



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY,

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

**93RD SITTING -SECOND ASSEMBLY: FIRST MEETING – FOURTH
SESSION**

Wednesday, 22 September 2010

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of Deputies,
Burundi National Assembly, in Bujumbura.

(The Speaker in the Chair)

PRAYER

(The Assembly was called to Order)

MOTION

The Civil Aviation Safety and Security
Oversight Agency (CASSOA) Bill,
2008

**The Minister for East African
Cooperation, Tanzania, and
Chairman, EAC Council of
Ministers (Dr. Diodorus Kamala):**
Mr. Speaker, I beg to move _

THAT, in accordance with the
provisions of Article 63 of the
Treaty and Rule 71 of the Rules
of Procedure of the Assembly,
the CASSOA Bill be

recommitted in respect of some
particular amendments.

**The Counsel to the Community, Mr.
Kaahwa:** Seconded.

Dr. Kamala: Mr. Speaker, in
accordance with the provisions of
Section 72 of the Acts of the
Community Act, 2003, and Rule 71 of
the Rules of Procedure of the
Assembly, the CASSOA Bill can be
recommitted in respect of some
particular amendments.

Mr Speaker, in accordance with the
provisions of Article 63(1) and Article
2 of the Treaty and Section 72 of the
Acts of the Community Act, 2003, His

Excellency Paul Kagame, the President of the Republic of Rwanda withheld assent to the CASSOA Bill, which had been enacted by the Assembly in August 2009, and returned it to the Assembly for reconsideration. The President wrote to the hon. Speaker of the Assembly to inform the Assembly that his withholding of assent was based on the fact that some provisions of the Bill as enacted by the Assembly were in conflict with the CASSOA Protocol, which is an integral part of the Treaty.

The provisions of the Bill that are inconsistent with the Protocol are as follows:

1. Whereas Clause 9(3) of the Bill states that the quorum at any meeting of the CASSOA Board shall be a simple majority of the members of the Board, including at least three heads of civil aviation or their designated representatives, Article 8(3) of the Protocol provides for at least two heads of civil aviation or their designated representatives.
2. Whereas Clause 12 of the Bill states that the Executive Director shall serve for a period of five years renewable, Article 10(2)(a) states that a person appointed as the Executive Director shall hold office for a period of five years and shall not be eligible for reappointment.
3. Whereas Clause 18(3) of the Bill states that the Agency shall, within three months after the end of each financial year, submit its accounts to the Audit Commission for auditing, Article 15(5)(b) of the Protocol provides that the Agency shall, within four months after the end of each financial year, submit to the Audit Commission the

accounts of the Agency for auditing.

Mr. Speaker, as you are aware, Article 151(4) of the Treaty provides that “*the Annexes and Protocols to this Treaty shall form an integral part of this Treaty.*” Therefore, any provision in any law of the Community must be consistent to the provisions of the Treaty and its protocols and annexes thereto. Otherwise, it would be an attempt to amend the Treaty through means other than provided in the Treaty.

It is for these reasons then that His Excellency the President returned the Bill to this House for reconsideration. I therefore, move that this House do reconsider those particular clauses of the Bill and amend them accordingly to make them consistent with the Protocol.

Mr. Speaker, I beg to move.

(Question proposed)

The Chairperson, Committee on Communications, Trade and Investment (Dr. James Ndahiro) (Rwanda): Mr. Speaker, we looked at the proposal from the Council of Ministers in regard to this Bill, and as a Committee we deliberated on all the issues and came up with a report. With your indulgence, Mr Speaker, allow me to call a Member of the Committee to read the report on behalf of the Committee.

Mr. Gervase Akhaabi (Kenya): Thank you, Mr. Speaker, sir. The report is as follows:

1.0 Introduction

Pursuant to the provisions of *Articles 49, 59, and 62* of the Treaty for the

Establishment of the East African Community and in accordance with Rules 62 and 65 of the Rules of Procedure of the Assembly, the Civil Aviation Safety and Security Oversight Agency (CASSOA) Bill, 2008 was introduced for the First Reading in the House on 23 May 2008. The Bill was then referred to the Committee on Communications, Trade and Investment for consideration.

The Bill was considered and the Committee gave a report. It was later passed in August 2009 in Dar-es-Salaam, in the United Republic of Tanzania. In accordance with *Article 62 (2)* of the Treaty, the Rt. Hon. Speaker submitted the Bill to the Summit for assent.

Pursuant to the provisions of *Article 63 (1)* of the Treaty, the President of the Republic of Rwanda, then the Chairperson of the Summit of the EAC Heads of State, notified the Rt. Hon. Speaker that he was withholding his assent to the Bill for reasons that the specified provisions of the Bill did not conform with and contradicted the provisions of the protocol on CASSOA. The reference to the Assembly was also accompanied by a matrix of provisions of the Bill, which the Minister for EAC Affairs in Rwanda contended that contravened the said protocol.

Consequently, at a meeting held at the Royal Castle Hotel in Mombasa, Kenya, the Committee, having considered the referred Bill together with the accompanying documents and memorandum, directed that the Rwanda Minister in charge of EAC Affairs should furnish the Committee with further and better particulars, especially as pertained to any comments on the alleged

contradictions between the Protocol and the Bill.

The comments were received by the Rt. Hon. Speaker of the Assembly and the same were transmitted to the Committee on Communications, Trade and Investments, which sat on 20 September 2010 to consider the same.

2.0 Consideration of the Reference and Comments by the Committee

The Chairperson of the Committee invited the Chairperson of the Council of Ministers to elucidate on the reference by the President of Rwanda and the President's comments on the Bill.

The Chairperson of the Council of Ministers limited his discussion on the three issues raised by the President namely:-

1) Quorum of the CASSOA Board meetings.

The Council of Ministers said that the quorum at any meeting of the Board of Directors be raised from at least two to at least three, owing to the increased membership of the EAC as the Protocol was introduced before Rwanda and Burundi had joined the Community.

2) Tenure of the Chief Executive of CASSOA

The Council of Ministers informed the Committee that the tenure of the Chief Executive Director should be a five-year fixed non-renewable term because this is the current policy of the Community.

- 3) The Submission of Audited Accounts by the CASSOA to the Secretary General.

The Council of Ministers advised the Committee to go by the President's directive that CASSOA should submit its audited accounts within four months after the end of each financial year as it is provided for in the Protocol. The Counsel to the Community further informed the Committee that on the instruction of the Council of Ministers, a new standard format for drawing protocols has been developed, which limits protocols to issues of policy framework so that the details will be a matter of legislative and regulatory action. This was confirmed by the Council of Ministers.

2.1 Observations

- 1) This Bill was introduced by the Council of Ministers, the provisions of which reference has been made by President Paul Kagame and his comments relate to matters of policy for which the Council of Ministers is responsible.
- 2) The Council of Ministers has come to the realization that protocols cannot and will not contain details necessary for the implementation of policies which must necessitate appropriate legislation. This is the correct way to go.

As a matter of policy, the Council considers that Chief Executives of Institutions of the EAC should be limited to one term of five years.

- 3) The Council also recognizes that the number of Partner States in the Community

having risen from the original three to the current five, it is necessary to raise the quorum of the institutions of the Community to a level above the quorum when the Partner States were only three.

- 4) The Council of Ministers recognizes that financial rules and regulations of the Community require audited accounts of the Community institutions to be submitted to the Secretary General within three months after the end of the financial year, and the need to have all institutions of the Community to conform to this requirement. However, the Protocol on CASSOA stipulates the period for such submission to be four months, and therefore it is in conflict with the other financial regulations as stated above. Therefore, there is need to align the protocol with these general EAC financial rules and regulations.
- 5) For the purposes of this Bill, such re-alignment may necessitate and lead to a delay in the provision of a proper institutional and legal framework for CASSOA, although the anomaly can be rectified in due course.

2.2 General Comments

The Committee:-

- Noted that the Summit should always be advised accordingly on technical issues.
- Observed that the Council should provide the current standard

format of protocols to the EALA Committee on Legal, Rules and Privileges.

- Further noted that previous protocols should be reviewed to conform to the standard format of protocols to accommodate both current and future amendments.

Therefore, the Committee resolved and recommends as follows:-

i) Quorum

To retain the proposal in the Bill that the quorum should be at least three members composed of the Chief Executives of the Civil Aviation authorities in the Partner States in order that there is proper representation of the Partner States in light of the enlargement of the membership of the Community. Retaining the provisions in the Protocol may result in the majority of the Partner States not being represented at the Board meetings of CASSOA, and decisions reached by a minority.

ii) Tenure of Chief Executive Officers

To accept the proposal by the President of the Republic of Rwanda, His Excellency Paul Kagame as explained by the Chairperson of the Council of Ministers as this is a policy position of the EAC Council of Ministers.

iii) Submission of Audited Accounts

Accept the proposal by the President of the Republic of Rwanda to conform to the Protocol on CASSOA, but urge the Council of Ministers to cause the Protocol to be amended urgently to conform to financial regulations governing other EAC Institutions.

- iv) In light of the directive to the Counsel to the Community by the Council of Ministers, the Committee recommends to the Assembly to direct its Committee on Legal, Rules and Privileges to urgently examine and consider appropriate amendments to the existing protocols that may require amendment in light of the policy directive by the Council of Ministers, and submit its report to the Assembly for appropriate action.

Mr. Speaker, I beg to report.
(*Applause*)

The Speaker: Honourable Members, you have heard from the hon. Minister as well as the Committee. Debate is now open.

Dr. F. Lwanyantika Masha (Tanzania): Mr. Speaker, I am not a Member of the Committee, and unfortunately most of the documents which we are referring to, I just saw them on the table here; but I know that the CASSOA Bill has a long history, so I am familiar with some of its elements.

I want to say that there is a fundamental problem in the Community's legislative process, which I will keep pointing out for as long as I am Member of this House, and hope that one day somebody will understand it, and that the Council will accept this problem and hopefully find a way out of it.

