



## **EAST AFRICAN COMMUNITY**

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### **IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)**

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

#### **FIFTH MEETING – FOURTH SESSION – SECOND ASSEMBLY**

**Wednesday, 25 April 2012**

*The East African Legislative Assembly met at 2.30 p.m. in the County Hall, Kenya National Assembly, Nairobi*

#### **PRAYER**

*(The Speaker, Mr Abidrahim Abdi, in the Chair.)*

*The Assembly was called to order.*

#### **PAPERS**

The following Papers were laid on the Table:

The Report of the Committee on Agriculture, Tourism and Natural Resources on the Assessment of the Lake Victoria Water Supply and Sanitation Programme which was done in Kisumu, Kericho, Keroka, Isebenia and Mayuge.

*(By the Chairperson of the Committee on Agriculture, Tourism and Natural Resources (Ms. Safina Kwekwe)*

The Report of the Committee on Accounts on the East African Community Accountability process

*(By Mr. Dan Ogalo on behalf of the Chairperson of the Committee on Accounts)*

The report of the Committee on General Purpose on the on spot assessment of the Partner States Policy Framework and Facilitations of CSO's activities for women, youths, PWDs and elderly and other special interest groups in the East African Community Partner States

*(By the Chairperson of the Committee on General Purpose, Ms. Sebtuu Nassor)*

### **BILL COMMITTEE STAGE**

#### **THE EAST AFRICAN COMMUNITY HUMAN AND PEOPLE'S RIGHTS BILL, 2011**

*(Resumption of Business interrupted on Tuesday, 24 April, 2012)*

#### *Clause 13*

*(Question proposed)*

**Mr Ngenzebuhoro:** Mr Chairman, before we adjourned yesterday, there something about the term marriage. I would like to give clarification on this and include the definition of the term marriage to be read as follows; "Marriage contracted by the parties in accordance with the law in the Partner State where it is contracted." So, it will be clearer. Thank you.

**Mr Bilal:** Thank you, Mr Chairman. I am proposing that the whole clause 13 be replaced by the following: "Parties to a marriage shall enjoy equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage subject to the distinct roles that each party is required to play as prescribed by any tradition or professed by a particular religion in accordance with the laws of the Partner State."

**The Chairman:** Hon. Bilal, what you sent here and what you are reading are two different things unless you write it and send it to us again. But anyway, you have heard what hon. Bilal is saying. If you could send us what you have just read out now because what we have is different.

**Ms Hajabakiga:** Thank you Mr Chairman. I would like to ask them to be consistent with the other sections as in 13(2) instead of National Parliament.

**The Chairman:** Hon. Member, let us finalise with one issue at a time. We were talking about hon. Bilal's issue because he is like amending clause 13. Maybe we read it out once again. He says, "Parties to a marriage shall enjoy equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage subject to the distinct roles that each party is required to play as prescribed by any tradition or professed by a particular religion in accordance with the laws of the Partner State."

**Ms Byamukama:** Thank you Mr Chairman. I would like to state that I don't have any problem with what hon. Dr Bilal is saying but it is contrary to the convention on the elimination of all forms of discrimination against women. Some of our Partner States are signatories and they don't have any reservations on the issue of the rights in marriage. But maybe what we could adopt is that we could subject it to the national laws because we have gained ground at the national level. We don't want to lose ground at the East African Community level and, therefore, negate the achievements we have so far made.

So, if it is agreeable to him, he can subject it to the national laws of the Partner States like we have done in other clauses. I have a strong reservation on that particular aspect talking about roles because this is stereotyping. The roles change if both of you are in London doing a degree, whoever gets home earlier cooks and hon. Dr Bilal knows this. So, I think it would be unclear to

talk about roles. It would be clearer to talk about the prevailing laws in the Partner States on the particular issue.

**The Chairman:** Hon. Bilal, have you heard what hon. Dora has said?

**Mr Bilal:** Mr Chairman, I am kind of clear about what prevailing roles are. I am referring to the traditional roles because that is what marriage prescribes. Marriage to me is a process and I believe that it is defined in a tradition or in a religious setting. So, based on that, we just can't come and change settings for the sake of having a marriage. So, what I am emphasising is that it must be based on a tradition – that is what I wrote, I believe- as prescribed. This is what defines a marriage. A marriage is not just sitting down and defining a marriage process but you have to do it in a traditional setting, which is different with different people. So, that has to be observed and that is why I said that the other part should be deleted.

**Ms Hajabakiga:** Thank you Mr Chairman. Let me rescue hon. Bilal; if you look at the new amendment which we received from the committee describing marriage as a contract by parties according to the law in Partner States where it is contracted. And if that is the definition that we have been given, it means what the law of Rwanda says is what will be followed there and so applies to the other Partner States, if we go by the amendment of the committee. Can I go on because I have another issue to raise?

**The Chairman:** We are still on this issue. But before hon. Byamukama comes in, you could tell us what roles you are talking about between man and women so that hon. Byamukama may be aware before saying something.

**Mr Bilal:** My idea of a marriage is that there are proposals and the process you have to undergo and then you have pay dowry.

**The Chairman:** That is no problem but then you talk of roles. Which roles?

**Mr Bilal:** Yes, a wife has a role to play and her husband has a role to play in the house. You cannot interfere with the setting in their house; we can't have laws that – the role of a father and a mother in a marriage is known. *(Laughter)*

**Ms Byamukama:** Mr Chairman, since we have already defined the word “marriage” and linked it to the Partner State laws, then what hon. Patricia has said would be consistent. But I would also like to say that we are legislating in light of the African Charter to the Human and People's Rights. This Charter has a Protocol on women's rights known as the Maputo Protocol. The Maputo Protocol has within it the provision that we are trying to put across- “equal rights in marriage, during marriage and at dissolution,” therefore, if there are any roles, which are permanent, because I know that roles are also changeable except those which are biological like breastfeeding but there are other roles which are dynamic like I gave an example.

So, I would like to say that for the comfort of hon. Dr Bilal, and I believe that the United Republic of Tanzania may take into account different types of marriage, therefore, when this is taken into account, then he has no cause to fear. But if we are going to legislate in line with what we have already discussed here, which is in line with the Maputo Protocol, which is part of the African Charter and in line with some of our Partner State laws, actually the Constitution, we

would like to be very clear that if there is any disparity, we would rather say that “as is recognised by Partner State laws.” Short of that, Mr Chairman we shall be contradicting what we have just passed and what the Charter says plus what we have already achieved on this front. I thank you.

**Mr Akhaabi:** Thank you, Mr Chairman. A marriage is not a process; it is in fact an invent. It is a contract. Basically marriage is not a process leading to something else. The definition of marriage as we have proposed subjects marriages to the understanding in Partner States where the marriage is contracted.

Mr Chairman, as hon. Dora has is suggesting, we appreciate that there may be circumstances, for example, under Islamic law where at dissolution of a marriage certain rights or obligations may arise within. But if we then subject it to the national laws where such positions exist or subsist, that should take care of the concerns and, therefore, with respect, I agree with hon. Dora and request my brother, hon. Dr Bilal to accept that in Zanzibar that will be the law applicable.

By the way the position in Zanzibar is also the position in Kenya. In Kenya there is recognition of Islamic law-the Muhammadan Marriage and Divorce Act. So, it will be applicable, Mr Chairman.

**The Chairman:** You don’t need to give information; if you want to say something on the clause you just stand up during committee stage.

**Ms Hajabakiga:** Thank you Mr Chairman. I would like to refer hon. Bilal to the Tanzanian Marriage Act, 1971, which describes all those types of accepted marriage contracts in Tanzania including civil, traditional, religious etcetera. So, that Act prescribes how all these marriages are contracted.

**The Chairman:** It is interesting in this House how someone from Rwanda is giving information to a Tanzanian Member.

**Mr Bilal:** Thank you, Mr Chairman. The reason why hon. Akhaabi was saying marriage is a process beyond a contract is that during the marriage and at the time of the dissolution, this is a contract, I agree but involving those people who live together and perform duties-*(Laughter)*-many duties -*(Member: “Give examples.”)* - and they have clear roles of these duties. That is why I was worried about this.

**The Chairman:** Maybe be hon. Members, those duties and roles you could do in your homes and not in the law. *(Laughter)* So, I think you are saying that you agree with the laws and definition in the Partner States and you are okay with it? Yes, hon. Frederic?

**Mr Ngenzebuhoro:** Mr Chairman, I have nothing to say on the clause. Thank you.

**The Chairman:** Hon. Members, I now put the question that clause 13 as amended be part of the Bill.

*(Question, that the words to be added be added, put and agreed to)*

*(Clause 13, as amended, agreed to)*

*Clause 14**(Question proposed)*

**Mr Akhaabi:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 14 be amended by deleting the current clause 14 (2) (b) and substituting it with the following: “Have access to educational institutions and facilities for persons with disabilities that are as integrated in society as a whole as is compatible with the interests of those persons,” and by deleting clause 14(3).

This will make it elegant and avoid repetition.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 14, as amended, agreed to.)*

*Clause 15**(Question proposed)*

**Mr Akhaabi:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended by deleting the words “designed to benefit minorities and marginalised groups” that appear in the clause at the end because it adds no value and is just repetitive.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to.)*

*(Clause 15, as amended, agreed to)*

*Clause 16**(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 16 be amended by deleting sub-clause 2 so that we only remain with one clause; that is, 16 (1).

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to.)*

*(Clause 16, as amended, agreed to)*

*Clause 17*

*(Question proposed)*

**The Counsel to the Community, Mr. Wilbert Kaahwa:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 17(d) be amended by deleting the word ‘psychological’ at the end with the word ‘mental’ to read “Every person has the right to freedom and security of the person which includes the right not to be subjected to torture in any manner whether physical or mental.”

Mr. Chairman, Sir, Clause 17 is on freedom and security of the person. I have had the opportunity to discuss the terminology in this sub-clause with those hon. friends of mine who are conversant with medical knowledge, hon. Dr Sadala Abdullah, hon. Ambassador Dr Sezibera, hon. Dr Odet Nyiramirimo and I have been advised, which I believe to be true, that the term normally used is “physical and mental.” When you use the term “physical or psychological,” you restrict the attributes of the kind of torture you are trying to legislate against.

**Mr Ngenzebuhoro:** Mr Chairman, that is acceptable.

*(Question, that the word to be deleted be deleted, put and agreed to)*

*(Question, that the word to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 17, as amended, agreed to)*

*(Clause 18 agreed to.)*

*Clause 19*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 19 be amended by deleting the whole clause and replacing it with a new one reading: “Subject to the provisions of this Act, a person has the right to privacy, which shall include the right not to have his or her person or home arbitrarily searched, property arbitrarily, possessions ceased without due process of the law information relating to the family or private affairs of such person unnecessarily required or revealed or privacy of communications and correspondence infringed.”

Mr Chairman, this brings clarity to the enjoyment of the right and gives leeway to circumstances or areas when it may be interfered with.

Thank you, Mr Chairman.

**Ms Hajabakiga:** Thank you Mr Chairman. This is just a clarification on the amended clause in (a) where it says, “person or home arbitrarily searched,” does that mean that under the context of law they can be searched? I would like to understand if “arbitrarily” solves that problem because I know that there are cases where the Police will have to search a home or an individual.

In the second one, it is clear; “processions without due process of the law.” But in No.1, they say “arbitrarily searched,” could it solve a problem of the law?

**Ms Byamukama:** Mr Chairman, the qualifier which has been introduced by hon. Akhaabi goes to show that although there are rights, these rights can be qualified in certain circumstances. So, the element of arbitrary search will enable us to take into account that we have certain areas in the East African Community whereby it is legitimate, for example, to interfere with this right to privacy in certain circumstances. So, this is why it is being put there to qualify because this right is not absolute.

**The Chairman:** I think what the hon. Members is saying is this; here you are talking of a person not being searched but in the second one you go ahead and say, “...without due process.” So, can’t you make it very clear and say, “You cannot search a person without a search warrant?” You are not making it clear in terms of when a person can be searched. That is what she is trying to ask.

**Mr Akhaabi:** Mr Chairman, the position is that the due process of law implies going through a court process. Now, when we talk about arbitrariness it is acting recklessly or in disregard of the law. And when you are arrested, for example, you will not have been taken through the due process of the law. But before you are arrested, a police officer should come to you and introduce himself as so and so, “I am investigating into this case.” They should inform you as to why they want to arrest you and it must be in relation to an existing offence. That is to avoid arbitrariness. So, arbitrariness is a situation before you are taken through a judicial process. I don’t know whether that is clear.

**The Chairman:** I think maybe for us lay persons who have not studied the law; I think what she was asking was, why you use “due process of the law” in one and not the other because you would also have to go through the same process. That is what you are asking, isn’t it?

**Mr Akhaabi:** Mr Chairman, “due process” is going through the judicial process but the other one is before you go through the judicial process.

**The Chairman:** Hon. Patricia, are you okay?

**Ms Hajabakiga:** Mr Chairman, my problem was that in one they are very specific and in the other one they are not. So, that was my confusion since I am not a lawyer. But if that is clear for the lawyers, then that is fine. If that is how it is used in the law, then that is fine. *(Laughter)*

**The Chairman:** Hon. Akhaabi, as a lawyer, you are clear on that.

**Mr Akhaabi:** Mr Chairman, they are clear on this. I see hon. Ogalo is nodding; I also saw hon. Mwinyi nodding. So, we are in agreement. *(Laughter)*

**Mr Ngenzebuhoro:** Mr Chairman, since I am not a lawyer, I accept that proposal. *(Laughter)*

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 19, as amended, agreed to)*

*Clause 20*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 20 be amended by deleted sub-clauses (3) up to sub-clause (6). This is to bring clarity and logic in the drafting.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 20, as amended, agreed to)*

*Clause 21*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended by deleting sub-clause (2) thereof and substituting there with the following: "The right referred to in sub-clause (1) doesn't extend to scientific or other research that could be harmful, prejudicial to public health and national security."

