



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

Official Report of the Proceedings of the East African Legislative Assembly

61ST SITTING - FIRST ASSEMBLY: THIRD MEETING – FIFTH SESSION

Tuesday, 23 May 2006

The Assembly met at 2.30 p.m. at the Chamber of the Assembly, Ngorongoro Wing, Sixth Floor, AICC Complex, Arusha

PRAYER

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

The Assembly was called to Order.

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable Members, you will recall that the term of office of the former Secretary General, hon. Nuwe Amanywa Mushega came to an end on 24 April 2006. Consequently, the Summit of the East African Community Heads of State appointed a new Secretary General in the name of Ambassador Juma Volter Mwapachu.

Pursuant to the provisions of Clause 1(b) (i) of Article 48 of the Treaty, Ambassador Juma Mwapachu now becomes an ex-officio Member of this Assembly. However, before he takes his seat in this Chamber, he has to fulfil one more condition. In accordance with the provisions of Rule 6 of the Rules of Procedure of this House, no Member

may sit or vote in the Assembly before taking the oath or affirmation of allegiance to the Treaty. I am reliably informed that Ambassador Juma Mwapachu is within the precincts of this Assembly. May I then request any two Members who may happen to know Ambassador Mwapachu to present him to the Speaker to take the oath?

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to: -

Amb. Juma Volter Mwapachu

COMMUNICATION FROM THE CHAIR

The Speaker: Honourable Members, during the last recess, the East African Legislative Assembly lost one of its

distinguished Members in a plane accident. The late Lt. Gen. (Rtd) Adan Abdullahi died in a plane crash in Marsabit in Kenya on 10 April 2006.

The passing on of the late Lt. Gen. Adan has robbed this Assembly of a peace maker who had an unfailing commitment and resolve to see the eradication of small arms and light weapons in the hands of civilians, and a peaceful co-existence of the peoples of East Africa, especially those living in marginal areas. He was a well disciplined soldier who spoke in simple language and socialized with all people irrespective of their social standing in society.

The late Lt. Gen. Adan had an illustrious career as a soldier spanning over 30 years. He served in various capacities in the Kenyan armed forces, rising through the ranks to become the Commander of the Kenya Armed Forces in 1995, a post he held until his retirement in the year 2000. Upon his retirement, he was elected to represent the Republic of Kenya in this Assembly, and it is here that we came to appreciate his experiences on conflict resolution when he was elected to chair the Standing Committee on Regional Affairs and Conflict Resolution. He represented this Assembly in many international meetings on issues of conflict resolution and reconciliation.

To us, the late Gen. Adan personified humility, dignity and sophistication. He was a great man who held the noble qualities of dedication, sacrifice and discipline. In his tenure as the Chairperson of the Standing Committee on Regional Affairs and Conflict Resolution, he showed great empathy for

human suffering and compassion for those affected by conflicts within our region.

We will remain indebted to him, and we should continue to pursue the ideals he stood for, especially the eradication of the proliferation of small arms and light weapons in East Africa and in the Great Lakes Region.

The passing away of the late hon. Adan has left a great void in our hearts, but death is a sad reality, which we must accept when it occurs, for God gives and takes away.

On behalf of the Assembly, I pray that God gives his family, friends and relatives the strength to bear this loss with courage and fortitude. May God rest his soul in eternal peace! I request the House to stand for one minute in his honour.

(The House observed a minute's silence in honour of the late hon. Lt. Gen. Adan)

The Speaker: Hon. Members, on behalf of the Assembly, I received a letter from the wife of the late Lt. Gen. Adan and his family addressed to me and to the Assembly. I would like to read this letter to you all.

*"The Hon. Speaker,
We the family of the late Lt. Gen. Adan Abdullahi wish to express our heartfelt gratitude to you and through you to all the Members of the East African Legislative Assembly for standing by our family during the untimely demise of our dear hon. Lt. Gen. Adan through the recent tragic air crash in Marsabit.*

We acknowledge with gratitude the Assembly's and the Secretariat's overwhelming support that was accorded to us through visits, material, logistical, financial, emotional and moral tributes.

Since we cannot mention everybody by name, please, Mr. Speaker, accept this message as our expression of appreciation from the depths of our hearts. You really shared our sorrows, cared for us and comforted us. God bless you all.

Thank you very much."

QUESTIONS FOR ORAL ANSWER

Question No. EALA/PQ/OA/031/2006

Dr. George Francis Nangale (Tanzania): asked the Chairperson of the Council of Ministers_

"Over the past months, we have witnessed the lowering of the Lake Victoria water levels, thus affecting lake transport and other water-based resource utilization services. Many reasons have been expressed as the cause of this phenomenon, among them the serious drought in the entire lake basin, environmental degradation in the catchments area and employment of water-resource for power generation:

(a) Are there any regional agreements or an understanding binding Partner States on the employment of water-resources from the Lake or /and from the rivers attributing water to the Lake?

(b) If the answer in (a) is "no", what efforts are being made to reach such

agreements so that this shared valuable resource is protected?

(c) If the answer in (a) is "yes", what quantities of water have been drawn/used by each Partner State for power generation or other requirements over the last year?"

The Chairperson of the Council of Ministers (Mr. John Koech) (Ex-Officio, Kenya): Mr. Speaker, sir, I beg to reply:

There are regional agreements in which the Partner States have committed themselves for purposes of management of the water resources and other natural resources in East Africa. The overreaching ones are in the Treaty for the Establishment of the East African Community, 1999. Chapter 19 of the Treaty provides for co-operation in environment and natural resource management, and Articles 111, 112 and 114, stipulate the areas and what should be done in water resources management.

