



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

THIRD ASSEMBLY: SECOND MEETING - SECOND SESSION

Thursday, 24th October 2013

*(The East African Legislative Assembly met at 2.30 p.m. in the Burundi National Assembly,
Bujumbura, Burundi.)*

PRAYER

(The Speaker, Ms Margaret Nantongo Zziwa, in the Chair)

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

The Speaker: Hon. Members, I wish to welcome you to today's sitting. I can appreciate that today we started our football and netball training. I want to thank the hon. Members who made it; I want to make a plea, to call upon all of you, hon. Members that you join the training sessions, which start quite early, 5 o'clock in the morning and by 7.30 to 8, they are finished and we get ready for our committees. So, I would like to call upon you, so that we are ready to defend our flag during the inter-parliamentary games.

(Applause)

Just on a matter of update, hon. Murunya is improving though he is still in hospital but we pray that he recovers. And I know that as we proceed, it will good to check on him again. Also hon. Tiperu yesterday underwent a successful operation. So we want to inform you that you keep her in your prayers so that she gains full health and regains so as to quickly join us.

As a matter of information, I want to let you know that copies of our strategic plan will be ready by the end of this session. So each one of us will be able to get a copy; take heart.

Allow me to recognize in our midst the presence of Ms Marina Narnor who is the Head of Westminster Foundation. *(Applause)* You are most welcome. She is here with Kennedy Akolo who is also the Program Director of Westminster Foundation.

(Applause)

Westminster Foundation is one of our partners and they are the ones who have given us this support to help us with binding of our strategic plan and they are also committed to helping us in printing a popular version. But before the popular version, is a copy which everybody can hold when called upon. So, thank you for that effort and the many other projects and programs which are in line to support the East African Legislative Assembly. Thank you very much.

PAPERS

The Chairperson of the Committee on Accounts (Mr. Straton Ndikuryayo): Thank you, Rt hon. Speaker. I beg to lay on the table the report of the Committee on Accounts on the audited accounts of the East African Community for the year ended 30th June, 2012. I beg to lay.

The Speaker: Thank you, Chairperson.

REPORT OF THE COMMITTEE ON ACCOUNTS ON THE AUDITED ACCOUNTS OF THE EAST AFRICAN COMMUNITY FOR THE YEAR ENDED 30TH JUNE, 2012

MOTION

The Chairperson of the Committee on Accounts (Mr. Straton Ndikuryayo): Thank you, Madam Speaker. I beg to move that the report of the Committee on Accounts on the audited accounts of the East African Community for the year ended 30th June, 2012 be adopted.

The Speaker: Secunder; hon. Susan Nakawuki and hon. Pierre Celestin Rwigyema; proceed, hon. Ndikuryayo.

Mr. Ndikuryayo: Thank you, hon. Speaker. As you see, we have two documents; there is a big report and a summary of the report. So, I would like to read the summary report but the details will be found in the detailed report.

PART I

INTRODUCTION

Rt. Hon. Madame Speaker, in accordance with the provisions of Article 134 (3) of the Treaty for the establishment the East African Community (EAC), the Chairperson of the EAC Council of Ministers on 23rd October, 2013 in Bujumbura, Burundi laid before the Assembly the following reports of the Audit Commission:

- i) The Audited Consolidated Financial Statements of the EAC organs for the year ended 30th June, 2012;
- ii) The Audited Financial Statements of the Lake Victoria Basin Commission (LVBC) for the year that ended 30th June, 2012;
- iii) The Audited Financial Statement for the Lake Victoria Fisheries Organization (LVFO) for the year ended 30th June, 2012;
- iv) The Audited Financial Statements of the Civil Aviation Safety and Security Oversight Agency (CASSOA) for the year that ended 30th June, 2012; and
- v) Audited Financial Statements of the Inter University Council for East Africa (IUCEA) for the year ended 30th June, 2012.

In accordance with *Rule 77, Rule 79 and Annex 5 (A)* of the Rules of Procedure of the Assembly, the Rt. Hon. Speaker referred the reports to the Committee on Accounts for review. The Committee met for this purpose and produced a report.

The report covers the Committee's findings and recommendations on the main issues raised. This report is sub-divided into seven (7) parts.

