perhaps. We may not like the circulatory methods of implementation, but at least some of the elements are in the Treaty. This is the Article on co-operation in political matters, and paragraph (6) says:

*“The Summit shall initiate the process towards the establishment of a political federation of the Partner States by directing the Council to undertake the process.”*

If we all see the need for a political federation to pre-empt these kinds of things that end up with the slaughter of our people, turning us against ourselves, maybe it is time to invoke this particular paragraph in this particular Article.

Now, I am not privy to how matters reach the Summit and how they come back from there, but I would expect that one of the methods of triggering action would be for the Council of Ministers to suggest to the Summit – this is rather winded, eh – for the Council to ask the Summit to invoke this Article so that we can initiate the process of political federation – (*Hear, hear!*)

And if I may be allowed to be more specific, Mr Speaker, perhaps the Council of Ministers should request the Summit to authorize the Council, in line with the paragraphs in the Wako Report, to establish a constitutional commission to start look into what this political federation would look like – (*Applause*). Otherwise, given the history of how the Summit works, as we have been told, this paragraph will never come into being, and the federation will never come into being if we have to wait for the Summit to take the initiative. So, in line with my agreement with the Minister, may I suggest that we request the Council of Ministers to suggest to the Summit, in whatever format they find fit, to activate the relevant paragraph in the Treaty – (*Applause*)?

Mr. Speaker, there have been many comments about being visible and not being invisible and whether we are people oriented or not. Yes, I share the feeling of the hon. Kwekwe who says when people do not know what you are doing it gives them the opportunity to fill in the gaps through rumour mongering.

Mr Speaker, this is not digressing, but having been here for more than a week in this Assembly, the people of East Africa do not even know that there is an Assembly sitting; they do not know we are here. And with all this wonderful debate I have heard today, the people of East Africa, especially the people of Kenya, may not know that we made these

statements, and that we are going to pass these recommendations, as it appears. There is something missing in our system here. Our machinery for telling East Africans about what is going on about the Community and about EALA, is not working – (*Applause*).

I do not want to use this opportunity as if I am addressing the Secretariat on its shortcomings because we are debating something different, but certainly from the debate it is clear that there is a problem, and because of that, I wish to beg the indulgence of the House, at least in a limited way, to include an additional recommendation to read as follows:

*“The Assembly strongly recommends the recruitment of an information officer to publicize the work of EALA and its missions” - (Applause).*

I want to request that when the question is put for the adoption of the report, that this recommendation be included. I would hesitate to put in a specific recommendation on the matter I spoke about concerning asking the Summit to active paragraph 6 of Article 123, but I hope the record will show and some work will be done. If it is not, maybe we might have another opportunity in the near future to make sure that we put in a resolution, if it is needed, to request the Council to do that.

Mr. Speaker, once again, on behalf of my colleagues, I want to thank the Assembly and those who made statements for the support they have given to the report, and for their support of the recommendations, and I beg to move – (*Applause*).

**The Speaker:** Honourable Members, the leader of the Mission gave two recommendations: one was to set up a Select Committee, which he has not done in writing and which I should not admit, but I would like to say that the relevant Committee on Regional Affairs and Conflict Resolution is able to do that and I do not think we need to duplicate that Committee’s work. The other recommendation was on the recruitment of an information officer, which he has in writing. So, I think we can include that.

*(Question put and agreed to)*

## MOTION

**For a Resolution of the Assembly to Urge the Council to Upgrade the Positions of the Counsel to the Community, the Clerk of the Assembly and the Registrar of the East African Court of Justice to Executive Level Positions in the Structure of the EAC**

**Ms. Lydia Wanyoto-Mutende (Uganda):** Mr. Speaker, sir, I beg to move:-

THAT, this Assembly do urge the Council to upgrade the positions of the Counsel to the Community, the Clerk of the Assembly and the Registrar of the East African Court of Justice to executive level positions in the structure of the East African Community.

Honourable Speaker, I beg to move.

