



## EAST AFRICAN COMMUNITY

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### EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

#### 65<sup>TH</sup> SITTING - SECOND ASSEMBLY: FIRST MEETING – THIRD SESSION

Thursday, 6 August 2009

*The East African Legislative Assembly met at 2.30 p.m. in the Karimjee Hall, in Dar-es-Salaam.*

#### PRAYER

*(The Speaker, Mr Abdirahin Haithar Abdi, in the Chair)*

*(The Assembly was called to order.)*

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#### PAPERS LAID

**Dr Aman Kabourou (Tanzania):** Mr Speaker, I beg to lay on the Table the Report of the 118<sup>th</sup> IPU Conference, held in Cape Town, in South Africa in April 2008. The EALA delegation to the conference comprised of you, Mr Speaker, hon. Augustine Lotodo, hon. Nusura Tiperu and hon. Aman Kabourou. The copies of this report were distributed while we were in Kigali, but we did not have an opportunity to present the report in the Assembly. *(Applause)*

**Ms Regine Katabarumwe (Burundi):** Mr Speaker, before I lay the report on the Table, I would like to thank you for giving me the Floor. I would also like to thank our

colleagues, the Members of Parliament from Tanzania for their, and the Dar-es-salaam City Council for lending us this hall in which we are holding this meeting. *(Applause)*

I beg to lay on the Table, the Report of the 119<sup>th</sup> IPU Conference, held in Geneva in October 2008. The EALA delegation comprised of you, Mr Speaker, hon. Gervase Akhaabi, hon. Dan Kidega and I, Regine Katabarumwe. We are grateful for the opportunity that you gave us. Thank you. *(Applause)*

**The Speaker:** I thought you would clap hard because this is the maiden speech of hon. Regine Katabarumwe - *(Laughter and Applause)*.

**Ms Valerie Nyirahabineza (Rwanda):** Mr Speaker, hon. Members, I would like to lay on the Table, the Report of the 120<sup>th</sup> Conference of the IPU that was held in Addis Ababa in Ethiopia between the 5<sup>th</sup> and 10<sup>th</sup> of April 2009. (*Applause*)

Since it is my first time to take the Floor during this meeting, I would like to take this opportunity to thank you, Mr Speaker, for having convened this meeting in Dar-es-salaam. Let me also congratulate the Government and the people of Tanzania, with a special vote of thanks to the EALA Members, Tanzania Chapter, for the warm welcome and hospitality accorded to us. (*Applause*)

This report was produced after the 120<sup>th</sup> Assembly of the IPU, which was held in Addis Ababa. The East African Legislative Assembly did participate in this important activity, and the delegation was comprised of you, Mr Speaker, hon. Dr John Didas Masaburi, hon. Manasseh Nzobonimpa and I, hon. Valerie Nyirahabineza. As the IPU statute requires, this report was prepared and has been distributed to all members. I therefore I beg to lay on the Table, the Report on the 120<sup>th</sup> Inter-Parliamentary Union Conference. Thank you very much. (*Applause*)

## BILLS

### Committee Stage

The East African Civil Aviation Safety and Security Oversight Agency Bill, 2008

Clause 7

**The Chairman:** Honourable Members, we stopped at Clause 7 yesterday, and we gave the Council of Ministers opportunity to try to prepare a harmonised position. I know the

honourable minister would like to say something.

**The Minister for East African Cooperation, Tanzania, and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala):** Mr Chairman, upon further reflection on Clause 7 of the Bill, and taking into account the views of the members, I would like to propose the following amendments:

In Clause 7(2) (a), to delete the words “*and the technical committees*”

In Clause 7(2) (d), delete the words “*on recommendation of the technical committee*”. In Clause 7(2) (e), delete the words “*on recommendation of the technical committee*”. In Clause 9(3), delete the whole sub-clause. I beg to submit.

**The Chairman:** Honourable Members, we were on Clause 7 and not Clause 9, so I think we will only consider what the Minister has said about Clause 7(2), (a), (d), (e). In sub clause (a), he says we delete the words “*and the technical committees*”; in the second one, we delete the words “*on the recommendation of the technical committee*”; and in Clause 7(2)(d), we delete the words “*on the recommendation of the technical committee*”.

**Ms Zziwa:** Thank you very much, Mr Chairman. I want to thank the Chairperson of the Council of Ministers for the amendments. Yesterday towards the close of the sitting, I moved amendments to Clause 7(2) (d) and (e). I am happy that the Council of Ministers has captured the spirit, but he has not given the justification.

For purposes of the *Hansard*, I beg to say that the essence of sub-clause (d)

was actually to create the functions of the Board, and adding a technical committee within it does not give any added relevance. Therefore, I want to say that I support the Minister's amendment with regard to (d) and (e). I thank you, sir.

**The Chairman:** Hon. Masaburi, I think it is you who should say "yes" or "no".

**Dr Masaburi:** Thank you, Chairman; I accept the amendments.

**The Chairman:** So, do you withdraw your amendment?

**Dr Masaburi:** The amendment has captured what I wanted.

**The Chairman:** There is another proposed amendment from hon. Safina on the same Clause 7. Maybe we can proceed.

**Ms Kwekwe:** Mr Chairman. I propose to amend Clause 7 by adding a new sub-clause (3) under the functions of the Board to read as follows "*Propose to Council mechanisms for the comprehensive operationalisation of Article 92 of the Treaty within 12 months after the operationalisation of this Act*".

The justification is that this is to address the necessity of making Article 92 of the Treaty operational to address the issue of air transport, infrastructure and safety. It also addresses the urgency of making Article 92 of the Treaty operational because it indeed will actualise safe movement of persons and goods, which are a prerequisite for the EAC integration.

**The Chairman:** I would like to apologise to hon. Masha. I think you should have come before because you

have something on (g) and (h), but I thought you had agreed with what the Minister had said. I will let you have a word after this. Maybe we will work on this one and then come back to you.

**The Counsel to the Community (Mr Wilbert Kaahwa):** Mr Chairman, I have considered the proposed amendment moved by hon. Kwekwe. I invite this august House to consider the role, functioning and purpose of the Agency, which this Bill is establishing as a corporate body. The role of the Agency, which is served by the Board, is limited to those aspects in Article 92 of the Treaty, which touch on civil aviation safety and security. The sole purpose of this is to enable the Board, as a corporate body, to oversee civil aviation safety and security. Article 92 as it is, and the intention of the Treaty, covers a lot more areas beyond civil aviation safety and security. To that extent, the proposed amendment will not fit within the board of an agency established for that purpose.

I know it is the intention of this august House to have necessary legislation on other aspects under Article 92, like civil aviation and air transport. Logically, that should be the basis of specific legislation, which the Council of Ministers will initiate. Otherwise, within its functions, the Board will not be able to have this extra function. The board will not be able to have this extra function outside the ambit, the role and the function of the Agency. Therefore, the Council of Ministers, with due respect, is not agreeable to the proposed amendment. I thank you, Mr Chairman.

**Ms Kwekwe:** Mr Chairman, with due respect to the submission by the Counsel to the Community, I would like to give the reason as to why I proposed this amendment. If you look

at the composition of this agency, one of the organs is the Board, and the composition of this board comprises “who is who” in the civil aviation industry. I do not think there are any better brains we shall find in relation to the civil aviation industry outside the membership of this board. This is where you have the heads of the civil aviation authorities and aviation experts from each Partner State. Therefore, I thought it would be wise for these brains to help the Council to come up with a comprehensive mechanism to make Article 92 operational, because they will advise the Council on the same. Therefore, I do not see the reason why there is opposition to this proposed amendment, which is noble in nature.

**Ms Byamukama:** Mr Chairman, I support the proposal of hon. Safina Kwekwe because even the Committee was very clear about the issue of this Bill not capturing the contents of Article 92. As was pointed out earlier, the memorandum refers to Article 92, so I do not appreciate why the honourable Counsel to the Community would not support this amendment. It is important that we put a timeframe to the operationalisation of Article 92 because if we rely on goodwill, it will be difficult for us to ensure that it is done. However, more importantly, like hon. Kwekwe has said, you will have all the heads of civil aviation authorities of the Partner States meeting together, and I think this would be the right forum come up with an appropriate law to make Article 92 operational.

I also have a problem with us now starting to be selective. It is not like a food menu where you can decide to take the salad and leave out the main dish. I think we need to appreciate that the foundation for this Bill is Article

92. Therefore, refusal or reluctance to refer to a comprehensive enactment of a law in respect of this particular article makes us question the whole rationale for having this particular Bill in place.

I would like to implore the hon. Counsel to the Community to support this proposal because it is in good faith; it will help us to monitor and comprehensively capture the elements and the important aspects that are in the Treaty. Therefore, I ask him to kindly support it. Thank you.

**Ms Zziwa:** Mr Chairman, I am also inclined to support hon. Safina Kwekwe. I am a member of the Committee, and we did express this concern in our discussions with the technical people and with the Secretary-General.

I took the trouble to find out why they were hesitant to consider all the areas that we felt should be addressed comprehensively, and which were of concern to us. I was informed that this law is only dealing with issues of safety and oversight, and that the other areas, namely, economic and other technical aspects, are going to remain with the Partner States while supervision and monitoring will remain with the Secretariat.

Mr Chairman, I want to implore the Counsel to the Community -if he feels that he does not want to take on hon. Safina Kwekwe’s amendment- to help us to see to it that in the memorandum he itemises the elements of Article 92, which is the concern of this Bill. He may argue that the memorandum does not constitute part of the law, but we are basing our debate of this Bill on it.

I support hon. Safina Kwekwe’s amendment because we are dealing

with Article 92, as stipulated in the object of this Bill, which reads, *“The object of this Bill is to establish the East African Civil Aviation Safety Oversight Agency in accordance with Article 92 of the Treaty”*. This means the whole of Article 92. For that reason, I support hon. Safina Kwekwe’s amendment.

**Mr Kaahwa:** Mr Chairman, I would like to appreciate the interventions, which have come in response to the proposed amendment. We stand to be guided by both the Treaty and the Report of the Committee on Communications, Trade and Investments.

In the first instance, the Report of the Committee, in its paragraph 4(2) (i), clearly guides this august House on the objective of the Bill. With your permission, Mr Chairman, I will read it: *“The objective of the Bill is to establish the EAC Civil Aviation Safety and Security Oversight Agency and to streamline developments in civil aviation matters within the EAC region to comply with international safety and security oversight of the civil aviation industry.”* Those are the cornerstones of this Bill.

I must concede that the wording of the memorandum is a bit wide in scope, and it could give the impression that the Bill can cover all those aspects provided for the cooperation of the partner states in Article 92 of the Treaty. I invite this august House now to look at the substantive parts of the Bill itself. You will appreciate that the substantive parts of the Bill are in line with what the Committee observed that this Bill is limited to establishing that agency and streamlining compliance with international safety and security oversight of the civil aviation industry. That is the purpose of the Bill.