Part I: Introduction

- Part II: Audit Findings on the Consolidated Financial Statements of the EAC Organs for the Year that Ended 30th June, 2012
- Part III: The Lake Victoria Basin Commission (LVBC)
- Part IV: The Lake Victoria Fisheries Organization (LVFO)
- Part V: The Civil Aviation Safety and Security Oversight Agency (CASSOA)
- Part VI: The Inter-University Council For East Africa (IUCEA)
- Part VII Acknowledgements

PART II

AUDIT FINDINGS ON THE CONSOLIDATED FINANCIAL STATEMENTS OF THE EAC FOR THE YEAR THAT ENDED 30TH JUNE, 2012

FOLLOW UP ON AUDIT FINDINGS OF THE PREVIOUS YEAR

Rt Hon. Speaker, the Accounts of EAC Organs and its Institutions of CASSOA and LVBC presented fairly, in all material respects, the financial position of EAC for the year ended 30th June, 2012; its financial performance and its cash flows for the period in accordance with the International Public Sector Accounting Standards (IPSAS). This was done in accordance with the Treaty for the establishment of the EAC and Regulation 80-85 of the EAC Financial Rules and Regulations (2006). The Accounts of Lake Victoria Fisheries Organization and the Inter University Council of East Africa were qualified and the Audit Commission was not able to make an opinion and issued a disclaimer thereof.

CURRENT YEAR AUDIT FINDINGS

SIGNIFICANT ISSUES (page 6-7)

With regard to Enhancing Supervisory role by the Secretary General over the EAC Institutions

The Audit Commission reported that the EAC Secretary General does not exercise adequate supervision over all EAC institutions in accordance with Article 67 (3) and 67 (3b) of the Treaty.

The Secretary General is not involved in the preparation and implementation of the strategic plans, so are the quarterly, the periodic, or the annual reports prepared by the institutions and sent for his review on institutions progress and no updates of institutions strengths and weaknesses.

There are no performance benchmarks for each institution and as such no sanctions or rewards by the Secretary General for non-performing institutions. (The Audit Commission highlighted some issues in CASSOA, LVFO, LVBC, LVEMPII and EAC. Details on page 6).

The Management responded that although the legal instruments establishing the EAC institutions do not specifically provide that the Secretary General exercise direct supervisory role on the institutions as embedded in the Treaty, the Secretary General held a meeting with the heads of institutions and resolved that the legal instruments would be amended and harmonized to reflect the role of the Secretary General on the institutions

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) Expedite amendment and harmonization of legal instruments establishing the Institutions to comply with the Treaty provisions of Article 67 (3);and
- ii) Direct the EAC Secretary General to elevate the M&E Unit to a Directorate level and develop a strategy for monitoring the performance of the EAC Organs and Institutions.

EFFECTIVENESS OF THE EAC AUDIT AND RISK COMMITTEE (Page 7)

The Audit Commission observed that the EAC Audit and Risk Committee members were nominated by ministries in the Partner States without due regard to their technical qualifications. Consequently, the effectiveness of the Committee is compromised as it may lack technical knowledge to assess the risks.

With the consideration of the management response,

The Committee recommends to the Assembly to urge the EAC Council of Ministers that:

- i) Nomination of members of the Audit and Risk Committee should strictly take into consideration their technical skills and competencies as stipulated in the charter; and
- ii) The nomination of the Audit and Risk Committee always be done in consultation with the Auditors General of the Partner States.

INADEQUATE STAFFING (page 7- 8)

The Audit Commission observed and reported that the EAC does not have adequate staffing in some positions within its institutions including LVBC and CASSOA. The Committee realized the same case in IUCEA and other EAC organs.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) Finalize recruitment exercise to fill gaps across EAC Organs and Institutions; and
- ii) Engage experts to save the Lake Victoria from Water hyacinth and pollution.

ISSUES NOT PROPERLY ADDRESSED BY THE EAC TREATY (page 8-9)

The Audit Commission reported that Article 134 of the Treaty is silent on financial statements. The Treaty envisages the final Audit Report whilst other audits which include value for money (economy, efficiency and effectiveness), forensic interim audit have not been covered by the Treaty.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to widen the scope of audit to include management, value for money, (economy efficiency, and effectiveness) audits.