**Mr. Gervase Akhaabi (Kenya):** Seconded.

**Ms. Wanyoto-Mutende:** Honourable Speaker, Sir;

WHEREAS Article 9 of the Treaty establishes the organs and institutions of the Community, of which the organs are superior and are decision making bodies;

AND WHEREAS the positions of Counsel to the Community, Registrar of the Court and the Clerk of the Assembly are specifically articulated in Articles 69, 45 and 48 of the Treaty respectively;

AND WHEREAS Article 23 establishes the role of the Court of being the judicial body of the Community while Article 49 bestows on the Assembly all legislative powers;

AND WHEREAS the Executive Officers of these two organs of the Community, namely, the Registrar and the Clerk, are graded as Professional Officers thereby misrepresenting the mandate and dignity of these organs;

NOTING THAT the heads of some of the EAC institutions and departments within the Secretariat are graded at executive levels;

FURTHER RECALLING the Secretary General's decision to give the Clerk and the Registrar semi-autonomous powers in all matters of Finance and Administration of the two organs, these being additional responsibilities and therefore compelling the need for the EAC to urgently harmonize the ranking of its heads of organs and institutions;

FURTHER RECALLING the House Business Committee recommendation to upgrade the Office of the Clerk to Executive level and of giving the Assembly departments which were downgraded their due position within the structure of EAC staff establishment;

FURTHER NOTING that the Counsel to the Community is a position created by the Treaty in Article 69 and with the incumbent being the principal legal advisor to the Community, all its organs and institutions as articulated by this provision and also by Articles 37 and 71(4) of the Treaty;

GLARINGLY AWARE that the Counsel to the Community is an Ex- officio Member of this Assembly and therefore entitled to certain privileges and immunities as a Member of the August House, which are not being accorded to the office by the current establishment of the structure which grades the Counsel to the Community at professional level;



FURTHER NOTING that because of the wrong staffing structure the Office of the Counsel to the Community has remained understaffed for a long time;

NOTING WITH APPRECIATION the decisions of the Sectoral Council on Legal and Judicial Affairs of 4 August 2006 (Ref: EAC/SR/2006) and of 16<sup>th</sup> March 2007 (EAC/SCLJ/01/2007) which stressed the urgent need to strengthen the office of the Counsel to the Community and to upgrade it to executive level noting that it is a unique office whose services are in demand by all sectors, institutions and organs of the Community and yet continues to be equated to professional level;

NOW THIS ASSEMBLY;

CONSCIOUS of an expanded mandate of the Clerk, the Registrar and the Counsel to Community bestowed upon them by the Treaty and the Community laws;

AWARE that the mandate will further be expanded following the admission of Rwanda and Burundi, and therefore calling for extra demands;

CONCERNED that the Clerk and Registrar who are executive officers of two of the major organs of the Community are graded below heads of the institutions of the EAC in the structure;

FURTHER CONCERNED of the anomalies in the existing structure of the Assembly *vis-à-vis* that of the Secretariat and other organs and institutions of the East African Community,

DO NOW RESOLVE AS FOLLOWS:

1. THAT the Council be urged to consider the matter of elevating the structure of the office of the Clerk, the Registrar and the Counsel to Community to the Executive level, D1 within the Community's structure to better manage the expanded mandate.
2. THAT the Council do take note of the anomaly which was occasioned in the process of restructuring the Assembly positions which down-graded its departments, and do consider repositioning them in tandem with those of the Secretariat.
3. THAT this resolution be transmitted to the Chairperson of the Council of Ministers and the Secretary General to place the same on the agenda of the next meeting of the Council of Ministers.

Honourable Speaker, I beg to move.

*(Question on the Motion proposed)*

**Mr. Gervase Akhaabi (Kenya):** Mr. Speaker, sir, at the inception of this phase of the East African Community, and in accordance with the Treaty establishing the Community,

certain specific organs of the Community are enumerated under Article 9. And among the organs of the Community mentioned and established under Article 9 are: the legislature, which is this Assembly of which you are the head, the East African Court of Justice, and, of course, the Secretariat.