Secondly, Mr Chairman, that the clause should also be amended by adding this new sub-clause to read sub-clause (4) "Penalties for offences committed under this Act shall be determined under the Partner State laws."

**Mr. Kaahwa:** Thank you, Mr Chairman. While agreeing with my friend, hon. Akhaabi on the proposed amendment whose purpose is to enhance clarity, there could be a problem with the proposed amendment which creates a sub-clause (4); not the substantive replacement of that clause but the replacement, maybe this will be addressed during the drafting. Because I thought that this is a penultimate clause which will apply to all other offences or penalties. It wouldn't come at this point in the Bill. It should come as a penultimate paragraph after the Bill has stated the freedoms and rights and then it should provide for penalties at an appropriate stage. This may not be the appropriate placement in the Bill. I can see hon. Akhaabi more or less agreeing with



me- he is nodding- this is a sub- clause which is applicable not specifically to clause 21 but all others in which case it comes at a later and more appropriate placement in the Bill.

**Mr Akhaabi:** Mr Chairman, I do appreciate that proposal and I think it should be taken right to near the end of the Bill.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Question, that the words to be added be added, put and agreed to)*

*(Clause 21, as amended, agreed to)*

*Clause 22*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 22 be amended by deleting sub-clause 1 and replacing therewith the following: "Subject to clause 21, a Partner State shall not ..." and then the rest follows with (a) and (b). And then that sub-clause 3(a) be deleted.

**Ms Hajabakiga:** Mr Chairman, I would like us to look at clause 22 and clause 21. If in clause 21 we have talked about exceptions in terms on national security and here we are not providing anything, what will happen if somebody decides to go on radio and broadcast and infringes on the national security.

**The Chairman:** Yes, hon. Patricia?

**Ms Hajabakiga:** He is trying to show me that it was deleted but I can't see where it is deleted. My concern remains that they have to be consistent with clause 21 and clause 22 in terms of national security.

**Mr Akhaabi:** Mr Chairman, I think this consistence is there and if the hon. Member read 21 as amended, and then read it together with the proposed amendment, this is quite clear that those concerns are taken care of.

**The Chairman:** Hon. Kaahwa, can you help? Hon. Patricia, does that clarify? Hon. Frederic, is it okay? I am just trying to make sure the CTC is following but hon. Frederic?

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 22, as amended, agreed to)*

*Clause 23*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 23(1) be amended by deleting the sub-clause and replacing it with the following: "Except where such release of information is likely to prejudice the security and sovereignty of the state, or interfere with the right to privacy of any person, every citizen in a Partner State has the right of access to..." and then the others.

**Mr. Kaahwa:** Thank you, Mr Chairman. First of all let me apologise for appearing to have drifted a short while ago. I had not drifted but thinking about the next proposal, which is this one. My response is that the qualification is in order and I advise the committee to adopt it. But I also have a proposed amendment.

**The Chairman:** That is why I called you to move your proposed amendment.

**Mr CTC:** Mr Chairman, my proposed amendment is with regard to sub-clause 3. It reads as follows: "Every Partner State shall publish and publicise any important information affecting the Partner State." I have a bit of discomfort because this clause is on access to information by citizens and I do not see the requirement on the state to publish and publicise as a component of access to information even from a peripheral point of view. And I propose that sub-clause 3 be deleted. The deletion will not have any adverse effect on the rest of the provision in clause 23. Thank you.

**Mr Ngenzebuhoro:** Mr Chairman, I don't see any harm in that proposal. I accept it.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 23, as amended, agreed to)*

*Clause 24*

*(Question proposed)*

**The Chairman:** Hon. Members, this is going to be a long afternoon and we have a lot of business to do. I wish you could be brief and to the point when you are moving your amendments or clarifying.

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 24 be amended by deleting sub-clauses 3, 4, and 6 and redrafting sub-clause 1 to read as follows: “Subject to clause 21 (2) every person has a right to freedom of association, the right referred to in sub-clause 1 doesn’t extend to clause 20(1) (2) (d).”

**Mr Kaahwa:** Mr Chairman, there is a problem with clause 24 though it is not a major problem of emphasising the right to freedom of association by the population. But when you read through you find that there is prominence given to civil society organisations. This House is not legislating on this matter for civil society organisations. And I propose that sub-clause 2 be deleted, which deletion will not any harm on extending the freedom of association to every person.

I also propose that in sub-clause 4, we substitute the word “popular” with the word “civil society” to promote popular participation.

Mr Chairman, against that background, I also propose that the committee feels obliged to delete sub-clauses 5 and 6 because all that they do is to give emphasis to the rights of the civil society organisations and yet we shouldn’t appear to be legislating for civil society. I thank you.

**Ms Safina:** Mr Chairman, the committee has already amended clause 21(2) and that 21(2) now as amended doesn’t have (d). So, the proposal of the committee that the right to refer to in sub-clause (21) (2) (d) doesn’t hold any more because the amendment has merged all those into one statement. I thank you.

**Mr Akhaabi:** Mr Chairman, to start off with what hon. Safina is saying, I agree with her that when sub-clause 2 of clause 21 was amended, it did not preserve any of those paragraphs that we are referring to. So, we will only say that: “Subject to sub-clause 21(2), every person has a right to freedom of association.” And delete the others.

With regard to the proposal by hon. CTC on paragraphs 5 and 6, we have already proposed that those be deleted together with sub-clause 3.

**The Chairman:** So, you have agreed to everything that the Counsel to the Community has proposed?

**Mr Akhaabi:** There is one that the mover of the motion will deal with. It doesn’t concern the committee.

**Mr Ngenzebuhoro:** Mr Chairman, There is no harm in that proposal. I accept it.

**The Chairman:** I like this mover; “there is no harm” in everything. *(Laughter)*

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 24, as amended, agreed to.)*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 25 be amended to read: “Every person has freedom to assemble and to demonstrate peacefully and unarmed, to collective bargaining and to petition public authority.” This will bring clarity.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question put, and agreed to)*

*(Clause 25, as amended, agreed to)*

*(Clause 26 agreed to)*

*Clause 27*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 27 be amended to have it redrafted in 7(2) to read: “Every person has a right to live and also return to a Partner State in which he or she is resident.” And also add a sub-clause 4 to read: “The enjoyment of this freedom may be subject to reasons of health or security,” as Yellow Fever – *(Laughter)* - Yellow Fever is not part of the amendment.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be added be added, put and agreed to)*

*(Clause 27, as amended, agreed to)*

*(Clause 28 and 29 agreed to)*

*Clause 30*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT Clause 30(1) be amended to read as follows: “Subject to the provisions of the Treaty and the Partner State laws, every person has a right to acquire and own property in any part of the Community either individually or in association with others.” This will clarify the issue that land is not a Common Market issue.

**The Chairman:** Hon. Safina, you had an amendment.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment proposed here.

*(Question put, and agreed to)*

*(Clause 30, as amended, agreed to)*

*(Clause 31 agreed to)*

*Clause 32*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 32 be amended in sub-clauses 1 and 2; sub-clause 1 to read: "Every person has the right to social protection." And sub-clause 2 to read: "Every Partner State shall endeavour to provide appropriate social protection to persons who are unable to support themselves or their dependants."

This is to bring it in conformity with the fundamental principles of social justice and for practical purposes.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question put and agreed to)*

*(Clause 32, as amended, agreed to)*

**The Chairman:** Hon. Members, it appears that people are sending amendments in other people's names. So, I wish you could stop that because hon. Safina is denying that it is not her handwriting.

*(Clause 33 agreed to)*

*Clause 34*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 34 be amended by deleting sub-clause 4. This is covered adequately in the rest of the Bill.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the proposed amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 34, as amended, agreed to)*

*(Clauses 35, 36 and 37 agreed to)*

*Clause 38*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 38 be amended in sub-clause 1 that (b) to read: “Have the environment managed and protected for the benefit of the present and future generations through legislative and other measures that prevent it.” and then to delete paragraph 2 (ii) of that sub-clause and replace “promote conservation” with “preserve the environment.”

**The Chairman:** Hon. Members, I was going to ask hon. Siita but you all looked confused. Maybe we just go directly to hon. Frederic.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment in this clause.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 38, as amended, agreed to)*

Clause 39

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, I beg to move:-

THAT, Clause 39 be amended by deleting sub-clause 1 and substituting it with the following: “Every person has the right to use the language and to participate in the cultural life of that person’s choice in accordance with the laws of a Partner State.”

That will also take care of the different matters under Article 119 of the Treaty but also national concerns.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment as it is Treaty matters.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 39, as amended, agreed to)*

Clause 40

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 40 be amended in sub-clause 1(c) and sub-clause 2. Clause 40(1) (c) to read: “The protection of their life health, safety and economic interests” and sub-clause 2 to read: “The East African Community shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.”

We are also proposing deletion of sub-clause 3 of clause 40.

**Mr Kaahwa:** Thank you, Mr Chairman. First of all I would like to believe that in the last column, hon. Akhaabi intends to say, “Value addition” rather than “no value addition.” But going to my substantive contribution, the amendment to sub-clause 1(c) for purposes of value addition and clarity is fine though I have a problem with the proposed addition of anew sub-clause requiring the East African Community to enact legislation to provide for consumer protection.

My problem arises out of the knowledge and information available to this House that in 2006 this august House enacted the East African Community Competition Act, which in Part 8 provides for consumer welfare on matters like false representation and cautionable conduct in consumer transactions, authority to publish dangerous goods, product safety standards and unsafe goods, product information standards, compulsory products recall, liability in respect of unsuitable goods, liability for defective good causing injury or loss and unidentified manufacturers.

Now, if we have that Competition Act and it addresses all those aspects of consumer rights, then we don’t need to oblige the East African Community to enact another piece of legislation in this Bill.

**Mr Akhaabi:** Mr Chairman, I think I agree with the CTC.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the deletion since this provision has already been enacted elsewhere.

**The Chairman:** Hon. Members, you will find that in this particular clause we are amending 40 (2) to read what we had already to read as what has been stated here, which means if we drop this amendment, it is going to stay the way it is in the Bill. (*Hon. Member: “Yes”*) How can it be yes? If it stays like this, we should remember that we have a law which supersedes those laws and matters pertaining to the Community, now are we telling national parliaments to legislate? I can’t move an amendment to delete. So, somebody should else do that.

**Mr Akhaabi:** Mr Chairman, we had actually proposed a deletion.

**The Chairman:** You proposed an amendment.

**Mr Akhaabi:** By deleting and substituting with what we had proposed which then the CTC struck down.

**The Chairman:** Which means it stays.

**Mr Akhaabi:** In that case, I stand to be guided by the Chair.

**The Chairman:** So, can you move that it be deleted?

**Mr Akhaabi:** I move that it be deleted.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the proposal to delete for the reason that has been given.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 40, as amended, agreed to)*

*Clause 41*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 41 be amended by deleting clause 41 (1) and sub-clauses 3 (a) and 3 (b) and then clause 4 (2) (i) (b) be amended to read: “Every person whose right or fundamental freedom has been or is likely to be adversely affected by administrative action has the right to be given written reasons for the action and be heard before such action is taken.”

This is consistent with the right to know why your right may be taken away or curtailed.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 41, as amended, agreed to)*

*(Clause 42 agreed to)*

*Clause 43*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 43 be amended in paragraphs (d) and (f) so that paragraph (d) reads: “And not be remanded in custody and the right to be released on cash bail or bond if the offence does not attract a sentence or imprisonment not exceeding six months except where the circumstances are necessary.” The exception relates to a case probably like what we were discussing here last week like public safety, terrorism etcetera and it may be necessary to detain a person even if the offence may not attract a sentence exceeding six months.

Then (f) to read: “To be brought before a court of law as soon as reasonable in accordance with the laws of the Partner State where the arrest is made.”

**The Chairman:** Hon. Member, what you have brought here and what you are reading are two different things. Can you read it again, please? Because here it is: “... have to be brought before a court as soon as reasonably possible in accordance to Partner State laws.”

**Mr Akhaabi:** Mr Chairman, I saw that but “in accordance with Partner State laws,” there are all the Partner States, we would be talking about all the Partner States. So, we would like to clarify; to say: “The laws of that particular Partner State where the arrest is being made.”



**Ms Hajabakiga:** Thank you Mr Chairman. I think clause 43 (d) as amended “where the circumstances are necessary” is very subjective and maybe we can refer to Article 21 instead of leaving it like that because who determines whether it is necessary or not?

**Mr Akhaabi:** Mr Chairman, hon. members should appreciate that sometimes the security agencies operate under very difficult circumstances and it may not be possible in every case to have these persons arrested and taken to court within the prescribed time. That is why it may be understandable that where the circumstances are such that the person cannot be released either on bond or on bail, we can give discretion to the arresting officer in some of these circumstances.

But probably it will be upon the arresting officer to justify the circumstances. Then the question is; to whom does the arresting officer justify the circumstances? My answer would be that the arresting officer would then justify the circumstances when that officer eventually takes that person to court why he had to keep that person in custody. It is not like what I saw on TV the other day in Kampala – that would not be tenable.

**Mr Chairman:** You know when you see things- I don’t know what kind of TV channels you watch? *(Laughter)* Are you clarifying, hon. Dora?

**Ms Byamukama:** I am clarifying.

**Mr Chairman:** On what, the Kampala thing? *(Laughter)*

**Ms Byamukama:** Mr Chairman, this issue of “circumstances necessary” leaves some vagueness and is subjective. What harm would there be if we did not mention it because when you talk about circumstances which are necessary, who determines what is necessary or not? So, I would like to concur that this exception doesn’t add any value. It may be better to just leave it “not exceeding six months” and leave it at that because discretion is already imputed, any way, by virtue of the powers bestowed upon the authority.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question put and agreed to)*

*Clause 43, as amended, agreed to)*

*(Clauses 44 and 45 agreed to)*

*Clause 46*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 46 be amended by deleting the whole clause except sub-clause 6 thereof, which we would wish to deal with later.

**The Chairman:** Hon. Member, I think what you should be saying is that you delete the whole of 46 and then whatever you would want to bring in later comes as an amendment.