FUNDING GAPS (page 9)

The Audit Commission noted that the funding mechanism of the EAC institutions is faulty. Some institutions were not getting the budgeted funds as planned. Consequently, some institutions, like LVFO were borrowing staff gratuity to finance their operations. CASSOA also used general reserves to fund its activities during the year 2011/2012. The audit further noted that failure to adhere to funding mechanisms could lead to collapse of some institutions, as they will not be able to discharge their mandate.

COMMITTEE OBSERVATION

The Committee recommends to the Assembly:

- i) to urge the EAC Council of Ministers to urge the EAC Partner States to comply with their funding obligations to Organs & Institutions in timely manner;
- ii) to urge the EAC Council of Ministers to direct EAC Organs & Institutions to stop use of General Reserves unless approved by relevant authority; and
- iii) that the Audit Commission provide information on the use and status of General Reserves and report to the Assembly by November 2013

THE EAC AUDIT COMMISSION (page9- 10)

Despite timely dispatch of the audit programme to the EAC Organs and Institutions, indicating the time, budget and required documents, the EAC Staff did not prepare for the exercise on time, causing delay in the commencement and completion of the audit exercise and thus increase in the overall cost for the exercise.

The Audit Commission recommends the need to establish an Audit Commission Secretariat which will handle and coordinate all activities of the Audit Commission, including proper budgeting, availability of relevant documents on time and all related matters.

The Committee noted serious problems with LVFO and improper management of reserves. The Committee therefore recommends to the Assembly that:

- i) The EAC Council of Ministers urgently establishes the Audit Commission Secretariat at the EAC Headquarters to enable custody of documents; and
- II) A separate and independent budget line to facilitate the coordination of the Audit Commission activities be created in accordance with Article 132 (5) of the Treaty.

INTERNAL CONTROLS AND ACCOUNTING SYSTEMS(page 10-11)

Financial regulations require that proper and accurate records be maintained to ensure that public funds are properly utilized and value for money achieved. During the previous audit however, weaknesses in internal controls and accounting systems were noted.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct the EAC Institutions to prepare and submit accurate and timely financial statements as per the Treaty and the EAC Financial Rules and Regulations;
- ii) direct the EAC Management to negotiate better rates with travel bureaux and airlines given the fact that EAC expenditure on air tickets should attract better rates;
- iii) direct the EAC Management to explore other avenues of lowering travel rates given the large volumes of tickets being procured.

WITH REGARD TO THE INSTITUTION NOT AUDITED BY EAC AUDIT COMMISSION - THE EAST AFRICAN DEVELOPMENT BANK (page 12)

The Committee also noted that there is a lot of need to streamline the legal and structural framework of the EADB in relation to the EAC.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council of Ministers to streamline the legal framework of the Bank in relation to the EAC, and thereafter implement Article 9(3) of the Treaty.

REVIEW OF ICT SYSTEMS AT THE EAC SECRETARIAT (Page 12-15)

The following challenges were raised by Audit Commission:

- i. lack of an active ICT steering committee and an approved ICT policy
- ii. lack of approved ICT strategic plan
- iii. lack of a formally approved standard operating policy, procedures and annual plans
- iv. lack of disaster recovery plan
- v. change control procedures
- vi. management of back-ups

The Committee further observed that there is lack of harmonization in the linkage of the ICT Systems, policies, and procurement of tools.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) create an IT directorate at the EAC to coordinate ICT activities of the EAC Organs and Institutions;
- ii) direct the ICT Units of all organs and institutions to meet regularly to exchange ideas, share experience and establish other systems of interest to all;
- iii) direct the Management to improve connectivity by introducing secure web-based activities, upgrading the Sun System and Info 10 to enable online sharing of information which should be extended to EAC Ministries;
- iv) expedite formulation and approval of ICT Strategic Plan, ICT Standard Operating Policy, Procedures and Annual Plans; Change Control Procedures, Disaster Recovery management of Back-Up systems; and
- vi) centrally procure as to earn economies of scale, and to harmonize the systems to ease connectivity.

NON CURRENT ASSETS (PAGE 15-16)

WITH REGARD TO NON MAINTENANCE OF AN INVESTMENT LEDGER, The Committee recommends to the Assembly to urge the EAC Management establishes an Investment Ledger immediately.