Mr. Speaker, sir, though in my view, the Secretariat forms part of the Executive falling under the Summit and the Council of Ministers, it is nevertheless mentioned under Article 9(1) as one of the organs of the Community.

Mr. Speaker, sir, the office of the Clerk to the Assembly is a creature of the Treaty. Similarly, the office of the Registrar of the Court is also a creature of the Treaty, and so is the office of the Counsel to the Community. These three offices perform very important and distinct roles for the different organs of the Community.

Mr Speaker, sir, specifically, the office of the Clerk is central to the operations of this Assembly. The office of the Registrar of the East African Court of Justice is central to the development of the jurisprudence and the judicial system in the Community. That office is extremely important, and the dignity conferred upon it will reflect on how serious we take the East African Court of Justice. The office of the Counsel to the Community is, without saying any more, so important and so central to the operations of the Community as a whole that indeed without that office it would be difficult to have this Community operating. It is, therefore, important that these three offices are clothed with the authority, decorum and honour that they deserve, considering the centrality of their operations in the organs of the Community – (*Applause*).

Mr. Speaker, sir, it is important to appreciate that the Assembly, the Secretariat and the Court compliment each other. It is important therefore, that the civil service heads - if I may call it so - of these offices are accorded that status...not the personalities in there, but of course the personalities will also enjoy the status of the office – (*Laughter*). Let us not look at the personalities, but the offices themselves. The offices deserve that status. And it is for this reason, that we are urging this Assembly to pass this resolution, which will go a long way in properly aligning the structures within the Secretariat of the Community so that there is a proper flow of information, authority and proper functioning of the Secretariat and the Community as a whole.

Mr. Speaker, sir, when you take the office of the Counsel to the Community, for example, the Counsel to the Community is a Member of this Assembly. The Counsel gives professional legal guidance to this Assembly; to the Secretariat; to the Council of Ministers and also to the Summit – (*Interjection*) -

**Ms. Byamukama:** On a point of clarification, Mr. Speaker, sir, I have consistently listened to the hon. Akhaabi mentioning that this person is a “he” – (*Laughter*). Could I get some clarification as to whether there may never be an opportunity for this person to be a “she”?

**Mr. Akhaabi:** Mr. Speaker, sir, my learned friend, the hon. Byamukama knows that in law, “he” also includes “she”, but I will amend and say “he” or “she” – (*Interjection*).

**The Counsel to the Community (Mr. Wilbert Kaahwa (Ex-Officio):** On a point of further information, Mr. Speaker, sir, may I be allowed to cite the *Laws of the Community (Interpretation) Act, 2003*? According to Section 6 of that Act, in an enactment, words and expressions importing the masculine gender include the feminine gender, and words and expressions importing the feminine gender include the masculine gender. Mr. Speaker, sir, the motion now – (*Interjection*) -

**The Secretary General (Dr. Mwapachu) (Ex-Officio):** Mr. Speaker, on a point of order. I am sorry to stand – (*Interruption*) -

**The Speaker:** Honourable Secretary-General, if you read the rules, you cannot rise when another Member is on a point of order. Please continue, honourable Counsel to the Community.

**Mr. Kaahwa:** Mr. Speaker, sir, at this point in time, and considering the Motion on the Floor of the House, the House is not debating any Bill or considering any enactment. But to the extent that we are talking about offices which are created by the Treaty, I thought I should point this out in addition to what the hon. Akhaabi has said is the legal practice with regard to the masculine importing the feminine gender.

**Mr. Akhaabi:** Mr. Speaker, sir, I want to thank the hon. Byamukama, and the Counsel to the Community for confirming – (*Laughter*) – Mr Speaker this is a serious matter; we want these offices to be given those statuses. And, as I said, that office of the Counsel to the Community is so low down in terms of hierarchy that it does not conform to the status as contemplated under the Treaty. It is only fair, therefore, that we pass this resolution to confer on these offices within the structure of the Community, the status that was intended by the framers of this Treaty – (*Applause*).

Mr. Speaker, sir, I second the Motion.