Going to the Bill itself, Clause 4 specifies the objectives of the Agency, and Clause 5 the functions. When you read those clauses, the focus is civil aviation safety and security. That is where the Agency is confined. The Board, which is established by Article 6, cannot be seen to go beyond the ambit, role and functions of the Agency as provided for by Article 92 of the Treaty.

Mr Chairman, this is not to say that the Council is oblivious of the concern of the august House for the need for legislation to provide a regulatory framework for other aspects of Article 92. At an appropriate time, the Council of Ministers should initiate the process to cater for those other areas. It will be inappropriate to cater for those other areas in a Bill whose purpose is limited to specific matters drawn out of Article 92.

With that explanation, I am going back to the guidance by the Committee, and standing by the undertaking by Council to initiate relevant legislation at an appropriate time. I ask this august House to consider this explanation and to appreciate that the amendment of Clause 7 in the proposed terms may not be appropriate. I thank you, Mr Chairman.

**The Chairman:** I can see hon. Ogalo standing up but I see that hon. Safina wants to concede.

**Mr Wandera Ogalo (Uganda):** Mr Chairman, yesterday I sought clarification from hon. Kategaya as to who was taking care of Article 92 prior to the Agency that we are trying to set up. He very clearly stated that there was nothing on the ground, and that occasionally, there is an ad hoc arrangement to deal with it.

We are aware that this Treaty has been in existence for ten years and that all the organs to implement the Treaty have been formed. If what hon. Kategaya said yesterday that there is no sectoral council or sectoral committee looking into this area is true – *(Interruption)* -

**Mr Kaahwa:** Mr Chairman, may I inform my honourable friend on the Floor that under Chapter 15 of the Treaty, and in respect to matters that encompass co-operation in civil aviation and civil air transport, the Council of Ministers, has established a sectoral council on transport and communication. It is this Council, which guides on the rationalisation and harmonisation of Partner State qualities on matters pertaining to civil aviation and civil air transport. It is through this council that the Council will be able to initiate appropriate Bills to cover those other areas, which this particular Bill does not cover. I thank you, Mr Chairman.

**The Chairman:** Honourable Counsel to the Community, I think you, the other ministers and the Secretary General were sitting here yesterday when hon. Kategaya stood and said there is no sectoral council dealing with these issues. I wonder where that sectoral council has come from since yesterday. You all heard him telling us that there was no sectoral council. Maybe you can tell us, sir.

**Mr Kaahwa:** Mr Chairman, I would sincerely like to inform this august House that within the institutional framework of the Community, there is a sectoral council on transport, communications and meteorology. If yesterday because of my having gone out of the Chamber I did not hear this, I am sorry.

**The Chairman:** But Counsel to the Community, you were right here; you did not go out.

**Mr Kaahwa:** Mr Chairman, I stand guided, but I crave your indulgence in now allowing me to inform this august House that that sectoral council exists. I thank you.

**The Chairman:** I think it exists when it helps the Council, but it does not exist when it does not. *(Laughter)*

**Mr Ogalo:** Mr Chairman, I think there should be some honesty in this House; there should be guidance in this House so that this House can reach decisions based on correct information. The Counsel to the Community was seating where he is when hon. Kategaya, in answer to the question I had raised, said that there was no council. He went on to say that now it is this agency, which will do the co-ordination of the policies for civil aviation. Now, they are shifting goal posts; yesterday there was no sectoral council, but today there is a sectoral council, and we expect this House to debate from a point of knowledge?

Mr Chairman, I am very disappointed because we come here in good faith. We want to make a good law, and we take the information given by the Executive in good faith. Yesterday when hon. Kategaya said that there was no such council, I took that information in good faith and sat down believing him. Now all of a sudden, because there is a different argument on the Floor, the sectoral council has appeared. This is unfair to the House – *(Interjection)*. I will take the information.

**The Chairman:** Hon. Member, we are not debating the article; we are at

Committee Stage now. Maybe you can give him the information later on.

**Mr Ogalo:** Coming to the amendment, I suppose now I have to use both arguments. If what hon. Kategaya said is true, then it means that we do not have any body or any institution to operationalise Article 92. If that is the case, where is the harm in having this Board recommend to the Council of Ministers...why do you want to cut out the Council of Ministers from considering just recommendations? Where is the harm? The amendment is not seeking to impose on the Council of Ministers anything. The amendment only seeks to make recommendations to the Council. If the Council feels in its wisdom that what the Board has said has some logic, the Council will take it. Therefore, I do not see why there is any opposition to this harmless amendment, which only seeks to make the Council of Ministers take some decisions on the recommendations of the Board.

I would plead with this House to accept this. Nevertheless, if we make recommendations to the Council, Council may base their decisions on the recommendations but we are not forcing the Council to take those decisions. All we are doing here is providing for the Council to receive technical information from the Board, comprising very educated people in civil aviation. The Council will then make a decision. Where is the harm in that? I cannot see any harm in that.

Secondly, the Counsel to the Community seems to be having a misconception that once the Council has brought a Bill here, then this House must pass it the mode it is. The reason why a Bill is brought to any assembly is for the assembly to review it and make amendments. We are not

tied down to what the Council says. At the end of the day if we pass a law, there is also a check in case the Executive does not feel happy with it. The laws we pass must be assented to by the Summit. So, if we do anything wrong, there is that check by the Summit.

I see a danger in the way the Counsel to the Community thinks that once a Bill is brought it must be passed the way it has been brought. Why bring it then? The purpose of bringing it is for us to review it and make amendments where we feel it necessary. Legislative power lies in this House, and we share it with the Summit. So, Mr Chairman, hon. Members, I plead with you; this is our power, this is the way of pushing the integration process forward. Therefore, we should exercise it by supporting the Kwekwe amendment. I thank you.

**The Chairman:** Hon. Minister, what do you think about the Kwekwe amendment?

**Dr Kamala:** Mr Chairman, I beg your indulgence. We were consulting, because we have just seen this new proposal here in this chamber. As I said yesterday, the Council of Ministers appreciates and recognises the importance of coming up with other Bills to operationalise Article 92, but this Bill is essentially for safety and security issues. In addition, the Board will always function, and not only to advise the Council on matters related to the operationalisation of Article 92. The process is continuous; it is not once. You may operationalise the Article today, and as you implementing the provisions, you will realise issues that you must also work on. So, the Board will always advise. You cannot do it within 12 months,

finally. The Board will always advise; it is a continuous process.

That being the case, we would like to make a slight adjustment to the proposal by hon. Safina Kwekwe, to make it one of the functions, to read, "*Recommend to Council mechanisms for the comprehensive operationalisation of Article 92*" and stop there because the issue is continuous; from time to time the Board will always advise the Council. I would not like them to come up one day and say, "No, we were given 12 months, we did advise you and that is concluded." We want the process to be continuous because the Board should always advise and give remedies.

Mr Chairman, if the House accepts what we are proposing that the Board should recommend to Council mechanisms for the comprehensive operationalisation of Article 92 of the Treaty, we have no problem with that.

**The Chairman:** Hon. Members, you have heard what the Minister has just said – (*Interruption*). It is not for you to tell me where to look. Can you just say what you want to say, please!

**Ms Kwekwe:** Mr Chairman, I have not recommended to the Chair to do anything at all. What I am saying is that it is better to have one-half than to lose both halves. However, I hope that within reasonable time there shall be a comprehensive operationalisation of this Article 92 of the Treaty. I therefore concur with what the hon. Minister has just said. (*Applause*)

**Dr Masha:** Mr Chairman, I am proposing amendments in Clause 7(g), (h) and (i). I am mentioning them at the same time because the essence of the change is similar.

In Clause 7(g), the Board approves annual programmes for submission to the Council for consideration. In 7(h), the Board approves the annual accounts of the Agency to the Council for consideration. In 7(i), the Board approves the annual reports of the activities of the Agency for submission to the Council for consideration. As I said in my intervention, this is very awkward. I am not sure who has authority over whom; the one who approves or the one who does the consideration later. After approval, for what is the consideration then? So, I propose in both cases to change the phraseology.

If you will allow me, Mr Chairman, I will read the three of them because the change is intended to be the same. Sub clause (g) should read, "*Review the annual programme of activities and the budget estimates of the Agency for submission to the Council.*" I am leaving it as "*for submission to the Council*" without determining who does the approval. This has to do with budget estimates, and I am not sure about the exact nature of funding for this agency. There might be a role for the Assembly so that the matter would not end with the Council. That is why I am leaving out that finality in terms of who eventually approves. According to the Treaty and our Rules of procedure, the body, which finally approves the budget, is the Assembly.

In (h), please note that this is purely an editorial change - it should read, "*Review the annual accounts of the Agency for submission to the Council*". Sub-clause (i), "*Review the annual report for the activities of the Agency for submission to the Council*". It is just a change to remove the finality of approval to rest with Board. I thank you.



**Dr Kamala:** Mr Chairman, the Council of Ministers does recognise hon. Masha, the son of a learned brother and the father of one of the learned lawyers, so we are taking into account the justification stated. The Council of Ministers accepts the proposals. *(Applause)*

*(Ms Byamukama stood in her place)*

**The Chairman:** Honourable Member, do you have an amendment to clause 7?

**Ms Byamukama:** Yes, I have an amendment to Clause 7, and it is number four in the proposed amendments that I circulated yesterday. With your permission, I would like to propose an amendment to Clause 7. Now that we have amended it several times, I will not give it a particular number, but it reads, *“One of the functions of the Board shall be to bring to the attention of the Council, any violations by any Partner States on matters relevant to this Act”*.

My amendment is justified by the fact that in the Bill in its original state, the only cross reference to the Treaty is in relation to Article 138. Article 138 provides for privileges and immunities, and as I said before, it seems that the drafters of the Bill were looking at this menu and only picking out those elements that suited them. Indeed, the one on immunities and privileges seems to have suited them. In addition, and following on what hon. Masha said, when you look at the immunity clause -and I hope he has an amendment to it- it is far reaching. Therefore, because this board is made up of the highest officers of the civil aviation authorities, I propose this amendment. Although the Board may make annual reports to the Assembly and to the Council, there may be need,

at one time or another, to make some recommendations or reports to the Council so that the Council can crack its whip.

Article 143 of the Treaty is on sanctions, and it says, *“A Partner State which defaults in meeting its financial and other obligations under this Treaty shall be subject to such action as the Summit may, on the recommendation of the Council, determine.”*

This amendment is further justified by the fact that Clause 14 provides that the Council may give directions. Further more, this clause would also be creating another level of linkage, which would cure the problem of linkages that the Committee has pointed out.

I would like to propose that this House further augments this Bill by not only taking on the clauses that I proposed earlier, which anchor it to the Treaty, but by going further to find mechanisms of dealing with those instances. We need to bring to order any Partner State, which may be in violation of any matter relevant to the Act. I hope that the honourable Counsel to the Community will support this proposal.