The most recent specific agreement on Lake Victoria is the Protocol for the Sustainable Development of Lake Victoria Basin signed in November 2003 and ratified by all the Partner States in December 2004. The operationalisation of this Protocol commences in July this year. There are other earlier arrangements concluded by the Partner States that are relevant for the management and use of the water resources of Lake Victoria. These include the Convention on the Establishment of Lake Victoria Fisheries Organisation, 1994; the Tripartite Agreement on Lake Victoria Environmental Management Project, 1994 and the Tripartite Agreement on

Inland Waterways signed in 1998 but ratified in 2004.

On the question of volumes of water used by the three East African countries, the data of the actual volume used in the various uses may be available in the individual Partner State sector ministries, but it is yet to be collated by the Commission.

Dr. George Nangale: With the answers given by the Chairperson of the Council of Ministers, I would like to ask one additional question. The fact is that 30 million people in East Africa depend on this very important resource, Lake Victoria, and over the last few years we have witnessed the drying up of the Lake. Could the Minister tell me who will be responsible if at the end of the day this resource actually dries up?

The Chairperson of the Council of Ministers (Mr. Koech): Now, Mr. Speaker that is a very good question – (*Laughter*). As we are all aware, the Lake Victoria Basin Commission has just been established and we do have a lot of hope that the Lake Victoria Basin Commission will be able to co-ordinate all the activities around Lake Victoria and some of those activities are to ensure the sustainable management of the environment. I do hope that when it starts its work in collaboration with all the three East African countries, we shall be able to find a way to ensure that there is no further sinking of the level of Lake Victoria, and we do hope that we shall be able to improve the water levels as it is stipulated in the Treaty that we really need to manage our environment, especially the Lake. It is true that the Lake serves quite a good number of people, and making it sustainable and

ensuring that it does not dry up is of extreme importance to the people of East Africa.

Mr. Maxwell Shamala (Kenya): Mr. Speaker, the basin of Lake Victoria has one-third of the population of East Africa, and these people depend on Tilapia and Nile Perch, among other fish. Tilapia brings in a lot of money, and so does the Nile Perch. The Minister has said that there are protocols agreed upon by the three Partner States that will govern the management of the waters of Lake Victoria. Can the Minister tell this House whether there are adequate resources to back up the Commission, and whether there are other agencies that are involved in the management of the waters of Lake Victoria? Are there adequate resources even allocated in this year's Budget to deal with this issue? (*Applause*)

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, this financial year we have at least got funds for the establishment of the offices in Kisumu. The offices have been given, and I think preparations for the officers to take over the offices are already underway. So at least we have money to start the office.

As to whether we have got adequate finances this year to start the work, at least we have some money to operate the Commission, but I do hope that as we move on, we will find ways and means and to ensure that the Lake Victoria Basin Commission operates optimally. We must ensure as the three East African countries that the operations in Lake Victoria are made sustainable. So I do hope that our three countries...and maybe we can also appeal to some

friends to assist us in the development of the Commission, because what is required at the moment to really bring the level of Lake Victoria up may mean quite a lot of money – (*Interruption*).

Mr. Ochieng-Mbeo (Kenya): On a point of order, Mr. Speaker-

The Speaker: Let me say this. Mr Minister you may finish your question, then the honourable Member you can raise another question if you want – (*Interjection*). I do not accept the point of order. Mr Minister you may continue.

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, I was saying that we are starting operations of the Lake Victoria Basin Commission fully this year. Now we have got to find ways...projects, because the way this Commission is going to operate is to find projects through which we are going to manage or make Lake Victoria become sustainable and to improve the environment in the region.

The biggest problem we have in the region is of course the great increase in population, and an increase in population normally tends to destroy the environment, Mr Speaker. But we must make sure, in spite of the increasing population, that we get the resources so that we can use this resource in a sustainable manner.

Honourable Members talked about the fish in Lake Victoria. Unless we make Lake Victoria to be used sustainably, some of these fish will just disappear. But I think the reason for starting the Commission is to look into those problems and try to find ways of how the resource will be utilised in an efficient

way for the good of the people of East Africa.

The Speaker: Hon. Ochieng Mbeo, do you have any supplementary question?

Mr. Ochieng-Mbeo: Well, Mr. Speaker I was going to stand on a point of order but now I will pose it as a supplementary question, even though it is the same question.

The Speaker: Are you ready to ask the question now?

Mr. Ochieng-Mbeo: Yes, Mr. Speaker, sir.

The Speaker: Then go ahead.

Mr. Ochieng-Mbeo: You know, the Committee on Agriculture, Natural Resources and Tourism has just finished a tour of Lake Victoria, Mr Speaker, and hon. Shamala asked a very pertinent question, that the livelihood of 30 million East Africans depends on the Lake. The question was: how much money has the Community allocated to start, sustainably, the project of Lake Victoria Basin Commission?

That was the question, and it has not been answered, and that was going to be my point order, however, my question is: There are of course issues that arise when you are talking of the Protocol on the Sustainable Management of Lake Victoria. Is the Minister aware that there is no legal...that we have never legislated, and that there is no gazetted legal instrument in place other than the Protocol on Lake Victoria, which is rather haphazard? Is he planning to bring a Bill before this House to empower the

Lake Victoria Basin Commission?
(*Applause*)

The Chairperson of the Council of Ministers (Mr Koech): I want to request the hon. Mbeo to be a little patient – (*Laughter*) - we are just starting! Even the question of funding...we do not know yet what we are going to do in Lake Victoria. We need to assess the situation in Lake Victoria first. There is a Commission there now; it is going to assess the situation, and then it may be able to come up with the projects which may need to be funded. Already we have some donors who are interested in assisting us, but first and foremost we have got to establish what we are going to do in Lake Victoria, what some of the projects which are going to implement which will reduce environmental degradation are, and hence increase the level of water in the Lake.