**Mr Akhaabi:** Thank you, Mr Chairman.

**The Chairman:** Move it.

**Mr Akhaabi:** Mr Chairman, the committee proposes the deletion of the entire clause 46.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the proposal.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 46, as amended, agreed to)*

*Clause 47*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 47 be amended to read as follows: “It is a fundamental duty of the Community Partner State, their organs, institutions and officers to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in this Act.”

The sub-committee doesn't propose any other amendment there.

**The Chairman:** Hon. Member, what sub-committee is this?

**Mr Akhaabi:** I am sorry, it is the committee. Let me proceed, Mr Chairman. The committee proposes a deletion of clause 47 (1) and substitute therewith the following: “It is a fundamental duty of the Community Partner State, their organs, institutions and officers to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in this Act.” *(Interruptions)*

**The Chairman:** Hon. Member, don't listen to them, just continue.

**Mr. Akhaabi:** Thank you, Mr Chairman. So, that is the one that we would like there. Then we beseech you Mr Chairman to introduce another 48.

**The Chairman:** Hon. Member, you know when you proposed the amendment here, you put 47(1) and there is a long list, what are all the four pages for?

**Mr. Akhaabi:** Mr Chairman, we have circulated a corrigendum and addendum that we wish to introduce.

**Mr. Kaahwa:** Mr Chairman, I take it that the corrigendum, which the committee has circulated, disposes of what is contained in the Schedule proposing a Part III, if it is a corrigendum., so that we use the addendum, which the hon. Akhaabi has just read out with regard to clause 47(1). Is that the position?

**Mr. Akhaabi:** Mr Chairman, the only amendment in clause 47 relates to sub-clause 1. So, we have sub-clause 1 that has been amended; 2 remains the same; 3, 4, 5, 6 and 7 remain the same.

**The Chairman:** What about 8?

**Mr. Akhaabi:** Mr Chairman, 8 will be deleted.

**Mr. Kaahwa:** Mr Chairman, through you I thank my friend hon. Akhaabi for that clarification. Arising out of the committee's deliberations and amendments of clause 24, I propose that sub-clause 3 be deleted, sub-clause 3 proposes the recognition and facilitation of civil society and since our deliberations are on record, I don't have to go into details.

The same goes for the deletion of the words "participation of civil society" in sub-clause 5(b). I thank you, Sir.

**Mr. Akhaabi:** Mr Chairman, I think we have to concede. Having agreed, we cannot change goalposts now.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment being that we can't go back.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Clause 47, as amended, agreed to)*

*Clause 48*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 48 be amended by deleting the entire clause and replacing it with the following new Clause 48, which has been circulated to read as follows: " There shall be established within the East African Community a commission to be known as the "East African Community Human and People's Rights Commission."

**Mr Ngenzebuhoro:** Mr Chairman, I accept the proposal.

**Ms Byamukama:** Mr Chairman, I had a proposal that I forwarded to your desk.

**The Chairman:** On what? Is it a new clause?

**Ms Byamukama:** Yes, it is a new clause on enforcement. May I read it?

**The Chairman:** Why would enforcement come here?

**Ms Byamukama:** Because this is also under enforcement- the marginal notice of enforcement rights.

**The Chairman:** Will it flow there? The problem I have is that the next clause is trying to look at what that commission will do.

**Ms Byamukama:** Okay, I stand advised; I will bring it later, Sir.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place)*

*thereof be inserted, put and agreed to)*

*(Clause 48, as amended, agreed to)*

*Clause 49*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 49 be amended adding the following sentence: "...shall be composed of one commissioner nominated by each Partner State and appointed in writing by the Summit of Heads of State."

**The Chairperson:** Hon. Members, you have heard.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the insertion.

*(Question, that the words to be added be added, put and agreed to)*

*(Clause 49, as amended, agreed to)*

*Clause 48 in the Bill*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, Sir, I beg to move:-

THAT, the committee introduces a new Clause 50 in the Bill to read, "A person shall be qualified to be nominated and appointed as a commissioner if that person is a citizen of a Partner State, is a holder of a post graduate degree from a recognised university, has proven experience and interest in matters of human rights within the Community and is of integrity to cater for the qualifications for appointment to the Commission that is being proposed."

**The Chairperson:** Hon. Members, you have heard the proposal. The only thing I wanted to ask is, is this post going to be advertised or appointed and if so, why a post graduate degree and what kind of a degree are you asking for? Why a post graduate degree? You will find that there are very eminent persons who do not have post graduate degrees who can do some of these jobs. And if you are going to be specific on a post graduate degree, are you going to say which type of post graduate degree? I am just asking and maybe someone can help us to because I don't see-

**Mr Sebalu:** Thank you very much, Mr Chairman, I think the idea is to try and limit the pool with the understanding that East African Community is not short of people who can fit into this kind of qualification. That is my reading of the intentions but I do agree with you that there are prominent people who can really champion this cause and without those limitations. So we ought to be accommodative in this respect. Thank you, Mr Chairman.

**The Chairperson:** But what if we decide to appoint former Heads of State and you know some of them don't even have the first ones. Anyway it is for you to decide.

**Mr Akhaabi:** Mr Chairman, I am waiting for proposals from the floor.

**Mr Ngenzebuhoro:** Mr Chairman, this is pertinent and I accept it.

**The Chairperson:** Before I put the question I just want more clarification. You are talking about human rights. Does it mean if I have a mathematics degree- Why don't you specify? I know the lawyers will say a law degree but-

**Mr Kaahwa:** Mr Chairperson, I propose that the committee does not go deep into the level of university education. For that matter, this sub clause could read, 'is a university graduate.' I believe that is a reasonably high and not necessarily very low qualification. You don't go into the levels of degrees or into the disciplines. '...is a university graduate.' I don't want to put it below that.

**Ms Wanyoto:** Thank you, Mr Chairman. I was in the same mind with the CTC to just say that somebody should be a university graduate because it is better qualified under 3. If you look at 3, it talks about proven experience and interest in human rights matters and then the others can be administrative to cover everybody and to be more inclusive. EAC is about being inclusive also so let us talk about a university graduate and then other matters can be administrative but also it is properly covered under 3, if you look at it. 'Proven experience and interest in human rights.' I thank you.

**Dr Masha:** Mr Chairman, I have heard that this particular amendment with reference to the commission to be established is a recommendation of the committee. I just wanted it for the record to be known that this matter did not come up in the committee unless the committee met when I was not there.

**Mr Akhaabi:** Mr Chairman, I think hon. Dr Masha is not being fair because the committee at its various sittings recommended that there should be provision in the Bill for the commission and the Chairman was tasked with the responsibility to go and craft the provisions relating to the institutional framework. What hon. Dr Masha is saying amounts to insinuating improper motive on the part of the committee and the committee deserves respect. It is not fair to the committee, Mr Chairman.

**Dr Masha:** Mr Chairman, I have been silent because I made my positions known on matters which came to the committee yesterday. If something did not come to the committee to suggest that I am insinuating something or to suggest that I was involved in discussions about the commission and I am not sure who else was, I think is unfair. And to suggest that I am insinuating something sinister, I think the hon. Member owes me an apology.

I have a right to say what I feel about this and all I am saying here is that if there was a private discussion with the chairperson of the committee to request the chairperson of the committee to draft something about this commission, it was not done in the committee.

**Mr Ogalo:** Thank you, Mr Chairman. This was a matter which came up in the committee. Maybe I need to remind hon. Masha that at one time he left for Dar es Salaam when we were in the committee and the chairman gave you leave. So you were not there. Thank you.

**Mr Bazivamo:** Thank you, Mr Chairman. I want to clarify that I am the one who requested that this commission been established. As it was at the end of our debate, we requested that this be deeply analysed and put in the report. Thank you.

**The Chairperson:** Hon. Masha, I think you have heard from the members of the committee and the problem I have is that when you started off, you said that this matter was not discussed in the committee. I think if you put a rider to say that it was discussed when I was not there, it is something else. But I think that you had said that this matter was not discussed in the committee and it is being put- When you say that, it insinuates that it was put in the report without discussion from the committee.

**Dr Masha:** Mr Chairman, I am not saying in the discussion the need for a commission did not come up. All I am saying is that the details which appear in this document have not been in any committee. Yes the discussion came up and indeed I agree- I said up to the end of that session-

**The Chairperson:** Hon. Masha, like yesterday you said you did not sign this report and if all the committee members have signed this report, I think it is the report of the committee and to say or insinuate that this matter was not discussed and it was not from the committee and hon. Akhaabi brought it here on his own I think is not very fair. I think the best thing to say is you do not agree with that commission which you said yesterday, you did not sign the report but to say that it has been brought- I don't want to use the word 'smuggled' but- Maybe I will check the *Hansard* to see whether you used the word 'smuggled' but I don't think it is fair on your colleagues to insinuate that on the floor of the House.

So we have a proposal from two members to say that you leave it at the university degree.

**Mr Akhaabi:** Mr Chairman, from the comment that you made that the commission may actually also attract a former Head of State some of whom may not have these degrees, I think that let us leave it at university education or degree as was suggested.

**The Chairperson:** Hon. Dora wants PhD but anyway-

**Mr Ngenzebuhoro:** Mr Chairman, I think that this issue can rest. We can accept it. The most important thing is to have competent persons.

*(Question put and agreed to.)*

*Clause 48 in the Bill*

*(Question proposed)*

**Mr Akhaabi:** Thank you, Mr Chairman. The committee proposes an amendment to introduce a new Clause 51 to read, 'A person appointed to serve in the commission as a commissioner shall serve in that office for a term of three years renewable once only.'

**Mr Ngenzebuhoro:** Mr Chairman, I accept the insertion.

*(Question put and agreed to)*

*Clause 48 in the Bill**(Question proposed)*

**Mr Akhaabi:** Thank you, Mr Chairman. The committee proposes an amendment to introduce a new clause 52 to read, 'The functions of the commission shall be:

- (a) Monitored implementation of human and people's rights contained in this Act,
- (b) Undertake and coordinate awareness creation and sensitisation of public and private institutions and the general public in matters relating to human rights,
- (c) Liaise with Partner States, agencies and other stakeholders in the recognition, promotion and protection of human and people's rights within the Community,
- (d) Receive and investigate reports of violations and noncompliance with the human and people's rights in the Community,
- (e) Conduct and undertake research and studies on matters on human and peoples' rights and make recommendations with regard thereto to the Community and Partner States
- (f) Cooperate with other regional and international institutions in matters relating to and concerned with the recognition, promotion and protection of human and people's rights and
- (g) Perform such other functions that may be necessary for the better carrying out of the purposes of this Act.'

Mr Chairman, this is to give roles for the commission.

**The Chairperson:** Can you also move the marginal note as well, please?

**Mr Akhaabi:** Mr Chairman, with regard to this particular Clause, the marginal note will be functions of the commission.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the insertion.

*(Question put and agreed to)**Clause 48 in the Bill**(Question proposed)*

**Mr Akhaabi:** Mr Chairman, on Clause 48, the committee proposes an amendment to sub clause 3 to delete that sub clause and substitute it with the following, "The President of the East African Court of Justice and the Chief Justices in every Partner State shall make rules providing for the court proceedings under sub section 1 which shall satisfy the criteria..." and then continue with the rest.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

*(Question put and agreed to)*

*(Clause 49 agreed to)*

*Clause 50*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, the committee proposes that Clause 50 be amended to delete Clause 50 sub clause 4. This is because the committee will shortly be making a proposal to amend the Bill by introducing a new section 56 which is the provision that was in Clause 46 sub clause 6. It will be covered. What is in sub clause 4 will be covered in the new clause so we want it deleted.

**The Chairperson:** So you want 50 deleted, is it?

**Mr Akhaabi:** 50 sub clause 4 only.

**Mr Ngenzebuhoro:** The amendment is acceptable, Mr Chairman.

*(Question put and agreed to)*

*Clause 51*

*(Question proposed)*

**Mr Akhaabi:** Mr Chairman, the committee proposes an amendment to the Bill to introduce a new section immediately before the current Clause 51 which will consist of what was in Clause 46 sub clause 6 to read, “Any legislation enacted in consequence of a declaration of a state of emergency may limit or derogate from this Act only to the extent...” and then the rest will follow as was in sub clause 6 of Clause 46.

**The Chairperson:** Hon. Members, I think where hon. Akhaabi is getting this from is, remember Clause 46 when he wanted to delete 46(6) and he said he is going to bring it as 50 which he did not. Now he is bringing it under a new 51, correct? I can see some people are following.

**Mr Ngenzebuhoro:** Mr Chairman, I accept that amendment as we already dealt with it when we were talking about Article 46(6).

*(Question put and agreed to)*

*(Clause 51 in the Bill agreed to)*

**Ms Kwekwe:** Mr Chairman, I propose to move an amendment by introducing new clauses under the marginal notes, duties of the individual. The new Clause 52 shall read, ‘The individual shall have duties:

1. Towards his family, society, the State and the East African Community and the international Community
2. To preserve the harmonies development of the family and to work for the cohesion and respect of the family, to respect his parents at all times and to maintain them in case of need



3. Serve the community by placing his physical and intellectual abilities at its service
4. Not to compromise the security of the community whose resident he is
5. To preserve and strengthen social and community solidarity
6. To work to the best of his abilities and competencies to contribute to the realisation of the objectives of the EAC Treaty
7. To preserve and strengthen positive African values in his relations with other members of society in the spirit of tolerance, dialogue and consultation and in general, contribute to the promotion of the moral wellbeing of the Community.'

This is under duties of the individual. The justification, Mr Chairman is that we need to recognise that right holders are also duty bearers and this would actually be in consistence with Articles 27, 28 and 29 of the African Charter which the Bill is highly hinged upon. Thank you.

**The Chairperson:** Hon. Members you have heard. Aren't these things that your parents are supposed to teach you at home? Any comment?