**Mr Chairman:** Just to correct you, it is not (k) but (l).

**Ms Byamukama:** Mr Chairman, as I confessed from the beginning, there has been several amendments to this clause, so it becomes (l).

*(Interruption by a phone ringing in the chamber)*

**The Chairman:** Hon. Member, may you please switch off your phone.

**Mr Kaahwa:** Mr Speaker, for good measure, may I inform my honourable learned sister that her proposed amendment, which arises out of the contributions of the member is not for the Counsel to the Community to accept but for the Council of Ministers?

**The Chairman:** But I thought you were representing the Council here, and you have been denying or accepting the amendments? Hon. Minister, I guess I will not allow the Counsel to the Community to come up now; it is only the minister from now on.

**Dr Kamala:** Mr Chairman, we have listened very carefully to the amendment proposed by the learned sister, the honourable member of this Assembly, and we have noted the aims and justifications advanced before us. Having listened carefully and having studied the amendments, the Council of Ministers has no objection to the proposed amendment. *(Applause)*

**The Chairman:** Hon. Members, I do not think there are any further amendments to this clause. Therefore, I now put the question.

*(Question put and agreed to.)*

*Clause 7, as amended, agreed to.*

Clause 8

**Ms Kimura:** The Committee proposes to amend Clause 8(3) by deleting the current wording and replacing it with the following: *“The quorum at any meeting of the Board shall be a simple majority of the members of the Board, including at least three heads of civil aviation or their designated representatives, if every partner state is represented.”*

The committee recognises that when the Bill was prepared, there were only three partner states. Therefore, we need to take cognisance of the fact that we are now five members and this amendment will take care of that. Thank you, Chairman.

**Dr Kamala:** Mr Chairman, as I said yesterday when I was winding up the debate on this matter, the Council of Ministers agrees with the proposal 100 percent. *(Laughter)*

**Dr Masha:** Mr Chairman, in principle I have no objection to the amendment from the Committee, but I had an amendment, which I will probably have to withdraw, however, we should be aware of what we are committing ourselves to in this particular amendment.

If you say, *“...provided every partner state is represented”*, what we are doing is giving veto power to any one single member state. If they do not want anything, they will not show up, and the Board cannot function. Therefore, we are still going back to a setup, which is very close to the earlier decision by consensus, although even more serious, because in this case the Board cannot function unless all of them are there. If one is not there and there is a decision to make - and this is a technical body - they will not be able to work!

I am not proposing a formal amendment, Mr Chairman, but I would rather it stops somewhere at *“representatives”* rather than provide this veto power to a single partner state to hamstring such a technical body as this one. I am not proposing a formal - *(Interruption)* -

**The Chairman:** But, honourable Member, you can still propose your amendment; we have not yet voted on the Clause.

**Dr Masha:** I then propose that we delete "*provided every partner state is represented*". If that is accepted, I will withdraw the amendment, which I was proposing.

**Ms Kimura:** Mr Chairman, my committee concedes to that.

**Dr Kamala:** Mr Chairman, the principle of consensus is entrenched in the Treaty, so I would like to advise this Assembly not to pass a law that is liable to challenge in court for not being in harmony with the Treaty. However, we are not insisting that all heads of the civil aviation authorities should be present, and that is why I said "*or their designated representatives*". The purpose of the provision was to ensure representation of all the Partner States. Let us not forget that despite the fact that we are enacting this law, every partner state has its national mandate on issues of civil aviation.

I would like to advise that we continue with the amendment proposed by the Committee because nobody can challenge it in a court of law. If we do otherwise, anybody anywhere can challenge this law by saying that it is against the Treaty, and then we will be in serious problems unnecessarily. If we go with the amendment of the Committee, it will be good.

I can assure hon. Masha that the meetings will always go on smoothly and please do not forget that the Board is not the final organ in the process of decision-making.

**The Chairman:** Hon. Members, I think the Council can also guide us here. As you are aware, the Council went to the East African Court of Justice to challenge the same Treaty and got a decision on this issue of consensus and geometry, and so on. Hon. Minister, maybe you can guide us on that one as well so that we can go on from there. Can we go by his words or is he talking on your behalf?

**Mr Kaahwa:** Mr Chairman, I am speaking as Counsel to the Community who filed the reference seeking an advisory opinion on the application of the principle of variable geometry and consensus decision-making within the Community, in the East African Court of Justice.

I have the honour to inform this august House that regarding the decision-making by consensus, the East African Court of Justice observed that consensus in decision-making does not necessarily import unanimity. The Court further went on to observe that in this regard, the Treaty might have to define the proper parameters and terms of consensus decision-making.

The Court was more or less guiding the Council of Ministers and all the organs that there is need to amend the Treaty in this regard. Up to this time and as we speak, the proposal for the principle of consensus in decision-making is still in the comprehensive list of amendments, which the Council of Ministers will consider at its 18<sup>th</sup> meeting, later this month. In short, I am saying the principle of consensus in decision-making is still a requirement of the Treaty although its application requires amendment of the Treaty to define its proper parameters.

**Mr Akhaabi:** Mr Chairman, the Treaty for the establishment of the East African Community is the fundamental law of the Community. It is true, indeed, that the Treaty talks about consensus, and the principle of consensus is clearly defined and required in only two instances. First, in Article 12(3) it says, "*The decisions of the Summit shall be by consensus*". That is the decisions of the Summit; the Board of the Agency is not the Summit. *(Applause)*

Secondly, in Article 15(4) regarding the meetings of the Council, it says, "*subject to a protocol on decision-making, the decisions of the Council shall be by consensus*". Again, these are decisions of the Council; the Board of the Agency is not the Council. *(Applause)*

Mr Chairman, when we go to the meetings of the sectoral committees described in Article 22, it says, "*Subject to any directions that may be given by the Council, the sectoral committee shall meet as often as necessary for the proper discharge of their functions and shall determine their own procedure*". The sectoral committees established under the Treaty are therefore given mandate to determine their own procedure.

When you come to the decisions of this Assembly, they are never by consensus. The majority determines the decisions of this Assembly and of the Court. I think this frequent hiding behind the consensus principle to try to stifle the operations of the institutions of the Community is not in keeping with the spirit of the Treaty, nor with the principles governing business operations. Let us look at this Board as a business organ. Thank you, Mr Chairman. *(Applause)*

**Mr Kaahwa:** Mr Chairman, I entirely agree with what my honourable learned friend has read regarding the provisions of the Treaty on decision-making by consensus. However, I would like to inform you that we read the Treaty together with its annexes, which are integral parts. For purposes of this Bill, and for purposes of establishing the Agency and its Board, we the protocol establishing the Civil Aviation Safety and Security Oversight Agency guides us. For the avoidance of doubt, Article 8 of the protocol I have cited provides for the meetings of the Board. Sub clause (4) provides very succinctly in plain English that decisions of the Board shall be made by consensus. I thank you, Mr Chairman.

**The Chairman:** Hon. Members, it becomes a problem to this House when the Council brings a protocol and then tells us that we cannot do anything to the law because of a protocol. I know hon. Kategaya is looking at me and saying we cannot amend the Treaty through the back door, but I think that is it. Otherwise, you just wonder why the Council should bring the Bill to the House when you have a protocol. You do not need the law! Anyway, hon. Masha, you have heard.

**Dr Masha:** Mr Chairman, the problems that we face about legislation vis-à-vis protocols in the process of the work of the Assembly that you have heard from me is an old song. I suffer the same frustration, as I have expressed several times before, as to why they would not want to bring us everything in the Bill since it is based on a protocol that can be changed. I do not believe that is correct. I believe that we have authority.

Under our Rules of Procedure and the relevant articles in the Treaty, we have

authority to determine the laws as we see them. If there is any variance, or if there is any quarrel about what our rights are, then there is a procedure to settle that, and that is to go to court. In my judgment, therefore, we can proceed the way most members seem to want, and if the Council should find some difficulty with our decisions, I think there is an avenue through the court to decide whether we have the right or not to change it. *(Applause)*

**The Chairman:** Hon. Members, I think the clause we are looking at is Clause 8(3), and the proposal is *that "the quorum of the meetings of the Board shall be by a simple majority of the members of the Board, including at least three heads of civil aviation authorities or designated representatives, provided that every partner state is represented."*

If you look at it the way it is, I think hon. Masha is correct, because you are going to have a simple majority of at least two thirds, and then again, you are saying, "...*provided each partner state is represented*". I should not say we can remove it, but I am just guiding you to see what you can do. However, I think right now it has shifted to consensus and quorum not being part of decision-making. This is just quorum to hold a meeting; you do not necessarily have to be making any decision in that meeting. You may just be having a meeting. Maybe we can remove that and then we can come to hon. Masha's clause of consensus on decision-making after that.

**Ms Kimura:** Mr Chairman, my problem is that the two clauses look contradictory. To me, you hold a meeting in order to transact business that will result in some decision-making. If I look at the protocol, the issue of quorum is there. Sub-clause

(3) of Clause 8 is saying that quorum shall be by a simple majority, while sub-clause (4) talks about decisions of the Board being by consensus. To me those two seem contradictory. One, you have a simple majority; you sit down and transact business and then because you do not have a full house, you cannot make a decision because of I do not know what – *(Interruption)* –

**The Chairman:** Maybe I can guide you, if you could sit please. I am glad hon. Kategaya is saying that it is consensus of those present. I think that is one rule that we have taken up in the Speakers' Bureau. This same issue of consensus did come up, and the whole debate was about whether it was consensus of the two-thirds present or of those present. Finally, we agreed that technically if you say "consensus", it is the consensus of those present. I am happy that honourable members also helped us in that, but that is what we did in the Speakers Bureau. If we go by what the Minister says, someone will surely go to the East African Court of Justice, which is good, because I think it would be good for the Community for someone to go to the Court and get interpretation.

**Ms Kimura:** Given that interpretation, I do not think we have a problem if we delete the words.

**The Chairman:** Hon. Minister, do you have a problem with deleting the words "*provided that each partner state is present*"? This is because it is contradictory; it does not make sense. I think the Council is, again - I will not say this because there are some people in the gallery, but if the Council could please answer that.

I would like to say that if the Council is not decided on this, we could vote on it. I think that is what we are here to

do. I do not think there is any document, which says that the quorum at any meeting of the Board shall be by a simple majority of the members of the Board, including at least three heads of civil aviation authorities or designated representatives, provided that every partner state is present to make it two thirds.

**Dr Kamala:** Mr Chairman, given that the Board is not the final decision-making body - at the end of the day whatever they decide should come before us - we do agree with the proposal (*Applause*).

**Dr Masha:** Mr Chairman, following that agreement, I withdraw my proposed amendment.

*(Question put and agreed to.)  
Clause 8, as amended, agreed to.*

Clause 9

**Ms Kimura:** Mr Chairman, the Committee would like to substitute sub clause 9(3) with the following new sub-clause, "*without prejudice to the generality of the sub clause, the technical committee shall prepare comprehensive programmes and monitor their implementation.*"

The justification is that someone needs to make preparations before one can begin talking about implementation. That is why we are proposing a change in the structure of that sub clause.