I want to request *Mheshimiwa* Mbeo to go home, sit with his people there and assist us in identifying the projects which would be able to alleviate the problems. I think that is very important – (*Laughter*). I want him to come up with projects. I think this is very important because he comes from there and he has a lot of experience and he knows the problems. First he needs to tell us the problems and the projects that need to be undertaken there to improve the environment.

So, honourable Members, we are coming up with the Budget; I am going to read the Budget on Thursday but I do not think we have any money yet which is earmarked for projects in the Lake. However, we need to have a thorough study first of what we are going to do

and how we are going to do it, what some of the projects we need to initiate which are going to make this Lake not to continue receding are.

We have already appointed a team of highly qualified staff here to look into those problems and maybe give us some recommendations on what to do. When we get the recommendations of what to do, then the East African governments will provide some funding, and we shall also appeal to some of our friends, the donors, to assist us to finance some of the projects, because we all know that we cannot talk of money which just comes easily.

We know the state of the coffers of our own countries, and we know the problems we have with our own people. We cannot assume that we can just easily get money from our Partner States; it is not possible. But of course, once we have identified the particular projects which need to be implemented, we need to give them money according to the priorities which may come.

There is already a commitment to ensure that we reverse the environmental degradation in the Lake basin, and we can do that because we already have the intentions, which are very clear. We are going to get the answers as we move. Thank you, Mr Speaker.

Ms. Kawamara-Mishambi: Mr. Speaker, sir, I just wanted to find out whether the Minister is aware of the serious impact of the declining water levels on the economic activities around the lake, and the dangers on the shipping services on the lake. What this house is actually asking is: where are the laws that will make us be able to manage the

lake sustainably and also make it safe for people using the lake in terms of marine services? I think that is what this House wants. I think our governments are capable of putting funds aside without resorting to donors because the lives of 30 million people are affected in this case – (*Applause*).

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, we are totally aware of the situation in Lake Victoria. In fact the former Secretary General and a team of officers visited Lake Victoria to assess the situation there and they came up with a report. Our new Secretary General is receiving the *Jumuiya* ship on 29th May, which is going to be used to assess the bio-diversity degradation in Lake Victoria. So we are aware, and we are set to work.

It true that we have not done it before, and that is why by the time of signing of the Treaty for the Establishment of the East African Community, it was agreed by the three countries that we really needed to do something about Lake Victoria. The idea to do something came then and now we are in the process of establishing structures or institutions which will ensure that the problems which are being raised by the honourable Members are addressed.

Ms. Mahfoudha Hamid (Tanzania): Thank you Mr. Speaker, sir. During the said tour, we found out that the waters of Lake Victoria had receded deep inside, thus making it a problem for the boats to dock. One of the conditions of the European Union was that there should be built piers at which the boat should dock to offload the fish, otherwise they were going to boycott buying fish from Lake

Victoria. When we went there we found that the people were very concerned about this because even these piers and docks which were fenced, the waters had receded from them, and now they had to drag their catch as it was before, something which made the European Union boycott our fish in the first place. Is the Minister aware of this? If he is aware, what steps have been taken to address this situation? And, if there are any steps taken, are they collective or is each country left to go on its own?

The Chairperson of the Council of Ministers (Mr Koech): I thank the hon. Member for raising that concern, and the Secretariat is already making arrangements to meet with the European Union so that they can find immediate ways of rectifying the problems of the boats docking at the piers. I think this one is going to be addressed soon.

Also, I do understand that the Secretary General will soon be going to Kisumu to further assess the situation, especially on the docks, so that we can be able to find out how fast we can be able to improve the situation. So, at least the Community headquarters is aware and it is doing everything possible to address the situation.

But we must understand that this has been a problem that has been going on for some time. What also compounded the problem is the drought which affected the eastern region of Africa in a very serious way. I do not know whether now that we have been having a lot of heavy rains in Kenya, and especially western Kenya, the situation has improved. I do hope that the level has increased a little bit – (*Laughter*). But you know, the biggest problem of

drought...I think there are some years when we have some cycles of drought which become more serious than in some other years. I believe the drought which came this year was extremely severe. So, we may also count on nature to correct itself, but of course we are not going to leave nature alone to work. We have got to work with nature to ensure that the situation is reversed, and we pray to God that there will be more rains so that the water levels in lake can come up. But we must also work in our own ways to ensure that the receding level of the lake is brought back to its original level – *(Interjection)*.

Mr. Mohammed Zubedi (Kenya): Mr. Speaker, the question here that was asked, as I read it, and if I may read it, was: *“Are there any regional agreements or understanding binding Partner States on the employment of water resources from the lake or/and from the rivers attributing water to the Lake?”* The Minister has ably answered that, but the three Partner States have their own national environment management authorities. I am sure Kenya has one, Tanzania has one and Uganda has one.

Can the minister tell us how these authorities work with the Lake Victoria Basin Commission to see that that situation is reversed, because we have environmental authorities which are supposed to stop, if not to reverse, the trend before even the authority looks for funding and what they are going to do. We have three bodies in the three Partner States which are working -and I think there is a very good case that they should work together, Mr Speaker, so that they come up with a solution where the authority on the lake can just

implement that solution. Why are we making it so long?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, in Arusha here we normally have the three ministers in charge of environment meeting during the Sectoral Council on Environment meetings. They normally meet and they have brought up the concerns of those problems in Lake Victoria. Also, the Commission which has just started operations is going to work jointly with the three Partner States. The way we are going to work in everything, like in trade, is also the way we are going to work in environment, because we are not going to succeed if we are not going to have joint efforts. So, already that effort has started and we are already on track. We do hope that in the next few years, some of the concerns we are raising today, maybe, will have been forgotten.