WITH REGARD TO DELAYED CONCLUSION OF NEGOTIATIONS FOR RENTED SPACE (page 15-16)

The Committee noted laxity in the management of the EAC resources. Physical verification by the Board of Survey (BOS) revealed that 244.12 square meters were being over charged and simply asked the Landlord to take action, instead of officially demanding for a refund of the overcharge.

Furthermore, two floors continued to be occupied without a tenancy agreement and vacated space was not formally handed over to AICC.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) come up with a written status on the matter and submit to the Assembly by November 2013; and enhance the EAC expertise during negotiations and drafting of contracts

SHORTCOMINGS IN THE CONSTRUCTION OF THE EAC HEADQUARTERS (PAGE 16-19)

The Audit commission has raised the following anomalies:

- i. POOR ASSESSMENT OF ACCOMMODATION NEEDS AND HENCE BUILDING DESIGN
- ii. UNSATISFACTORY FINISHES IN SOME PARTS OF THE BUILDING
- iii. POOR WORKMANSHIP ON EXTERNAL WORKS
- iv. UNPLANNED ADDITIONAL WORKS AND COST VARIATIONS DURING THE CONSTRUCTION OF THE EAC BUILDING

The Committee noted that there was no attention paid to the objectives of constructing the EAC building, leading to non-accommodation of all the EAC staff, poor finishing in some parts of the building, poor workmanship on external design, all of which indicate that the design of the project was not adequately reviewed.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct the EAC Management to implement the recommendations of the Audit Commission; and
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- ii)M facilitate the Audit Commission with resources and experts to carry out a comprehensive audit including value for money and report to the Assembly by June 2014.

DEBTORS (PAGE 19-20)

WITH REGARD TO LONG OUTSTANDING RECEIVABLES OF VAT- USD680,220

The Committee recommends to the Assembly to urge the EAC Council of Ministers to intervene with relevant government Institutions to ensure that refund of VAT and WHT is timely and prompt.

WITH REGARD TO DELAYS IN BANKING OF CASE FILING FEES, The Committee was satisfied with the justification and noted that the issue should not arise again.

EXPENDITURE (PAGE 20-23)

WITH REGARD TO UNSUPPORTED EXPENDITURE ON EAC-EU EPA NEGOTIATIONS - Kshs. 1,400,000, The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct the Secretary General to ensure that planning of activities is done and executed properly; and

ii) direct the EAC Management to avail the documents to the Audit Commission for verification.

WITH REGARD TO LACK OF REGULATIONS FOR THE APPOINTMENT AND REWARD OF NON-STAFF OF THE COMMUNITY,

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the Management to comply with the EAC Staff Rules and Regulations in negotiations of projects and consider representation of all the EAC Partner States when recruiting project staff.

WITH REGARD TO LACK OF CONTROL OVER EXPENDITURE,

The Committee however recommends to the Assembly to urge the EAC Council of Ministers to direct the EAC Management to ensure that accountabilities are done on time to avoid likely misuse of funds.

EAC SECRETARIAT (PAGE 23-25)

Under Human Resource Management, a review of the human resource management revealed that EAC does not have a HRM Policy that would guide on recruitment process, rewarding, staff rotation, promotions and other procedures intended to motivate staff.

The Committee condemns lack of a Human Resource Policy for the EAC, which its existence is more than 12 years.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council to direct the EAC Management to expedite the conclusion of HR Policy by January 2014.

WITH REGARD TO THE NEED TO USE INTEGRATED MANAGEMENT INFORMATION SYSTEM IN EAC,

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the EAC Management to expedite the procurement and harmonization of the Accounting software and other information systems across all EAC Organs and Institutions.

WITH REGARD TO FAILURE TO FILL VACANT POSITIONS, The Committee observed that even for the already established position is not filled after the officer relinquishes the position.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) Ensure recruitment is done immediately to replace staff who leave the service of the Community;
- ii) Conclude recruitment of vacancies for which interviews were conducted in 2013; and
- iii) Finalize Institutional Review and unfreeze the positions indicated in the Management response.

EAC PARTNERHSIP FUND (page 26)

WITH REGARD TO SHORT TERM APPOINTMENTS, The Committee noted the laxity of the EAC Management to comply with the Staff Rules and Regulations in the recruitment exercise.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the EAC Management to:

- i) comply with the EAC Rules and Regulations especially under project staffing; and
- ii) harmonize the EAC Salaries and report to the Audit Commission for verification.