**The Chairman:** Honourable Chairperson, the owner of the Bill is proposing to delete sub clause (3), so you cannot amend it.

**Mr Kaahwa:** Mr Chairman, considering the deliberations of this august House on the role of technical committees, which are not standing

committees but in the context of Clause 9 (b) are ad hoc committees established with functions and composition as and when the board deems necessary, sub clause (3) will no longer serve any purpose. This is because it imports the idea of standing committees. Therefore, the mover is withdrawing that clause from the Bill. I thank you, Mr Chairman.

**Ms Kimura:** Mr Chairman, it sounds reasonable to delete the clause.

**The Chairman:** I think there is a change of names that continues.

**Ms Zziwa:** Hon. Chairman, I had earlier on, as a subsequent amendment to (7) (d) and (e), proposed an amendment to say that the technical committee shall offer technical support on issues of civil aviation safety and security regulations, materials and procedures. Considering that the mover of the Bill had looked at these two areas of the importance of the technical committee giving technical support to safety and security, I thought it would be imperative to give the technical committee this specific function.

In addition, maybe in 7(2) we can move an amendment, so that we do not separate the composition and the function, to say "*the composition and other functions*". We would insert the word "other" to make this one of the functions but then give an opportunity for other functions. Mr Chairman, I beg to submit.

**The Chairman:** Hon. Zziwa, I think if you look at Clause 9 (1), it says, "*the Board may establish technical committees as may be necessary for specific areas of the functions of the Agency.*" Sub clause (2) says, "*The composition and functions of the technical committee shall be specified*

by the Board.” I am wondering why you are specifying these functions for them if they are already doing them. You know, I thought the committees could be any kind of committee and not necessarily on specific issues.

**Ms Zziwa:** Mr Chairman, I do not have strong reasons, but drawing from the very long arguments we had yesterday and the importance of the attachment of technical committees to safety, I thought it would be very important to specify this function in Clause 9. I think that is where hon. Dr Masaburi was coming from.

**The Chairman:** I think we deleted all those technical committees from all those sub clauses. Anything that says “technical committee” was removed.

**Ms Zziwa:** I agree, but just note that we deleted the technical committees from all those sub clauses to remove them from the functions of the Board. Therefore, I think this is where they would fit best. That is why I was moving to give this important role of giving to the technical committees.

**Mr Kaahwa:** Mr Chairman, the mover of the Bill and this august House appreciate the need for technical guidance in different areas for purposes of enabling the Agency discharge its functions. To that extent, the Board may establish technical committees as and when necessary to specific areas and then specify the functions of those committees. Now, the matter that my honourable friend is referring to is one of those areas in respect of which the Board may, from time to time, establish relevant technical committees and give them appropriate terms of reference. The essence here is to avoid establishing standing technical committees, as was

agreed by this august House yesterday after lengthy debate. I thank you, sir.

**The Chairman:** Hon. Member, what do you say?

**Ms Zziwa:** I concede.

**Mr Chairman:** I now put the question on the amendment.

*(Question put and agreed to.)*  
*Clause 9, as amended, agreed to.*

Clause 10

**Ms Kimura:** Mr Chairman, the Committee proposes that we replace sub clause 10 (1) with the following new sub-clause: “*There shall be a secretariat of the Agency, which shall be under the authority of the Executive Director.*” The amendment was necessary to specify under whose direction the Agency will be operating.

**Dr Kamala:** Mr Chairman, the Council of Ministers accepts the amendment. *(Applause)*

*(Question put and agreed to.)*  
*Clause 10, as amended, agreed to.*

Clause 11

**Ms Kimura:** Mr Chairman, under Clause 11(2) (b), the Committee proposes to delete the word “agency” in the last line and to insert the word “board”.

Also, under sub Clause (2) (c), delete the word “agency” and insert the word “board”. This is for clarity because the Agency cannot report to itself.

After sub clause (4), insert the following new sub clause (5): “*The Executive Director shall be responsible to the Board*”. This is just

to give clarity to the reporting hierarchy.

**Dr Kamala:** Mr Chairman, the Council of Ministers thinks the same way. *(Applause)*

**The Chairman:** I wish they always did that - *(Laughter)*.

**Dr Masha:** Mr Chairman, in my intervention I referred to the problem of appointing somebody for five years, with no provision for renewal of their contract, in a job that deals with very technical matters and technical people. Considering the time required for a person to acquire the necessary experience needed to manage this agency, I think it would be unfortunate for us to say that we cannot renew their contract. This is because, for anybody in his or her prime looking for a career, unless he or she is very good, that person would not seek for this kind of a job, especially if it is on a competitive basis as is provided here. That person will not seek this kind of job knowing they have only five years and then they have to look for another job elsewhere.

I am proposing, Mr Chairman, that we delete the word “*not*” in sub clause (4) to allow them to stay for five years, but be eligible for re-appointment. Since the Council appoints them, after five years the Council has an opportunity to review and see whether they are good, whether they have been doing a good job, or to stop their work. Even if they renew for another term, they still have an opportunity after five years to do the same. If there is any shortcoming in the performance of the executive director, there is an opportunity to correct that in another five years rather than insist on only five years. Here we may meet the political demands by getting everybody from every country,

but we are not doing justice to the demands of the job that is the Bill intends. Therefore, I recommend, Mr Chairman, that we delete the word “*not*” to allow them to be eligible for re-appointment. I thank you, Mr Chairman.

**The Chairman:** Hon. Members, I think there is an EAC policy for the appointment of professional staff to be renewable at least once. Maybe instead of making it open-ended, you can say at least once so that there is no problem with the five years down here. I think that is the policy for professional staff at the EAC.

**Mr Mwapachu:** Mr Chairman, the policy in the EAC for professional staff is to renew the contracts, and, in fact, we are trying to see whether the appointment of the professional staff should not be on permanent and pensionable basis. This is for purposes of giving motivation to the professional staff to remain. It is something that we are going to be looking into; it is ready for debate within the EAC. However, there is a category of staff, which, though professional, is above the professional category in as far as our grading is concerned, and it comprises the secretary general and the deputy secretaries general. It is a fixed contract of five years for the secretary general, and three years renewable once for the deputy secretary general.

When we were establishing the Customs Union, the Council created the position of Director-General for the Directorate of Customs and Trade. There was very strong debate on whether we should also subject this position to a non-renewable contract period, since it is a technical position of a professional nature. The Council decided, within the ethos of rotation, to



give a chance to all member states to be able to take that position, but on a competitive basis. Therefore, we did not give a renewable clause to that contract of five years. The Director General of the Directorate of Customs and Trade has a fixed contract of five years, and similarly the Executive Director of the Lake Victoria Basin Commission. This is now the established principle for all the top positions at the executive level at the EAC. The reason for this is to enable geographical allocation for the Partner States to secure these positions. Therefore, we should only have a five-year single contract at that level, and after that, we re-advertise the position. Thank you.

**The Chairman:** Hon. Masha, I think you have heard, but there is always the Treaty; maybe we can use the Treaty provision and say “renewable at least once”?

**Dr Masha:** Mr Chairman, I understand what the Secretary-General has said. I still believe that the Council, which made those decisions, should review that position since it is not yet in law. Merely practising it may not be binding on us. I will also accept your suggestion, Mr Chairman, to renew it at least once, ending decisions that may come, particularly for this kind of technical jobs.

**Mr Sebalu:** Mr Chairman, I do appreciate the concerns raised by the Secretary General, but I still think that hon. Masha has a good point, which we need to look at as a legislature. If we are creating institutions that are supposed to serve the best interest of the region, then we should go beyond the benefit of an individual country where a candidate comes from and look at the bigger picture of the best

person that can serve the best interest of the region. *(Applause)*

If we have an officer who has occupied this office and his good works have really moved it to a level where East Africans are deriving good benefits from his service, I think it is not in our interest as a region not to renew the services of such an officer. Maybe we could look at a possibility, in this case, where we could scale down the years, say maybe to four years renewable once. If someone comes up with exceptional qualities and skills, then that person can be eligible for this office. Besides, it also helps us to attract the best and most competitive human resource that we may have anywhere. If someone is in the USA and there is this good job, he can be drawn to it, given that he has a fair opportunity to serve.

I think that as a parliament, we really need to give this issue some serious thought. It is something we need to look at because even here in the EALA we have benefited from renewable terms. Imagine a situation where all EALA members of the first Assembly had left and all of us that came in this Second Assembly were new, what would the institutional memory of this House be? We have benefited from the fact that it is renewable at least once by having with us members with whom we have been able to build capacity, and we have been able to pass good legislation. If all of us had been new, the situation would have been difficult. Imagine someone new coming and becoming a Speaker!

We need to revisit some of these considerations because I think that the benefit for the region is much more important than just benefiting an individual country. We should look at the bigger picture. If someone is

delivering results, then we should give them the chance to continue to the good job for the region. *(Applause)*

**Ms Hajabakiga:** Mr Chairman, I tend to agree with hon. Masha's proposed amendment, especially because we call ourselves East African but at the end of the day, we go back and talk about rotating as partner states. I think we really need to look for a candidate who is able, who is capable, and who can best serve East Africa instead of looking at where this person is coming from. My only problem is how we will be able to use these two documents, the law that we are making and the protocol, together.

Article 10(2)(a) of the Protocol says, "...shall hold office for a period of five years and shall not be eligible for re-appointment". How will we use these two pieces of legislation, one of which, the protocol, is an integral part of the Treaty and the other, an Act of the Assembly, a subsidiary under the same Treaty? However, in principle, I do support the motion, but my problem is how we will use both the protocol and the Act, in case we pass this Bill. Supposing somebody wants to challenge it, what will happen?

**The Chairman:** Maybe they can amend the protocol after we pass the law.

**Mr Kaahwa:** Mr Chairman, let me try to indicate parity between the protocol and the legislation you make. The protocol is an integral part of the Treaty; it is the agreement between the five partner states. Therefore, you are guided when you are enacting legislation in respect of a policy basis.

That being the position, with all due respect, I am of the view that if there is a principle of the Treaty stated in a

protocol, it will not be proper for you to amend that protocol because you will be amending the Treaty through legislation. In other words, if the protocol is providing for five years, which is the period common to all executive posts, let us maintain that, even at the level of enactment.

However, this is not to lose sight of the arguments advanced by different members regarding the need to have sufficient tenure for the executive staff of this sort. We have been saying that the Council of Ministers is considering amending the Treaty, which also relates to amendment of the integral parts of the Treaty. The Council of Ministers, therefore, considers these views. For purposes of this Bill, however, I advise the august House not to vary the period from the period stated, on which the law you are enacting is based. I thank you, Mr Chairperson.

**Mr Ogalo:** I thank the Counsel to the Community for the interpretation he has given to the House, but I want to seek some clarification from you, sir, on what Article 49 (1) means when it says, "*the Assembly shall be the legislative organ of the Community*". How do you understand that? What does that mean? Thank you.