Once again, it is the relationship between a protocol and an Act of the Assembly. Since I have said so many things about this problem in the past, I need not go into the details of the nature of this problem, except perhaps

to say that since I am not a lawyer, I find it difficult to accept - I have not seen this anywhere else except in the Community set-up, where protocols subsequent to a treaty become integral elements of that treaty. I find that difficult to accept. I stand corrected by legal historians; maybe there are precedents elsewhere.

Protocols subsequent to a Treaty cannot become integral elements of the Treaty. After the Treaty, you amend the Treaty. To consider protocols as amendments to the Treaty is preposterous. If you make a protocol an integral element of the Treaty and that protocol contains details to a point of tenure of the officers, and to change that tenure you must go through the Treaty amendment process, I find that very difficult to accept.

Mr. Speaker, we have been told that there are some standards. Let me read the words as I heard them: *“Further noted that previous protocols should be reviewed to conform to the standard format of protocols.”* Which is this ‘standard format’ of protocols so that we will now accept that in the future we will have it? I don’t know of any ‘standard format’ of protocols. The only thing is that protocols subsequent to a Treaty, in my judgment, cannot be integral elements of the Treaty.

I know we discussed this during our session in Kampala where both the Council of Ministers and the Counsel to the Community assured us that future subsequent protocols would not contain these kinds of details, I had hoped that from then on, we would not be seeing protocols with that level of detail, but we are still seeing them. We are being told -and the Committee seems to have accepted this- that they would look at these protocols to ensure that they conform to the standard

format of protocols. Where is this standard?

The Speaker: Hon. Masha, I think I can help you out. If you look at this report of the Committee on page five where they talk of directives maybe my English is not the best but if you read the last paragraph it says *“in light of the directive to the Counsel to the Community by the Council of Ministers, the Committee recommends to the Assembly to direct its Committee on Legal, Rules and Privileges to urgently examine and consider appropriate amendments to the existing protocols that may require amendment in light of the policy directive by the Council of Ministers, and submit the report to the Assembly.”* It is as though the Council is now directing us to do some of these things, and we are going by the Council directives, which is against the Treaty. In essence, I don’t think the Council can direct the Assembly to do anything. So, I don’t see how the Committee came up with that recommendation.

Dr. Masha: Mr. Speaker, I thank you very much for your statement. I will have to actually come to that particular paragraph and add to what you have put very well.

The Treaty does not provide for the Assembly to be involved in the negotiation process for the amendment of the Treaty. If a protocol is an integral element of the Treaty, and you are saying the Council has asked the Counsel to the Community to advise the Committee on Legal, Rules and Privileges to look at these protocols. But, we are out of the loop, according to that Treaty! As long as they are integral elements of the Treaty, we cannot do anything about them. I see

this as a way of trying to avoid a problem.

There is a fundamental problem about the relationship of protocols and treaties. The Committee on Legal, Rules and Privileges, which is being assigned this job in consultation with the Counsel is given a job that it has no mandate to do under the Treaty. We are trying to avoid a problem. And, if indeed the Council has directed the Counsel to the Community to do that, I want to be a bit unkind to the Council and say that they are avoiding a problem. After listening to the Chairman, Council of Ministers yesterday, I got the impression that the current Chairman is such a straightforward and decisive person. So, I wonder how this one passed him!

I find it terribly awkward that the Community has not been able to deal with this problem of protocols and legislation. I know that protocols had a role before the Assembly was activated, but I see no role for protocols after that. Even if you get protocols, they should just be indications of the willingness of the Partner States to the extent of what sovereignty they will cede to the Community, but not as integral elements of the Treaty. I don't believe this problem should make CASSOA become hostage to this tussle which we may not resolve during the term of this Assembly.

I will, very reluctantly go ahead and support the motion but continue to urge that we resolve this problem because it is endemic to all other institutions that we will be setting up, and it will even make the good elements in protocols to be subjected to critical review only because this relationship is not resolved.

With that, I will very reluctantly accept this so that CASSOA can go ahead, but I don't agree with the report of the Committee, including the contents that I have referred to.

The Counsel to the Community (Mr. Kaahwa): Mr. Speaker, I rise on two points regarding this Motion, which I support. The first point is to explain, once again, the nature and relevance of protocols within the EAC institutional and legal arrangements.

Mr. Speaker, when the Treaty was negotiated and concluded, the contracting parties- which were the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda- recognized that the negotiators did not go deep into some of the intended areas of cooperation.

The Treaty provides for different areas of cooperation in Chapters 11 to 27, and on realizing that the negotiators did not go deep into some of these areas to spell out the intended framework and parameters of cooperation, Partner States provided for a way out of this lacuna.

The way out of this situation is what is succinctly provided for under Article 151 of the Treaty, which states that *"The Partner States shall conclude such protocols as may be necessary in each area of cooperation, which shall spell out the objectives and scope of, and institutional mechanisms for cooperation and integration."*

The salient words to underline here are: *"as may be necessary in each area of cooperation, which shall spell out the objectives and scope of cooperation."* This arose out of the recognition that in some of these areas, the parameters and extent of cooperation was not succinctly

negotiated. Let me give you an example.

Articles 76 and 104 of the Treaty provide for the scope of the Common Market on the freedom of movement, and the right of establishment and residence, but the scope on these matters was not spelt out, hence the recognition of a need for protocols which would spell them out. If they had not provided for those protocols, then the provision and establishment of the Common Market on the basis of the provisions of Articles 76 and 104 of the Treaty would have been restricted.

The other example is with regard to CASSOA. Article 92(1) provides that Partner States shall harmonize their policies on civil aviation to promote the development of safe, reliable, efficient and economically viable civil aviation. That does not go into the depths of civil aviation security and safety oversight, which is necessary for civil aviation in the region, hence the need, again, for a protocol which spells out the details of a safe, reliable and efficient security oversight in civil aviation. There are so many other examples.

Mr. Speaker, the Partner States provided for such protocols because some areas of cooperation were not succinctly negotiated and concluded in the Treaty. Room had to be made for when such matters could be negotiated after the Treaty has come into force, and hence the need of subsequent protocols. All the protocols which have been concluded this far have been concluded on this basis to provide for those areas where the Partner States did not spell out the complete scope in the Treaty in certain areas.

Mr. Speaker, let me also add that having observed that there is restriction on subsequent legislative action in some of the protocols that have been concluded, it is important to prepare protocols in such a manner that they don't interfere with subsequent action of the legislature. That is the new format for protocols which has been talked about, and which I have developed. Since I developed that format for use for all protocols, we are very careful to make sure that the provisions for protocols relate only to the scope of cooperation as is intended in Article 151 of the Treaty, and the provisions do not go into such areas as would make legislation and enactment of Bills difficult.

When I met the House Business Committee, I undertook to avail this format, and I will do so to both the Committee on Trade and Investments and the Committee on Legal Rules and Privileges. That is the basis of protocols as we have them. They remain integral parts of the Treaty for the reasons I have indicated.

Mr. Speaker, on the proposed amendments, much as I am not a Member of this Committee, I attended its deliberations. The Committee strictly observed the requirements of Article 63 of the Treaty regarding assent and withhold of assent to Bills by Heads of State. The Committee, together with the Council of Ministers, traced back the development to the observations made by His Excellency President Paul Kagame, and we observed the need to ensure that the Bill which we enact does not conflict with the provisions of the Protocol, which is an integral part of the Treaty.

You see, Mr. Speaker, when a Head of State has withheld assent and sent back the Bill to this august House for

reconsideration with very clear reasons which is the case with this Bill, and then we, in our wisdom, don't accommodate his views without giving sufficient reasons, there is a danger that such a head of State will still withhold his assent. It is within his or her right. Should he do that, then such a Bill will lapse. We should guard against that.

Mr. Speaker, whereas I am in total agreement with the Committee's recommendations regarding the tenure of the Chief Executive Officer of CASSOA, and while I am also in agreement with the Committee's recommendations regarding the timing for the submission of the CASSOA Bill to the Audit Commission, which recommendations are reflected on page five of the report of the Committee, I would like to request the House in this debate to go back on the recommendation on the quorum.

It is true that we attended the meeting of the Committee, and that we were arguably party to this recommendation, but upon recollection, I think that even in this case there will be need to amend the Bill so that the quorum for the board meetings remains a simple majority of the members, including at least two heads of the civil aviation authorities.

As much as we know that there has been country expansion of the membership of the Community, let us amend this recommendation so that we conform to the provisions of the Protocol. The Head of State who withheld his assent knows the difference between these, and to accommodate ourselves, we can use the same argument that the Committee used regarding the recommendation on the submission of audited accounts. So, we ought to live within the Protocol in

enacting this Bill, but we could cause the Protocol to be amended to conform to the country membership of the Community.

I thank you. (*Applause*)

The Speaker: Honourable Members, before I call on hon. Mwinyi to contribute, I would like to get clarification on this matter. I know the Speaker is not supposed to debate, but for to guide the Members so that they know how to vote on this issue, I would like to get clarification from the Committee and the Chairperson of Council on two things. One, when I sent out the letter from the President on his withholding assent, there was a long matrix in terms of issues that were raised. From what I see here from the Council and the Committee, they only talk of three issues. Maybe they can guide us on what happened to all the other issues.

Secondly, on page five of the Committee report, in talking about the submission of audited accounts, the Committee says "*urge the Council of Ministers to cause the Protocol to be amended urgently to conform to the financial rules and regulations governing the EAC institutions*". Is it easier to amend the financial rules or a protocol? Right now we are being told to amend the law so as not to change the protocol, and then to change the protocol to conform to the financial rules and regulations. I thought we should amend the protocol to conform to our law but we are being told to amend the protocol to conform to financial rules and regulations!

I would also like to say this to the Counsel to the Community that so much as a Head of State can withhold assent to a Bill, I think it is also the right of the Assembly to discuss and

decide in its wisdom whether to agree or not. When we discuss Bills here, I don't think any of us benefits directly. I don't know whether any Member here is going to benefit personally from the CASSOA Bill, but we just want a Bill that is the best for the East African people. *(Applause)* So, to tell us that we have to conform with the Head of State just because he will not sign the Bill is a bit unfair to this Assembly.