Maj. Gen. Mugisha Muntu (Uganda): Thank you Mr. Speaker. I believe the minister will agree with us that the drought did not come suddenly, that it was anticipated, and that the three countries knew well in time. Actually I think that about three years before the drought started, it was already known that it was going to happen. I also believe the minister will agree with me that Lake Victoria generates over \$300 million from the combined fish exports for the three East African Partner States.

I keep hearing from the minister that the Community is trying to look for donors to come in with money to resolve the near-crisis situation that we have over Lake Victoria. When you have a cow that gives you milk, I thought that you would take good care of it. If we have

got a resource from which the three countries are generating over \$300 million and the three countries are busy trotting all over the globe looking for donors to go and see how they can take care of piers which have dried up, would the Minister agree with me that the three Partner States are using a very sloppy approach to solving this problem? *(Applause)*

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, we must appreciate the fact that the three East African countries came together recently – *(Interjections)* – and that is a fact. So if it is the question of drought, we have not had a very long history or even data as a Community – *(Laughter)* - maybe we have had as individual countries. Secondly, we are not depending on donors. I said the three countries are going contribute but we must also accept a reality. We do not have resources to be able to utilise for all our problems in the region.

You know how many problems we have? We have problems of health, education and a myriad of other problems, all competing for the little resources we have in our budgets. So, we cannot assume that there are resources somewhere that the three governments are refusing to use. Even in this Assembly we want more resources also, and there are people who want resources everywhere, and we are competing over a very small basket of resources in our budgets.

I think what is very important is also to involve our people - even the people in the lake - to find ways and means of saving the environment. If we do not involve the people who live there and

the leaders also do not involve the people who live there, it will not be easy to address the problems. But what I am assuring the honourable Members is that we have the Commission now, and it will be making some proposals on some of the steps we should take and the Partner States will finance it, and if some of our friends from outside who may have more resources than us can chip in and give us something, I think we shall welcome that. But of course, I am not saying we are going to depend totally on donors. We must start ourselves, but under the circumstances of our budgetary problems.

The Speaker: Before I give the Floor to hon. Nangale to ask the next question, let me recognise the presence of Dr. Bonny Khalwale, the Assistant Minister for the East African Community Affairs from the Republic of Kenya - *(Applause)*. Let me also take this opportunity to call upon the relevant Committee of the House to look into this matter so that he may be able to take his seat in the House. We have Assistant Ministers who are not Members of this House, and I think the Committee on Legal, Rules and Privileges may want to look into that.

Question No:EALA/PQ/OA//032/2006

Dr. George Francis Nangale (Tanzania) asked the Chairperson of the Council of Ministers_

“Although the East African Customs Union went into operation on the 1st of January, 2005, the East African Community has not harmonised trade policies of the Partner States. Are there any efforts being made to harmonise trade policies of the Partner States for

effective and smooth operationalisation of a trade regime through the Customs Union and the envisaged common market?”

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Speaker, I beg to reply as follows:

It is not wholly true that the East African Community does not have harmonised trade policies, because since the negotiation of the Customs Union, and the coming into effect of the Customs Union, we have been able to harmonise a good number of policies on trade. Of course the biggest problem we have at the moment is the problem of the implementation processes, or the degrees of implementation, which may still appear to give some disharmony. But we are working on this as a Community, and we have got some assistance from the World Trade Organisation Team, which is doing a lot of work within the three East African countries to find ways and means of how we can trade together and how our policies in respect to the Community are working together.

We do hope that we shall get a report from this team and we shall be able to find out areas where there is still some apparent disharmony so that we can be able to harmonise. Otherwise, we have moved a long way in spite of the fact that we still have some teething problems in harmonisation. We are also continuing to negotiate as the Council of Ministers to ensure that a good number of the policies which are hampering the Customs Union are removed so that we move in total harmony as far as trade policies are concerned.

Dr. Nangale: Hon. Speaker, the Chairperson of the Council of Ministers says it is not true that the East African Community has not harmonised trade policies. Is he aware that up to today the Republic of Kenya has no trade policy? And if that is the case, how can the three countries harmonise policies when one of them has no trade policy?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, I do not understand that, because how can we operate without a trade policy? *(Laughter)* I want to assure the hon. Member that we have a trade policy.

Ms. Kawamara Mishambi: The honourable Minister told us that the three countries have gone a great way in harmonising the trade policies but however that they are not yet implementing...that there is still lack of implementation. So I am asking, what are they harmonising if they cannot implement what they are harmonising?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, last week I travelled to Mombasa to see how the Common External Tariff is being implemented. When I met our Kenya Revenue Authority personnel, I found out that they had gone a long way in ensuring that those policies on the Common External Tariff are already in operation. We may have a few issues which we have not yet agreed upon and upon which we are still negotiating, but the negotiations are going on well. There may be a few policies which we have agreed upon and the respective countries are trying to rationalise their laws to fit into the trade policies we have. There are some countries that have been getting some revenue from certain types of

charges, and with the coming of the Customs Union, those charges have got to go. Now these countries have got to find ways and means of removing those charges from their budgets and also adjust the laws accordingly.

While we have agreed on some of the issues in Arusha here, the implementation process of course also takes a little bit of time: the decisions take some time to get to the capitals and then for the capitals to issue notices to the immigration officials also takes some time. But I want to assure the House that the Customs Union has progressed very well, and in spite of the fact that a few policies have not been implemented, we are on track, and we are doing our best, as Council of Ministers, to ensure that some of these issues which have not been implemented are implemented. And you know, we are going to be more efficient this year.