**Mr Kaahwa:** Mr Chairman, Article 49(1) of the Treaty provides that the Assembly shall be the legislative organ of the Community. Going by the meaning of legislation, it means this august House will pass legislation of the Community. However, the passing of legislation of the Community is based on some principles and legal instruments, which are at the root of the integration process, and those are the Treaty and its integral parts. I thank you, Mr Chairman.

**Ms Byamukama:** Mr Speaker, I have a problem with the way we have been proceeding. From the beginning, we felt more comfortable citing the Chicago Convention rather than the Treaty. Now we seem even more comfortable citing the protocol rather than the Treaty. I know that the protocol is part of the Treaty, but if the principles in the Treaty conflict with the protocol to the extent that in the Treaty, similar appointments are renewable and in this particular case, it is not renewable, I find a problem with that.

In addition, I would also like to say that I have a problem with being a part of a lawmaking body, which is going to make a bad law just because its hands are tied. I do not think that our hands are tied, and, therefore, I would vote for the amendment, because the protocol says so many things, which we have already amended. It is so elaborate that it even ceases to be a protocol. For example, when you look at the functions of the Agency in the protocol, it is very elaborate. Therefore, in my understanding, this protocol went far beyond just providing for the principles, and in a way tried to usurp the powers of this House, which it shares with the Summit. I have a problem with that. If the Summit has a problem with and does not want, for example, to assent to this Bill, then we will have to go back and amend the Treaty. Otherwise, it is a problem, and we need to have a solution to it.

**The Chairman:** Honourable Members, I think they should have reprinted this into law and brought it to us instead of tricking us.

**Mr Karan:** Mr Chairman, I rise to seek your guidance. In other jurisdictions once a Bill more than three times, either the ministers withdraw it for reconsideration, or the minister concerned resigns. What is the practise within your jurisdiction?

**The Chairman:** Hon. Karan, I think these are just small amendments; they are not substantial. So, unless the minister wants to resign – *(Interruption)* -

**Dr Masha:** Mr Chairman, I am not coming in to support the resignation of the minister, only because I do not know which minister should resign – *(Laughter)*. However, we have had this debate about protocols and legislation and the nature of a protocol to the extent that it usurps the legislative process. If I remember correctly -I do not remember whether it was our session in Kigali or in Kampala or may be elsewhere- our good and friendly Counsel assured us that in future, protocols would have a format which will not be so detailed to usurp the authority of the Assembly. This was when we were talking about the pending protocol on tourism. Now here we have a protocol, which is so detailed that there is no need for legislation.

I am going to suggest, Mr Chairman, that we vote on this amendment, and test whether protocols as detailed as this one have a legality as part of the Treaty; whether changing the terms of service of a staff member must be in the Treaty, and then let us go to the Court and determine this. However, for our purposes here - since the protocol said to be part of the Treaty, and I am probably proposing to violate the Treaty in that sense- let us proceed with that amendment. If there is any conflict of laws, I am not a lawyer but

lawyers know that when there is a conflict of laws there is a mechanism to resolve this. So, if there is a conflict of the processes of the Assembly and the processes of protocol formulation, let us go to where these are resolved. However, for the purposes of this legislation, I consider that not every detail that appears in that protocol should tie us down.

**Mr Ndarubagiye:** Mr Chairman, mine is very simple. I think there is someone who touched the question of rotating the post among the partner states every five years. Actually, I think the problem will not arise because I presume that in five years time, we will be a federation. Thank you.

**Dr Ndahiro:** Mr Chairman, I think the principle of rotation is important in our integration process. In addition, I do not believe that there is monopoly of knowledge anywhere. Therefore, unless we decide here to get rid of the principle of rotation, then we cannot debate on the other options. However, if it is there as a principle, then why not abide by it?

If five years to members is a short time for a person to have delivered results, even 20 years and a day, some people will argue, is a short time, and they will want to stay for 40 to 50 years. So, I think we should maintain the principle of rotation because every corner of the Community wants to have a chance to also show their ability. *(Applause)* Thank you, Mr Chairman.

**The Chairman:** Honourable Members, I would like to guide you on one thing. Clause 3(3) says, “*The office of the Executive Director should be held on a competitive basis under the principle of rotation among the partner states*”. The principle is there

but the issue is the period. I think members here have said that it should be after ten years if renewed. Therefore, I think we will go by that principle. Hon. Minister, what do you say?

**Dr Kamala:** Mr Chairman, much as we would like to concur with the proposal, given the fact that protocols are an integral part of the Treaty, the Council of Ministers cannot advise this House differently from what is within the protocol and the Treaty. However, it is up to you to proceed the way you think fit. For the Council of Ministers, we stand to advise you appropriately as to what we think is right but that does not mean that we can stop you from proceeding on what you think is right. *(Applause)*

**The Chairman:** Thank very much, hon. Minister. I think he has guided us on that issue. The Minister has said that, and the honourable member has not conceded on the wording. Clause 11(4) says, “*The Executive Director shall serve for a period of five years and shall not be eligible for re-appointment*”. The proposal is to change this to say, “*The Executive Director shall serve for a period of five years renewable once*”. I think we will have to vote on that amendment and then we move from there.

*(Question on amendment put and agreed to.)*

*Clause 11, as amended, agreed to.*

*Clause 12, agreed to.*

*Clause 13, agreed to.*

*Clause 14, agreed to.*

*Clause 15, agreed to.*

## Clause 16

**Ms Kimura:** Mr Chairman, the Committee would like to delete the expression “*through their respective civil aviation authorities*” in Clause 16(1). As explained in our report, it is important for the Partner States to fund the Agency, and not to limit it to the generosity of another institution, which the Partner State treasuries also fund.

**Dr Masha:** Mr Chairman, I support the proposal. I would only like to request that we should also correct the same wording in the memorandum that the Committee is proposing to delete in this clause.

**Dr Kamala:** Mr Chairman, we do support the amendment. *(Applause)*

*(Question put and agreed to.)*  
*Clause 16, as amended, agreed to.*  
*Clause 17, agreed to.*

## Clause 18

**Ms Kimura:** Mr Chairman, the Committee proposes that in Clause 18(1), we insert, after the word “*prepares*” the words “*and submit to the Council*”. This is to give the Council opportunity to receive the accounts and then lay them before the Assembly.

**Dr Kamala:** Mr Chairman, the Council of Ministers supports the amendment. *(Applause)*

**Ms Kimura:** The Committee proposes to delete Clause 18 (2) and to substitute it with the following: “*The Council shall cause the annual report to be read before the East African Legislative Assembly within three months after receiving the report*”.

We feel that six months is too long after the financial year, to read the report, as it would mean that issues therein would come too late, if they were to inform the following year’s budget. Therefore, we wish to see the report tabled before the year is over; before 12 months from the time that they were prepared.

**Dr Kamala:** Mr Chairman, the Council of Ministers has no single reason to disagree. *(Applause)*

*(Question put and agreed to.)*  
*Clause 18, as amended, agreed to.*

## Clause 19

**Dr Masha:** Mr Chairman, I am proposing to delete Clause 19 completely and to renumber the subsequent paragraphs accordingly. There are so many reasons why I can imagine a person, under the pretence of good faith, can do so many wrong things. Why do we want to protect people who might do funny things? There are so many things that I could cite. For example, a person working for this agency may go to the bank, comes out with agency money and meets somebody who is destitute, and takes out that money to give that destitute in good faith and he reports to the boss. Should we protect that person? If there is any violation of the law, it should be determined in the courts. The question of good faith should not be protected in this Assembly for the kind of actions, which these people are likely to do.

I did cite the case of a driver who runs over a person while rushing to a meeting. He did not see the person and so he runs over – it may be a kid or the mother or worse still a pregnant mother and then he says, “I did not see the person. I was rushing to go to a

meeting and I really did not intend to run over this person". We do not want to protect that kind of thing in this Act. That should be determined in the courts of law.

What I am saying may sound very frivolous or somewhat ridiculous, but nonetheless, this kind of general protection we are providing is what actually would protect those kinds of actions. That is why I will go for deleting the entire clause. Let these people be protected by the privileges and immunities provided for in a different Act but not in here. Thank you, Mr Chairman.

**Mr Kaahwa:** Mr Chairman, I think Dr Masha's proposal to delete the entire Clause 19 is a rather revolutionary amendment. As is common with all laws, including laws enacted by this august House, the need to protect people from liability while discharging their functions in good faith makes Clause 19 necessary. In the absence of a provision like this one, people will be reluctant to perform their functions fully; they will always hesitate and therefore become rather useless in the discharge of the powers and the functions of the Agency. The provision protects people - servants of the Agency - in matters pertaining to the discharge of the functions of the Agency and not any other matters outside its ambit, which would create genuine fear.

I would like to inform this august House, with regard to the very good examples Dr Masha is giving, that we are not orphans in this House, because there is a penal law regarding criminal negligence and recklessness. I therefore urge this august House, as it has done before in enacting legislation, to see the importance of this clause in enabling the Agency's servants to

discharge their functions in good faith in accordance with their terms of reference. I thank you, Sir.

**Mr Mwinyi:** Mr Chairman, I am seeking clarification from the Counsel to the Community and the Council of Ministers as to whether the Agency will be under the auspices of the East African Community. If so, would a comprehensive headquarters agreement not take care of such liabilities?

**Mr Kaahwa:** Mr Chairman, as an institution of the Community, the Agency and its other arms will be the subject of the East African Community provisions on immunities and privileges. However, the question, which is being addressed here, which is on public liability for wrongs committed, does not feature within the context of immunities and privileges. This is a question of liability for wrongs, which may be encountered by an officer discharging his or her obligations. Immunities refer to civil processes and matters like immigration requirements, and privileges refer to the provisions.

**Mr Akhaabi:** Mr Chairman, we did take quite a bit of time to determine the functions of the Board of this Agency in Clause 7. One of those functions is that of setting and maintaining standards for safety and security in civil aviation in our region.

Would the hon. Counsel to the Community, and indeed the Council of Ministers, clarify to me how a body and the persons working in this body charged with maintaining, safeguarding and securing the standards of civil aviation would be absolved from responsibility when they fall below those standards? I do not understand it because in my view,

Clause 19 simply means that provided these persons charged with responsibility for maintaining standards fall short of what is expected of them in good faith, they can be protected! Can they tell me, so that I may understand, how this is possible for a body charged with the responsibility of maintaining standards?

**Mr Kaahwa:** Mr Chairman, Clause 7 of this Bill provides for the Board to formulate policies regarding civil aviation safety and security standards. Now, Clause 19 takes into account the roles of the Board but does not presuppose that the Board, through its servants and agents, will discharge its obligations to the latter without the possibility of committing any wrong. That is why the clause says, "*in good faith*". It takes into account that while in the discharge of their obligations they cannot be entirely right and void of wrong because that does not happen. So if they commit any offence in good faith, then they should be absolved.