Mr. Abdullah Mwinyi (Tanzania): Mr. Speaker, I would like to add my voice to this debate on a number of levels. First and foremost, I would like to agree with the hon. Dr Masha for casting doubt on whether a protocol should be considered an integral part of the Treaty.

The Treaty is equivalent to the constitution in the Partner States. It is well established in jurisprudence that a constitution, being the very basis of all laws, can be amended by subsequent amendments to that constitution. Therefore, in this case the Treaty can be amended to a certain extent by protocols. However, the scope of the amendment of the Treaty is limited. I do not wish to bring this debate to the finer points of jurisprudence and the law, but I just wanted to lend my support to Dr. Masha and say that it is doubtful whether it is legal to amend the Treaty by Protocol. I think perhaps we could consider taking this matter to the East African Court of Justice for interpretation.

The second matter is in relation to what the hon. Wilbert Kaahwa, the Counsel to the Community, has said. He spent some time elucidating the need for protocols in the Community. Notwithstanding his arguments, I would like to quote Article 151 of the Treaty.

Article 151(1) stipulates that "*The Partner States shall conclude such protocols as may be necessary in each area of co-operation, which shall spell out the objective, scope and institutional mechanism....*" There are three aspects here: objective, scope and institutional mechanism.

The Treaty envisages protocols to be broad policy guiding instruments, but instead what we are getting from such protocols is detail, which is, if I may say, deliberately put there to remove the legislative function of this august House. The Treaty itself provides the scope in which future protocols need to be drafted. So, it is even arguable to say that a detailed protocol is in contravention of the Treaty.

My third point is in relation to the specific amendments on Clauses 9(3) and 18(3). On Clause 9(3), the Council is suggesting the following amendment: "*The quorum at any meeting of the Board shall be a simple majority of the members of the Board, including at least two heads of civil aviation or their designated representatives.*" The emphasis here is on "*at least two.*" What the Bill stipulated was three. Perhaps my understanding is different, but I don't see a contradiction. If I may illustrate by using a parable, maybe hon. Members can align themselves to my thinking.

If, for instance, the Council of Ministers or the Partner States decide to introduce a protocol into the Community that forces all male Members of EALA to have at least two wives -I am sure the male Members would support that particular protocol- and then we decide to pass a piece of legislation in this august House that says four wives, the protocol has provided a minimum threshold; it has

not said anything about a maximum. My honourable friend Oyondi would not be in breach of that protocol if he had three wives. So, I do not see a contradiction on this particular point. I see hon. Masaburi applauding that point. *(Laughter)*

Mr. Speaker, the suggested amendment on Clause 18(3) is that the Agency shall, within four months after the end of each financial year, submit the accounts to the Audit Commission for auditing. Again, allow me to go back to the Treaty. Article 151(4) stipulates that *“The annexes and protocols to this Treaty shall form an integral part of this Treaty.”* We have been informed that the financial rules and regulations are treated as annexes to the Treaty. Therefore, they are also part of the Treaty.

Notwithstanding my previous argument, if you were to follow the Counsel to the Community’s argument, what we have here is the CASSOA Protocol being in direct contravention of the financial rules and regulations, which are also part of the Treaty. So, we have two documents that profess to be part of the Treaty but are in contravention of that Treaty. How do we deal with such a situation? Do we say that all institutions that are supposed to submit their financial accounts within three months after closure can, as of now, as a result of the CASSOA Protocol, submit the accounts four months after? That is the question that the Counsel to the Community needs to respond to - *(Interruption)*.

The Speaker: Mr. Kaahwa, are the financial rules and regulations annexes to the Treaty?

Mr. Kaahwa: Mr. Speaker, it is true that Article 151(4) provides that the

annexes and protocols to this Treaty shall form an integral part of this Treaty. It is clear what the protocols are. We have had consultations on what annexes include. Annexes would include any other instruments that are made pursuant to the Treaty. Those include staff rules and regulations, as well as financial rules and regulations. But then, in terms of precedence, protocols are next to the Treaty and then the rules and regulations follow in the hierarchy, because even the protocols themselves provide for rules and regulations. So, the structure is such that you have the Treaty, the Protocol and then you have rules and regulations.

The Speaker: It is a straight question. Are the financial rules and regulations part of this Treaty? Are they annexes to the Treaty?

Mr. Kaahwa: Rules and Regulations are annexes to the Treaty.

The Speaker: So, to amend them you have to go through the process of amending the Treaty?

Mr. Kaahwa: Mr. Speaker, I said there is a structure in which these instruments shall be seen. The Treaty is amended by what is provided for under Article 150, and similarly the protocols. The financial rules and regulations, because they are at a different level -they are annexes, not protocols- are amended otherwise, and in a manner so provided in the financial rules and regulations.

Mr. Mwinyi: Mr. Speaker, the Counsel to the Community has still not shed much light on this particular argument. Nevertheless, I would like to conclude that if we look at the proposed amendments, though I am against them in principle and I would

urge honourable members to agree with me on this, the magnitude of the proposed amendments are not grave. Had they been of a much weightier subject, it would have been worse.

But having said all that, if we were to proceed and agree with the proposed amendments, I would want the Chairman Council of Ministers to stipulate before this august House that such provisions which are clearly not consistent with the current state of the Community would be amended. He should promise this august House that he will take every action necessary to ensure the amendment of the protocol to conform to what is clear. If we were to follow this Bill and to follow the proposed amendments, in the foreseeable future the Partner States will take action to amend the CASSOA Bill to make it conform to the so-called "standard protocol", and to align it with the fact that currently we have five Partner States as opposed to three.

With those remarks, I beg to support the Motion. *(Applause)*

Major General Mugisha Muntu (Uganda): Mr. Speaker, I stand here to support the report of the Committee. However, I would like to make some observations. The first one is on the long-running debate -since the inception of the First Assembly on to this current one- on protocols.

When we were in the Committee, we were given information which, to me, seemed to be leading us to the resolution of that debate. We were informed by the Counsel to the Community that now they have a standard format; that there has been a realization that detailed protocols are an impediment to future legislative process.

Mr. Speaker, this is what has always been the core of that debate. This Assembly has always stated that protocols should only state the principles that are agreed upon by the Partner States and they should leave the details to the legislative process. Well, unfortunately it has taken this long, but the good thing is that, that realization has ultimately occurred. *(Applause)* So, what we proposed as the Committee on Trade and Investments was that we need to have a look at the new format.

Secondly, we also raised a proposal that, that new format should be sent to the relevant Committee of the Assembly for purposes of looking at possibilities of reviewing and amending all the protocols that are in existence so far, to see whether they can be reviewed to be consistent with the new format. That request is in paragraph 2.2.4 of the report, and the recommendation is that the Committee should look at the new format and find out whether there is a possibility of amending all the past protocols so that they are consistent with the new format. This is because the way we are going, it looks like whenever a controversy arises because a protocol is so detailed that there is a clash between legislation and the protocol, it is always going to be taking us through what we are going through now, and we want to avoid that. *(Applause)*

The other issue that we looked at was the amendments. We noted that the amendments were not very serious; they are not on issues that are controversial. One is on quorum, and I don't think there was a lot of controversy on that, and 18(3) is on time; whether it should be three or four months. Those are not make-or-break issues. That is why in the Committee we agreed to go along with what the

Council requires. However, we made some observations, and I think we need to raise the same observations in this Assembly, because I think this is where the problem lies.

I have heard the Counsel to the Community raise the same issue that the Chairperson of the Council of Ministers raised in the Committee about the danger that lies in the Assembly returning a Bill for assent, holding the same position that was the basis for a Head of State withholding assent to the Bill in the first place. I think we really need to dwell on that a little bit. Why? We need to observe the principle of separation of powers.

We opted, as countries and as a region, to subscribe to the principle of separation of powers between the legislative arm, the executive arm and the judicial arm of government. This is a very well-known principle worldwide. I believe that all the five Partner States subscribe to that principle, even where the different arms of government act separately. The only danger I see is if they act in an adverse manner; I think that is what we should resist. But when we are in the process, for example, of developing legislation, the two arms, and in this case the legislative and the executive arms, should interact to end up with legislation that is good for everybody within the region. That is the spirit behind that partnership. That is the way I look at it myself. *(Applause)*

So, when a Head of State withholds assent, I believe it is in good faith, but it is because the Head of State has not understood why the Assembly has passed the particular Bill in the manner in which it has. But if after it has been sent back to the Assembly the Assembly still feels that there are legitimate reasons to stick to its

position, I would like to believe that the Assembly would also be doing so in good faith. So, I see no danger in that.

Mr. Speaker, I get kind of perturbed when those who are on the side of the executive arm of the Community seem to read danger in this. I get confused! Actually, the danger lies behind that kind of thinking, in my own estimation. That is where the danger lies, because all the actors are acting in good faith.

Of course, we have said let this pass. I personally have no problem with three or four months, and we agreed to go ahead and pass this according to the wishes of the Council of Ministers, which is also the wish of the Chairperson of Summit, but for the future, I think we need to work out a method as an Assembly.

You cannot tell now, but there might be a situation in future when a President withholds assent and yet you will find that for the good of the region, it is necessary to stick to your position, not because you want to be adversarial, but because you want to be given an opportunity to explain why you think there are legitimate reasons for that position to be withheld.

So, I would like to propose that in future, even before we debate and pass any proposed amendment and stick to the original position to which a Head of State withheld assent, we will need to be a little bit more innovative because the culture within which we are operating in this region is not good; I can tell you that. Many of the actors in our region, and even in the African continent...somehow we impose fear into ourselves where authority is concerned.

The proposal I would like to make is that in a case like this where a Committee brings such a recommendation back to the Assembly and the Assembly feels that its views are legitimate and maintains the same position, the Assembly should work out a mechanism whereby the Speaker and the Chairperson of the Council of Ministers can present the views of the Assembly back to the Head of State for purposes of coming to an informal assent before the passed legislations is sent back to the Head of State.

Why do I say that, it is because, first, it will help us to avoid the fear that they are talking about. There seems to be the thinking that if the Assembly sticks to its position and sends the legislation back to the Head of State, it becomes dangerous. I don't see it that way myself.