Right now we have got the Minister in charge of the Community from Tanzania – (*shouts of: “where is he?”*) - Kenya’s has already come, and I am told that Uganda is appointing ministers this week. So we are going to have a colleague from Uganda. So the problem you have had here of the ministers not meeting will be a thing of the past, and I do hope that when we have more time to stay in Arusha and discuss issues affecting the Community, I believe the implementation process on trade policies is going to move with greater speed than before.

Mr. Med Kaggwa (Uganda): Mr. Speaker, I just want to ask the Minister, when we passed the Customs Management Act here we were made to understand that there would be schedules

accompanying the same. To date I have not seen them here, and the question is: how are they using them when they have not had the blessing of this House?

The Chairperson of the Council of Ministers (Mr. Koech): (*after consulting with officials at the Treasury Bench*) Mr Speaker, I wanted to know from the staff here how far we have gone – (*Laughter*) - because the Council had already made a decision on the preparation of some schedules. I believe that during the next Council meeting we shall be able to make a decision on those. So I wanted to know about the preparation. But I think it will be okay.

Mr. Mabere Marando (Tanzania): Mr. Speaker, since the question refers to the coming into operation of the Customs Union Act, and since it also refers to the effective and smooth operationalisation of a trade regime, and whereas we have seen, since the coming into operation of this Act, Partner States making unilateral decisions quite in flagrant disobedience to the provisions of the law, and knowing that the Council of Ministers knows that a law must be obeyed, and after the last incident of a Partner State exempting one textiles manufacturer from paying certain taxes contrary to the provisions relating to the Common External Tariff, could the hon. Chairperson of the Council of Ministers tell me the following:-

1. Whether the Secretariat has taken any action against any Partner State that has flagrantly violated the law;
2. Whether the Council of Ministers has itself addressed this problem of their violating the law with apparent impunity; and

3. Whether the Chairperson of the Council of Ministers, if nothing has been done, has it in his agenda to table this issue before his next meeting with the Council of Ministers?

The Chairperson of the Council of Ministers (Mr Koech): Mr Speaker, we have had some issues of such nature because there was some pressure initially with the coming up of the Common External Tariff. There was quite a lot of pressure on the individual countries on the level of taxation but the finance ministers met and formalised the whole issue. But in a situation where you are just starting, you cannot expect everything to go on smoothly – *(Laughter)*.

I do remember that in Kenya we had said that the tariff on rice was going to be 70 per cent, and we had overlooked a certain clause which said that Pakistan had to import a certain amount of our tea with the understanding that we import a certain amount of their rice. So, we had to meet with our colleagues and find out ways of sorting out this problem. So, the finance ministers met and we found an amicable solution to that problem.

There was also the question of *Mitumba*. There was a very big outcry by the people, and you know governments are politicians; they must respond to the cries of the people. So, in that confusion anybody could do anything – *(Laughter)*. But we met immediately as Council of Ministers and we had to sort out that problem which was affecting our people and the problem was solved amicably. If there are some other problems which are outstanding...we are also meeting as Council to iron out some of the textiles

problems we have in Tanzania. So that one, we are aware of, and we are going to look into. But I want to beg the indulgence of Members; you know Rome was not built in a day – *(Interjection)*. We cannot build the Community in a day. But we have made tremendous progress.

The import of goods from Tanzania into Kenya now has increased; the goods from Uganda to Kenya have increased and Kenya has also benefited. Although with the principle of asymmetry, Kenya was affected a little bit, but when you look at the statistics, it is quite comfortable to say that the Customs Union is working. Of course we depend on you, as critics, to tell us some of the problems. But we shall respond – *(Laughter)* - and I assure you, now with the three ministers meeting regularly, things will move fast – *(Applause)*.

Mr. Maxell Shamala (Kenya): Mr. Speaker, I would like the honourable Minister to respond to the following: The setting up of the Customs Union was basically to liberalise trade amongst the Partner States, and he has said that the Customs Union is working. Yes, we wanted a Customs Union, but with everybody having a win-win-situation.

Could the honourable Minister tell this House what transpired in, say, the year 2005; what was the trade imbalance among these Partner States? Who gained what; who lost what?

Secondly, we have been to the border posts and seen some of the collection centres for taxes. In the case of Lunga Lunga border post, I read in the papers that you were going to move offices next to Horo Horo. Could you confirm that

this is going to be done for Lunga Lunga and Horo Horo, as well as for Taveta and Holili?

The Speaker: Hon. Minister, this is a different question but you may wish to respond to it.

The Chairperson of the Council of Ministers (Mr Koech): In fact it is good they are dealing with someone who is very enthusiastic about the Community. I do not have the statistics right now because that was not the question, but if the question was asked, I could be able to come with the statistics. But on the question of the trade between the three Partner States, whether there is a lot of imbalance is not the question. We think that if a country has continued to progressively increase its export earning, then we have gained, because the figures were different for all the three East African countries before this. I think the idea is that if every country is gaining from the Customs Union, then we have gained. But today, I do not have the statistics.

On the question of moving the Immigration and Customs posts from Lunga Lunga in Kenya to Horo Horo in Tanzania, that is something which the Kenyan Government has already planned to do. In fact they have already got the necessary finances. With the other areas, we have got to learn to move closer. But you are forgetting that we are moving towards a common market. Now when we have a fully-fledged common market, do we need these borders? So, wherever you are operating does not mean much. We do hope that with the coming up of the Common Market Protocol we are going to have free

movement of goods and free movement of people.

So, the question of customs posts at the border will be a thing of the past. Maybe they can be used for some other purposes but they have got to be made to be more friendly, like the one which has been established at Busia, where officials from the two countries are very close to each to make sure that the vehicles passing through those borders spend less time than before, and this has become a success.