This provision is not new from the Council of Ministers. For comparative purposes, if you looked at legislation establishing, for example, the parastatal bodies or similar agencies in the partner states, this common provision is always used. It serves a purpose, which is to enable the people to discharge their obligations without fearing that they may encounter any possible human error. I thank you, Mr Chairman.

**The Chairman:** Honourable Member, I also want to say that we have used the same wording in legislation we have passed before. This has been the standard in most of what we have passed. It is actually specific that, "*...in good faith in the exercise or performance of any power and*

*authority or duty conferred or imposed on that officer or person under this Act*". Therefore, technically, taking money and giving it to a destitute or knocking someone while driving is not in the ambit of this Act. It is a standard provision. I am surprised that the lawyer was saying a lot in this.

**Ms Byamukama:** Mr Chairman, I have a problem with this particular drafting. If I was an employee of this Agency and I saw this clause, it would be a blanket clause to enable me, if I wanted to, to act recklessly. This kind of drafting is a little bit rare. If you begin by saying "*no civil action*", then go on and say, "*...any other person appointed or authorised to perform any function under this Act*", I think the scope is too wide. Moreover, the provision does not only cover the staff but goes further to bring in "*any other person appointed or authorised to perform any function under this Act*". You then go ahead in the same law to incorporate a defence, because good faith is a defence. Who determines good faith? This is a matter of fact and I think only a court of law that can determine it. Therefore, I have a problem with it.

When you look at the Article 62(1) of the Treaty, the provision on our powers and privileges, it says, "*The members of the Assembly shall be immune from legal action for any acts of omission or commission in the discharge of their functions under this Treaty*". It is that specific. When you read further - and this is the question, that hon. Mwinyi asked about cross-references - section (2) of the Article makes a cross-reference to Article 138, which provides for status, privileges and immunities. Therefore, you have two articles in the Treaty that cover the issue of immunity. Even this Article 138(3) also covers immunities. It

actually says, “*Each Partner State undertakes to accord the Community and its officers the privileges and immunities according to similar international organisations in the territory*”.

I would like to propose some middle ground. We should say, “*Staff of the Agency shall be immune from civil action - because you should not be immune from criminal action - for any acts of omission or commission in the discharge of their functions under this Act*”. That could perhaps be the middle position, but otherwise, when you have a wide scope and you bring in “good faith”, it becomes very amorphous. Thank you.

**Mr Ogalo:** Mr Chairman, I take the point, which you have stated, that we have done this before. However, if we have done it before and we find that we have made an error, we should not be shy to part from them.

My problem with Clause 19 is actually the point, which hon. Byamukama has raised on the scope of the provision. We already know that civil action shall lie against any officer of the Agency. That would be fine because he or she is an officer of the Agency. We know him or her, we have employed him and he acting on behalf of the agency. My problem begins when we say, “...or any other person appointed or authorised to perform any function under this Act”. To me this means that an officer of the Agency whom we have already protected can authorise some other person who is not an employee to perform certain acts under this Act. That person would also be protected, notwithstanding the fact that that person is not even an employee. It just says, “...or any other person appointed or authorised to perform any of these functions”. To me, this is too wide. You do not just sit

in the office of the Agency and then you look for somebody outside the Agency and just say, “you go and perform that” and he is also protected by the Act. My problem is the scope; it is too wide. Thank you.

**Ms Hajabakiga:** Mr Chairman, I just want to read Article 73 on immunities. It says, “*Persons employed in the service of the Community shall be immune from civil process with respect to omission or commission of acts performed by them in their official capacity*” and it ends there. We can probably borrow this provision to solve this problem.

**The Chairman:** Instead of looking at the officer, you can also look at Article 61, which says, “*Members of the Assembly shall be immune from legal action for any acts of omission or commission in the discharge of their functions under this Treaty.*” Shall we then say “...under this Act”? It is even wider than the one in the Act. This one says “*civil action*” and the one in the Treaty says “*all action*”. Therefore, I think we should just go with this one instead of widening it more than what we have; unless we want to make it even wider anyway.

**Ms Byamukama:** Chairman, maybe I was not listened to, but that is what I quoted.

**The Chairman:** Are you implying that the Chair is not listening?

**Ms Byamukama:** Ok, I am sorry. My proposal was, “*Staff of the Agency shall be immune from civil action for any acts of omission or commission in the discharge of their functions under this Act*”. I think this would be very explicit because if I have an appointment, it will clearly mean that I am part of the staff. If by virtue of



being a consultant you also consider me as staff, then that is very rare. Therefore, I want to be more explicit. I was actually using the words of Article 61; maybe that would be more succinct as a middle ground.

**Mr Mwapachu:** Mr Chairman, I just wanted to draw the attention of the honourable members to Article 73(2) of the Treaty. I think what we have done under Clause 19 of the Bill is to incorporate, in more succinct terms, what is actually provided under Article 73(2). It reads, *“Experts or consultants rendering services to the Community and delegates of the Partner States while performing services to the Community or while in transit in the Partner States to perform the services of the Community shall be accorded such immunities and privileges in the Partner States as the Council may determine”*. Therefore, the sort of protection against any civil process that Clause 19 encapsulates could make specific reference to such people, but if we have just left it in those broad terms, conditioning it of course to the Act. I think what we are really trying to do here is to get all these experts and consultants whom the Agency will retain or appoint to also have protection against civil processes.

**Dr Masha:** Mr Chairman, I am not a lawyer, so I cannot argue the legalisms of this thing, but the Article that the Secretary-General kindly quoted refers to experts and consultants, and here it is talking about an officer. I would be comfortable, since we are talking about an officer of the Agency, to use the language that either hon. Hajabakiga or hon. Byamukama, quoted. I have to name all the names. To keep it the way it is, I think, is a convolution of the intentions of the Treaty in the articles on privileges.

I am also aware, having worked with the United Nations for more than 20 years, that in diplomatic etiquette when a diplomat commits a crime at their station of work there is no automatic denial of privileges. The country is required to withdraw diplomatic immunity to that person before they can take that person to court. I think that the invocations of the privileges in the Treaty, which refer also to international practise, are sufficient to protect the staff of this Agency. That is why, in my judgment, we do not need this confusion between consultants, officers and other persons. The invocations in the Treaty are enough to protect them. Therefore, we should delete this paragraph.

Some Members are saying that we have done this before, but in my judgment, it was a bad law, and we should not continue making bad laws.

**Mr Kaahwa:** Mr Chairman, once again, I invite this august House to take into consideration the use of the cardinal terms *“in good faith”* and *“under this Act”*. These two terms guide the absolution here. Allow me, also, to indicate that this kind of provision, which you have under this Bill and which you had under the Inter-University Council Bill is an improvement. Under the East African Legislative Assembly Powers and Privileges Act, 2003, the ambit of protection is even wider than what you have here. What you have here is actually, what you have in Clause 19. Mr Chairman, I am using this as an example for comparative purposes.

**The Chairman:** Do you compare apples and oranges? *(Laughter)*

**Mr Kaahwa:** Mr Chairman, with your guidance, I will not attempt to compare apples and oranges, but I was comparing pieces of legislation enacted by this House. I wanted to say that what you have here in this Bill that you have used successfully and very effectively elsewhere does not only provide for this protection, but also for limitations. The limitations are in the act of being done in good faith and within the context of the Act.

An earlier piece of legislation is even wider - and here I am not referring to the Office of the Rt. hon. Speaker, but I am just reading the law to indicate to you that what you have here is an improvement. Section 32 of the East African Legislative Assembly Powers and Privileges Act, provides that neither the Speaker nor any officer of the Assembly -and I want to concentrate on "any officer of the Assembly"- shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer under this Act, and subsequently in all legislation. I am not talking about the Office of the Speaker but about an officer of the Assembly who is comparative to an officer of the Agency.

**Ms Byamukama:** Mr Chairman, I have a problem because we are now comparing the terms and conditions of the staff of an agency with the Office of the Rt. hon. Speaker. This is comparing apples and oranges! Let us concentrate on the essence of what we want to do. Is the honourable Counsel to the Community in order to compare the office of the Speaker, who is head of an organ in the East African Community, with the staff of an agency? Is it in order, sir? *(Applause)*

**The Chairman:** I am actually surprised that he is going that way.

**Mr Kaahwa:** Mr Chairman, with your guidance, I will not continue surprising you by going that way. I tried as much as possible to indicate that the same section I was citing also refers to any officer apart from the Rt. hon. Speaker, but I will not use that example. Let me - *(Interjections)* - Mr Chairman, why don't you protect me? The other members are very well protected. They are delaying - *(Interruption)* -

**The Chairman:** It is because of the way you went, but hon. Members, please allow the Chairperson to control the House.

**Mr Kaahwa:** Mr Chairman, I went there but I have since returned. I am now with you.

**The Chairman:** Continue hon. Counsel to the Community, you are protected.

**Mr Kaahwa:** Mr Chairman, in short, the point I am making is that this provision is a necessity, and it is not wide because its enforcement curtails it. As far as enforcement is concerned, it is being limited to acts performed within the context of the Bill as it is now, and in good faith. I thank you, Mr Chairman.

**Dr Kabourou:** Mr Chairman, I just want to get clarification from the Counsel to the Community based on what he just said. He informed this august House that the proposition for the clause regarding immunities, which we have been asked to pass together with this legislation, is an improvement over what has been done with other legislations.

Maybe he can just enlighten us more because I know that under common law - and even civil law- it is not proper to pass legislation discriminately. Is the hon. Counsel to the Community aware that he is informing us that there are certain laws, which have been passed, that favour certain groups and now we are being asked to pass a law that does not do justice to others?

**Mr Kaahwa:** Mr Chairman, when I referred to previous legislation, which this august House has enacted, you correctly advised me to desist from that course and I did. I eventually did not use it in my arguments.

**The Chairman:** Honourable Members, I have another proposal here for this same amendment from hon. Byamukama, which says, "*Staff of the Agency shall be immune from civil action for any acts of omission or commission in the discharge of their functions under this Act*". This is the same as Article 61 of the Treaty. I think this is even wider, and that is what I was saying earlier. If you look at other legislations, if you look at what is going on in the Treaty, I do not see anything wrong with this. Anyway, it is hon. Masha to say what he wants to say because I can see what hon. Dora has brought here is even wider than what is in the Act right now.

**Dr Masha:** Mr Chairman, since that conforms to what is in the Treaty, I will accept hon. Byamukama's suggestion, but I am uncomfortable with the language in the current Bill. It is bad law, and if we have had a bad law before, we should not continue.

**Mr Ogalo:** Mr Chairman, I think that the proposal on the floor is too wide because it gives total immunity. At least the provision in the Bill allows

for some investigation, gives a defence, and allows proceedings to continue. So, between the two, I would rather go with this one, which is more restricted than the wording of the Treaty.