Many of us have held senior positions in our governments. I see people in this House who have been ministers and some who have been vice-presidents in their countries. The Members of Council here are Ministers in their various governments, and I think they will agree with me that the style of management is very important.

I held command over an army for quite a while, and I studied officers at different levels below me, at division level and at brigade level and, sometimes, for example, if a position was passed at a certain level, one commander would come back and say, "Sir, I don't think this position that was taken is good for us for this and that reason", in a disciplined way, while another Commander would go ahead and carry out the directive as is, even if he knew that maybe you made that decision minus certain important information.

In my own case, and I think in management generally, I think you need to respect people who come back to you and say, "Sir, you made this decision, but did you look at this information?" Maybe the information was not available to you before you made the decision. You could still go ahead and maintain your position because the buck stops with you as the senior person, or you could act now with the benefit of the new information and change the directive or the decision, or in this case, the legislation.

I think we must respect those who are bold enough to come back and advise us. That is the best thing in management, and I think that as an Assembly, that is the position we should always take in whatever we do; of course not in an adversarial or confrontational manner, but in a manner that recognizes that the person who took the position did it in good faith, and that we are also doing what we are doing in good faith, and that at some point we would reach an understanding, which would be good for us and for the region. I don't see any danger in that, and I would like to ask the Council of Ministers to change direction, because they seem to think that there would be danger in the Assembly telling a Head of State that we still think this is the correct thing to do. We have let this pass because it is a small matter, but in future we might need to take a decision on a more serious issue. If the Assembly takes a position and we think it is in the best interest of the region, we should not fear at all because there is no danger in it.

The only thing that I would like to advise is that we should try to come up with a mechanism of getting back to the Head of State, even if it means all the five, to advise them on what we

think is the best way forward. *(Applause)* If we do not do that, we will be failing in our responsibilities, and I think we would also be building a wrong culture in this region that we all want to integrate into. We should not recreate the dangers that we have gone through at the national level at the regional level.

I have seen that culture operating in many of our African countries since independence, and in some cases it has caused us problems. So, let us not repeat the same thing at the regional level. As individuals, we act today and tomorrow when we are out, new people come in, but it is a culture that guides us in what we do. So, we should go ahead and establish a better culture than hitherto.

Mr. Speaker, to the Members of the Council of Ministers, I give my apologies. Please don't misunderstand me, but I think you should align with us in that thinking. It is the best way forward. You would be doing the best thing that anyone of us in this region could do for our future. Most of these Heads of State –at least those that I know personally- would respect such a position. I know quite a number who will respect someone who firmly says “no” but in a disciplined way that would make them realize that it is for the purpose of guiding them to make the right decision. So, we should have no fears over that.

Mr. Speaker, that is the spirit in which we made this report, and I hope that when it comes to the proposal to look at the possibility of amending past protocols, the Council will be on board with us and we will go ahead and do things which are the best for all of us in this region. As the hon. Speaker has indicated, what do we have to gain? Many of these legislations that we

make have nothing personal to us; not personal to the Council of Ministers, not personal to Members of the Assembly, not personal to the Heads of State; no. It is really for the whole region. So, I don't see why anybody would be offended at all.

Thank you, Mr. Speaker for giving me this opportunity to give that explanation. *(Applause)*

Ms. Patricia Hajabakiga (Rwanda): Mr. Speaker, I also want to declare that I am a Member of this Committee and I support its report, but I would like to comment a little bit on the submission by the Counsel to the Community, and probably request for certain clarifications from him.

I would like to know the importance of the Accession Treaty signed by Rwanda and Burundi; whether it has any meaning in terms of representation to the EAC bodies and institutions. I thought that by this Treaty of Accession, all the instruments - including the Treaty- concluded prior to the Treaty of Accession, actually did amend the Treaty for the Establishment of the East African Community accordingly, including representation on the different bodies and institutions of the EAC. I would also like to come up with a worst case scenario of this.

Mr Speaker, supposing we had a situation where an Executive Director of CASSOA sends out invitations to the board members of the Agency, but makes sure that only two of the directors of civil aviation of his or her choice receive the invitation on time, and only those two out of the five attend the meeting, and a very serious decision is made in that meeting, which has an impact on all the Partner States, including those not represented

in that particular meeting, what would happen?

In view of that, therefore, this House should not accept the recommendation to amend Clause 9(3) of the Bill because of the reasons I have given, because otherwise we would not be serving the East Africans in terms of representation to the CASSOA board. I thank you.

Ms. Nusura Tiperu (Uganda): Mr. Speaker, I would like to join my colleagues in support of the recommendations proposed by the Committee. I also want to let the House know that I am a Member of the Committee and, therefore, I agree totally with all the recommendations that the Committee has highlighted in the report.

Mr. Speaker, this being my first time to speak during this meeting, allow me, just like my other colleagues, to congratulate our colleague Dr. Sabine Ntakarutimana for her appointment to serve in the Government of Burundi. As Members of EALA, we are very happy for her. I also want to thank the President for acknowledging our presence and participation. *(Applause)*

Mr. Speaker, let me also take this opportunity to congratulate the Government of Kenya for the progress it has made, especially following the promulgation of their new constitution. As East Africans, we are happy, and as women of East Africa in particular, we are very grateful, because, compared to all the other countries in the region, Kenya was lagging behind as far as the empowerment and positioning of women in key government positions is concerned. So, all East Africans are happy. Kudos to Kenya for having 47 guaranteed seats in Parliament and 30 per cent of positions in all other levels

like the Senate, the Judicial Service Commission and so on. This will have an impact on the womenfolk in this region. I am therefore not surprised to see that we have been joined in the Assembly by Prof. Helen Sambili; an indication that whereas Kenya has come late, they are ready to do what it takes to show that the contribution of the women of Kenya is fully recognized. I want to assure Prof. Sambili of our total support. *(Applause)*

I would also like to congratulate Mr. Alphaxard Lugola, our immediate former Sergeant-At-Arms, for winning the *Chama Cha Mapinduzi* Primaries in Tanzania. Similarly, I would like to congratulate the hon. Margaret Zziwa for winning the NRM Primaries as Woman MP for Kampala, and the hon. Dr. Didas Masaburi for the efforts he put. Mr. Speaker, these three people going in to contest for elections is an indication that your Members are really very active, and we support and wish them well in their endeavours. *(Applause)*

Mr. Speaker, I appreciate the concerns raised by His Excellency Paul Kagame. We respect him. We know that he is a very thorough President, that he scrutinizes everything before he appends his signature to it. As a Committee, we, in a way, agreed with the three key issues he raised, but I want to specifically highlight why we agreed on the issue of the term limit for the executive director.

Mr. Speaker, on the issue of term limits, let me first congratulate this House for its wisdom, during the last meeting when we were passing the CASSOA Bill, to say that term limits should be reviewed. At that moment, Members were filled with a spirit of regionalism as opposed to nationalism.

At that time, we were focusing mainly at competence, and we did not care very much where someone came from, as long as they were East African. But we have been assured, and of course it is the fact on the ground, that the term limit for the Executive Director of CASSOA has to be five years non-renewable, because that is the EAC policy for contracts at that level. So, if we make a law whereby the contract of the Executive Director of CASSOA is renewable whereas the rest are not, we would not be acting in compliance with the policy of the EAC for that level. So, based on that matter, we did agree that the President's concerns were genuine, and that until such a time when the policy is reversed – *(Interruption)* -

The Speaker: Hon. Tiperu, before you proceed, I would like to say one thing. Honourable Members, one thing that concerns me is when some of you people talk about the executive and make us the legislature seem subservient to them. When we pass a law, we don't look at policies or other things that are there, because we are passing a law as a legislature. *(Applause)*

The other day I heard a Member talking about the Assembly getting permission from someone before passing a law, and today I am hearing the issue of policy and so on. I think it is in the wisdom of this House to pass a law; we are guided by the Treaty. Hon. General Muntu spoke earlier about separation of powers...I think if someone listened to some of the debates we have here, they would think that we are subservient to another group. But honourable Members should know that in terms of lawmaking, we are supreme. We are the ones mandated by the Treaty to make laws, and we make the laws

depending on what we deem fit and good for the Community - *(Applause)*.

So, I agree with you hon. Tiperu that policies do exist, but you should not bring in policies when it comes to the Assembly making laws. If you go by the same principle, you will find that in some directorates of the EAC, there are some people employed for a renewable term of two years, while some are given a non-renewable term of one year. Now when it comes to the Assembly, suddenly they remember that there is a policy! There is no policy, hon. Tiperu. I don't think the Council can stand up here and say there is a policy, because there is none.

In the last meeting of the Council, they said they would have to put in place a policy to ensure that all the executives have proper contracts. A case in point is that one of the Director General of the Customs and Trade Directorate, whose contract was renewed the other day. So, let us not use policies to misguide this House. I think the Council knows that recently they renewed the contract of one of the directors following a long argument. So, if some policies are misguided, we should say they are misguided.

Sometimes people will read the *Hansard* and then get back to us and say, "You did not get permission", or "you did not do this or the other". So, honourable Members, I plead with you to mind the language you use. We are not subservient to anyone; we are here to legislate and we do so how we deem fit! *(Applause)* You may proceed with your statement hon. Tiperu.

Ms. Tiperu: I thank you very much, Mr. Speaker, for that guidance. Since the Chairman, Council of Ministers is around, he will clarify to us whether they have a policy or not.

Mr. Speaker, based on our findings in the Committee, and in view of the fact that we can have a member of the Summit disagreeing with some of the clauses within a Bill, we also – *(Interruption)*-

Ms. Hajabakiga: On a point of clarification, Mr. Speaker, the protocol on CASSOA provides for four months while the legislation provides for three months. So, now that they contradict each other, which one takes precedence? Since they are both integral parts of the Treaty, what happens?

Mr. Mwinyi: Mr. Speaker, I think hon. Hajabakiga and I have a meeting of minds. I want to supplement her comment in that the financial rules and regulations apply to all institutions of the Community. If I understood the Counsel to the Community correctly, he stated that the protocol supersedes them. Now, does that mean a specific protocol dealing with the civil aviation sector would amend the financial rules and regulations that apply across the board to all institutions of the Community?