**Mr. Mike Sebalu (Uganda):** Mr. Speaker, I rise to support the Motion, and I associate myself with the very good and well articulated reasons given by the Mover and the Secunder of the Motion. I believe it is well intentioned, and the timing could not have been any better.

Mr. Speaker, we need to appreciate that the Community is growing, and that there are certain aspects that were put in the Treaty and other policy framework to see the Community off the ground. But as we move and cover new areas, as we expand in terms of membership, as we increase the scope of the work, as of necessity we need to adjust certain arrangements to accommodate the expanded mandate of these offices as already put. Therefore, the three offices are among the offices that really need to be reconfigured in terms of placing them better to be able to deliver in the changing environment of the Community. Besides, when you look at the comparisons that have

already been given in terms of other executive officers heading other institutions and organs of the Community, you will find that it would be proper, in terms of getting good co-ordination and work done in a harmonious way, to also get these offices to the levels that allow them optimal performance, given the responsibilities that they have.

Mr. Speaker, at this point in time, we are talking of an expanded mandate in terms of scope of work as we cover more stages of integration. As we move into the Common Market, definitely the volume of work that the Counsel to the Community is going to have will be much more than at the stage when we were only dealing with the Customs Union. And in that respect, the office needs to be facilitated and given the enabling environment to be able to deliver on those increasing mandates. The same applies to the Clerk. The volume of work and the scope of the mandate of the East African Legislative Assembly have equally changed.

That actually even brings me to other issues, though not part of this motion, but serve for purposes of illustration. If you had the East African Legislative Assembly in 2001 dealing with just a few issues around the Community using only 60 days to do that, and you expect that when the mandate has grown to include issues of the Common Market and others, that the Assembly can still use the same 60 days, it defeats logic and understating of how the Assembly can deliver on all of these activities. Similarly, for instance, a Speaker handling issues of a few activities could easily do that from the capitals, and once in a while from Arusha, but when things like the Common Market and the like are coming in, it would require that he becomes resident in Arusha – (*Applause*).

In the same spirit, I would like to applaud the Chairman of Council when he clearly indicated that it was high time they took residence in Arusha as Ministers. It is in the same spirit of increased mandates, increased volumes across the board. So, the resolution that we are passing this evening should be seen in the same spirit of increased mandates, volumes, scopes and even memberships because we were dealing with three Partner States of the Community, but we are now talking of five, and all that brings in increased volumes and extended mandates.

Mr. Speaker, sir, in my view, this is a very well thought-out resolution. It is aimed at adding value in terms of the way we do business in the Community, and to be to place all these offices in a position that will allow them to deliver better on the needs and demands of the East African Community as spelt out in the Treaty.

Mr. Speaker, I beg to support the motion, and I urge all Members to unwaveringly support this well thought-out resolution – (*Applause*).

**Dr. Aman Kabourou (Tanzania):** Honourable Speaker, I thank you for allowing me to make a contribution to this Motion, which I find to be interesting. I think it is long overdue that we showed respect for the offices that we create. I cannot see why we did not do this from the beginning of the Community. As it is clearly stated, these are offices that really lead organs of the Community, and, therefore, they deserve respect. To me, it is rather strange that one would expect to drive a car effectively with only one tyre;

meaning, three tyres are flat and you try to drive this car with only one tyre. That is very strange.

I look at the office of the Counsel to the Community, that of the Clerk of the Assembly, and that of the Registrar of the Court as being complimentary to that of the Secretary-General who heads the Secretariat, and yet only one of these four offices seems to be working. I am not sure if it is really working very well. Could be that is one reason why we see a lot of deficiencies – (*Interjection*).

**Ms. Margaret Zziwa (Uganda):** Mr. Speaker, I want to seek clarification with regard to the office of the Counsel to the Community. It is prudent and possible for the Counsel to the Community to be invited to access the Summit. I want to seek clarification as to what happens if the Counsel to the Community wishes to access the Summit on his own accord, perhaps to relate to the Summit. So, if he does not have that status, is it not difficult for him? Would he be able to access the Summit with the same leverage he would have if he was at the status of an executive, or would he have to go through the Secretary-General and the Council of Ministers?