**Mr Akhaabi:** Mr Chairman, I will be the last person to support this proposed amendment. This Bill deals with rights not duties. The duty I have to my family or towards my family cannot be dictated by the law. That is a question of morals and we cannot legislate morals. If the State demands certain duties from me, it has to do it itself and justify. I don't know what duties the East African Community or the international community would demand of me. These are matters that are left to the States, to the East African Community to state precisely what it requires me to do and not for the law to come up and say that I have certain duties that are unspecified to that society or state.

Mr Chairman, doing this- Hon. Safina is also talking of preservation, to preserve the harmonious development of the family. What does this mean? When is a family said to be harmoniously developing and when is it not harmoniously developing and who will be the judge? And to work for the cohesion- Mr Chairman, these are very nebulous terms and concepts.

Respect of the family. That cannot be something that can be a legal obligation. That is a moral obligation and it changes from society from society, from circumstance to circumstance. To respect parents. This I would be taught in the church somewhere or under Cardinal Njuwe but to say the law should demand that I respect my parents who are dead now and to maintain them- Mr Chairman, no.

We have already given the responsibility for maintaining the parents or people on the State and then morally I, as son of Nicodemus Buluma, if he were alive, would maintain him.

When we talk about to serve the obligation duty to serve the community by placing physical and intellectual abilities at the community's disposal or service, what does this mean? Mr Chairman, law must be clear. There must be clarity in law. There should be no ambiguity in the law. So Mr Chairman, I am totally opposed to this.

**The Chairperson:** The *Mzee* has not spoken for a long time and he knows a lot about family. Hon. Leonce.

**Mr Ndarubagiye:** Thank you very much, Mr Chairman for giving me the floor. I totally disagree with hon. Akhaabi and agree with hon. Kwekwe. Let me give you an example. In our Constitution, there is an obligation towards the family; one's parents and children. A man must provide support to his parents and to his children. I think it is definitely an obligation that should be in the law that we moralise our society and that someone who is irresponsible to his family and children with his father going hungry, he should be punished definitely. Thank you.

**The Chairperson:** What about the woman or the mother because you only talked of the man.

**Mr Ndarubagiye:** Son or daughter of someone, a father or mother to someone, we have obligations. I thank you.

**Ms Byamukama:** Mr Chairman, I just wanted to say that what hon. Akhaabi has called nebulous is actually in Article 29 of the Charter on Human and Peoples' Rights and this is what hon. Kwekwe has lifted and would like to bring to the fore. So when he says, 'I am totally opposed to this' and yet as a mover he is working within the ambit of the Charter, I think he may need to qualify these very words.

Having said this, it is true when you look at the Constitution you will have fundamental rights and freedoms in one chapter. Then in another area you will have the civic duties, which are what he stated here but what hon. Kwekwe is saying is that when you only provide for rights and we do not provide for the duties of an individual, it is as if we are only looking at the issue of what the State needs to do or put in place but we are not looking at what the individual also needs to do in order to be a respected citizen.

I have a challenge because obviously what we are legislating on is on issues to do with human and peoples' rights but that said, I do not see any harm in us looking at the other side not only us claiming our rights but looking at the side of the duty of a citizen.

In most of our constitutions, for example if the country is at war, we have a duty to ensure that we contribute in defence in accordance with the law. In other areas where we also have certain qualifications and skills, we are called upon to contribute and serve by placing physical and intellectual abilities at the State's Service.

We could claim these rights but I think it would also be noble for us to clearly state what we as individuals should also do on our part to ensure that these rights are exercised and enjoyed with some degree of responsibility. So I don't see any harm and I would like to kindly request that hon. Akhaabi takes this into consideration.

**Mr Ogalo:** Thank you, Mr Chairman. It is true that this is lifted from a provision in the Charter but it is equally true that the Bill is dealing with a regime for human and people's rights. I think that the Bill in itself is smaller than what is in the Charter which is larger. So in importing duties towards society and the State, it is really in my humble view outside the ambit of people's rights.

So I think that yes, as hon. Dora says these are civic obligations but in my humble view they do not fall strictly under what you would call either human rights under the 1948 Human Rights Charter or second and third generation rights. It would in my view be going beyond what we have set out to prescribe in the Bill.

**Gen. Muntu:** Mr Chairman, the current situation in which we discuss or try to tackle issues of human rights is a situation where we are coming from a period of dictatorships for quite a long time and the tendency is that we focus a lot on individual rights and never to a large extent bring into perspective the responsibilities that need to go along with observation of human rights.

I think it is inevitable and at this particular point in time it may not be easy for us to balance the imbalance that there is which we have more or less been forced into because of the nature of the environment in which we have been operating for quite a long time. It is also an ideological debate because you may realise that largely in the West the emphasis is on individual human rights. When you go to the East for example, you will find that they look at human rights but they also look at responsibilities and also how human rights need to be exercised putting into consideration society at large.

Africa is- I don't know whether we have our focus yet, we are being swayed along but nevertheless as we progress hopefully within the framework that is already set for the observation of human rights, one hopes that when we have governments that are responsible and observe human rights, the debate needs to be resurrected where we look at individual human rights but also look at responsibilities.

When you look at what is going on in the West where human rights have been pushed to the extent as if there is no society that needs to be taken care of, my own view is that at some point in future and I don't know when, we need to start applying the brakes and engaging that debate which I think is very necessary. It is difficult to be engaged in it right now because the tendency of the regimes that are prevalent on this African continent are repressive so we have to focus on individual human rights until that time when we have a stable situation where governments do not go out trampling on individual human rights. But individual human rights need to go with responsibilities. Not the extent that we see in some of the Western countries where individual human rights are exercised to the extent where it is like you can literally do anything.

However at this point in time, I don't think there is much we can do because of the environment within which we operate. Thank you, Mr Chairman.

**The Chairperson:** So you are supporting this or not?

**Gen. Muntu:** If there can be a section where it is put and not necessarily to look at- Because I agree with hon. Akhaabi. Laws must be clear. However if there can be a certain section where we put- I think what we would expect to be the responsibilities of the individuals, I would have no problem with that but they cannot be formulated into law because indeed they are moral questions. But I would like to believe also that laws are rooted in the desire to extend certain belief systems of a society. How to formulate it, I am not so sure and I think that would depend on those who are best placed technically to tell us how to advance but the two I think are critical. As to how we can deal with both, one which cannot be formulated into law; the moral questions

as we advanced a law in this Bill. That one I would not want to venture into that. I just simply wanted to indicate my own concerns about the current situation. Thank you, Mr Chairman.

**Ms Hajabakiga:** Thank you, hon. Chair. I am not a lawyer but I think where you request rights from the State, there should also be responsibilities towards the State and among the people themselves so I support that these amendments be part of this Bill.

**Ms Kwekwe:** I just want to respond to something that hon. Ogalo said. If we are to go with the argument that we will choose what we want to choose from the African Charter which is on Human and Peoples' Rights and choose what not to take from it then I think that is being misguided because the Charter is very clear. It is on the human and peoples' rights yet it provides within it the duties of the citizen, the individual and the implementation, which is through the commission which the Bill has heavily borrowed from.

So I think Mr Chairman – I just want to contest that. That is one. Hon. Akhaabi's sentiments- what hon. Dora said that these are not nebulous issues. We cannot purport to hinge a law on a Protocol which has provisions and then we start calling those issues nebulous. I just want to register my contestment to that.

**Mr Ngenzebuhoro:** Mr Chairman, today we are dealing with a Bill on rights and as aid by hon. Safina, what she is bringing here is already in the African Charter on Human Rights and I understand very well that when we talk about rights, this also implies responsibilities and duties. I understand this very well but I am wondering if we would not ask the Partner States of the Community to enforce the provisions referred to here of the African Charter on Human Rights because if we put these amendments in this Bill, first of all probably we will not be able to clarify everything as already indicated.

Secondly, I think that it will probably make this Bill heavy and add value and for me, it will depend. If the House decides to put it, I will not be against it but that is my conviction that probably we could make a recommendation to the Partner States to enforce the provisions of the African Charter on Human Rights.

**The Chairperson:** So honourable, are you for it or not?

**Mr Ngenzebuhoro:** It will depend on the House.

**The Chairperson:** No, I am asking you. The House will decide, are you for it or not though?

**Mr Ngenzebuhoro:** For me I would be for a recommendation to the Partner States-

**The Chairperson:** You are not answering my question. You have been very good so far. Are you for it or not for it?

**Mr Ngenzebuhoro:** I am not for it.

**The Chairperson:** That is all I wanted to know. Hon. Members, now I think we will have to vote on this one. Whoever is for will say, aye and whoever is against will say, no. All those in favour of hon. Safina's-

**Ms Tiperu:** Clarification

**The Chairperson:** What do you want to clarify?

**Ms Tiperu:** I don't know how you are going to put the question for vote but some of us have not contributed. I just wanted to seek clarification in the event that I support the proposal but I only have issues to do with some of the wordings in the recommendations.

**The Chairperson:** You should have brought that earlier. If you say aye you support and if you say no, you don't support. Hon. Members, I put the question to hon. Safina's proposal.

*(Question put and negatived)*

**Ms Kwekwe:** Mr Chairman, I move an amendment to introduce a Clause which I had proposed at Clause 53 to read:

1. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest and
2. Every individual shall have the duty to respect and consider his fellow ... without discrimination and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

I so move.

**Mr Akhaabi:** Mr Chairman, I support that one.

**Mr Ngenzebuhoro:** Mr Chairman, this is acceptable, it can be put in the Bill.

**The Chairperson:** Acceptable to whom? To you or to this House? Hon. Members, today I am forgetting names, I don't know why. Hon. Safina, what is the marginal note on this one? Will it be the same; duties and individuals?

**Ms Kwekwe:** The marginal note will be 'duties of the individual.'

**The Chairperson:** Hon. Members, I now put the question that a new Clause 52 be part of the Bill.

*(Question put and agreed to)*

**The Chairperson:** Hon. Dora, you had an amendment.

**Ms Byamukama:** Mr Chairman, I would like to withdraw my amendment because it may be limiting. I thank you.

**Mr CTC:** Thank you, Mr Chairperson. I propose two amendments. The first amendment arises out of our consideration of Clause 24 and it will be to the effect that a penalty clause as I called it be inserted providing that penalties for offences committed under this Act shall be determined by the national laws of Partner States.

**The Chairperson:** Hon. Members, you have heard.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the insertion because we need penalties in this Bill.

**The Chairperson:** Hon. Members, I now put the question that a new Clause 52 be part of the Bill.

*(Question put and agreed to)*

**Mr CTC:** Mr Chairperson Sir, I also propose that the Bill includes a clause to the effect that the Council may make regulations generally for giving effect to the provisions of this Act and the justification is that we need an implementation mechanism which will enable the Council as the policy making organ to make by-laws for the better implementation of this Act. I thank you.

**Mr Ngenzebuhoro:** Mr Chairman, I accept that the implementation mechanism be included in this Bill.

**The Chairperson:** Hon. Members, I now put the question that a new Clause 53 be part of the Bill.

*(Question put and agreed to)*

*The Title*

*(Question proposed)*

**Mr Akhaabi:** Mr chairman, the committee proposes an amendment to the long Title of the Bill to read ‘An Act to establish a mechanism and give effect to the provisions of the Treaty for the establishment of the East African Community on human and peoples’ rights and to establish a mechanism for recognition promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on human and peoples’ rights.’

Mr Chairman, the long title as it is today only refers to the Charter and the committee feels that it should also be hinged in the Treaty itself.

**Mr Ngenzebuhoro:** Mr Chairman, I accept the amendment.

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

*(Question put and agreed to.)*

### **MOTION FOR THE HOUSE TO RESUME**

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

*(Question put and agreed to.)*

### **REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE**

**Mr Ngenzebuhoro:** Mr Speaker, I beg to report that the committee of the Whole House has considered the Bill entitled the East African Community Human and Peoples' Rights Bill, 2011 and passed it with some amendments. Mr Speaker, I beg to move.

**ADOPTION OF THE REPORT OF THE COMMITTEE  
OF THE WHOLE HOUSE BY WAY OF MOTION**

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

*(Question put and agreed to.)*

**THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2012**

**BILLS'**

**THIRD READING**

**MOTION**

**Mr Kaahwa:** Mr Speaker Sir, it is my desire that this Bill be re-committed and I am standing here on the basis of Rule 71 of our Rules of Procedure moving a motion that this House be pleased to recommit this Bill in respect of a particular amendment I intend to move to Clause 49.

**Mr. ??:** Seconded.

**The Speaker:** Hon. Members you have heard the Counsel to the Community is requesting that we recommit the Bill to look at Section 49 of this Bill.

**BILLS'**

**COMMITTEE STAGE**

**The Chairperson:** Honourable, don't worry. On the *Hansard* it will say the question was put.

**THE BILL IN COMMITTEE IN RESPECT OF CLAUSE 49**

**Mr. Kaahwa:** Mr Chairperson Sir, Clause 49, as amended by the committee to the effect that the commission shall be composed of one commissioner nominated by each Partner State and appointed in writing by the Summit of the Heads of State.

I propose that for good effect, we add the words, 'on recommendation by the Council' at the end so that whenever the Summit is appointing commissioners, it has some basis on which to base its decision. That is my proposal, Mr Chairperson.

**The Chairperson:** Hon. Members you have heard.

**Ms Byamukama:** Mr Chairman, the premise for having these commissioners or the commissioner was based on the fact that there is already a loose network of human rights commissions in the East African Community and what happens is that when it comes to

appointment of these commissioners, the head of state is involved and these are approved by the Parliament. I was hoping that the honourable Council to the Community would propose some kind of approval by Parliament so that maybe we break the bureaucracy which has been created by having the Council of Ministers which has to first get recommendations from F&A and this may take forever.

So I would like to be assured that this process will not be beleaguered by this kind of red-tape that we have seen before.

**Mr Ngenzebuhoro:** Mr Chairman, in some countries, persons to be nominated at such high positions normally require the approval of the Parliament. In Burundi for example, it is the Senate.

I would be ... with the proposal made by hon. Dora to say that it would be after the approval of the Parliament for example instead of Council of Ministers. Thank you.