Mr. Kaahwa: Mr. Speaker, at the risk of repeating myself, let me once again state that a protocol is an instrument which is above annexes, although both of them are integral parts of the Treaty. Now, where there is a conflict, the provisions of the protocol will prevail.

Mr. Akhaabi: Mr. Speaker, I think the issue raised by the hon. Dr. Masha is the basis for our submission. There is an inconsistency in the financial rules and regulations which, according to the Counsel to the Community, is part of the Treaty. The provisions of the financial rules and regulations conflict with and contradict the provisions of the protocol. That is all that we are

saying. So, when we recommend that the Council of Ministers should deal with these inconsistencies, it is their problem; let them deal with. That is why I am proposing that we accept and then ask the Council of Ministers to remove that inconsistency.

With due respect, and from a purely legal and jurisprudential perspective, I do not agree that financial rules and regulations are part of the Treaty. I think that is erroneous. But we are not here for that; we are just asking that the House accept the recommendation of the Committee, and then ask the Council of Ministers to deal with these inconsistencies.

Dr. Didas Masaburi (Tanzania): Mr. Speaker, since there are inconsistencies between the Treaty, the financial rules and regulations, the protocol and this Bill, yet still we recommend that we should pass the Bill and request the Council to review and amend the protocol, I think I will take the position of Dr. Masha that it is not proper to pass this Bill while we are still waiting for the Council of Ministers to consider and amend the protocol. Supposing they amended the protocol in favour of the financial rules and regulations, what would be the outcome? Shall we also change the Act to reflect the cleaning of the protocol?

Secondly, I don't see the contradiction between the protocol and this Bill. The Treaty stipulates six months for the Audit Commission to submit the audited accounts to this august House, while the protocol stipulates four months to submit the audited accounts to the Audit Commission. That means that Audit Commission is given only two months to lay the audited financial statements before the House. The Bill, on the other hand, is talking of three months, which gives the Audit

Commission enough time to complete the audit and submit the audited accounts to the House. Therefore, I think the financial regulations give the Audit Commission enough time to do their work.

Therefore, I think that when the Council is reviewing the protocol, they must consider taking into account the provisions of the financial regulations, which is actually better than the protocol that has been passed. I am, therefore, proposing for the suspension or deferment of the consideration of this Bill until the Council amends the protocol.

The Speaker: Honourable Members, I would like to say one thing that we have said quite a lot on these amendments, but no one has given a concrete suggestion on the way forward.

Ms. Tiperu: Mr. Speaker, I have a suggestion. When we were in the Committee, we agreed on three major issues, and the rest were considered as grammatical errors which we were told would be handled by the draftsman. However, the conscience of some of the Members was not very clear on this particular issue even though we agreed on it. Now, considering that the original Bill and the financial rules and regulations both proposed three months, and it is only the protocol which is saying four months, speaking for myself, I think I would say that my conscience is clear, and that three months would be the most appropriate period.

So I propose that we take what is within the Bill, and out of the three proposals, we take two and reject one, but then leave everything to the Chairman, Council of Ministers to go ahead and convince the President that

out of the three proposals that he made, this House accepted two and rejected one. Personally I feel that, that would be a compromise situation, and we would not be pushed to accept something that will haunt our conscience. But, the Bill should be passed because of its urgency and the fact that it is needed by East Africans.

The Speaker: They also need a very good Bill, not just to pass it for the sake of passing. You can bring that suggestion in the Committee stage.

Dr. James Ndahiro (Rwanda): Mr. Speaker, I thank you for your guidance. I would like to assure hon. Masha that calling upon the Council of Ministers to look into those areas that we felt, at the level of the Committee, were causing us havoc and actually have problems that need to be fixed, is upholding the principles of the Treaty. We are not saying that a Treaty that has a protocol that mentions four months and rules that mention three or six months is healthy. We are trying to defend the Treaty. We are calling upon the Council of Ministers to look into those errors or omissions to make sure that everything is in line with the principles of the Treaty.

Mr. Speaker, our recommendations were based on an understanding that both the Committee and the Council of Ministers were in agreement on where the problem was, and the Council of Ministers assured the Committee that they were going to fix those problems. We are not in a position to stand in the way of progress by saying “no, you go back and fix the problem first and then you can come back for us to debate.” The integration process is not something that you can sit and fix in one day. These problems are emerging in the process of integration. In the process of building our Community, a

number of problems are going to emerge, but once we sit together and agree on the way forward and agree that we fully appreciate and understand where the problem is, and both sides commit to do so, I think we should give them the benefit of the doubt.

Mr. Speaker, I am calling upon all honourable Members to appreciate that the Committee actually discussed all those concerns in detail, and we think that the Council of Ministers, as well the Counsel to the Community, are in total agreement, and they are going to fix the gaps. So the Bill in its current form can pass, and later on, if the need arises and if we find that the protocol or the rules will require amendment of the law – *(Interruption)* -

The Speaker: Dr. Ndahiro let us get some clarification from hon. Mulengani.

Mr. Mulengani: Mr. Speaker, what was the agreed position; are we going to amend to four or three months?

Dr. Masha: Mr. Speaker, I am rising on another point of clarification. The amendment hon. Akhaabi read out stated that...I may have a problem with the language, but listen to the words: *“Urge the Council of Ministers to cause the protocol to be amended urgently so that it may conform to the provisions of the Treaty...”*

The requested amendment is implying that this does not conform to the provisions of the Treaty. How do we pass on something which, in our own amendments, we are saying does not conform to the provisions of the Treaty? If there is to be an amendment to a protocol, which is an integral element of the Treaty, I don't see that process taking place in another six months; it may take even a year. That

is why I would go along with the proposal by Dr. Masaburi that at this stage we should find some way to get around it and wait until these things are clear. There are too many issues which are vague and contradictory, and they need to be clarified before we proceed with the Bill.

Dr. Ndahiro: Mr. Speaker, to be fair to hon. Masha, I think this is an issue of language. If he has problems with words, the Treaty has both the principles and the aspirations. If he is proposing to omit that to replace it with “aspirations of the Treaty” let him come clear. But we thought that bringing things in harmony with the aspirations of the Treaty was our mandate, and it is also of concern to the Council. The Council has taken it up and they have promised to deal with it. We are just re-emphasizing that we want all things to be in the spirit in which the Treaty was drafted.

On the other issue, we have agreed that the problem is with those protocols that go into detail. Sometimes after a protocol is negotiated, an event occurs, and then there is a need to go back to the protocol to ensure that it is in line with the current issues. Now, what we are saying is that the Council is going to revisit all the protocols, and we have agreed that all protocols, going forward in the future, should be based on a standard that will allow for the negation of the principles only, leaving the operationalisation of the protocols to be established by law.

Mr. Speaker, we understand that the Community has developed the standards, and that is why we call upon the Counsel to the Community to avail copies of the framework to all the relevant committees of the Assembly so that we establish the truth, and then work with it to amend prior protocols.

Mr. Speaker, it is not only on the issue of four or three months. If you remember, only this week we were looking at audited accounts which are 15 months old, so what is the difference between three months and four months? That is something that we can, at this point, let pass, but we should make sure that we fix it, so that everything is in line.

Financial regulations, to me, are not part and parcel of the Treaty. They can be annexes to the Treaty, because they change regularly. Some of these financial rules and regulations are not guided by Council policies, but by international requirements and standards and other things that change regularly. So, each time such international standards change, we shall have to change our regulations so that we are in line with international accounting standards. But we shall not be going to the Treaty to change it each time a financial rule or regulation changes.

These are the things that we are asking the Council to look into; all those challenges, so that as we go ahead, we know that we have regulations which will change like this, we have protocols which are like this, and we have laws that operationalise all those that are made this way. So, it is not only for this Bill; it is for everything else that will go on in the future. It is unfortunate that, that observation did affect this Bill partly, but it is an observation that you can say is in line with all we do in the Community.

Mr. Speaker, we have suggested some amendments. Unless the honourable Members feel otherwise, as a Committee we felt that they are appropriate. And if hon. Masha insists on using a single word, we can amend

it, but I propose that we should respect the aspirations of the Treaty.

The Speaker: Honourable Members, this is the Committee report we are talking about here; not the actual Bill. At the Committee stage, we are going to talk about those amendments.

What we are talking about is the justification for the Committee position. It states that “*whereas Clause 18(3) of the Bill states that the agency shall, within three months after the end of the financial year, submit the accounts to the Audit Commission for auditing...*” That is what we are talking about; the three months. Honourable Members are saying that that does not conform to the Treaty, but if you look at the Treaty in view of what hon. Masaburi was talking about in Article 134, it says: “*The Audit Commission shall submit its report under paragraph 2 of this Article to the Council, which shall cause the same to be laid before the Assembly after six months.*”

There are two different things here. I think the protocol does not conform to the financial rules and regulations, not the Treaty. The Treaty is fine. So, let’s not confuse these things. The only confusion here is between the financial rules and regulations, which says “within four months” and the protocol, which says “within three months.”

The Counsel to the Community has guided us by saying that when there is a conflict between the protocol and the financial rules and regulations, the protocol takes precedence. So, if anything, this recommendation should say that the financial rules and regulations should conform to the Treaty and other protocols, or something of that sort. I don’t know whether we are talking of the protocol

or the financial rules and regulations being against the Treaty. I think that is where we need clarification.

Ms. Margaret Zziwa (Uganda): Mr. Speaker, I closely followed the submissions by hon. Akhaabi and hon. Dr. Masha, and I think that Dr. Masha's concern comes from the fact that this august House feels that there is an anomaly. I thought perhaps we could improve on hon. Akhaabi's amendment to address this gap between the two, namely, the Committee report and the recommendations to the House, and then we adopt it, knowing very well that what this implies is that the House accepts that there was a mismatch. So, I just wanted to make this suggestion, and perhaps later on, if hon. Akhaabi accepts, he could look at my humble suggestion that instead of using the word "accept" we say, we "appreciate" the proposal by the President of the Republic of Rwanda that the CASSOA Bill should conform to the protocol on CASSOA, but urge the Council of Ministers to cause the amendment of the protocol to reflect the spirit of the provisions of the Treaty and the dynamic changes within the East African Community. This is just to make sure that we don't concede that this problem was there and went ahead to embrace it.