**Dr. Kabourou:** Mr. Speaker, unfortunately I cannot offer that kind of clarification; I am sure there are people who can do that – (*Laughter*) - but I the meantime, I should just point out that as Members of the Legal, Rules and Privileges Committee, and we somehow get concerned about the disparities between these offices. We even went ahead and made some recommendations that perhaps we should give more clout to the office of the Counsel to the Community by basically saying that he or she should become the Secretary to the Council of Ministers. We thought that would be a little elevation, and of course with all these things that have been mentioned here, I honestly do not see any reason why anybody would want to question why these offices have to be given their due respect.

Hon. Speaker, I, therefore, would not want to think of this House as a courtroom where only “learned” questions from “learned” brothers and sisters take precedence. I think this is where we should make political decisions, and I think the integration process is mostly political, more than anything else. Let us forget about who feels good or bad about anything, but believe and accept that we need to move forward. And we can only do that if we give due respect to the offices that we have created to help us with the process. I thank you, honourable Speaker – (*Applause*).

**Ms. Dora Kanabahita-Byamukama (Uganda):** Mr. Speaker, I beg to support the Motion, and I have three reasons for supporting it.

First, I would like to clearly state for the record of the House that we as the Committee on Accounts, ably chaired by the hon. Nakuleu had the privilege of meeting with the Secretary-General when he formalized the acceptance of having our Clerk as an accounting officer. Having said that, I would like to thank the Secretary-General, and also to register that this is a landmark, especially as regards the achievement of the East African Community in that previously, this was a tug of war and that in his wisdom, he saw it fit to enable our Clerk, as well as the Registrar of the Court, to be accounting

officers – (*Applause*). This indeed moves the East African Community to even higher levels of governance, especially as regards separation of powers whereby now each organ is able to independently handle its own financial affairs. Therefore, I would like to register our appreciation and to say that we are privileged to be serving the Assembly at this point in time when we have such a Secretary-General – (*Hear, hear*).

Mr. Speaker, sir, having said that, I would also like to take note of the work that was undertaken by the House Business Committee, which, under your excellent chairmanship, did consider it fit to institute a study on the administrative structure of the East African Community, and in particular because the Committee took time to look at the structure of the East African Legislative Assembly. I want to thank the mover of the Motion for giving credit to this in one of the paragraphs where she cited the role that the House Business Committee undertook. We thank all the honourable Members for their participation, because this is how partly these anomalies were uncovered.

Mr. Speaker, sir, when you consider this Motion, and having heard what the honourable Members have said, I would like to concur with the hon. Dr. Kabourou that this is long over-due. This Motion is premised on sound justification, including a justification from a very important committee, which is the Sectoral Council on Legal and Judicial Affairs. Therefore, I do not see any reason why this should not be expeditiously addressed.

Mr. Speaker, I would like to point out a very glaring anomaly. When you look at Article 66 of the Treaty, on the establishment of the Secretariat, sub-paragraph (2) says:

*“There shall be the following offices in the service of the Community:*

- (a) Secretary-General*
- (b) Deputy Secretaries-General*
- (c) Counsel to the Community*
- (d) Such other offices as may be deemed necessary by the Council.”*

It defeats my understanding as to why an office which is specifically mentioned in the Treaty is relegated to that of a professional level whereas others which are mentioned are at a higher level. I just do not comprehend the rationale for their having done this in the structure. I think this a grave anomaly, which should be expeditiously rectified. And I would like to say without fear that because the office of the Counsel to the Community has been relegated to that level, it has, in a way, denied us of very important advice which we would have otherwise got because, indeed, professionally when, in the staffing structure, one is at a certain level, one may feel constrained from objectively giving legal advice lest your contract is not renewed. Therefore, with those few remarks, I would like to support the Motion.

**Mr. Daniel W. Ogalo (Uganda):** Thank you, Mr. Speaker, sir, for giving me this opportunity to debate the Motion. Yesterday, the Chairman, Council of Ministers made a very pertinent statement. He stated that when you are a pioneer Parliament, you put in

place systems and that you have to keep on fighting to make sure that you put in place mechanisms which will make the organization or a country work.