PART III

THE LAKE VICTORIA BASIN COMMISSION (LVBC)

FOLLOW UP OF PREVIOUS YEARS ISSUES (PAGE 27-28)

WITH REGARD TO SLOW IMPLEMENTATION OF PROJECTS – LVEMP II (page 26). The Committee noted that non implementation of project activities especially in LVEMP II is perennial. Although LVBC reported challenges as caused by World Bank delays, it was observed that planning did not envisage the World Bank procedures yet technical planning demands so.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to:

- i) always plan realistically; and
- ii) implement the project and always report the progress to the Secretary General, after every three months.

WITH REGARD TO WEAKNESSES IN THE MANAGEMENT OF ACCOUNTABLE ADVANCES – LVEMP II (page 27-28), The Committee observed that LVEMP II Management did not comply with Section 78.1(b) and 78.2(a) of the LVBC – LVEMP II Financial Manual.

Although the LVBC Management assured the Committee that measures are in place to avoid the weakness, there is no evidence to that effect.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to recover all unaccounted for imprest from staff and report to the Assembly by November 2013.

WEAKNESSES OBSERVED DURING THE REVIEW OF LVBC ICT SYSTEMS (PAGE 28- 33)

WITH REGARD TO WEAKNESSES IN IT GOVERNANCE, the following anomalies were observed:

- i. Inactive ICT Steering Committee
- ii. Lack of Approved ICT Policy
- iii. Lack of Approved ICT Strategic Plan
- iv. Lack of formal Approved Documents for the following ICT aspects
- v. Low Reporting Level of the ICT Function

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to expedite establishment of ICT systems and report progress to the Assembly by November 2013.

WITH REGARD TO SEGREGATION OF DUTIES IN THE ICT FUNCTION. The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to urgently segregate duties in the ICT function and report to the Audit Commission for verification

WITH REGARD TO INADEQUATE UTILIZATION OF THE INFO SUN SYSTEM. The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to improve on the accounting program reconfiguration so that Accounts can automatically run the reports, and to report the progress to the Assembly by November 2013.

WITH REGARD TO REVIEW OF SERVICE LEVEL AGREEMENT (SLA) – INFO SUN SYSTEM. The Committee recommends to the Assembly to urge the EAC Council of Ministers to caution the LVBC Management on its laxity while managing institution's agreements.

WITH REGARD TO MECHANISM OF OFFSITE BACK UP, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to implement the Audit Commission recommendation and report the progress by November 2013.

WITH REGARD TO LACK OF ADEQUATE POWER BACK-UP, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC

Management to implement the Audit Commission recommendation and report the progress to the Assembly by November 2013.

WITH REGARD TO WEAK MANAGEMENT CONTROL OF CHANGES TO THE INFORMATION SYSTEM, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to comply and implement the Audit Commission recommendation and report the progress to the Assembly by November 2013.

WITH REGARD TO INADEQUATE ONLINE REVIEW OF THE SUN SYSTEM MIS BY THE INTERNAL AUDITOR, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVBC Management to comply and implement the Audit Commission recommendation and report the progress to the Assembly by November 2013

WITH REGARD TO ICT Systems not completed on schedule, The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) revitalize the ICT Steering Committee;
- ii) employ more IT staff with immediate effect;
- iii) harmonize IT systems with other EAC organs and institutions; and
- iv) direct LVBC Management to implement all recommendations by the Audit Commission and report the progress to the Assembly by November 2013.

DEBTORS (page 33)

WITH REGARD TO IMPROPER MANAGEMENT OF ACCOUNTS RECEIVABLE OF PARTNERSHIP FUND, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the LVBC Management to recover and account for all the outstanding imprest from staff and ensure the Partner States make timely accountability.

DEFERRED INCOME (page 34-35)

WITH REGARD TO UN-EXPLAINED DIFFERENCES OF DEFERRED INCOME, The Committee further observed that the Internal Auditor did not have opportunity to look at the Accounts, and there is a general weakness in the inter-departmental linkages.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct the LVBC Management to initiate a systemic inter-departmental linkages;
- ii) recruit and fill the position of a Senior Accountant who was dismissed; and

- iii) implore the Audit and Risk Committee to streamline the accountability systems at LVBC and report to the Assembly by January 2014.