I beg to submit.

The Speaker: Honourable Members, is the problem with the protocol or the financial rules and regulations?

Mr. Mwinyi: Mr. Speaker, I also want to seek further clarification. My understanding is that it is the financial rules and regulations. According to the Counsel to the Community's interpretation, the financial rules and regulations are annexes to the Treaty,

and therefore are an integral part of the Treaty. Just to further amplify this, his response was that a protocol supersedes an annex to the Treaty. Now, the financial rules and regulations apply to all institutions and organs of the Community, so does this therefore imply that all the institutions and organs of the Community can submit their accounts after four months?

Mr. Kaahwa: Mr. Speaker, I repeat that in the order of hierarchy, protocols supersede annexes, which include the financial rules and regulations.

Regarding whether the period of four months features in all protocols, I cannot provide a substantive answer at this point in time. I undertake to do research and come up with a substantive answer.

The Speaker: Honourable Members, the question still remains: Is it the protocol that is the problem or is it the financial rules and regulations?

Mr. Akhaabi: Mr. Speaker, I think the problem I have is with the interpretation that is being given by the Counsel to the Community. That is where my problem is, because that interpretation brings a conflict between the financial rules and regulations, which he says are part of the Treaty, and the provisions in the protocol, which the Treaty says, will form part of the Treaty. There is a conflict between the two of them, and so it is not easy to say whether the problem is with the financial rules and regulations or with the protocol, because the two of them are in conflict.

All that we want is for the Council of Ministers to remove the conflict. It can be removed either by amending the protocol on CASSOA, which to our knowledge, as of now, is the only one

that talks of four months for the submission of audited accounts, or, they can amend the financial rules and regulations and make them apply to all the institutions of the Community that require three months. I think the Counsel to the Community should advise the Council of Ministers so that this inconsistency is removed.

The Speaker: Can I make a suggestion to say: “... *accept the proposal by the President of the Republic of Rwanda to conform to the protocol on CASSOA but urge the Council of Ministers, and urgently cause the amendment of the financial rules and regulations to conform to the Treaty and protocols.*”

Ms. Safina Kwekwe (Kenya): Mr. Speaker, I would like to look at it from the wisdom of mathematics rather than from a legal point of view. The financial rules and regulations, which we are told are at the bottom of the hierarchy, say three months from the agency to the Audit Commission and from the Audit Commission to Council, one month. It says that the regulations require the audit to be undertaken within one month of receipt of the draft accounts. Then, from the Council to EALA is a provision of six months, which makes it 10 months in total. But the protocol is asking for four months, which will now make it 11 months. Now, for me, the question that begs wisdom is what is the purpose of audited accounts? Is it not supposed to make us better, to enable us make corrections where we have erred in the past?

I thank you.

The Speaker: Hon. Kaahwa, we want a way forward out of this now.

Mr. Kaahwa: Mr. Speaker, let me propose a way forward. First of all, it should be very clear in our minds that we are talking of two different submissions. There is the submission by the agency to the Audit Commission, and then there is the submission to the Assembly. Now, when you read Article 134(3) of the Treaty, the period mentioned there of six months is for submission to the Assembly; for the report to be laid in the Assembly. This is different from the submission under Article 15(5)(b) of the Protocol, which is by the agency to the Audit Commission, and which is a prior exercise. That should be very clear in our minds.

As a way forward, I propose that this august House understands the recommendation made by the Committee on Communications, Trade and Investments. The Committee is saying that we accept the proposal by the President of the Republic of Rwanda to conform to Article 15(5)(b) of the CASSOA Protocol regarding the period of submission to the Audit Commission. But the Committee adds that in its wisdom, the Council should be urged to cause the protocol to be amended. You may perhaps add here the protocol and relevant annexes, which will include the financial rules and regulations, to be amended, and that, in my humble view, would be a way forward.

I thank you.

Mr. Mulengani: Mr. Speaker, I stand the risk of taking the House back, but the question you asked, “where is the problem; is it with the financial regulations or the protocol” can raise other questions. Are we doing things contrary to the existing provisions because the protocol is superior to the financial regulations? It also raises a

question of authenticity: who is authentic? Is it the people writing the financial rules and regulations or those writing the protocol? If there is a spirit of doing things consistently within the Community, that protocol should have taken into consideration consultation of the financial people within the Community, and such errors would not have occurred.

Secondly, Article 134 of the Treaty says that the Council will lay the report in the House within six months, what would the Council be doing with audited accounts for six months? I think there was a drafting problem there. The entire period in which they are supposed to submit – *(Interruption)*

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The Speaker: Hon. Mulengani, stick to the issue at hand and stop debating. You can do that during next year's audit.

Mr. Akhaabi: Mr. Speaker, I think I am prepared to go with the proposal by the Counsel to the Community for amendment.

(Question of the amendments put and agreed to)

The Minister for East African Cooperation, Tanzania, and Chairman, Council of Ministers (Dr. Diodorus Kamala) (Ex-officio): Mr. Speaker, I would like to respond to the good debate which has been conducted on the floor of this House. Before that, let me recognize Members who have contributed to the debate, starting with hon. Dr. Ndahiro, the Chairperson of the Committee – *(Interruption)* -

The Speaker: Dr. Kamala, if you go that route, you will name the whole House. Just go ahead and debate.

Dr. Kamala: Thank you, Mr. Speaker, sir. I would like to state two things: one, on the question why we focused on only three areas and not on all the issues raised by the President, it was the view of the Council that looking at the proposals by the President, there were three issues that were considered to be contrary to the protocol.

On the first issue, which was related to quorum, and despite the fact that the President was of the view that we could change the quorum from three to two, the Council agreed with the Committee, which led us to retain at least three. Given the fact that we have the new Partner States of Rwanda and Burundi, and given the fact that the Treaty was amended to recognize that the Partner States of the EAC were no longer three but the original three and any other members, it meant that any decision which was made assuming that members were three was now null and void, given the fact that the Treaty recognizes that members can be more than three. That being the case, we shall advise the President that it is better for CASSOA and the Community to retain the quorum at three for the good reasons which have been stated by the Committee. So, we agree with the Committee and as Council, we shall do what we can to explain to the President and to the Summit so that they understand why we want to stick with that proposal.

On the second proposal of the Committee, we subscribe to the idea that the term should be a period of five years, not eligible for re-appointment as insisted by the President.

On the timeframe for submitting the financial reports of the Agency to the Audit Commission, the protocol is very clear, and we subscribe to that, but let me say that given the fact that

we are saying that “the agency shall, within four months after the end of each financial year, submit the accounts to the Audit Commission”, and understanding the thinking of the Members when they ask why not three months, and given the fact that in terms of managing institutions, we use laws enacted by the institutions responsible, as well as administrative instruments, we shall advise the Secretary-General and the Executive Director of CASSOA to make sure, administratively, that within three months the accounts are prepared for submission to the Audit Commission. That is within our capacity, and any Executive Director who goes contrary to that will be irresponsible.

So, you can enact a law that goes in line with the provisions of the protocol of four months, while internally we shall issue a directive to the relevant institutions, including CASSOA, to make sure that they do so within three months. That is within our capacity to do administratively.

Having said that, I would like to say we subscribe to all the ascribed details by the Committee, and once again, I support the recommendations of the Committee. I thank you. *(Applause)*

(Question for the commitment of the Bill put and agreed to)

THE ASSEMBLY IN COMMITTEE

(The Chairman presiding)

BILL Committee Stage

The Civil Aviation Security and Safety Oversight Authority Bill, 2008

(Bill Recommended in respect of specific clauses)

The Chairman: Honourable Members, as you are aware, we are recommitting this Bill for only three specific clauses: Clauses 9(3), 12(4) and 18(3). So, we are not discussing any other content of the Bill other than those three clauses.

Clause 9(3)

Dr. Kamala: Mr. Chairman, on Clause 9(3), I have agreed with the Committee. So, it stands as it is in the Bill. We don't make any changes on that because the Bill states that at least three – *(Interruption)* -

The Chairman: Dr. Kamala, are you sure you want to go by what you are saying now?

Dr. Kamala: What was recommended by the Committee was that – *(Interruption)* -

The Chairman: This is your Bill; you are the one who recommitted it. So, it is you to propose the amendment. If you say it should remain the way it is, then we are not doing anything.

Dr. Kamala: Mr. Chairman, I beg to move that Clause 9(3) be amended to read as follows: “*The quorum at any meeting of the Board shall be a simple majority of the members of the board, including at least three heads of civil aviation, or their designated representatives.*” I beg to move.

The Chairman: Dr. Kamala, I think when you brought your amendments, you had said two. So, are you changing to three? The other way of going about it is for you to say two and the Committee can propose three and we can go on from there. Just move it the way it was; I think it would be easier that way.

Dr. Kamala: Mr. Chairman, I beg to move that Clause 9(3) be amended to read as follows: *“The quorum at any meeting of the Board shall be a simple majority of the members of the Board, including at least two heads of civil aviation, or their designated representatives.”*

(Question of the amendment proposed)

Dr. Ndahiro: Mr. Chairman, the recommendation of the Committee is for “at least three.” That is our recommendation.

Dr. Kamala: I concede, Mr. Chairman, sir.

Dr. Masaburi: Mr. Chairman, I just want to point out that we have gone back to where we were because the protocol is stipulating at least two and we had said that we would go by the protocol. Now, is this not a contradiction?

The Chairman: Dr. Masaburi, I saw you clapping hard when we were talking about three wives, now you are not clapping on this one of the heads of civil aviation - *(Laughter)*. Anyway, it is for the House, in its wisdom, to agree.

(Question of the amendment put and agreed to)

Clause 12(4)

Dr. Kamala: Mr. Chairman, I beg to move that Clause 12(4) be amended to read as follows: *“The Executive Director shall serve a period of five years and shall not be eligible for re-appointment.”*

(Question of the amendment proposed)

Dr. Ndahiro: I concede, Mr. Chairman, sir.