**The Chairman:** Honourable Members, I now put the question on hon. Masha's amendment.

*(Question put and agreed to.)*

*Clause 19, as amended, agreed to.*

*Clause 20, agreed to.*

*Clause 21, agreed to.*

The Title

**Ms Kimura:** Mr Chairman, the Committee proposes to amend the Short Title to read, "*The East African Community Civil Aviation Safety and Security Oversight Agency Bill, 2008*". The addition here is inserting the word "*Community*" to reflect that we are talking about the East African Community. We also propose to substitute the word "*Africa*" with "*African*".

**Dr Kamala:** Mr Chairman, we do agree with the proposal. *(Applause)*

*(Question put and agreed to)*

*The Title, as amended, agreed to.*

**The Chairman:** Maybe I should repeat that vote. I saw hon. Hafsa Mossi saying "aye" and yet she should not be voting. *(Laughter)*

**MOTION FOR THE HOUSE TO  
RESUME**

**The Minister For East African Co-Operation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala)(Ex-Officio):** Mr Chairman, I beg to move that the Assembly do now resume and the Committee of the Whole House do report thereto.

*(Question put and agreed to.)*

*(The House resumed, the Speaker presiding.)*

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

**The Minister For East African Co-Operation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala)(Ex-Officio):** Mr Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled, “*The East Africa Civil Aviation Safety and Security Oversight Agency Bill, 2008*” from Clause 7 until the final clause, and passed it with amendments.

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

**The Minister for East African Co-Operation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala) (Ex-Officio):** Mr Speaker, I beg to move that the report of the Committee of the Whole House be adopted.

*(Question put and agreed to.)*

*(Report adopted.)*

**BILLS,  
Third Reading**

The East Africa Civil Aviation Safety and Security Oversight Agency Bill, 2008

**The Minister For East African Co-Operation, Tanzania and Chairperson, EAC Council of Ministers (Dr Diodorus Kamala)(Ex-Officio):** Mr Speaker, I beg to move that a Bill for an Act of the Community entitled “*the East African Community Civil Aviation Safety and Security Oversight Agency Act, 2008*”, an Act for the Community to establish the East African Community Civil Aviation Safety and Security Oversight Agency and to provide for other related matters”, be read the Third Time and do pass.

*(Mr Mulengani rose in his place)*

**The Speaker:** Hon. Mulengani, it is the Council’s Bill. Members of the Council are the ones who will second it, not you. *(Laughter)*

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

*(Question put and agreed to.)*

The Bill read a Third Time.

**QUESTIONS FOR ORAL ANSWER**

**Question Reference: EALA /PQ/OA/009/2009**

**Dr Aman Kabourou (Tanzania):** Asked the Chairperson, Council of Ministers:

*“Considering that the recurrence of hunger as a result of food shortages within some of the EAC*

*Partner States such as Kenya and Tanzania is both a tragedy as well as an embarrassment:*

- a) *How many hunger related deaths have been recorded in the region this year?*
- b) *How has the EAC helped in putting to an end this unfortunate recurrence of hunger in the region?*
- c) *Have the meteorological services been of any help in this fight? If so, how?"*

**The Minister for East African Cooperation, Tanzania, and Chairperson of the EAC Council of Ministers (Dr Diodorus Kamala):** Mr Speaker, in the recent past, there has been food shortage in various parts of the EAC region. This has been mostly due to frequent and prolonged droughts, inappropriate land use practices, high food prices in international markets, and trade policies put in place by some countries, such as export bans, which have contributed to higher prices in certain cases. However, there is no evidence of support for cases of hunger related deaths in the region this year.

In response to the food shortages, affected Partner States have put in place appropriate measures to alleviate the situation. In Kenya, duty free maize has been imported, mainly from South Africa. Currently, maize imports stand at approximately 744,148 metric tonnes.

To address the issue of recurrence of hunger in the region, the EAC Secretariat has adopted a strategy of developing a detailed action plan to address issues of food security in the region. This is in line with the directive from the Ordinary Summit of the EAC Heads of State, and the previous directive from the Council of

Ministers. The regional plan is a work in progress, and it is expected to be finalised in the first quarter of the next financial year (FY 2009/10). The regional plan covers the following key priority areas:

- a) Provision of an enabling policy environment
  - i. Liberalise cross-border trade in agricultural produce and products between partner states.
  - ii. Harmonize agricultural and related policies and regulations of the EAC partner states.
- b) Increase agricultural production and productivity
  - i. Promote investment in the agricultural sector.
  - ii. Promote sustainable agriculture and rural development.
  - iii. Facilitate provision of inputs and extension services.
  - iv. Improve research and technology development.
  - v. Develop irrigation and water management framework.
- c) Improve access to food
  - i. Enhance trade and markets.
  - ii. Improve infrastructure.
  - iii. Support vulnerable groups' livelihood.
- d) Ensure stability of availability/access
  - i. Establish emergency prevention and preparedness response (including strategic food reserves).
  - ii. Establish an effective early warning system.

- e) Implementation of strategies and monitoring
- f) Resource mobilization and timeframe

It is important to recognise that food security involves climate, not only as a natural hazard, but also as a natural resource. Climate is a renewable resource, but is variable in time and space. For proper and efficient use of the other two natural resources -soil and plant/animal genetic material- for sustainable agriculture, knowledge of the role of climate is an essential precondition. Climate can be regarded as the driving variable for sustainable production of plant, animal and soil resources.

The meteorological services of the Partner States strive to contribute to this activity by providing accurate weather and climate observations, analyse forecasts that the policy makers and the agricultural community are expected to use to increase crop and livestock yields, and plan their planting and harvest times, among other farming activities.

Every February and September before the onset of the long and short rain seasons, the metrological services issue a seasonal forecast, which is updated on a monthly basis throughout the season. Weekly and even daily updates of weather are available on request. The question that begs an answer is whether the information trickles down to the farmers and whether they actually use it.

The meteorological fraternity has tried to bridge the dissemination gaps by using various methods, including deploying meteorological officers to the provinces and organising workshops for various stakeholders

during the time that the forecasts are issued. They also utilise the mass media in this endeavour. However, there are challenges in the meteorological departments, which need to be addressed in order to improve the accuracy of the forecasts, which in turn may inspire more widespread utilisation of meteorological information.

In order to enhance the contribution of the meteorological services in the fight against hunger\_

- a) Partner States need to upgrade and expand the weather observing station networks and improve communication infrastructure for meteorological data and information;
- b) Partner States need to invest purposefully in enhancing the forecasting capabilities in the meteorological services - human, equipment and computers;
- c) More ingenious methods of disseminating meteorological information need to be employed. The use of agricultural extension officers to pass the information to farmers should be encouraged; and
- d) Climate change adaptation strategies in agriculture should be implemented as a matter of priority, for example, the increased use of irrigation and agro-forestry, among others.

**Dr Kabourou:** I thank you, Mr Speaker, for giving me this opportunity to have a supplementary question. I would like to commend the Council of Ministers for this comprehensive answer; I appreciate the effort. I only have a minor hitch; the hon. Minister has just told us that there is not a single hunger-related death, at least this year, in the region and yet I am somehow aware that the maize that was imported from South Africa and was eaten by Kenyans was contaminated, and a few people actually did lose their lives. What do you have to say about the information that the maize that was imported from South Africa into Kenya was contaminated, and that some people actually lost their lives?

**The Speaker:** Can you give us more information on that?

**The Assistant Minister for East African Affairs, Kenya, and Member of the EAC Council of Ministers (Mr Peter Munya) (Ex-Officio):** Hon. Kabourou, that information is not accurate at all, because the maize that was imported from South Africa and which was found to be contaminated was ordered to be shipped back to South Africa. It has been shipped back to South Africa. Not a sack, or even a kilo, was released into the market to be eaten by anybody. Therefore, the source of your information is not reliable.

**Dr Kabourou:** Thank you. I am grateful for the information, and if nothing like that did happen, then we are all happy. Thank you - (*Laughter*).

*(Mr Ogalo stood in his place)*

**The Speaker:** The hon. Member has said he is contented with the answer and that he does not have any problem.

Therefore, I do not know what hon. Ogalo is going to say.

**Mr Ogalo:** Mr Speaker, I have a small supplementary question to ask. Considering that under Article 110 of the Treaty for the Establishment of the East African Community we are supposed to initiate and maintain strategic food reserves in this region, I would like to know whether we have any strategic food reserves. If so, where are they contaminated situated, and if not, what steps are we taking to ensure that we maintain strategic food reserves?

**Dr Kamala:** Mr Speaker, as I said when I was responding to the substantive question, currently at the level of the East African Community, we are preparing an early warning system. Why are we preparing an early warning? We would like the Partner States to share information between them, for example, "look here, there is danger somewhere, or that somewhere they are missing food", so that appropriate action can be taken. However, all Partner States have strategic reserves for cereals.

What we are trying to emphasise here is that having strategic reserves is one thing, but what is important is to produce enough food in East Africa – (*Applause*). You can have strategic food reserves, but if you do not produce anything, you cannot store anything in the strategic reserves. Therefore, the challenge before us is to make sure we transform agriculture. That is why all partner states in East Africa are busy trying to come up with different programmes and initiatives. That is even why the heads of state directed the Secretariat to find out whether we can produce fertilisers on large scale. For example, in Tanzania, we have gas and in Uganda, there is

phosphate. We can join forces and have a very big plant, which can produce fertilisers for the whole region - (*Applause*). Therefore, we are working towards that so that we can have sufficient food, including having strategic reserves.

Finally, I would like to urge that we should not only use strategic reserves in times of scarcity of food, but we should use them to take care of fluctuations in prices of food as well. When prices are unnecessarily high, you can use strategic reserves to inject food into the market to lower the prices of food - (*Applause*). We are working towards other measures to ensure that we have sufficient food in East Africa.

**Mr Bilal:** I thank you, Mr Speaker, for giving me this opportunity to ask a supplementary question. Given the fact that there is increasing debate on the acceptance of genetically modified food to avert hunger, what is the position of East Africa in this debate that genetically modified food might be harmful to human beings?

**Dr Kamala:** Mr Speaker, I stand corrected, but the information we have so far is that there is no partner state in the East African Community, which has entirely accepted genetically modified foods. However, let me add that our researchers are working on finding out whether we can be able to improve our locally prepared seeds so that we can be able to produce more.

The other emphasis now, as I have said, is on the use of fertilisers. Therefore, the challenge is to have good seeds to increase the productivity per acre and to make sure that there are extension officers, so that we can increase food production. So, from the information that I have, I do not think there is any Partner State, which has

accepted the use of genetically modified food.