Mr. Speaker, sir, the Treaty says that the ultimate goal of the Community is the establishment of a political federation. Consequently, we have to put in place systems which will support the federal state of East Africa when it is eventually established. This federal state of East Africa definitely will have to be based on the doctrine of separation of powers, with its judiciary, legislature and executive. Mr Speaker, sir, it is time that we started putting in place a mechanism which will form the basic foundation of this federation, but the way things are now, it begs a questions; it removes it from the building we are seeking.

Mr. Speaker, sir, I see the Counsel to the Community as eventually being the Attorney-General of the Federal State of East Africa – (*Applause*). That means that all institutions in the federal state will be looking to him for legal advice. And indeed, right now if you look at the Treaty, he is the Principle Legal Advisor to the Community; to all of us, but where he is placed puts him in a very difficult position because, if, for example, the Assembly had a dispute with the Counsel - these are two organs - and we want him to advise us and the Counsel also wants his advice, and we are not agreeing, to put him in such a situation makes his work very difficult.

I see the Registrar of the East African Court of Justice as being the Registrar of the federal court of East Africa. In a situation he is now, if you look at the Treaty, he is answerable to the President of the Court, and yet, somehow in the structures of the East African Community, he is somewhere...not even near the top staff.

I see the Clerk of the Assembly eventually being the Clerk of that great legislature for the whole of East Africa. So, we should now put in place those mechanisms that the Chairman of Council was talking about; the offices which will support this.

Mr. Speaker, I want to appeal to the Council of Ministers that this Motion is justified. I will demonstrate it this way. If you look at the East African Community budget of 2007/2008 – I know the Chairman of Council has not said anything, but we must put all these on the table so that when he stands up he will say “really I agree” – (*Laughter*).

Mr Speaker, in the East African Community Budget for 2007/2008, the budget for the East African Legislative Assembly is US\$7,364,867, and the Clerk of the Assembly is put at P5. Now, when you look at the Lake Victoria Basin Commission, the budget is US\$1,532,733 and the Executive Secretary is at D1. If you look at Customs and Trade, the budget is US\$1,664,019 and it is headed by a Director-General who is at D1. If you look at CASSOA (the Civil Aviation Safety and Security Oversight Agency), their budget is US\$847,571, and the Executive Director is at D1.

Mr Speaker, these are offices within the Secretariat at the very high level of director general, and yet they are within the Secretariat. But the heads of organs, namely the Clerk and the Registrar, who are outside the Secretariat are at a lower level; they are at P5.

The Clerk of the Assembly is controlling a budget ten times that of CASSOA, seven times that of the Lake Victoria Basin Commission, about five times that of Customs and Trade, and yet he is at P5, and these others are far higher than him. Definitely, it shows that there is something not right with that system, where there is more responsibility in one officer and yet he is at a lower level – (*Applause*).

Secondly, this actually was the cause of the problems we were seeing yesterday in the report of the Committee on Accounts. In that debate yesterday we were looking at the Lake Victoria Basin Commission and the Directorate of Customs and Trade, which are controlling some of the projects. The heads are at D1, which means that they are removed from reporting to the Deputy Secretary-General in charge of Projects. It makes it difficult. They cannot report to him because they are at the same level. So, it really requires that there is some streamlining of the structure.

I think it was *Mheshimiwa* Kabourou who asked why this thing had not been done before, and why there are all these problems. I want to hazard an explanation.

The people who determine the creation of these offices would normally be officers from our Partner States. When the Secretary-General says I need these officers, it is these Finance and Administration people who will say, we will give this one or we will not give this one. Now these gentlemen and ladies when they come to determine this, there is a bias – I am sorry to say - against the Assembly and the Court, because there is nothing in it for them – (*Interjection*). There is nothing in it in this respect: It is not that they are being given money, no, but there is interest, and I will justify. It is easier to create these offices in the Secretariat because these gentlemen and ladies of the Finance and Administration Committee apply and take up these jobs – (*Ohoo*). They therefore actually say “that one put it higher because tomorrow I am going to apply for it.” (*Interjection*) And it is tailored. This, to me, is a reason why no particular attention is paid to the – (*Interruption*) -

**Dr. George Nangale (Tanzania):** On a point of order, Mr. Speaker, sir, can the hon. Member on the Floor prove that there are some previous members of the Finance and Administration Committee who did apply for posts in the East African Community?