(Question of the amendment put and agreed to)

Clause 18(3)

Dr. Kamala: Mr. Chairman, I beg to move that Clause 18(3) be amended to read as follows: *“The agency shall, within four months after the end of each financial year, submit its accounts to the Audit Commission for auditing.”*

(Question of the amendment proposed)

Dr. Ndahiro: I concede, Mr. Chairman, sir.

(Question of the amendment put and agreed to)

(Title agreed to)

MOTION FOR THE HOUSE TO RESUME

The Minister for East African Cooperation, and Chairperson, Council of Ministers (Dr. Diodorus Kamala): Mr. Chairman, I beg to move that the House do resume and that the Committee of the Whole House reports thereto.

The Counsel to the Community (Mr. Wilbert Kaahwa): Seconded.

THE HOUSE RESUMED
(The Speaker in the Chair)

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

The Minister for East African Cooperation, and Chairperson, Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I beg to report

that the Committee of the Whole House has reconsidered Clauses 9(3), 12(4) and 18(3) of the CASSOA Bill, 2008 and passed them with amendments.

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

The Minister for East African Cooperation, and Chairperson, Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I beg to move that the report of the Committee of the Whole House be adopted.

The Counsel to the Community (Mr. Kaahwa): Seconded.

(Question put and agreed to)

**BILL
Third Reading**

The Civil Aviation Security and Safety Oversight Authority Bill, 2008

The Minister for East African Cooperation, and Chairperson, Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I beg to move that the CASSOA Bill, 2008, be read a Third Time and do pass.

The Counsel to the Community (Mr. Kaahwa): Seconded.

(Question put and agreed to)

Bill read a Third Time.

-(Applause)-

The Speaker: Honourable Members, I just want to congratulate the Chairperson of Council for getting this Bill passed. *(Applause)*

I also want to say that when people talk about protocols, and you bring a protocol here and tell us you cannot do anything with it other than pass it, because it would contravene the Treaty, then I think you should bring some of those protocols here. You should just use protocols to guide whatever you to guide, because this House cannot be used as a rubberstamp. I think if we go by the way we are going right now, we are going to run into that problem.

I also want to say that this House does not agree with the practice of provisions of a bill being brought here and saying that they contravene the protocol. It is in the wisdom of this House to decide whether it wants to go by it or not. If we don't go by it, I think the Treaty is also very clear on that. A President can withhold assent so that a Bill lapses. So, honourable Members, as hon. Mulengani did say, we should not be threatened when they say that if we do pass a law here it will not get assented to and those other things. I think we should know that our primary function under the Treaty is to legislate, and you will not use protocols to stop us from legislating.

I also want to add that there are other pieces of legislation before this House that are facing similar problems. You know of the Lake Victoria Basin Commission Bill which has been before this House for the last three years. Since the beginning of the Second Assembly, that Bill has been here, and we are still waiting for the Council of Ministers to bring it for the Second Reading. So, I hope the Chairperson of the Council of Ministers will liaise with the Counsel to the Community. The Counsel has said he has new guidelines for protocols; we hope to see those guidelines availed to the Committee on

Legal, Rules and Privileges so that we can also have our input on those issues.

QUESTIONS FOR ORAL ANSWERS

Question: EALA/PQ/OA/018/2010

Mr. Bernard Mulengani (Uganda): asked the Chairperson Council of Ministers_

Recalling that the Chairperson of the Council elaborated on the reasons why the audited accounts for the FY 2008/2009 delayed; and aware of the provisions of the Treaty and the Financial Rules and Regulations requiring the audited accounts to be presented within a specific time frame; and cognizant of the need to not create audit backlogs; could the Chairperson of the Council avail this august House a written answer on:-

- a) The Annual Calendar for operationalizing Article 134(3) of the Treaty for the Establishment of the East African Community;*
- b) The strategies in place to facilitate the Audit Commission to conclude its work within the stipulated time;*
- c) Could the Council also give and account why particularly the audited accounts for Financial Year 2008/2009 have not been tabled and why it did not conform to the agreed position of February 2010?*

Dr. Kamala: Mr. Speaker, I would like to lay on the Table the Written Answer to the Question put forward by hon. Bernard Mulengani as answered.

(Dr. Kamala laid the document on the Table)

Question: EALA/PQ/OA/019/2010

Mr. Rueben Oyondi (Kenya): Asked the Chairperson, Council of Ministers_

Aware of the legacy and positive contributions of the former EAC, the collapse of the Community on 1977 was probably one of the most tragic events to have occurred to the region.

Could the Chairperson of the Council of Ministers inform this House on the following:-

- i. What were the official reasons for the collapse of the former Community?*
- ii. Whatever the reasons that were, are we sure that these reasons shall not manifest themselves ever again?*
- iii. What measures have been put in place to avoid such occurrences, and to promote perpetual continuity?*

The Minister for East African Cooperation, and Chairperson, Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I beg to reply:

The reasons for the collapse of the former East African Community(1967-1977), as highlighted in the Umbricht Report on the Mediation of Assets of the defunct East African Community and in the Mediation Agreement (1984) on the division of assets and liabilities of the defunct Community, were:-

- a) Lack of strong political goodwill;
- b) Lack of strong participation of the private sector and civil society in the co-operation activities;
- c) The continued disproportionate sharing of benefits among the Member States; and
- d) Lack of adequate policies to address such problems.

Mr. Speaker, as I proceed to elaborate the measures taken to avoid a recurrence of the problems that faced the former Community, I want to assure this August House that the Partner States are now sure that the current EAC will be sustainable, save for the occurrence of natural calamities, say, the destruction of the Earth. *(Laughter)*

The measures that have been put in place to avoid a repeat of the former Community include the following:-

- (a) Adoption and implementation of a progressive and systematic integration process. This approach is intended to build goodwill.
- (b) Regarding strong participation by the private sector and civil society, the current integration process is people-centred and private sector-driven. The Community, in its present form, is assured of strong participation of the private sector and civil society. According to the Treaty, the integration process is people-centred and market driven.
- (c) For purposes of avoiding a situation of disproportionate sharing of benefits, the Council has agreed on the need to undertake a study on the sharing of benefits and gains of the Community. This measure by the Council springs from the Treaty, which contains provisions on addressing imbalances. At its eighteenth meeting, the Council agreed on terms of reference for this study.
- (d) The Treaty, by demanding the involvement of the National Assemblies in case of withdrawal of membership, binds the Partner States to entrenched commitment to the integration process.

Mr Speaker, the issue of different ideologies is now addressed by the

Treaty, which, in its Articles 7 and 8, obliges the Partner States to pursue market-driven co-operation. The implementation of these provisions will avoid occurrences of undesirable ideological disparities and encourage perpetual continuity of the Community. *(Applause)*

Mr. Oyondi: Mr. Speaker, while thanking the Minister for the answer, is it not also true that the collapse came about as a result of the members of the Summit refusing to sit together on one table with the then dictator of Uganda, President Dr. Idi Amin Dada, Field Marshall, EBS?

Dr. Kamala: Mr. Speaker, as I said earlier, one of the reasons for the collapse was ideological differences. Now that can be put in inverted commas and then from there you can deduce its meaning. *(Laughter)*

Question: EALA/Pq/OA/020/2010

Mr. Christopher Nakuleu (Kenya): Asked the Chairperson Council of Ministers:

The EAC Secretariat has resorted to contracting out most of the jobs in all aspects of work in the Community. Drawing dissatisfaction from the various consultancy reports, including a range of EAC manuals presented to the Council in November 2009, and the consultants report on the CASSOA Strategic proposals, among others, and bearing in mind that tax payers' money is put to waste, could the Chairperson of the Council of Ministers:-

- a) Brief this August House on the criteria for sourcing EAC Consultants?
- b) Highlight to the House the procedure of cross-referencing and accounting for the accuracy of the

consultancy services before payment is done for purpose of value for money audit?

Dr. Kamala: Mr. Speaker, I beg to reply:

The sourcing of the consultancy services is undertaken competitively and in accordance with Regulation 38 of the East African Community Financial Rules and Regulations.

The procurement process is demand driven, and starts with the development of terms of reference, which give the scope of work and timeframe of the consultancy services being sought. The terms of reference are developed by the user directorate and approved by management. In some cases terms are developed by technical experts from the Partner States and approved by the respective sectoral councils.

The next phase is the advertisement notice for expression of interest for consultancy services, which is placed in the leading newspapers in the Partner States. The advertisements are also placed in the regional weekly newspaper *The East African*, and on EAC website.

For consultancy services funded by development partners, the financing agreements may require additional advertising sites like placement in the COMESA website for Regional Integration Support Programme (RISP) funded projects, and placement in the UN Business Development website for African Development Bank funded projects.

Mr Speaker, on the date set as deadline for bid submission, the Tenders/bids are opened by the Tender Committee in a session open to bidders or their representatives. During this meeting,

experts from the Partner States are appointed to form the Evaluation Committee, which evaluates and pre-qualifies the bids, and recommends to the Tender Committee the consultants who meet the criteria specified.

The Tender Committee will send to the short listed consultants Request for Proposal (RFP) forms for due completion and re-submission to the Committee. The RFP is very detailed and is divided into "Technical Proposal" and the "Financial Proposal". Only the Technical Proposals are opened by the Tender Committee and witnessed by bidders or their representatives. The bids which meet mandatory requirements like submission of tender fee, copies of audited accounts and bank details are referred to as "Responsive" and those not meeting the mandatory requirements are referred as "Non-Responsive" and are automatically disqualified.

Mr Speaker, regarding evaluation, an Evaluation Team will evaluate the Technical Proposals and Financial Proposals of those found responsive against a Quality and Cost Based Selection (QCBS) criteria and recommend to the Tender Committee the award of tender to the most competitive consultant.

Mr. Speaker, the procedures for cross referencing and accounting for accuracy of the consultancy services before payments are made are as follows:

For major consultancies, validation workshops involving EAC and the Partner States are held to cross reference the consultancy reports against the terms of reference and expected outputs before payments are made. Other consultancies are

validated internally by relevant technical officers.