Mr. Wandera-Ogalo (Uganda): Thank you Mr. Speaker. As the minister will recall, when the East African Community Customs Management Act was brought into this House, the relevant Committee of the House was only given seven days to deliberate on it and the Assembly was given only three days, and there were complaints then that the time was not sufficient, and that we would make a bad law because we did not have sufficient time to consult and get views from the people of East Africa. The minister now concedes that there have been problems in respect of goods like the *Mitumba*, when there was an outcry from the people of East Africa that indeed we had made a bad law.

Would the minister concede now that this House and its Committees require more time when you introduce these Bills to enable it make good laws? Would he now concede that in his next Budget he will provide more time for the Assembly and for the Committees? *(Applause)*

The second point I want to raise arises from the point raised by hon. Marando, about making a law and breaking the

law, by the Community. Mr Minister, I was saying that the point of making the law and then you break it and then you say “these things can happen” would mean that although we make the law we should be expecting to break it!

Now, my question is this: in the Customs Management Act, this House did provide, and it has been enacted, that the countries belonging to other regional blocs like SADC (the Southern African Development Cooperation) and COMESA (the Common Market for East and Southern Africa) would pull out of those bodies by some stipulated time – I think by December this year.

Could the minister inform the House what steps Tanzania has taken to pull out of SADC and what steps Kenya and Uganda have taken to pull out of COMESA, or do we intend to break that law also when we reach there? *(Laughter)*

The Chairperson of the Council of Ministers (Mr Koech): I want to tell my friend there that we did not break any law! *(Laughter)* When people are used to a certain way of living, to change them is very difficult. In order to encourage our textiles industry, finally we have got to change and make sure that our people do not use *Mitumba*, because if we continue like that, I do not think we shall succeed. It is just that when we gave the first treatment, the dose was a little bit too much. That is why the Minister has had to adjust the next dose on *Mtiumba*; it was not a mistake. It was only a question of a patient being given some injection and then you find that the dose is a little bit too strong for the patient. As a good doctor, you adjust the dose – *(laughter)*.

So, the dose was adjusted. It was just an adjustment of the dose. It was not breaking of the law.

Mr. Speaker, I do not think there will be time when we shall be able to come as if we come from a laboratory that once we make certain laws, the people are going to accept them. We are beginning to come to live as a Community, and we still have a lot of teething problems. I think we have accepted to live together as East Africans and that it is beneficial to all of us. There are problems, of course, when we come to live together. Even new people who have just come to live together experience a bit of a problem at first, but as they continue they get used to each other, and there will be no problem. So, I think we are still in that stage; we have not made any loss, we are moving very well.

On the question of negotiating as a bloc in the World Trade Organisation, the Secretariat is already working on something. We are having some meetings towards the end of the year to see how we are going to sort out that problem. So, something is being done about it. There have been some meetings; some negotiations and I think in the end we shall be able to find a way of overcoming the problem.

You know, when you are dealing with several countries, you need a lot of negotiations and we need to understand each other. There are certain things which we have cherished over a long time, and we cannot move on them immediately. We have got to find ways of coming out of them.

So, there are some quiet negotiations between the Partner States and some

international organisations on how we are going to come up with that clause showing that it is coming to an end in December. I do believe that by that time, we shall have an answer to that problem.

The Speaker: I am afraid the supplementary questions are also now becoming an overdose – (*Laughter*).

Ms. Irene Ovonji-Odida: Thank you very much hon. Speaker. I also hesitated to raise a supplementary question for some time bearing in mind that while we were in Nairobi last month, and we were hosted very well by the Minister for the EAC, we were made aware that he had had surgery but he has still made time to come and meet with us – (*Applause*). So I really sympathised that he has vigorously dealt with the questions today.

My supplementary question to the hon. Minister on this important issue is related to the issue raised about compliance. Yesterday, some of us Members of the Trade Committee attended a meeting of the East African Business Council which was looking at the Customs Union implementation, and the meeting also raised concerns around compliance and unilateral decisions by individual countries with Members of the business community appealing to ministers to give exemptions and so on unilaterally, in contravention of this Act and actually of the whole spirit of the protocol and the law.

In addition, when we went around in the three countries consulting the public, especially the business sector, on the Common Market and its implementation, issues related to the Customs Union also came up, and it was

said very clearly by the private sector that while they may not be very happy with some of the decisions taken that affect specific sectors in the Customs Union Act, what they need as a business Community above all is some sort of certainty or reliability that when decisions are made, they will be followed up and implemented, and that they will not have changes because those changes affect their capacity to operate and their bottom line as business entities. So these changes and moving backwards on decisions create problems.

The supplementary question that I have for the minister is that, given that these waivers have been coming from other line ministers, perhaps those dealing with finance in the particular countries, given that Customs Union implementation deals with issues like tax and so on and do not necessarily fall under the EAC ministers, could the minister undertake to ensure that even where there are crosscutting issues that fall under other ministries, as the ministers responsible for the East African Community, they will ensure that those other ministers refer decisions back to them as the ministers dealing with the East African Community in order to ensure that there is harmonious implementation of the decisions and of the integration process?

Secondly, to follow up on the SADC and COMESA issue, I am reliably informed by technical officers of our governments dealing with issues related to international organisations that the process of exiting from these institutions, SADC and COMESA, take time. That it could take up to a year once notification has been given. If that is the case, then given that we are already in

the month of May of 2006, and there are only about six months to the end of the year, what steps can really be taken by our governments to ensure that that deadline of December 2006 is actually complied with, or will they then return to the next Assembly and seek an amendment of the law? Is that what is going to happen, which once again would mean that we are not complying with decisions that are taken?