**The Chairperson:** Hon. Members, maybe just for information or guidance, you will find that in terms of commissions or how we do business in the Community currently, it talks of the Council giving recommendation's to the Summit. Of course not everything goes through F&A. for example Secretary General does not go through F&A or even their deputies or even when we had judges. There are some things that Partner States will- But currently the way it stands is to go through the recommendation of the Council of Ministers. The only thing I am trying to say is let us not rock the boat too much so that somebody who is looking for an excuse to not sign by saying this goes against what happens in the Community- But that is just guidance, it is up to you to decide.

**Mr Kaahwa:** Mr Chairperson. As you have rightly pointed out, the proposed amendment I am suggesting is informed by what obtains with regard to the Summit's decision on appointment to people in high offices including judges and deputy secretaries-general.

Secondly, this is not the first time we are subjecting to some decisions of the Summit in legislation to recommendations by the Council of Ministers. It is a standard way of enacting our legislation and I would encourage the committee to see it from that point of view. I thank you, Mr Chairperson.

**Ms Byamukama:** Mr Chairman, when we consider the rank of a commissioner for human rights, we are looking at people of the standing of for example judges and maybe I stand to be corrected. Does the appointment of judges go to the Council? Does the appointment of DSGs go to Council? These are people who are supposed to be impartial, they are people who maybe former presidents like we said before so if we now subject them through Council, and the way Council operates has been detailed to us in this House. We have been told that when they get such a piece of work, it is subjected to sectoral and then other bodies; coordination-

So basically what I would like to say is that if what has been said is correct, I do not believe that such an appointment would have to go back to Council. What is the value addition, if I could hear on that then maybe I would be persuaded. I do not see any value addition, actually I think it would be more prone to politicking and other vices. I thank you.



**Mr Kaahwa:** Mr Chairperson, let me first of all with humility make a correction on what I earlier submitted. The appointment of judges does not go through the Council, it is upon recommendation by Partner States according to Article 25 of the Treaty, the appointment of Deputy Secretaries general goes with the recommendations of the Council and not everything which is recommended by the Council necessarily goes through lower bodies like the F&A committee. There is procedurally a limit on matters which go through F&A and those which do not go through it.

A matter of significance like this having no bearing to the responsibility of the F&A committee, I believe would not go through the F&A committee. So the fears of any bureaucratic under currents to the implementation of the proposed amendment I am putting across do not, with respect to my honourable friend Dora Byamukama arise.

I still encourage the committee to look at it in that light so that the Summit stands to be advised by an organ of competence within the institutional framework and that can only be in a matter like this, the Council of Ministers.

**The Chairperson:** Hon. Members, you are not advertising the jobs and then people go and apply and go through short listing; a process. They are being appointed and once appointed, whether you like it or not, it is political. Whoever they appoint will come from Summit anyway. When it goes through Council, even DSGs today and even judges, to get to Summit they go through a process. Partner States say they have nominated so and so, it goes to Council, which then brings it to say so and so has been nominated from the Partner State and it is for the Summit to decide.

So whichever way you look at it, you cannot hide unless you advertise and the job is open for everybody and you look at those things, it is very difficult to say appoint by Summit. Unless we start a new process of saying that they have to come through Parliament, get vetted- In Kenya it took us a new constitution to do it but I think let us look at the practice in the Community instead of thinking that we can do something else through a law like this one and then we get into trouble also.

**Ms Byamukama:** Mr Chairman, I am a little bit surprised but if it is procedural let it be but I think it is better for us to put it on record because our concerns make sense, I think. They are logical so let it be. I concede.

**The Chairperson:** I just want to say it is just a process.

**Ms Byamukama:** If it is a process, fine but we have voiced our concerns and I hope like you amended and had a new Constitution, we shall also have a new Treaty and a new way of doing things very soon with the institutional review. Thank you.

**The Chairperson:** I think if you remember the Kigali retreat, we did say that even judges should go through a vetting process in Parliament. Those are some of the recommendations that came out of the Kigali retreat so hon. Frederic, do you agree with the CTC?

**Mr Ngenzebuhoro:** As it is a practice until tomorrow, I must agree with him. So I accept that. It is a standard in the East African Community.

*(Question put and agreed to)*

**MOTION FOR THE HOUSE TO RESUME**

**Mr Ngenzebuhoro:** Mr Chairman, I beg to move that the House do resume.

*(Question put and agreed to)*

**REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE**

**Mr Ngenzebuhoro:** Mr Speaker, I beg to report that the Committee of the Whole House has considered Clause 49 as recommitted and passed it with amendments. I beg to move.

**MOTION FOR ADOPTION OF THE REPORT OF THE  
COMMITTEE OF THE WHOLE HOUSE BY WAY OF MOTION**

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

*(Question put and agreed to)*

**THE EAST AFRICAN COMMUNITY HUMAN AND PEOPLES' RIGHTS BILL, 2012**

**MOTION FOR THIRD READING**

**Mr Ngenzebuhoro:** Mr Speaker, I beg to move that the East African Community Human and Peoples' Rights Bill, 2011 be read the Third Time and do pass. I beg to move.

The Speaker: Hon. Members, I now put the question that the East African Community Human and Peoples' Rights Bill, 2011 be read for the Third Time and do pass.

*(Question put and agreed to)*

**BILL**

**THIRD READING**

**A BILL FOR AN ACT ENTITLED THE EAST AFRICAN COMMUNITY HUMAN AND  
PEOPLES' RIGHTS ACT, 2011**

*(Bill read for the Third Time and passed)*

**BILL**

**SECOND READING**

**THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2012**

**Mr. Dan Ogal (Uganda):** Mr Speaker Sir, I beg to move:-

THAT, the East African Community Elections Bill, 2012 be read for the Second Time.

**Mr. ??:** Seconded.

**Mr Ogalo:** Mr Speaker Sir and hon. members, I wish to give some few justifications for this Bill. This Bill is grounded in the Treaty and I would like to refer to Article 5 Clause 5(d) of the Treaty which says, “The Treaty shall ensure the strengthening and consolidation of long standing political ties.”

Mr Speaker Sir, we already have political ties as recognised by the Treaty and there is a requirement that we strengthen and consolidate those political ties. Elections are an integral part of politics and this Bill seeks to consolidate that and is therefore in line with Article 5 Clause 3(d).

Mr Speaker Sir, I would also like to ground it in Article 6(a) which states that, “The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include mutual trust, political will and sovereign equality.”

Mr Speaker Sir and hon. Members, this is one Bill which will encourage mutual trust between all the Partner States. It is a fundamental principle of the Community so in as much as it seeks to consolidate and put in place a regional mechanism,. It is a way of creating the mutual trust and also emphasising political will and sovereign equality.

Mr Speaker Sir, the third point on which I wish to ground it is to be found in Article 7 Clause 2 which calls that the Partner States shall abide by the principles of good governance including the adherence of principles of democracy. Elections are no doubt a component of good governance and that the Bill consolidates that and inevitably makes the Partner States to comply with Article 7 Clause 2.

Lastly, the Bill is also grounded in Article 11 Clause 3 which says, “The Summit shall review the state of good governance within the Community.” In other words, the Summit is supposed to have reports about good governance and the elections being a component of good governance, there is definitely something which we will be complying with in that reports about it will be going to the Summit and the Summit will be fulfilling its functions under Article 11.

Mr Speaker Sir and hon. Members, I commit this Bill and call for your support. I thank you, Sir.

*(Question proposed)*

**THE CHAIRPERSON, COMMITTEE ON LEGAL RULES AND PRIVILEGES (Mr Frederic Ngenzebuhoro):** Mr Speaker, I am going to present the report of the committee on this Bill. This Bill was referred to the Committee on Legal Rules and Privileges on 18<sup>th</sup> April 2012 pursuant to Rule 66(4) of the Rules of Procedure of the Assembly.

The committee considered the Bill which is premised off Article 3(b), 6(d) and 123 of the Treaty for the establishment of the East African Community.

The essence of this Bill is the creation of an advisory regional body on elections in the region. It was formerly a practice which is already taking place and prescribes for other related matters.

Our methodology has been to interact with the mover of the Bill, carried out a... review of the Treaty for the establishment of the East African Community. It also reviewed its earlier report on the Elections Bill, 2008 and the views which were received from the Partner States.

The committee also considered the reports of this House on the Kenya general elections of 2007.

What did we find? Observations.

1. The committee observed that the mover took into account the recommendations submitted to the Assembly by the committee in September 2010 in Kigali and incorporated those recommendations adopted by the House in the present Bill.
2. The committee found that the functions of setting and harmonising elections standards to be adhered to by the national electoral commission are now reflected in the Bill.
3. The committee found that the recommendation on coordination, monitoring and evaluation of elections as a function of a Board is now reflected in the Bill.
4. The committee observed that there are already informal heads of national electoral commissions and the Bill helps to formulate and guide the meetings now taking place.
5. The ... fundamental principles of the Community to include among others the principles of democracy and the rule of law. The principle of democracy includes participation in free, fair and transparent elections.
6. In Article 123 of the Treaty, Partner States have agreed to cooperate in political matters and to develop and consolidate democracy and safeguard common values.
7. The committee noted that His Excellency Jakaya Kikwete in his capacity as the Chairperson of the Summit in his address to the Assembly in 2010 in Nairobi called for rules in electoral process at the regional level which could be enforced.
8. The Assembly adopted the Elections Observations Manual for the East African Community and the mechanisms to enhance democracy and good governance.
9. The African Union Assembly Extraordinary Session adopted the African Charter on democracy, elections and governance on January 13<sup>th</sup> 2007 and Article 17 of the Charter, the State parties reaffirm their commitments to hold legal, transparent, free and fair elections and lay down the conditions necessary for this. According to Article 17(9) it requires national political stakeholders' commitments to accept elections results and to challenge results only through legal panels. The charter, having been ratified by the 15 AU state parties' countries including the Republic of Rwanda and EAC Partner States is now in force.

#### Recommendations

The committee recommends that:

1. The proposed Electoral commissions Board should be advisory in nature.

2. The Board should be empowered to monitor, evaluate and report on the adherence to standards it has set.
3. In order to ensure continued improvement of the electoral processes in the region, it should involve itself with conduct of results in electoral processes and practices.
4. The Board should harmonise and consolidate electoral standards in the region and provide consultative forums to safeguard such standards.
5. It should have the authority to put in place mechanisms which facilitate its work.
6. The Board should submit reports to the Assembly.

The committee further recommends that subject to its proposed amendments attached hereto, this Bill be passed into law.

#### Acknowledgements.

This committee acknowledges the support it has received from you, Mr Speaker and the staff in the Assembly and the debates of this House on the Elections Bill, 2008 and on the report on general elections in Kenya in 2007 which greatly helped in its deliberations.

#### Conclusion

The Bill creates a regional mechanism to deal with elections. This is a building block in the integration process and lays foundation for political cooperation as envisaged in the Treaty.

Elections are an integral part of democracy and the Bill will therefore further the fundamental principles of the Community. The committee therefore urges the Assembly to support it.

Mr Speaker Sir, I beg to move. (*Applause*)

**The Speaker:** Hon. Members, debate is open but I would also like to remind you that if you remember, we discussed this Bill – I guess a different Bill at that time and most of it are the recommendations from what we had set then. What I am trying to say is let us make it very brief so that we can see how to utilise the remaining time that we have because we also have other agendas on the table. I wanted to say honourable but he is going to be too long, that is my problem. Hon. Muntu.

**Maj-Gen. Mugisha Muntu (Uganda):** Thank you, Mr Speaker. In support of the Bill, let me first thank hon. Dan Ogalo for being persistent because if he had not been persistent, I doubt whether he would have seen this Bill come to the stage at which it has come.

Two I thank the committee for finally accepting to adopt it much as it has been adopted in its very watered down form. (*Laughter*) I request the Members to pass it because if it is not passed in this form, I don't know in what other form it can be passed.

Three, I request the Members who will be fortunate enough to be re-elected to come to the Third Assembly that gradually they should look at the need to build trust in this region to the extent that people feel comfortable for us to move forward onto the full political integration.

I doubt whether many of us, even those who are convinced about political integration can venture into that until we see certain practices like the issue of the conduct of elections being elevated to the regional level. It is a mechanism for building trust. Now if we cannot trust having a regional body that conducts elections in all the five Partner States, what on earth would convince those of us who are convinced about political integration to come to the regional level? Why? What would make us believe that if we get to the regional level, there isn't the likelihood of us repeating what happens at the national level in some of the Partner States?

So to a certain extent, we have got to overcome our fears and understand that the Parliament needs to keep on pushing the frontiers of freedom, democracy and good governance and to ensure that there is an establishment at the regional level even before we physically advance to that until we reach that point when we can integrate. There must be building of trust.

So to a certain extent I was a little bit perturbed when I saw the resistance which hon. Dan walked into in the committee as well as in the Assembly. Personally, it is a process. Some of us can appreciate why some of the things happen the way they happen.

I urge those in the next Assembly not to feel shy, overcome their fears and hopefully be able to elevate through amendments this body that is now being established as an advisory body to become a fully-fledged authority to conduct elections at the regional level. If we do not overcome our fears, we will remain paralysed. The rest of the World is not going to wait for us as some of the people seem to think. Thank you Mr Speaker.

**Mr. Dan Kidega (Uganda):** Thank you, Rt hon. Speaker and hon. Members. I would like to join hon. Gen. Muntu to thank hon. Dan Ogalo for bringing forth this Bill. I would like to thank him not for being insistent of otherwise but for being a listening person.

I belong to the Committee of Legal Rules and Privileges. This Bill has a long history. It derives its history from election observation missions that we carried in the various Partner States and also from the report of the good will mission that came to Kenya in 2007. Thereafter, there came a Bill that aborted on this floor on the recommendation of the committee and we advised the mover to come up with another Bill and indeed hon. Ogalo did and that is the reason why I am thanking him for accepting the recommendation of the committee to which I belong.