The Committee also recommends the Audit Commission to audit the unexplained difference and report to the Assembly.

EXPENDITURE (PAGE 35-38)

WITH REGARD TO WEAKNESSES IN THE PAYMENTS SYSTEM, The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the LVBC Management to implement the Audit Commission recommendations and submit correct configuration for review in the accounts of the FY ended 30th June 2013.

WITH REGARD TO IRREGULAR HIRE OF PRIVATE EXTERNAL AUDITORS, The Committee observed that some negotiations with development partners do not take into account Article 134 of the Treaty for the Establishment of the EAC. To this end, LVEMP II was audited twice. Ordinarily the External Audit Report should have been submitted to the Audit Commission to save time and resources.

The Committee therefore recommends to the Assembly to urge the EAC Council of Ministers to direct the LVBC Management to put into consideration Article 134 of the EAC Treaty while negotiating projects with development partners.

WITH REGARD TO UN-ACCOUNTED FOR FUNDS, The Committee noted laxity by the LVBC in accounting for funds.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the LVBC Management to:

- i) avail evidence of accountability of the funds for confirmation of implementation to Audit Commission for verification in the subsequent audit; and
- ii) always ensure acknowledgement of receipts of the remittances.

WITH REGARD TO FAILURE TO PREPARE SEPARATE PROJECT FINANCIAL STATEMENTS, The Committee noted that the LVBC Management fails to separate project Financial Statements because of not applying or using International Accounting Standards (IPSAS) and did not specify to the provider what they needed. The provider would have separated and consolidated the Accounts.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the LVBC Management to:

- i) always separate accounts for different projects and consolidate later;
- ii) invite the service provider to properly reconfigure the system; and

- iii) add Financial Statements for the four(4) projects to the main Financial Statements for consolidation.

PART IV

THE LAKE VICTORIA FISHERIES ORGANIZATION (LVFO)

FOLLOW- UP OF PREVIOUS YEAR'S MATTERS (page 38-40)

REGARDING THE OUTSTANDING COUNTRY CONTRIBUTIONS, The Committee noted financial constraints faced by the LVFO. Partner States have not honored their contributions in total sums and on time. This cripples the activities of the organization and remains indebted to the extent of operating on gratuity funds. No wonder the organization is even understaffed.

The Committee observed that the organization is not mainstreamed in the EAC and has not taken on board Rwanda and Burundi as members of the organization.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) urge Member States to urgently honor their contributions to LVFO;
- ii) direct the LVFO Executive Committee to recruit staff in key positions in the organization; and
- iii) expand the Scope and Mandate of LVFO to cover all the Fisheries and Aquaculture Development in the EAC and change the name to East Africa Fisheries Organization (EAFO).

CURRENT YEAR MATTERS ON INTERNAL CONTROLS (PAGE 40-42)

The audit commission identified the following anomalies:

- I. WEAKNESS IN INTERNAL CONTROL ENVIRONMENT
- II. WEAKNESSES IN IT INTERNAL CONTROLS

The Committee noted the efforts by the LVFO to secure data and plan for continuity. However, as earlier observed, the organization has financially broken down. Measures in place do not guarantee the organizations data and business continuity.

The Committee was further informed that the EAC Secretary General committed himself to provide Sun Accounting System to LVFO which undertaking was never fulfilled.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct the LVFO Management to design a Risk Management Policy and Disaster Recovery Plan and present to the Audit Commission for verification;
- ii) direct the EAC Secretary General to provide the Sun Accounting System to LVFO;
- iii) recruit and fill the IT and other key positions in the organization; and
- iv) direct LVFO Management to always implement the Council decisions.

WITH REGARD TO LACK OF INTERNAL AUDIT FUNCTION AND AUDIT COMMITTEE, The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) approve budget and secure funds to enable recruitment of an Internal Auditor; and
- ii) direct the Audit and Risk Committee to visit LVFO and review the internal controls and advice accordingly.