The Chairperson of the Council of Ministers (Mr Koech): That was a very long statement – (*Laughter*) - but I think some of the issues which are being raised by hon. Ovonji I have already answered before. Some of the issues she has raised about exiting from the other two trade bodies will be addressed by the Council in August. Although the time is running out, we are not, of course, saying that exit is a must. There can always be some negotiation and some understanding on how we can work on a new framework. This is why I am saying the Council is already working on these issues of exit, and I believe that before the stated time comes, we shall have already found an answer on how we are going to behave. Since this issue will be handled in August, I will not be able to give you a definite answer. But I do take your concern very seriously, and I will bring that concern to the Council of Ministers so that we can expeditiously find a solution to this problem.

Question Ref: EALA/PQ/OA/033/2006

Dr. George Francis Nangale (Tanzania): asked the Chairperson, Council of Ministers_

“NEPAD (the New Partnership for African Development) did identify the US \$ 200 million-plus East African Submarine Cable System (EASSy) as a priority project for the enhancement of ICT (Information Communication Technology) infrastructure in the region, and EASSy is expected to lower connectivity rates by more than 50 percent. While the East African private sector has taken the initiative to raise capital for constructing EASSy, isn't it prudent for the public sector, the EAC Partner State governments to invest or/and provide financial guarantees to this project so that it becomes an “open access”, and therefore envisaged services do not result into an expensive monopolistic profit-motivated scheme, thus defeating its intended purpose?”

The Chairperson of the Council of Ministers (Mr. Koech): Mr. Speaker, I beg to reply:

It is not true that the East African Community is not going to participate in this programme. While a consortium of 28 telephone operators from 18 African countries and four international operators are involved in spearheading the implementation of the project, out of 32 operators, 12 are government owned entities while the rest are privately owned. I want also to let the hon. Members know that at the 11th Council of Ministers held on the 3 April 2006, the Council considered the progress of the EASSy project and decided that:

1. The Secretariat co-ordinates the NEPAD E-Commission on the development of a policy framework for the implementation of the ICT

- Broadband infrastructure networks including EASSy and other ICT intervention through public-private partnerships;
2. The Secretariat convenes a meeting of ICT policy makers, regulators and telecommunications operators to consider options for the implementation of ICT Broadband infrastructure network in the region by June this year;
 3. The Partner States be urged to adopt the open access principle in the development of ICT Broadband infrastructure network with a view to ensuring open non-discriminatory and affordable access by users in the region.

In that regard, there will be a high level meeting of policy makers in June to seek and explore the possibility of adopting the open access approach with a view to leveraging private sector investment in communication infrastructure in East Africa. And they have made some specific recommendations on a regulatory framework for this project.

So, the core aim of the foregoing activities, including the Council decisions, is to ensure that there will be a clear involvement of the East African governments in the financing and operation of a high capacity fibre optic marine cable system in the EASSy project to ensure open access which would be able to remove the monopolistic tendencies.

Mr George Nangale: Mr. Speaker, the Committee on Trade was in Nairobi early this month and my colleagues and I

had an opportunity to meet the newly appointed Permanent Secretary of the Ministry of Information and Communications, who told us that over the past few months he had had more than 20 meetings to discuss the EASSy project. Could the Minister now agree with me that this is a misuse of public funds? (*Interjections*) The meetings were East African Community meetings; not Kenyan meetings.

Secondly, there has been an announcement that the Republic of Kenya has a plan to do this project alone. Does the Minister agree with me that we are uniting and disuniting at the same time?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, I am glad that hon. Nangale has not talked aboutI had not talked about the East African meetings. I have also read in the newspapers about some of the things which have been taking place, but our Speaker in Nairobi has always told us that the newspapers are not authority – (*Laughter*).

On the question of the funds and the meetings, Mr Speaker, you know this is a very big project: It is a project which is going to cost billions of dollars, and it is also involving many countries. For a large number of people to agree is not something very easy. I think that is why there are always going to be a lot of meetings for consultations before agreements are reached. I also see that if this project is implemented on a regional basis, it is going to be cheaper and it is going to be more efficient. And I believe every country sees that, so I do hope it will be implemented on a more regional basis so that we have efficiency in the

whole operation because if we have this thing in segments, it will not be easy to have all the re-routing all over the region.

I also understand that in telecommunications, if there are problems, there could be some re-routing. So, if there is only one route and there is a problem in that route, you cannot by-pass to connect the other linkages. So I do hope that with further consultations and negotiations, we will come up to handle this project on a regional basis. I do not think one country can do it alone because I know it is going to be very expensive. But I would not claim to say that what is being done in one country is already advanced. But for the case of the region, you will find that the Council of Ministers has made a decision and we are trying to work as Community. But even in this case, not only the East African region, but it is going to encompass a bigger region than East Africa.

I think noting the economies of scale, it is better to do it on a regional basis. So there will be more negotiations, and I know there are more negotiations. I have told you that there will be a meeting next month. Maybe next month's meetings will be able to resolve the problems which might have been there. So, I do still have a lot of hope.

Mrs. Rose Waruhiu (Kenya): Mr. Speaker, I wish to ask the Minister a supplementary question, whether he could confirm what the policy is in terms of encouraging private sector participation in the area of infrastructure. Is the Minister aware that the initiative to raise money through the private sector has been going on for four

years and probably now the meetings that the government is introducing are delaying this process and the possibility of keeping the private sector motivated to invest in this sector?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, if the private sector was allowed to do this job alone, then the issues which were raised by hon. Nangale about the monopolistic tendencies would be built into the programme. So it is important for the governments to step in so that they can be able to have some regulation. In any case, when we talk about the private sector, who is the private sector? I wish it were some of you here, but unfortunately I do not think it is you – (*Laughter*) – so the private sector from where?