**Question** **Reference:**  
**EALA/PQ/OA/010/2009**

**Dr Aman Kabourou (Tanzania):**  
Asked the Chairperson of the EAC Council of Ministers:

*“Could the Chairperson of the Council of Ministers give a detailed update to this House on the progress so far made in the building of the Rwegura-Kigoma transmission line?”*

**The Minister for East African Cooperation, Tanzania, and Chairperson of the EAC Council of Ministers (Dr Diodorus Kamala) (Ex-Officio):** Mr Speaker, the Rwegura-Kigoma transmission line is one component in a project comprising the following four components:

- a) The Uganda (Jinja)-Kenya (Lessos) interconnection;
- b) The Uganda (Mbarara)-Rwanda (Birembo) interconnection;
- c) The Rwanda (Kigoma)-Burundi (Rwegura) interconnection; and
- d) The Upgrading of the existing 70 kV line, Ruzizil (DRC)-Bujumbura(Burundi) to 110 kV, and Ruzizil (DRC)-Goma (DRC) to 220 kV, with extensions Bujumbura (Burundi)-Kiliba(DRC) and Kibuye(Rwanda)-Goma (DRC)- Mukungwa(Rwanda)-Kigali(Rwanda).

The objective of this project is to strengthen cooperation and regional integration in the power sector by creating and reinforcing



interconnections among countries of the Nile Equatorial Region. Feasibility studies for this project were completed in November 2007, while the tender documents were completed in October 2008 with funding from the African Development Bank (ADB). The studies were coordinated by the Nile Equatorial Lakes Subsidiary Action Plan (NELSAP) of the Nile Basin Initiative (NBI).

The Rwegura (Burundi)—Kigoma (Rwanda) component comprises approximately 94 km of 132 kV transmission lines that will connect Burundi's electricity network to that of Rwanda and subsequently to the Uganda network through the Mbarara-Kigoma line. Construction of this line will facilitate interconnection of Burundi to the rest of EAC. The cost of the line is estimated to be US \$14,081,114 with the Rwanda portion being US \$9,436,558 and the Burundi portion being US \$4,644,556.

On the coordination mechanism between the EAC, NELSAP, and EGL, given that the EAC, NELSAP and the Economic Community of the Great Lakes Countries (CEPGL) have some common geographical coverage, a coordination mechanism for the power projects that lie in the same geographical area has been established. Regular meetings and exchange of information takes place among the three organisations, and has been taking place since 2007. The three organisations have agreed to work together in promoting projects in the region with the organisation that is best placed to take a lead in doing so. The Rwegura-Kigoma project is being promoted by NELSAP, having coordinated the studies since 2006.

The status currently is that funding to the tune of US \$248 million has been

secured from the African Development Bank, Japan, and the World Bank to cover the following three components, which are estimated to cost US\$ 260 Million:

- a) Uganda (Jinja) - Kenya (Lessos) interconnection;
- b) Uganda (Mbarara)-Rwanda (Birembo) interconnection; and
- c) Upgrading of the existing 70 kV line Ruzizil(DRC)-Bujumbura(Burundi) to 110 kV and Ruzizil(DRC)-Goma(DRC) to 220 kV with extensions Bujumbura(Burundi)-Kiliba(DRC) and Kibuye(Rwanda) - Goma(DRC)-Mukungwa(Rwanda)– Kigali

The breakdown for the funding so far secured is as follows:

- a) African Development Bank – US \$162 million
- b) Japan – US \$61 Million
- c) World Bank – US \$25 Million

The countries concerned will contribute a total of US\$ 12 million towards the project. Construction works for these components is estimated to start in April 2010 and finish by December 2013.

Funding for the Rwegura-Kigoma transmission line component has not yet been secured, but efforts are being made with NELSAP taking the lead. Mr Speaker, I have circulated the report so that everybody can see it.

**Dr Kabourou:** Mr Speaker, I am just glad to hear what is in the works for this region and for that reason, I do not really have any supplementary questions.

**The Speaker:** The Minister made it so long that you could not follow anyway. *(Laughter)*

**Question** **Reference:**  
**EALA/PQ/OA/011/2009**

**Mr Augustine Lotodo (Kenya):** Asked the Chairperson of the Council of Ministers: -

*“The EAC is described as an intergovernmental organisation of five partner states, namely; Kenya, Uganda, Tanzania, Rwanda and Burundi. It is considered that all of them are equal partners in the Community. With this in mind, could the Chairperson of the EAC Council of Ministers:*

- a) *Inform this August Assembly about the steps taken to include the Republic of Burundi and the Republic of Rwanda in the EAC Development Strategy;*
- b) *Give the Assembly a stock of what has so far been done to fully integrate the two countries within the EAC; and*
- c) *Update the Assembly on what the trade flows are within the East African Partner States.”*

**The Minister for East African Co-Operation, Tanzania and Chairperson of the EAC Council of Ministers (Dr Diodorus Kamala)**

**(Ex-Officio):** Mr Speaker, in respect of integrating the two new Partner States into the Community, the Republic of Rwanda and the Republic of Burundi commenced implementation of the Customs Union on 1 July 2009. The Customs Union was simultaneously launched in Kigali and Bujumbura on 6 July 2009, presided over by the Prime Minister of Rwanda and the Second Vice-

President of the Republic of Burundi, respectively.

The two new Partner States have adopted and are implementing the EAC Customs Management Act and Regulations, the EAC Common External Tariff and the EAC Rules of Origin. They are also fully participating in the Customs Union programmes.

Training and sensitisation of officials responsible for implementing the Customs Union was conducted in 2008, and Rwanda participated in the pre-budget consultative meetings of the Ministers of Finance. The Republic of Rwanda has aligned its fiscal year to that of the East African Community and her budget was read on the same day with those of the other Partner States. The Republic of Burundi has undertaken to align her budget starting from July 2010, and has made the necessary adjustments to migrate to the Customs Union, including the amendment of the national laws, establishment of a Burundi Revenue Authority and introduction of VAT. The customs systems in the two countries have been configured with guidance from the Secretariat to enable application of the EAC common external tariff in both countries. The customs operational instruments have been availed to the two Partner States.

The two Partner States are fully participating in the negotiations of the Common Market and Economic Partnership Agreements with the European Union. The national monitoring committees on non-tariff barriers have been launched in the two countries.

Mr Speaker, compilation of data on trade flows for 2008 is currently being undertaken, but I will provide an

update of data up to 2007. In the analysis, Rwanda and Burundi are treated separately because they had not yet commenced implementation of the Customs Union. In 2007, the total intra-EAC trade increased by 22.0 percent, reaching the highest value of US \$1,973.2 million because of increased intra EAC imports compared to the previous year. The rise in intra-EAC total trade could be attributed to considerable increase in exports and imports amongst the three Partner States. The total trade for Uganda and Kenya increased by 27.1 percent and 42 percent respectively.

Overall, Kenya continued to dominate the EAC regional trade, accounting for 51.6 percent of total volume of trade. Kenya also exported more than it imported from the other Partner States thereby recording a remarkable trade surplus. Meanwhile, Uganda and Tanzania accounted for 34.2 percent and 14.2 percent of the total intra-EAC trade respectively. The total intra-EAC trade increased from US \$1,525 million in 2004 to US \$1,936 million in 2007 registering a 29 percent increase. (*Applause*)

The overall revenue performance in Uganda, Tanzania and Kenya registered a growth in 2007. The increase in 2007 compared to 2006 was 32 percent in the three partner states. The total trade taxes performed significantly with an increase of 33 percent in the three Partners States. This is attributed to the growth in trade, with high turnover in spite of the reduction of tax rates under the Customs Union. The Republic of Rwanda and the Republic of Burundi also registered a positive customs revenue growth of 12 percent and 11.9 percent respectively in 2007.

The total intra-EAC imports increased by 13.4 percent to US\$ 824.6 million in 2007 compared to a decrease of 7.5 percent in the previous year. Uganda's share in intra-EAC imports rose to 63.8 percent in 2007 compared to 59.1 percent recorded in 2006. Over the same period, Kenya's intra-EAC imports increased significantly and attained the highest level of 145.1 percent in 2007.

Regarding exports, the total intra-EAC exports rose to US \$1,148.6 billion in 2007 compared to US \$890.1 million registered in the previous year. In general, all EAC Partner States recorded significant increases in intra-EAC exports. Uganda's share in intra-EAC exports increase was 11.4 percent in 2006 and 13.0 percent in 2007. Kenya's share of intra-EAC exports remained at the 2006 level of 72 percent while, Tanzania's share in intra-EAC exports maintained a growth of 16.6 percent in 2006 to 14.7 percent in 2007.

Mr Speaker, low levels of exports continued to characterise Rwanda's external trade compared to imports. The country's EAC total trade stood at US \$237.82 million in 2007, compared to US \$172.02 million in 2006, maintaining a share of about 27 percent of total trade. During the period under review, the country recorded persistent trade deficits with the highest deficit of US\$ 162 million in 2007. Overall, both total imports and exports to EAC increased by 43.4 percent and 16.3 percent respectively.

Burundi's trade with the EAC partner states, on the other hand, increased significantly by 36.8 percent to US \$84.2 million in 2007 from US \$61.6 million registered in 2006. In 2007, both imports and exports increased. The country recorded persistent trade

deficits with the worst deficit of US\$ 78 million occurring in 2007. Overall, the proportion of EAC trade to total trade reduced twice as much from 24.4 percent in 2004 to 12.6 percent in 2007, implying a shift in her trade partners over the years.

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

**Mr Lotodo:** I thank the Chairperson of Council for the effort he has put in to address the state of the East Africa Community new partner states and trade flows within the Community, in his answer. I request the Minister's answer to be circulated to all the members. I am satisfied with the answer, Mr Speaker.

**The Speaker:** Honourable Members, I would like to thank the Minister for those answers. I think it is the first time that we have actually had comprehensive answers. Perhaps it would be good for the Minister to distribute the answers to members before the question is asked on the Floor of the House so that the Members can refer to those answers, which will save us time. (*Applause*)

I think we have come to the end of our business today but before I adjourn the House, I would like to make to a few announcements:

The Minister for East African Community, Tanzania, hon. Diodorus Kamala, has invited us to dinner this evening at his residence in Kijitonyama - (*Applause*) - and there is a lot of *Nyama* there tonight - (*Laughter*). Because of the traffic in Dar-es-Salaam, I would request that we proceed there immediately after our tea here so that we can get there early and maybe finalise early as well.

Secondly, you are aware that His Excellency, President Jakaya Mrisho Kikwete will be addressing the Assembly tomorrow at 2.30 p.m. You are supposed to be seated by 2.00 p.m. I would request that you sit close here so that we allow other people to use the other seats. Hon. Abdul Karim will be a stranger if he sits there tomorrow (*Mr Speaker pointed at where Mr Abdul Karim was seated*). You will also need your badges, because even though people know that you are members of EALA, tomorrow there will be a lot of confusion, and it would be good to have your badges to make it easier for you to access the chambers.

I would also like to announce that the Rt. hon. Samuel Siita, Speaker of the National Assembly of Tanzania, has invited us for dinner tomorrow evening at his residence.

## ADJOURNMENT

**The Speaker:** We have now come to the end of our business for today, so I adjourn the House until 2.30 p.m. tomorrow.

(*The Assembly rose at 6.40 p.m. and adjourned until Friday, 7 August 2009 at 2.30p.m.*)