WITH REGARD TO LACK OF PROPER ACCOUNTING SYSTEM, The Committee noted poor accounting records in LVFO, leading to inaccurate financial statements. Lack of budget seems to be the major problem. The EAC Council of Ministers has not seen the implication of denying an increment of the budget to the organization.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) exercise due diligence to advise on the status of an institution before taking it over an institution;
- ii) find funds for the organization;
- iii) direct LVFO Management to always classify accounts properly both by activity or nature to provide useful information to the users; and
- iv) fully implement Article 9 (3) of the Treaty and the Summit directive on the organization;

FINANCIAL STATEMENTS OBSERVATION (PAGE 43-47)

WITH REGARD TO GOING CONCERN/SUSTAINABILITY OF SERVICE CONSIDERATIONS, The Committee noted the concern of the Audit Commission.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) urge LVFO Member States to urgently remit their arrears; and
- ii) direct LVFO Management to refund staff gratuity.

UNSANCTIONED INTERNAL BORROWING

The Committee noted the anomaly of the matter and recommends as follows:-

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct LVFO Management to always work within the budget;
- ii) direct LVFO Management to respect borrowing procedures; and
- iii) direct LVFO Management to refund the borrowed money to respective accounts.

REGARDING NON-COMPLIANCE TO IPSAS 6 –CONSOLIDATED AND SEPARATE FINANCIAL STATEMENTS, The Committee noted the non-compliance to IPSAS 6 by the organization.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVFO Management to comply with IPSAS 6 and present the Financial Statements to the Audit Commission for verification.

ON PRESENTATION OF FINANCIAL STATEMENTS, The Committee noted that the Financial Statements figures may not have been fairly stated.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVFO Management to make journal entries where adjustments are made and at the same time reflected in the General Ledger and Trial Balance.

WITH REGARD TO DIFFERENCE BETWEEN THE GRATUITY FIGURE REFLECTED IN THE STATEMENT OF COMPARISON OF BUDGET VERSUS ACTUAL AND BANK BALANCES.

The Committee noted unexplained loss of funds and the likelihood of continued use of staff gratuity to finance the expenses of the Organization.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Assembly to urge the EAC Council of Ministers to:

- i) direct LVFO Management to reconcile the unexplained difference of USD83,050 and present to the Audit Commission for verification; and

- ii) direct LVFO Management to refrain from using Gratuity Funds and should refund the used amounts as soon as possible.

WITH REGARD TO MISSTATEMENT OF BALANCES IN THE FINANCIAL STATEMENT, The Committee noted the anomaly and recommends as below.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct LVFO Management to investigate the variance and present correct figures in the Financial Statements to the Audit Commission for verification

GENERAL OBSERVATION

The Committee observed that during the audit exercise of LVFO Financial Statements, the Audit Commission was not able to get appropriate evidence to provide an audit opinion and therefore issued a disclaimer.

The Committee further observed that the operations and Legal Framework of LVFO are not streamlined with the EAC operations; only three Partner States out of five contribute to the Organizations moreover through the departments in the Ministries of Fisheries.

The Committee also observed that the previous Financial Statements of the Organization were being audited by the Auditor General of the Republic of Uganda. However, the Committee proceeded to review the qualified accounts due to the Directives of the Summit and the Decisions of Council of Ministers to integrate the organization.

To this end, the Committee recommends to the EAC Council of Ministers to always exercise due diligence while incorporating institutions into the EAC mainstream.

PART V

THE CIVIL AVIATION SAFETY AND SECURITY OVERSIGHT AGENCY (CASSOA)

FOLLOW UP OF PREVIOUS YEAR'S MATTERS (PAGE 47-48)

REGARDING INCORRECT CLASSIFICATION OF EXPENDITURE IN THE SYSTEM, The Committee noted compliance and implementation of the Audit finding. The Committee implores CASSOA to avoid mixing up classification of expenditure.

WITH REGARD TO TAX EXEMPTION NOT GRANTED, The Committee noted that unlike TRA and KRA, URA despite delays has to a greater extent refunded VAT and WHT to CASSOA. The Committee was not fully convinced that the Agency was pursuing the matter aggressively.

The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct CASSOA Management to:

- i) follow up and secure Tax Exemption Certificate; and
- ii) follow up recovery of VAT and WHT before the expiry of the time limit.