**Mr. Ogalo:** Mr. Speaker, sir, I have here a list of East African Community staff from the office of the Secretary-General to CASSOA, and I can state with no fear of contradiction that two people here, Mr. Karanja and Mr. Ajumbo were members of the Finance and Administration, just to mention a few. But you will find more. So, I am not saying this out of the blue; it is the reason why no particular attention is given to these other offices. My appeal is that the Council should therefore come in because these are things that are being done without the Council’s knowledge. This is what is causing all these things we cannot explain. You cannot explain how a Director-General is going to be in the Secretariat and he is above the head of an organ. You can not!

So, Mr. Speaker, sir, I support this Motion and I appeal to the Council of Ministers to look at this thing critically and resolve this matter. I thank you – (*Applause*).



**Mover of the Motion (Ms. Lydia Wanyoto-Mutende) (Uganda):** Hon. Speaker, I just want to thank my honourable colleagues for supporting this Motion unreservedly. I am very humbled by their support. This is collective responsibility; we have just been able to rise to the occasion and do our job. I just want to recognize the contributions of the hon. Akhaabi, the hon. Sebalu, the hon. Dr. Kabourou, the hon. Byamukama and the hon. Ogalo. I am just waiting eagerly and anxiously for the rest of the House to pass this Motion. Hon. Speaker, I beg to move.

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

Resolution Adopted.

**The Speaker:** The Resolution has been adopted and the Clerk will transmit the resolution to the Secretary General for onward transmission.

Honourable Members we have come to the end of our business for today, and I would like to make some few announcements, but before that, there were some documents that the Chairman of Council of Ministers was to table; his response and the EPA documents. I hope we will have them by the next sitting so that we can give them to the relevant Committee.

**The Chairman, Council of Ministers (Mr. Eriya Kategaya (Ex-Officio Uganda):** Mr. Speaker, my response is ready; in fact I have the original. But the other document on the interim agreement, what I have is a copy, and I do not think I can table the copy; I have to look for the original. But for the copies, I am ready.

**The Speaker:** I hope we will get everything before we leave. I think you can table copies now if they are authentic.

**The Chairman, Council of Ministers (Mr. Eriya Kategaya (Ex-Officio, Uganda):** Mr. Speaker, sir, I am told there are two questions that we have not yet responded to; is that true?

**The Speaker:** Those will be handled next time. We were talking about what we did today; the other ones we can do them later. But I can see the Counsel to the Community trying to give advice on the Floor of the House; that is why you need to upgrade his office. Anyhow, I think you can table all those documents in our next sitting.

Honourable Members, the good news I have for your is that His Excellency Yoweri Kaguta Museveni, the Chairperson of the East African Community Heads of State Summit has confirmed that he will address the Assembly on the 26 February 2006. He will also officially open the Chamber on that day - *(Applause)*. You are expected to be punctual and the programme is being finalized and will be distributed in due course.

I would also like to announce that the AMANI Forum, EALA Chapter will hold a two-day meeting starting tomorrow morning, Friday, 23 February 2008 at 9.00 a.m. and ending on Saturday, 24 February 2008. The meeting will take place at the AICC Complex, Twiga Hall, Ngorongoro Wing 7<sup>th</sup> Floor. You are all required to attend, including the Ministers and Secretary General and the Counsel to the Community are welcome to attend.

### ADJOURNMENT

**The Speaker:** With that, I adjourn the House until Tuesday at 2.30 p.m.

*(The House rose at 7.00 p.m. and adjourned until Tuesday, 26 February 2008, at 2.30 p.m.)*