So, it would be good for our governments to step in so that they can regulate the whole process for the benefit of the people of East Africa in terms of pricing and also in terms of them joining this process because if our people are not going to participate and yet we say “private sector”, then you ask yourself, who is the private sector: is it somebody from Iringa; is it somebody from Garissa? I think the governments should come in so that they encourage the locals to be able to participate and also benefit.

Mr. Abdirahim Abdi (Kenya): Hon. Speaker, is the Minister aware that a country which is not a Member of the East African Community is frustrating the laying of this submarine cable – specifically the government of South Africa? Secondly, I think hon. Nangale talked about Kenya. I think the government of Kenya proposed that it

funds the project cheaply so that the other governments can come and participate later on so that they can get the cables set up cheaply and then transfer to the private sector.

Could the Minister convince our other governments of Uganda and Tanzania to help the government of Kenya and co-fund the submarine cable from Djibouti to Mozambique so that we can get...and it is not 50 per cent as hon. Nangale said, but the cost will go down by 90 per cent.

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, these issues of some other countries outside East Africa is being addressed by the Council. We know one country has been participating much longer on these issues, and this had given an impression that they were going to dominate the scene, but by the fact that other governments have come in, they will be able to moderate the problem which is perceived to be in the control of one country.

That is why you will find that the Council has come in, so that it can effectively sort out the problems of such nature so that we are not going to be in any way disadvantaged by one country getting the whole benefit. So, we must work as a Council to ensure that our three countries participate so that we are also in an advantageous position.

Mr. Mabere Marando (Tanzania): *Ahsante Mheshimiwa Spika.* Would the hon. Minister agree to receive information from me that the ESSay project was the brainchild of the East African Community from way back before the collapse of the first Community in 1977? A Member of this

Assembly, hon. Kanyomozi, was in charge of the East African Posts and Telecommunications and this project was initiated by them. Therefore, would the Minister agree to receive and adopt that information, that we are the original initiators and not South Africa?

And, Mr Speaker, sir, after agreeing to adopt that position, if he will be so willing, would the minister undertake to this August House that this project may remain the initiative and under the control of not only the East African Community but the Community and its eastern African colleagues, instead of allowing South Africa under the guise of the so called NEPAD to take it over as it is attempting do as of now?

Would the Minister also accept information from me, that the cost of this project is not in billions of dollars but only \$280 million, and that our governments, properly co-ordinated, are very capable of chipping in and financing this project without the South African dominance? *Ahsante sana.*

The Chairperson of the Council of Ministers (Mr Koech): I always accept the wise counsel of hon. Marando – (*Laughter*). That is why you can see that it was unfortunate that the Community failed; but it is good that it has been revived, so we can buy the very good ideas which were brought by an honourable member of this House. I do not see hon. Kanyomozi today – (*Interjections*). He should have been here to hear from his colleague some of the good things he did in the past! We shall campaign for him to come back – (*Laughter*).

It is true that this thing is going to go beyond East Africa. It is also true, as hon. Marando has said, that it is \$280 million, but that is several billions of East African shillings! (*Interjections and Laughter*) This thing is not only touching on East Africa, it is going beyond East Africa. So, we cannot help other countries also wanting to own it.

NEPAD is an African Union organisation, so we cannot run away from it. I think what is very important and what hon. Marando has said is that we should be in the forefront in ensuring that this project succeeds, and we should be able to own much more of it because it was our brainchild. I think that one I agree with, but since it is going to touch on a bigger region than East Africa, we cannot avoid some of our regional friends being part and parcel of the project.

Otherwise, I do agree with you, *Mheshimiwa*, that it is our project and the Council should really be in the forefront to speed up the programmes and be able to also remove all the hurdles which are preventing the East African region from being the one to play a greater role.

Mr. Ochieng-Mbeo (Kenya): Arising from the beautiful answer given to the House by the minister on the whole process of ESSAy, could the minister assure this House that he will persuade his colleague in Kenya, the Minister for Information and Communication, to allow the rest of the East African partners, as referred to in the question asked by hon. Abdi, to join hands with Kenya and the East African Business Council plus ESSAy partners so that the process is not seen as Kenya versus

South Africa as it is now, but as East Africa plus the 28 partners to further the process of NEPAD?

The Chairperson of the Council of Ministers (Mr Koech): Mr. Speaker, I think the hon. Member should know that this is a project for the East African Community. Maybe a minister in Kenya might have said something and become more vocal about it, but this is an EAC project – (*Applause*) - and I have told the House that we are meeting as Council to ensure that this process is spearheaded, and then we can get our colleagues from the region to join us, because unless we work as a region, it is very difficult to succeed. We need to pull our resources together.

In this building here, the headquarters of EAC, several ministers do meet here to discuss several issues in sectoral councils, and several of our colleagues come here. We are talking about the Lake Victoria Basin Commission, the Ministers for Environment have been meeting; the ministers for Communications will also be meeting, and then of course there is coordination of all these activities of the sectoral councils. So we shall be able, I think, with the sentiments which I have got from this House, to work on a programme to ensure that the project is handled as an East African project by the three East African countries as a regional project – (*Applause*). And then of course we will also work with our colleagues in the region because this thing goes beyond the region. I think the sentiments you have raised, hon. Members, are quite pertinent, and I think when I meet my colleagues we shall discuss these issues and then we have got to find the way forward on how we are going to

work together to ensure that it is an East African project.

ADJOURNMENT

The Speaker: Hon. Members, we have come to the end of our sitting this afternoon, and I adjourn this House until tomorrow afternoon, at 2.30 p.m.

(The House rose at 4.00 p.m. and adjourned until 2.30 p.m. on Wednesday, 24 May 2006)