Mr Speaker, I was a proponent of those who were not very comfortable with the first Bill for very many reasons and I find this Bill very acceptable and that is why I seconded it and I am debating to support it.

This Bill provides a framework to legalise what is already in practice. The electoral commission chairpersons are already in a loose way meeting and discussing and they even observe elections in other Partner States so this Bill provides for a framework through which they can do their activities.

It also promotes convergence of policies and practices in electoral processes in the region with a view of really smoothening the path of political federation and that is one of the reasons why I really support this Bill.

Finally on the question of shared responsibility for good governance and growth of democracy in the region, if these chairpersons or persons who have been brought together under this Bill work to develop guidelines and principles under which elections can be conducted in this region and these democracies in these regions which are young grow to maturity. It is a responsibility that has been shared and the credit will go to all.

Finally on the question of trust, this will go a long way to build trust among Partner States and also among the electorate of the region that there are people from other parts of the country that are present in the election process of our country and therefore they will always accept the election results of a given country.

Trust is a fragile thing. It must be developed over time and that is why you see some of us today are supporting this Bill because it had to take time for us to trust what was coming out of this Bill and strangely, trust can also be shattered in a very small thing. Trust is more or less like virginity, once it is lost, you can never recover it easily.

So I plead with Members to support this Bill in the form it is and let it be used to guide our election processes in this region. I thank you and I support the Bill.

**Ms Lydia Wanyoto (Uganda):** Thank you, hon. Speaker. I congratulate hon. Ogalo and the committee responsible for the report and the Bill. I stand to support the Bill. Like hon. Kidega has said, there already exists some regional forum where our national electoral commissions share experiences and practices and also share work methods and synergies on how to organise especially the national general elections and other elections in our countries and legal regimes pertaining to elections.

This Bill is a work in progress because as we all know, we were able to discuss a document that was dealing with EAC Bill of Rights where issues of political rights and participation are fundamental.

Just yesterday we were debating a Bill that talks about- The Private Members' Bill by hon. Frederic which also talks about issues of rights in relation to politics and electoral practices.

Earlier this week, we talked about issues of conflict. My pride in this Bill is that maybe it will help us to find a way of resolving and mitigating conflicts that arise out of electoral processes. I have noticed over time that every time we have conflicts arising out of elections and there is violence, there are no mechanisms or institutions through which people deal with these matters head on and ensure that either there is an early mechanism or there is a way where an institutional arrangement is in place to advise, coordinate and ensure that we do not end up in mayhem when ideally there was a civil exercise that was meant to bring good results and bring leadership to pass.

As I conclude, I want to disagree with an opinion that our democracies are young. When we have bad practices, it is just bad manners. We have greed in our electoral processes and we have dishonesty in our electoral processes. We live in denial in our electoral processes and sometimes we lie to our people on the right to submit to the choice of the people.

Hon. Colleagues, I don't have the permission of hon. Buchuyi but I have been humbled this afternoon. I sat next to her in the library on the Internet. I was doing my work and she received an SMS and then a phone call. She started shaking me and said, I have won an election. I said but how? How can you win an election when you are just next to me? She said, elections have taken place in the Republic of Burundi and she won.

That is the maturity of democracy. The processes took place, her names went for elections, she has won. I wish we could be like- I hope there will be no petitions but the maturity of the process, the way she took it, I wish this is the way our elections take place so that they are not micro managed and almost to the ballot paper. There are even issues of ballot stuffing and then you run away with boxes, you switch off cameras, this is not maturity.

We need to deal with these issues of elections and submit to the will of the people. So I would like to congratulate honourable and I wish this law was stronger like my colleague said but we will take it the way it is. I wished it had more teeth but because it is going to come through people that are already elected- I mean Heads of State are elected and they are the ones going to appoint members of this board. God forbid that the people who will be appointed will have the teeth to challenge the appointing authority because those appointing authorities are elected. They are part of the processes whether for better or for worse that take us to political or electoral problems.

So I would like to support this Bill and I look forward to a time when we can make amendments so that the reality comes and so that there is fairness and that there would be a provision to allow stakeholders to be part of this body so that it is not an issue of a single appointing authority when they themselves are participating and so that there is a level ground in these practices. I submit, Mr Speaker and I support the Bill.

**The Speaker:** Hon. Ogalo, I don't think you have to say anything because everybody is supporting unless you want to thank them.

**Mr Ogalo:** I wish to thank the hon. Members who have contributed to the Bill for their support and to also say that hon. Muntu is being modest because at one time I really wondered whether it was worth it and he is the one who kept telling me, others will build on it. Just put it there and others will come and build on it.

I thank hon. Members for your support and hope that as has been said, future Assemblies and those of you who are coming back will work on this. I thank you Sir. *(Applause)*

*(Question put and agreed to)*

## **BILL**

### **COMMITTEE STAGE**

#### **THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2012**

*(Clause 1 agreed to)*

*Clause 2*



*(Question proposed)*

**Mr Kaahwa:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended by deleting the word 'free' in line three and to put a comma after 'democratic' so that it reads: 'Standards means such levels of electoral conduct as the Board may determine, to ensure a transparent, democratic, free and fair election in a Partner State.'

The justification is that the word 'free' there as it is now the first 'free' is an adjective which is not coupled with any-

**Mr Ogalo:** No objection.

*(Question, that the word to be deleted be deleted, put and agreed to)*

*(Question, that the word to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 2, as amended, agreed to)*

*(Clause 3 agreed to)*

*Clause 4*

*(Question proposed)*

**Mr Ngenzebuhoro:** Mr Chairperson, the committee had proposed some amendments on Clause 4 to insert a new Clause 4(a) to read as follows, 'Develop safe standards and advise Partner States on standards and other electoral based practices.' This is to enhance the role of the Board.

In the previous (a), we propose to delete the words 'set' and then rename it 4(b). 4(b) to be deleted and replaced by 4(c) to read as follows, 'Monitor, harmonise, evaluate and report in adherence to the set standards by the Partner States.' This is a particular function which will fit into the advisory function.

In 4(d) we propose that it be renamed 4(d) and delete the word 'coordinate'. ... Conduct results in electoral processes and practices. Then we have 4(f) meant to read, 'provide a consultative forum for political parties and other stakeholders in matters related to elections in the Community.' This is for enriching the advisory role.

Lastly we have another amendment on Clause 4 (v) to insert it to read 'exercise such other powers and perform such other functions as may be necessary for better carrying out of the provisions of this Act'.

Mr Chairman, I beg to submit.

**Mr Ogalo:** No objection, Mr Chairman.

*(Question put and agreed to)*

*Clause 5**(Question proposed)*

**Mr Ngenzebuhoro:** Mr Chairman, on Clause 5 we have some amendments and we propose to amend 5(1) to read as follows, 'The Board shall consist of the heads of the electoral commissions from each Partner State.' That is for proper composition of the Board.

5(2) is amended by adding another sentence to read, 'The Chairperson shall be elected by the members of the Board from among others, on rotational basis.' That is the principle which is in the Treaty in Articles 67 and 68.

Lastly on 5(4), we propose to insert 5(4) to read as follows, "The Board shall apply such staff as may be determined by the Council of Ministers." That is for the proper functioning of the Board.

Mr Chairman, I beg to submit.

**The Chairperson:** Hon. Ogalo before I call you, when the committee talks of rotational basis, is it after one year or five years? It says, "The Chairperson shall be elected by the members of the Board from amongst themselves on rotational basis."

**Mr Ogalo:** Mr Chairman, thank you for pointing that out. I think we need to add the practice which is one year so that it shall read, "The Chairperson shall be elected by members of the Board from among themselves to hold office for one year on rotational basis."

**The Chairperson:** Before the XCTYC comes, the clerk here was advising. You can leave it the way it is and then say, "... and shall serve for a period of one year." It would then read, "The Chairperson shall be elected by the members of the Board from amongst themselves on rotational basis and shall serve for a period of one year." I don't know which sounds better. Yours or this one.

**Mr Ogalo:** I think the clerk's sounds better.

**Mr Kaahwa:** Mr Chairperson, a minor amendment to the proposed amendment on the insertion of a new sub clause 4 to the extent that the Council of Ministers is defined in Clause 2, the new sub clause 4 of Clause 5 should only stop after the word 'council'. The words 'of ministers' should be deleted.

**Gen. Muntu:** I would like to request that they put into consideration the period when a Partner State is holding an election. Even under a rotational basis, I would like to propose that the chairperson of an electoral commission of a Partner State should not hold that rotation in the year when that country is holding its election. I don't know how they will put it- They need to put this into consideration and build it within the amendments.

**Mr Ogalo:** Mr Chairman Sir, I agree with that and maybe make it as a proviso after 5(2) to read- Mr Kamugisha maybe can help us. Provided that – Maybe Mr Chairman, we may just have to make another clause instead of trying to tie it into 5(2) so that we just have a new Clause 5(3) which states that a country holding elections shall not be considered for the position of chairperson.

**Dr Masha:** Mr Chairman, since this is an advisory Board, I would not be that insistent as hon. Muntu is suggesting but if another formulation can come up that is satisfactory, that is okay but for an advisory Board, I would not worry and insist that the member should not be from the same country.

**The Chairperson:** The clerk here is trying to say something. He says, “Notwithstanding the provisions of sub section 2, the chairperson shall not come from the country holding elections in that particular year.”

**Mr Ogalo:** Yes, that is okay.

**Mr CTC:** Mr Chairperson, basing myself on technical advice from my learned colleague, Mr Kamugisha, I want to propose an amendment reading this to address the lacuna. “A Partner State holding an election shall not sponsor a candidate for the chairperson of the Board.”

**Ms Nyiramirimo:** Thank you, hon. Chairman. I think the election has to be precise; legislative or presidential because in many countries we also have district elections, counties elections. So I think if we say elections, every year we will have elections everywhere. So I think it has to be precise.

**The Chairperson:** I think if you have elections every year then you will not be Chair of that Board.

**Mr Akhaabi:** Mr Chairman, I thank you. I think the proposed amendment by the CTC would not assist us very much because if we adopt his proposed amendment, we may run into difficulties. I believe that the proposal by the clerk captures what we want to say a lot better than what is coming from the hon. CTC.

**The Chairperson:** Hon. Members, just for guidance the clerk is not a member of this-

**Mr Akhaabi:** Well let me say what the Chairperson has-

**The Chairperson:** You are making it worse now.

**Mr Akhaabi:** Let me say this, Mr Chairman. You see the Clerk, for purposes of what we are saying advises us on technical issues and the advice he seems to have given represents better what we want to say.

**The Chairperson:** Hon. Ogalo, which one do you want? Do you want the advice given through the Speaker to hon. Sebalu to move or the CTC?

**Mr Ogalo:** Could I just have it read again, Sir?

**The Chairperson:** Hon. Sebalu moved the amendment saying, “Notwithstanding provisions of sub section 2, the chairperson shall not come from the country holding elections or general elections if you want in that particular year. If you want to be specific and call it general or you can say elections.

**Mr Ogalo:** Sir, I have read the one of the CTC and I think I will go with the one of the clerk- the one of hon. Sebalu.

**The Chairperson:** Hon. Members, I now put the question that Clause 5, as amended, be part of the Bill.

*(Question put and agreed to)*

*Clause 6*

*(Question proposed)*

**Mr Kaahwa:** Mr Chairperson, Sir, I have been reading Clause 6 together with its marginal note and I find that there is a discrepancy because the content is actually about directions to the Bard and not ratification to the Council. Ratification gives an impression that there is some Act, which needs subsequent ratification by a higher body. So for the justification I have made, I propose that the marginal note reads, 'directions to the Board' rather than 'justification by the Council'.

**The Chairperson:** Hon. Ogalo, I am just asking a question because I think chairpersons of electoral commissions do not take directions from anybody according to the way they are in our Partner States. I think they are supposed to be constitutional offices that are independent.

What I don't understand is when they are now being subjected- If they cannot even take instructions from their heads of state, why are we saying that the Council shall give directions to the Board? I am having a little trouble in terms of what you are trying to say here.

**Mr Ogalo:** Mr Chairman and hon. Members, this matter arose in the committee during debate and the agreement in the committee was that when they are now a Board, they are distinct from their powers as an electoral commission in a Partners State. The chairman of the electoral commission is differently constituted when he is now as a member of the Board. That was the argument.

**The Chairperson:** Honourable, whatever you are, look at the Treaty right now in terms of we members of the Assembly. Some of these people are judges in their Partner States and we do not take directives- I have a problem with that one. I don't know maybe honourable we can go through it and maybe the Board- You have talked a lot, let- Hon. Mwinyi-

**Mr Mwinyi:** Thank you, Mr Chairman. Had I been there, we would not have had this provision. May I suggest that we delete this provision? Thank you.

**The Chairperson:** Maybe hon. Munya can give us some more guidance.

**Mr Munya:** Mr Chairman, I also support the deletion because I think Clause 10 which allows the Council to make regulations in consultation with the Board is enough. I don't think you need to get directives. 'Directives' is extremely strong language for a body that is supposed to operate independently.

**The Chairperson:** Honourable, look at it in this way. A President cannot give directives to electoral commission then he uses his minister to go and give directives to that minister at the EAC. Does that make- Maybe hon. Dora can help us out as to why she feels -

**Ms Byamukama:** Mr Speaker Sir, we were very clear and we said that this is a constitutional matter in most of our Partner States. Electoral Commissions are independent and do not take directives from anybody. I do not know how, I think it is by omission that it was not tacked at this point in time. So I would like to put in on record that the committee discussed this and right from the beginning when they were talking about giving directions we said no and therefore I would like to put in on record that we agree with you and the committee, at no time, agreed that we should carry this forward. I thank you.

**The Chairperson:** Honourable, if you look at number 10 also and the way the minister was saying, it says, "The Council may, in consultation with the Board, make regulations." So it means that they cannot even make regulations for them without consulting them and here again you are saying direct. So hon. Ogalo, currently there is a proposal here for deletion. I don't know what you say, honourable.