Mr. Speaker, I like all payments in the EAC, consultancy service payments are subjected to verification by the user directorates, the procurement function, the budget function, and, the accounting and finance functions before approval and payments are effected.

Mr. Speaker, I would also like to inform this August house that the Council of Ministers has also seen the need to streamline procurement in this area, and during the 21st Extra-Ordinary Meeting of the Council of Ministers held on 12 May 2010, the Council directed the Secretariat to develop a new criteria for procurement of consultancy services, and to mainstream all consultancy work within the annual work plans and budgets.

Mr. Nakuleu: Mr. Speaker, I wish to thank the Minister for that comprehensive response to my question. I have one supplementary question to ask. Now that the Minister says most of the activities and projects of the Community involve consultants, does that imply that most of the employees of the Community are short of the requirements to perform the same duties? If so, isn't there, therefore, need for the Community to reassess the employment procedure?

Dr. Kamala: Mr. Speaker, employing consultants does not necessarily mean that your employees have no qualifications to undertake the same job. That is why international organisations with highly qualified employees such as the World Bank, the European Bank and others still employ consultants. There are many reasons for employing consultants, one of

which is to have a different view. This is because in terms of management, as you continue doing the same thing, sometimes you can never realise the difference and that is why you are always advised to employ consultants in some circumstances. However, I think we all agree that at the outset, we set out the Secretariat as a lean and efficient organ, but as the Community grows, the activities of the Secretariat have been increasing but the pace of employment has been very slow due to a number of reasons. Currently, we are undertaking a review of the EAC Institutions and Organs, and we hope that in future we are going to employ more staff. However, that does not guarantee that there will be no consultants, because sometimes you employ consultants not because you don't have the capacity but due to a number of reasons as I have stated.

Mr. Mike Sebalu (Uganda): Mr. Speaker, I would like to thank the Minister for the answers. Related to an earlier question, has the Minister done a cost-benefit analysis in terms of spending on consultants vis-à-vis motivating staff with the core competencies in some of the areas for which you seek consultants? We may not be attracting very highly competent persons due to the remuneration levels, but when you look at the monies we spend on consultancies, you might find it cheaper to attract highly specialised professionals to do some of the work. Have you done some cost benefit analysis?

Dr. Kamala: Mr. Speaker, I do entirely agree with hon. Sebalu that as you motivate your staff, they can be able to do their jobs better than before. We shall continue to remunerate them properly, but I would like to say that increasing their remuneration cannot stop consultancies altogether.

Nevertheless, the challenge that he has raised of the need to undertake cost benefit analysis, is important; we shall undertake to do it. However, I would like to caution this august House that undertaking a cost benefit analysis might end up in us employing a consultant. Therefore, should it happen, let us not be challenged as to the need to employ another consultant.

Question: EALA/PQ/OA/021/2010

Mr. Christopher Nakuleu (Kenya):
Asked the Chairperson, Council of Ministers_

In line with Article 124 of the Treaty for the Establishment of the East African Community, it is the mandate of the Partner States of the EAC to uphold peace and security for proper realization of the goals and objectives of the Community. With this in mind, on 30 March 2010, two Partner States, the Republic of Uganda and the Republic of Kenya, decided to carry out joint disarmament of the pastoral communities of Eastern Uganda and Northern Kenya as a way of reducing cross border conflicts resulting from cattle rustling as an attempt to spur development in the region. The exercise was carried out by the security forces of the two Partner States but with some civilians losing their lives and others sustaining injuries.

Could the Chairperson of the Council of Ministers:-

- a) confirm to this August House how many East Africans lost their lives in the course of the disarmament exercise;*
- b) explain to this August House the plans that EAC Partner States have in place to reduce death of*

civilians resulting from future operations of this nature;

- c) inform the House what incentives are in place for the disarmed communities to encourage voluntary submission of their firearms as a way of reducing confrontation between the communities and state security forces;*
- d) elaborate on the affirmative action the EAC Partner States have in place to spur economic development in pastoral communities in the region;*
- e) inform the House on what transformation plans the EAC Partner States have to bring the pastoral communities at par with the agrarian and fishing communities around Lake Victoria in order to achieve governance equity in the region?*

Dr. Kamala: Mr. Speaker, I beg to reply:

The issue of the joint cross border disarmament of the trans-boundary armed nomadic pastoralists between the Republic of Uganda and the Republic of Kenya called “Operation Umoja” was considered by the 13th Meeting of Council of Ministers. The Council recognized the efforts made by the two countries and decided that both countries should continue on bilateral engagements on the issue of cattle rustling, including the exchange of liaison officers.

In that premise, the after action review report of the operation will be considered by the Sectoral Council on Cooperation on Defence in its next meeting. That is when it will be established whether there was death or violation of human rights during the operation. Thereafter this August House will be informed accordingly.

Mr. Speaker, I wish to inform this August House that all operations undertaken in the region comply with the universally agreed standards to ensure that there is no death or violation of human rights. Currently the Community is implementing a project on the control of illicit proliferation of small arms and light weapons. The project is participatory, as it involves state actors, NGOs and local leaders. Through this project several initiatives have been undertaken including sensitizing the local communities to voluntarily surrender their weapons, registration and marking of weapons, and the strengthening of national arms databases.

Partner States have taken affirmative action to spur economic development in pastoral communities in the region by undertaking various initiatives to ensure high productivity of livestock, implementing a regional project for the control and prevention of human and animal trans-boundary diseases. Nonetheless, Partner States are in the process of developing an EAC Livestock Policy, which will address the areas of intervention to ensure safety of livestock for production and high yield.

Mr. Speaker, in order to ensure that pastoral communities in the region are brought up to be at par with the agrarian and fishing communities around Lake Victoria, and in order to achieve governance equity in the region, Partner States have established a regional steering committee to promote investment in the dry areas, and to improve the quality of the lives of the pastoralists. The Committee is exploring opportunities to enable the pastoralists to have alternative sources of livelihoods and income.

Mr. Speaker, I wish to inform this House that the responsibility to maintain law and order is vested in the individual Partner States. The laws of each Partner State provide the legal and regulatory frameworks on the use of force when persuasion fails, but without violating human rights and the rule of law. The use of force is therefore an option of last resort. Indeed, the Community, through the Small Arms and Light Weapons Program, continues to encourage voluntary disarmament in the region.

Mr. Speaker, I believe this House is aware that various measures or incentives have been put in place at national level to encourage voluntary disarmament. Thus, the honourable Members may be best placed to appraise the House on the measures that each Partner State is taking to encourage voluntary disarmament, and to reduce such confrontations.

The affirmative action that each Partner State has in place to spur economic development in among the pastoral communities in the region can best be elaborated by continuing to encourage voluntary disarmament in the region.

Mr. Nakuleu: Mr. Speaker, I wish to thank the Minister for his response. The Minister says that the Committee set up to evaluate the impact of the disarmament exercise that was carried out in eastern Uganda and north-western Kenya has not yet met. So, how true is the information that the Minister has given that there was no loss of life, considering that the Committee has not yet sat to review the operation?

Secondly, the Minister is alleging that the EAC has initiated development projects to spur economic growth in

that region. Could he inform this House of a single EAC project that has been started by the Community in either side of the region on the Turkana or Karamoja side?

Finally, could he also tell this House the timeframe within which the EAC Livestock Policy will be in place?

The Speaker: *Mheshimiwa*, I thought you were asking a question for all pastoralists and not for Karamoja and Turkana only? (*Laughter*) Anyway, proceed to respond, Dr. Kamala.

Dr. Kamala: Mr. Speaker, as I have said, the next Sectoral Council on Defence will look into this issue and will come up with a conclusion whether there was loss of life or not.

The Speaker: Honourable Minister, isn't it public knowledge that there was loss of life? Do you need a Committee to tell you there was loss of life when it was all over the media and some of the organisations were reporting the same?

Dr. Kamala: Mr. Speaker, when I respond to such issues here, I speak on behalf of the Council of Ministers and the Partner States. So, sometimes what I say is not necessarily what I think is right, but what the Partner States have allowed me at the moment to respond.

The Speaker: So, are you telling us that you are misguiding this House by giving us information that is not true? (*Applause*) You are responsible for answering questions in this House, and the question I am asking you is, are you sure you need a Committee to ascertain whether lives were lost when it is public knowledge? In the last meeting in Arusha, that matter came up and it was agreed on. So now the same Chairperson of Council is telling us he does not know whether there was loss

of life, because a committee has not sat or he is waiting for Partner States to tell him a, b, c, d?

Dr. Kamala: Mr. Speaker, I understand what you are saying, but I humbly request you to understand my position as well. But I subscribe to what you are saying.

The Speaker: So, can I ask you to bring a proper answer to this question later?

Dr. Kamala: That is why I said that when the Sectoral Council is ready we shall come up with what will be the pronouncement of defence on this question. It is a sensitive matter, and I cannot pronounce it otherwise.

The Speaker: So, maybe we can say that this question is not properly answered and, therefore you will get us a substantive answer next time. You may continue with the other aspects of the question but for this particular one, I think you should bring a proper answer in our next Sitting.

Dr. Kamala: Yes, that would be better for me.

The Speaker: Dr. Kamala, I know I should not take part in debate, but you know that when you talk about pastoralists, it becomes very emotive for the whole House. So, I think we need a proper answer on this one.

I have also read what you have written here, and perhaps you can also tell us why you find pastoralism not a good way of life so that you are looking for alternative livelihoods for the pastoralists. You state here that "...pastoralists to have alternative sources of livelihood." I don't think we have a problem with the pastoralist livelihood. Being a pastoralist myself,

and just for the information of the Chairperson, if you look at our economies, I don't think we have ever had a problem of lack of meat in any country in the region. You will always have meat to eat. If you look at hides and skins, I think we are either number two or three in terms of exports to other countries. So, when you bring us an answer, you should bring us a proper answer in terms of pastoralists not only from Karamoja or Turkana but all pastoralists. *(Applause)*

ADJOURNMENT

The Speaker: Honourable Members, I now adjourn the House until tomorrow at 2.30 p.m.

(The House rose at 7.05 p.m. and adjourned until Thursday, 23 September at 2.30 p.m.)