**Mr Ogalo:** Mr Chairman and hon. Members, having listened carefully to the several submissions made, I would concede that we could delete this clause.

**The Chairperson:** Hon. Members, I now put the question that Clause 6 be deleted.

*(Question, that the clause to be deleted be deleted, put and agreed to)*

*(Clause 6 deleted)*

*Clause 7*

**Mr Kaahwa:** Mr Chairperson, I am sorry. There is a matter I wanted to raise here.

**The Chairperson:** On which matter?

**Mr Kaahwa:** Immediately after that amendment but before you go to Clause 7-

**The Chairperson:** Let me go to Clause 7 first and then you can come and say whatever you want to say because the other one is already gone.

**Mr Kaahwa:** I may be disabled, it is not related to Clause 6.

**The Chairperson:** Are you inserting a new clause?

**Mr Kaahwa:** It is not a clause, it is a sub heading.

**The Chairperson:** You see, 6 has been deleted so is it in 7? You want a new heading?

**Mr Kaahwa:** Mr Chairperson. I crave your indulgence under your powers under Rule 8 to propose this, that the subsequent provisions should have a sub title part three miscellaneous because if you look at the provisions Clauses 3 up to 6, those are about establishment of the

Board and the subsequent ones on funds in Clause 7, estimates in 8, annual reports and regulations in 9, all these are miscellaneous so those could be part three. Thank you.

**Mr Ogalo:** No objection.

**The Chairperson:** Hon. Members, I now propose that Clause 7 be part of the Bill. I now put the question.

*(Question put and agreed to)*

*(Clause 7, as amended, agreed to)*

*(Clause 8 agreed to)*

*Clause 9*

*(Question proposed)*

**Mr Ngenzebuhoro:** Mr Chairman, Sir, I beg to move:-

THAT, Clause 9 be deleted and substituted with the following new Clause 9: “The Board shall prepare and submit to the Assembly for debate an annual report of its activities for the Assembly to exercise its oversight role.”

I beg to submit.

**The Chairperson:** Hon. Ogalo, before we finalise with this one, the Clerk has brought something to my attention. You are talking about the budget estimates. What about audit? Who will audit the funds of this -

**Mr Ogalo:** Sir, I believe that that will be the Audit Commission.

**The Chairperson:** The thing that the Clerk is bringing again to my attention is there is a problem for example with CASSOA which says that technically they should not be audited by the Auditor Generals, they can go to a private- Because the Act does not stipulate that they have to come to the Audit Commission.

**Mr Ogalo:** My understanding, Mr Chairman is that this would fall under Article 134 of the Treaty which establishes the Audit Commission to deal with and audit the funds of the Community. So when we look at the money coming through the Council and other donations. All that can fall under the Audit Commission. I don't think it is necessary to-

**The Chairperson:** Clause 9, you have heard the proposal from the committee.

**Mr Ogalo:** No objection, Mr Chairman.

*(Question, that the words to be deleted be deleted, put and agreed to)*

*(Question, that the words to be inserted in place*

*thereof be inserted, put and agreed to)*

*(Clause 9, as amended, agreed to)*

*(Clause 10 agreed to)*

*(Title agreed to)*

### **MOTION FOR THE HOUSE TO RESUME**

**Mr Ogalo:** Mr Chairman, I beg to move that the House do resume and the Committee of the Whole House do report thereto.

*(Question put and agreed to)*

### **REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE**

**Mr Ogalo:** Mr Speaker, I beg to report that the Committee of the Whole House considered the Bill and made amendments thereto.

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

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

*(Question put and agreed to)*

### **BILL**

### **THIRD READING**

### **MOTION**

### **THE EAST AFRICAN COMMUNITY ELECTIONS BILL, 2012**

**Mr Ogalo:** Mr Speaker Sir, I beg to move that the East African Community Elections Bill, 2012 be read for the Third Time and do pass.

*(Question put and agreed to.)*

*(Bill read the Third Time and passed)*

### **QUESTIONS FOR ORAL ANSWERS**

**Ms Jacqueline Muhongayire (Rwanda):** Thank you, Mr Speaker Sir. I beg to ask that the Chairperson of the Council of Ministers of EAC answer the question reference EALA/PQ/OA/07/2012. I beg to ask, Mr Speaker Sir.

**The Assistant Minister for East African Community Affairs, Mr. Peter Munya (Kenya):** Mr Speaker, I beg to reply. I wish to inform this august House that the East African Community has commissioned two studies under the East African Trade and Transport facilitation project. The

first one is the preparation of an EAC transport strategy and road sector development program whose main objective was to develop a ten year program for transport, infrastructure development. The second study was the development of a transport facilitation program whose objective was to harmonise road transport policies, specification and standards as mandated by Article 90 of the Treaty.

The study on the preparation of the EAC transport strategy and road sector development program was conducted through data collection, road condition surveys and extensive consultation with stakeholders.

The study was completed in September 2011 and the final report was adopted by the Council in November in 2011 and has been circulated to Partner States, development partners and relevant stakeholders.

Mr Speaker Sir, the strategy highlights the following actions that need to be undertaken in various sectors. Under roads it was found that 25 percent of the network, approximately 4000 kilometres is operating under constrained conditions and there is need to add more lanes including building of dual carriageways to enhance the capacity and improve safety in selected sections of the trunk roads.

Further, that about 3000 kilometres of roads are currently operating under a waning or deteriorated state and need immediate pavement rehabilitation. The study also proposed that EAC considers a standard road classification system across the region which would form the basis of a regional road management information system, the control of overloading on the regional trunk roads and enhancement of road safety in the region.

In the railway sub sector, it was found that much of the efficiency in operating the system is lost due to speed restrictions and unavailability of rolling stock. It is noted that the region has adopted the initiative to convert the railway system from the 1.0 m-narrow gauge road to gauge 1.435 m-standard gauge in order to improve operating speed and capacity.

However, the strategy also proposes a more conservative approach of reinstating the regional railway network at the existing narrow gauge while developing long term strategies or upgrading to standard gauge complemented with steady improvements on the state of the permanent way, availability of rolling stock, wide applications of computerised solutions and swift implementations of the concession agreements.

Under port, while acknowledging that Mombasa and Dar es Salaam ports are making good progress in capacity and efficiency improvements, the report is positive about the development of additional two ports of Lamu in Kenya and Mwambani, Zanzibar, a specialised port for bulk cargo therefore freeing the Meru port to handle more containers.

It also proposes the need to enhance the transport on Lake Victoria in order to reduce pressure on roads.

Under civil aviation and airport, the strategy recommends enhancement of terminal and airside facilities at the major international airports to handle passenger and freight traffic. It also



proposes the adoption of a region wide airport classification system that would indicate the regional roles for specific airports thereby guide the EAC support for airport projects.

The strategy also supports two major border posts initiatives. The general rehabilitation of border posts facilities and the on-going program for establishing one stop border posts. A draft Bill for the establishment of a one stop border post in the region is under Council consideration before being tabled in EALA for debate.

In the foregoing sub sector, the study report has prioritised projects and programs to match the sectoral proposals in the short, medium and long term and also those that would be amenable to the private sector for investment.

Mr Speaker Sir, the report of the study of the transport ... program involving harmonisation of transports policies, specification and standards is currently at the draft final stage. The harmonisation framework is expected to be ready by August 2012 and thereafter the process of implementing the legal regulatory recommendations will commence. Under this study however, the EAC fast tracked the conclusion of the component on the harmonisation of the vehicle load control regulations in the region which was concluded in September 2011.

The harmonisation of vehicle load control regulation focused on various vehicle load control parameters including the gross vehicle mass, the axle configurations, the dimensions of the allowed vehicles and the use of inter linked vehicles in the region.

Partner States have recently agreed on a draft vehicle load control Bill to operationalise the agreement which was approved by a multi-sectoral council of ministers in Nairobi in February, 2012. The draft is currently under consideration by the Council before being tabled before EALA for debate.

The Council is further working on establishing optimal locations of weigh –in- bridges across the EAC trunk road network to minimise mandatory weighing of transit vehicles. A standard report on this issue is due for consideration by Partner States in May, 2012 and this august House will be informed of the outcome.

Mr Speaker, as a result of the on-going efforts, the EAC is poised to make substantial progress in the improvement of vehicle load management to save on the wear and tear on our roads and transit transport facilitation to enable efficient cross-border trade both of which will work towards bringing down the cost of doing business in the region. I thank you.

**Ms Muhongayire:** Thank you, Mr Speaker. I wish to thank the Chair Council of Ministers for the response given. However, I have a supplementary question; can this transport strategy be made available for EALA and EALA Members?

Secondly, how do you relate with the private sector and the East African Business Association in the implementation process of this strategy? Thank you, Mr Speaker.

**Mr. Munya:** Yes, Mr Speaker I will endeavour to table the report of this study during the next sitting of the House. I have said the study report has prioritised projects and programmes to match the sectoral proposals in the short, medium and long term and also those that will be

amenable to the private sector for investments. So, the report already indicates which parts in each sector that can be funded by the private sector.

**Ms Tiperu:** Thank you, Mr Speaker. I would like to add a supplementary question to the question that has been asked. First of all I would like to thank the Minister for having answered the question and where he has really clearly put the strategies that the EAC is coming up with, which is an indication that a lot of work is being done by especially the department of Infrastructure.

Mr Speaker, the supplementary question that I would like to ask is: what steps have been taken so far towards the realisation of these intentions of the EAC transport strategy because everything seems to be for the future, what have you done as of now to realise the stages? Thank you.

**The Speaker:** I hope you will not say, "This is what we have done now."

**Mr. Munya:** I find the question quite interesting because I have already mentioned what is being done. I have said that the report is out; I have said the report identifies areas where the private sector can invest. I have also said the axle load law is ready; it is being tabled in the Council before being brought to EALA for passing into law so that we can regulate axle loads- we have harmonised them and the agreements have been done on harmonisation.

The Bill is already in draft form, which has been approved by Council in the sectoral Council where I sat and I am sure that the Council that is sitting today may have already approved it and then it will be brought here.

I have also said that the two new ports that are supposed to offload and assist decongest the other existing ports are already in implementation. The Lamu one has already had its ground breaking done. So, Mr Speaker my answer already contains the answer to the supplementary question.

**Mr Nakuleu:** Thank you, Rt hon. Speaker. In addition, I would like to highlight the issue of urban transport as a problem. When we speak about the transport strategy, we have to consider both the urban and rural areas. In general people speak about rural transport and that connecting Partner States and yet in our capitals like here in Nairobi, Kampala, Dar-el- Salaam and also beginning in Kigali generally during the rush hours, it has become a really big problem to be in these cities; one loses a lot of time. Could the hon. Minister enlighten us as to what plans are in place to solve this problem? Thank you.

**Mr. Munya:** Mr Speaker, whereas the supplementary question is a very good one, because indeed we are experiencing a very serious problem of congestion in our cities, it is not a regional problem because we are here dealing mainly with regional trunk roads- transport corridors. That is what the EAC deals with. The management of your cities is a national Government responsibility.

But I can give some information that like in Nairobi there is already a plan being implemented to provide mass railway transport for commuters within the city and the implantation is already midway. They are building stations - one at Syokimau to connect stations around the city and to be able to transport people without congesting the city.

The other way of doing it apart from the railway transport that can carry help very many people move is working on the roundabouts that make it impassable for the road users so that we can have bypasses and underpasses. That is what is happening in Nairobi to a greater extent. But really these are national issues that can only be done by the national governments.

**QTN Ref: EALA/PQ/OA 08.2012**

**Mr Ogalo:** The Chairperson Council of Ministers to answer Qtn Ref: EALA/PQ/OA 082012

**Mr. Munya:** Mr Speaker, I beg to reply; I agree with hon. Ogalo that the assets base of the Community which is attributed in the Partner States has grown over the years. In fact this growth corresponds proportionately with the growth in institutional programmes and projects. It is, therefore, important that all assets of the Community are adequately secured by legal protection against threats of any kind.

Indeed the lessons learnt from the litigation between Blue Line Enterprises and the East African Development Bank emphasises the need for such protection. This is what prompted the Summit of Heads of State at the 13<sup>th</sup> Summit in Bujumbura on 30<sup>th</sup> November, 2011 to direct the Council of Ministers to initiate a Bill that will protect the assets and priorities of the Community and its institutions and introduce it in this august House for enactment into law.

Mr Speaker, the Council of Ministers will soon introduce the Bill to protect the assets and properties of the Community and its institutions.

The objects of this Bill, which is now being drafted will be to:

- (a) Give effect to Article 138 of the Treaty for the establishment of then East African Community, which obliges Partner States to accord such diplomatic status, privileges and immunities to the Community as is accorded to similar international, organisations. This is a prime attribute of public international law;
- (b) Ensure that the Community and its institutions enjoy appropriate legal immunity from every form of legal process; and
- (c) Guarantee that the property and other assets of the Community wheresoever and by whomsoever held are immune from interferers, search, requisition, confiscation, excommunication, expropriation or any other form of taken for closure by Executive or legislative or judicial action and that premises used for the discharge of the objectives of the Community are immune from such threats other than through an order made by the highest court of competent jurisdiction.

The development of this Bill will also take care of the interests of those members of the general public who may have genuine claims against the Community. The Council will consider the draft Bill at its 25<sup>th</sup> meeting scheduled for 20<sup>th</sup> August, 2012 for subsequent introduction in this august House.

Mr Speaker, the Secretary-General has not carried out a stock taking exercise of the assets of the Community for purposes of registering and socialising them. I thank hon. Ogalo for pointing out

the need for this. We shall endeavour to undertake this in consultation with all the EAC organs and institutions.

According to the **registrar's record** at the Secretariat and the report from the EAC institutions, land belonging to the Community and institutions is properly documented and is under properly issued title deeds. However, there is a dispute of a piece of land allocated to the Inter University Council of East Africa at Plot 83/85 Prince Charles Drive, Kampala, which dispute is being resolved by the Government of the Republic of Uganda. I thank you.

**Mr Ogalo:** I thank you, Minister for a thorough answer given. However, I would just wish to have some specifics since this property of the Community could easily get lost, does the minister have a specific time when he expects this Bill to be introduced in the House so that those Members of the Third Assembly who are here now will be waiting in case you don't bring the Bill?

Secondly, has the minister given directives to the Secretary-General timelines when he must have done this work because the more we delay the more we risk this property of the Community going to waste or being stolen?

**Mr. Munya:** Yes, Mr Speaker, I already said that the Bill will be tabled in the 25<sup>th</sup> meeting of the Council scheduled for August, 2012 and immediately it is approved by the Council, then it will be tabled in the House. So, immediately after that meeting the Bill will find its way to the House for debate and passing.

I will also take hon. Ogalo's advice that the Council needs to give the Secretary-General a timeline and then when to do an audit and documentation of the properties of the Community. So, that advice will be taken to the Council.

**The Speaker:** Hon. Minister, you can give the directive from here; we have had directives being given by Council on the floor of this House. Maybe you can give that directive to the Secretariat.

**Mr. Munya:** I have already given directives to the Secretariat to do the job. *(Laughter)* What I cannot do, Mr Speaker is to be able to determine the timeline right here because I am not able to assess the amount of work needed but I have certainly already directed the Secretary-General to commence on this business of documenting and auditing the properties and assets of the Community.

**Ms Nyirahabineza:** Thank you very much, Rt hon. Speaker. I would like to ask the Minister if the Summit had not been wise enough to direct the Council to come up with such a very important Bill, what had they been waiting for especially after a very bad precedent of the Blue Line Enterprises case? What were they doing to enact a law before the Summit came in? Thank you.

**The Speaker:** I think the Counsel to the Community can help you being that it is under his office.

**Mr. Munya:** Mr Speaker, the Summit actually acted on the advice of the Council. *(Laughter)* The Summit didn't act on its own wish; it was advised by the Council.

**Mr Karan:** Mr Speaker, it is quite surprising to hear from the Minister that the Council of Ministers has not given directives to the Secretary-General to audit the assets when this was a subject of audit queries. It was raised and confirmed that the matter is being handled. So, how do we rely on the reply of the Minister if they couldn't even implement the recommendations of the audit query?

**The Speaker:** Hon. Members, this was an audit query which the Council said they were going to act on. And today we are having a situation whereby we are being told that hon. Ogalo brought it to your attention.

**Mr. Munya:** Mr Speaker, the question is not very clear.

**The Speaker:** Hon. Minister, what he is saying is that this issue of serialising and stocktaking of Community assets was an audit query, which the Council undertook to deal with a long time before the assembly. Today we are being told it is being brought to their attention by hon. Ogalo. So, the Member is wondering.

**Mr. Munya:** Mr Speaker, I admit that there has been a lapse on the part of the Council but we shall now endeavour to correct this once and for all.

**Mr Mwinyi:** Thank you very much, Mr Speaker. The hon. Minister very clearly articulated the immunities and privileges that should be accorded to the institutions of the Community. He also stated that there is a competing interest in that these immunities are not abused. Can the hon. Minister state to us how these two competing interests will be managed? It is important that citizens of East Africa are justly but if every institution is immune, doesn't the Minister think that could be subject to abuse? Thank you.

**Mr. Munya:** Mr Speaker, that is a fairly technical question that will be handled in the Bill and will be clearly stipulated in there; and it will be here for the House to provide its input. But clearly, institutions of this nature according to international practice are protected under the Geneva Convention and what we are doing is just to domesticate that convention that already gives immunities. But a balance has to be found especially in the instance of a bank where you are giving loans, you have an obligation to private individuals to provide loans for, which are contracts you are entering into with them. And individuals who borrow from you – I am speaking in specific reference to banks – have certain rights that you must protect even as you protect the property of the Community.

When you look at the Blue Line case, it is not private individuals' interests that were being protected. Clearly things went terribly wrong because the lender – the person who had given the money- was the one being made to pay. You are the one who has given the money, and then it turns out that you are the one meant to pay the person you lent the money. So, it was a bizarre case. This is what we are saying the Bill will undertake to balance those individual rights and also the obligations and the right to protect the institutions.

**QTN Ref: EALA/PQ/OA 09/2012**

**Mr Ogalo:** Mr Speaker, I request the Minister to answer my Question Ref: EALA/PQ/OA 09/2012

**Mr. Munya:** Thank you, Mr Speaker. I beg to reply; a dedicated EAC Ministerial meeting on tariff barriers was held on 14<sup>th</sup> February, 2012 in Mombasa, Kenya. The ministerial meeting deliberated on the EAC time bound programme on **elimination** and thereafter made decisions on how to handle the outstanding nontariff barriers in the EAC time bound programme.

The decisions of the ministers are contained in an EAC time bound programme on elimination nontariff barriers, which I have the honour to lay on table.

Mr Speaker, the decisions of the dedicated meeting on tariff barriers will be referred to the 24<sup>th</sup> extra ordinary meeting of the Council of Ministers on 25<sup>th</sup> April, 2012 for adoption, which is today; it should have been tabled today for adoption.

Meanwhile bilateral meetings between the Republic of Kenya and that of Uganda and the Republic of Kenya and the United Republic of Tanzania are scheduled to take place – in fact one has already taken place between the Republic of Kenya and the Republic of Uganda on 11<sup>th</sup> April, 2012 in Kampala as per the decision of the ministerial meeting to address NTBs affecting those countries. I thank you.

**Mr Ogalo:** I again thank the Chairman, Council of Ministers for his answer but just one question, why are there bilateral between Uganda and Kenya; Kenya and Tanzania, where is East Africa in all this?

**Mr. Munya:** Thank you, Mr Speaker. I already said that these are East African Community matters and approaching them through bilateral arrangements is not the right thing or procedure to do. The matters should be handled at the Community level. So, we shall advise the Council to discourage these new tendencies.

**Mr Ogalo:** But Mr Minister, if you know this is wrong, why not just direct and say, “Stop it, we will take over from Arusha?”

**Mr. Munya:** Mr Speaker, I cannot direct the Council. I can only advise the Council. Chairing the Council doesn’t mean that I am the boss of the Council to give it directives. But I can advise and I am sure my advice will be taken seriously. (*Laughter*)

#### **QTN Ref: EALA/PQ/OA/ 10/2012**

**Ms Tiperu:** Thank you very much, Mr Speaker. With due respect, I would like the Chair, Council of Ministers, the hon. Munya to answer my question referenced EALA/PQ/OA/10/2012. Thank you.

**Mr. Munya:** Mr Speaker, I beg to reply; upgrading and development of airports in the East African Community is a key strategy of the Community in the overall development of aviation infrastructure at the regional level. The Council of Ministers has already made the requisite decisions on its implementation. The approved EAC transport strategy provides for the development of priority airports in the region.

The compilation of the transport strategy took into account proposals from the Partner States, stakeholders in tourism, civil aviation authorities, air operators and other service providers, other

collaborating regional economic communities and benefitting from previous Master Plans for air development at the national and regional levels.

Mr Speaker, I would like to draw the attention of this House to the differences between the current structure of the East African Community and the previous one as far as air transport and other related sectors are concerned.

Under the defunct East African Community, development of policies governing their air transport sector and their implementation was centralised at the regional level and a common programme of the then department of Civil Aviation. As such development and implementation of then Regional Civil Aviation Master Plan and the regional aviation operations of the regional East African Airways were closely aligned.

The current structure of the Community, however, provides for the coordination of the implementation of a common Master Plan bringing on board individual Partner States priorities under their national airport development Master Plans.

Mr Speaker, a list of airport prioritised for development under regional tourist circuit infrastructure includes the following; in Uganda we have Pakuba, Kasese, -

**The Speaker:** Hon. Minister, they have that and so there is no need of reading them all.

**Mr. Munya:** There is also a regional programme being implemented under the economic and commercial airport development programme, which includes the other airports and we have also provided the list.

Mr Speaker, the above airports were proposed for development by the Partner States upon consultations with their stakeholders and prioritised at the regional level.

In terms of on-going work, The East African Community is continuing with resource mobilisation to fund the projects while consolidation of basic planning data for these airports and fine tuning the terms of reference for the requisite studies are being finalised. I thank you.

**Mr Sebalu:** Thank you very much, Mr Speaker. I would also like to thank the hon. Minister for a very good answer to this question. My supplementary is to do with the fact that we are now under a Common Market and air transport is a good facilitator of movements within the region to enhance business transactions. I am wondering whether the Chair, Council of Ministers and the relevant technical people at the Secretariat are considering the issue of domesticating the air space of the East African region in order to lower the costs of air transport.

**Mr. Munya:** Mr Speaker, the creation of a single air space for East Africa is one of the items on the agenda that is pending. We have not yet made up decisions on that. It is a pending matter in the Sectoral Council and the problem has been fear of loss of revenue because once you domesticate the whole of East Africa air space, then government will lose revenues that they generate through airports. So, that has been the sticking point in adopting this policy. But I am sure at one point, we shall be there.

**Ms Tiperu:** Thank you very much, Mr Speaker. I wish to thank the hon. Minister for having done his best to answer the question. I would also wish to appreciate the fact that a lot is being done especially when he talks about the regional tourists' circuit in the area of infrastructure. We especially appreciate when you talk about the area of airfields in places like Pakuba, Kasese and others. As East Africans we appraise because this will go a long way in increasing the number of tourists coming into the region and this have many more benefits.

My supplementary question to the minister is, yes the plans are there, but in the answer I don't see anything to do with money for these projects. Is there anything you have done as far as mobilisation for resources to effect these programmes are concerned or we are just talking? Thank you.

**Mr. Munya:** Mr Speaker, Partner States through their respective airport authorities have already agreed to fund the pre-feasibility study of the projects, that is, the initial step towards the implementation of the project. The study will enable the Community determine not only the actual cost of the projects but also prioritisation of the project components due to the magnitude of the project. So, it is already agreed the Partner States are already providing funds for the pre-feasibility studies.

**QTN Ref: EALA/PQ/OA/ 11/2012**

**Ms Byamukama:** Mr Speaker, I beg to move that Counsel gives an answer to Qtn: EALA/PQ/OA/ 11/2012.

**Mr. Munya:** Mr Speaker, I beg to reply regarding the Protocol on immunities and privileges for EAC, its organs and institutions. At the 13<sup>th</sup> Ordinary Summit of EAC Heads of State, which was held in Bujumbura on 30<sup>th</sup> November, 2011, the Summit approved the Protocol for conclusion. We shall soon have it signed by the ministers responsible for Foreign Affairs and then the ratification process will follow.

As to when it is likely to be operationalised, the Partner States are set for the urgency to conclude and have the Protocol in force as soon as the instruments of ratification are deposited with the Secretary-General as required under Article 152 of the Treaty. Then we shall proceed to implement its provisions.

Regarding beneficiaries, the Protocol is for the EAC, its institutions and organs. At such the provisions confer varied immunities and privileges to the different categories of persons in the service of the Community; representatives of Partner States, experts on mission for the Community, property and fund of the Community and official communication facilities in respect of the Community.

Mr Speaker, the internationalisation of the EAC Passport is not part of the Protocol on Immunities and Privileges. Nevertheless, the processes to see us towards the internationalisation of the passport are ongoing. First of all, this will be the new generation type of passport; the proposals have already been agreed upon towards the design, dimensions and security features. Once the Partner States start issuing the new generation passports, information will be communicated to the international community of states informing them on the coming into use of the said passport.



We shall also provide the detailed information on security features, specimen copies and the phase out programme for the old generation passports. As soon as the preliminary stages of the issuance of the new generation passports have been finalised, the Council will inform this august House on the steps taken for its internationalisation. I thank you, Mr Speaker.

**Ms Byamukama:** Mr Speaker, I believe that the Permanent Tripartite Commission for cooperation between the East African Partner States of then lapsed in as far as 1999 and this is not the first time I have asked this question but receiving the same answer. It actually looks like a copy and paste work. I don't see any specifics on time frame and this is an answer which I can even get may be yesterday and tomorrow.

Is there some kind of indicative time frame that can be given because this is putting us in a very uncomfortable situation whereby those who used to enjoy these benefits under the Permanent Tripartite Commission, were less encumbered with having to continuously having to renew their permits, for example, and also when it comes to vehicles, I think they didn't have as many challenges as there are now. So, I would like to hear something maybe more concrete because it is over 10 years.

**Mr. Munya:** Mr Speaker, I appreciate the concerns raised by hon. Dora over the delay in this extremely important matter. But the fact that the Protocol is already concluded and is only waiting for signing by ministers of Foreign Affairs and then ratification, I think it is a big step forward.

There were many issues with it and a lot of reluctance on this Protocol. So that is why the process of negotiation was very protracted. But it is now concluded and we await ratification. The ratification process is, of course, something that is in control of the Partner States. So, it is difficult for me to give a timeline on that.

**Mr Ogalo:** Thank you, Mr Speaker. The Summit approved the Protocol on 30<sup>th</sup> November, 2011. Now it is five months since then and the problem is that the ministers responsible for Foreign Affairs have not yet signed. Where do these ministers stay, are they in East Africa? Because surely five months, what is the problem that it takes five months and you have not yet even traced these ministers?

**Mr. Munya:** Mr Speaker, again I understand the concerns raised by Members especially if you don't sit in those sectoral councils, you don't understand why certain things take so long to happen. But the Sectoral council that deals with Foreign Affairs and the Sectoral Council on Legal and Judicial have been problematic sectoral councils because the ministers in those councils are very busy with other matters and sometimes we delay meetings because one of the members from the partner States is not available and thus move it to another date. So, these occasions and due delay makes the Council take time without meeting but I can assure you, Mr Speaker and the House that we are due for a meeting in June for the Sectoral Council on Foreign Affairs to come and sign the Protocol.

### ADJOURNMENT

**The Speaker:** Hon. Members, we have come to the end of business today. I would like to adjourn the House until tomorrow, 9.30 and we are going to be in the other chamber tomorrow.

*(The House rose at ??? p.m.)*