CURRENT YEAR'S AUDIT FINDINGS (PAGE 48-55)

ON REVIEW OF INFORMATION TECHNOLOGY (IT) SYSTEMS AT CASSOA, Audit Commission raised concerns in the following specific areas:

- i. THE IT STRATEGIC PLAN
- ii. IT PROJECT BEHIND SCHEDULE
- iii. IT STEERING COMMITTEE
- iv. IT ORGANIZATION STRUCTURE/INADEQUATE STAFF
- v. LACK OF IT TRAINING POLICY
- vi. LACK OF SEGREGATION OF DUTIES
- vii. UN-ENFORCED WIRELESS NETWORK SECURITY
- viii. IT CHANGE MANAGEMENT POLICY NOT DOCUMENTED
- ix. INADEQUATE PHYSICAL ACCESS CONTROL
- x. INADEQUATE ENVIRONMENTAL CONTROLS
- xi. INADEQUATE IT CONTINUITY PLAN (ITCP)
- xii. IT PROJECT MANAGEMENT FRAMEWORK

The Committee noted the Audit Commission report, and further noted that CASSOA is not able to implement the audit recommendations and the Board decision due to limited funding.

- a) The Committee noted the Audit Commission's report and the undertaking by CASSOA and commends the progress.
- b) The Committee recommends to the Assembly to urge the Partner States to cooperate by adhering to schedules and putting in place all the required infrastructure like Examination Centers and harmonized Examination System for aviation staff.
- c) The Committee recommends to the Assembly to urge the EAC Council of Ministers to engage the Partner States to increase funding for CASSOA.
- d) The Committee recommends to the Assembly to urge the EAC Council of Ministers to find other sources of funding to complement the current funding of CASSOA to allow recruitment of sufficient staff to manage duties of the Agency.
- e) The Committee recommends to the Assembly that the Audit Commission should verify the implementation of the ICT Policy.

- f) The Committee recommends to the Assembly to direct the CASSOA Management implement the Logging System for entrance to secure areas of concern.
- g) The Committee recommends to the Assembly to urge the EAC Council of Ministers to:
 - i) direct CASSOA Management to ensure power back-up with automatic change of switch at all times; and
 - ii) ensure more effective fire communication to users.
- h) The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the CASSOA Management to present the Business Continuity and Disaster Recovery Plan to Audit Commission for verification.
- i) The Committee recommends to the Assembly to urge the EAC Council of Ministers to direct the CASSOA Management to develop a suitable IT Project Management Framework and present it to the Audit Commission for verification.

CONSTRUCTION WORK IN PROGRESS (PAGE 55-57)

The Audit Commission reported that the Agency awarded a contract for the construction of CASSOA Annex (CASSOA/WORKS/001) to M/s Coronation Developers (U) Limited.

At the evaluation stage, it was found that Ms Coronation Developers (U) Ltd had no evidence of cash flow which was considered to be of material substance to the evaluation outcome. This was one of the elimination criteria, of which failure to meet would mean elimination. However, the company was passed to the next stage. There was no justification for its passing to the next stage in evaluation.

In consideration of this matter, the Committee took note of the anomaly reported by the Audit Commission and recommends as follows:-

The Committee recommends to the Assembly to task the Audit Commission to carry out an extensive audit of the project on the construction of CASSOA annex on how procurement was done and assess value for money.

WITH REGARD TO LACK OF POTENTIAL AND TECHNICAL STAFF;

The Committee noted the challenges of funds faced by CASSOA and recommends to the Assembly to urge the EAC Council of Ministers to:

- i) extend the mandate of the CASSOA and transform it into a business institution for self-sustainability;
- ii) urge the EAC Partner States to comply with their financial obligations in the affairs of the Agency and its sustainability; and

- iii) urge the United Republic of Tanzania and the Republic of Kenya to conclude consultations and respond to the proposal by CASSOA Management to levy the USD 0.70 (70 cents).

PART VI

THE INTER UNIVERSITY COUNCIL FOR EAST AFRICA (IUCEA) (PAGE 57-59)

The Audit Commission reported that due to the matters described the Basis for Disclaimer of Opinion paragraph, they were unable to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.

DISCLAIMER OF OPINION

Because of the significance of the matter described in the Basis for Disclaimer of Opinion paragraph, the Audit Commission have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly, no opinion was put for the Financial Statements.

The Committee noted, among other issues, the following:

- non-remittance of contributions by Partner States;
- lack of absorption capacity by Universities;
- lack of proper management of the institution;
- lack of competent staff, and team work;
- lack of linkage between the EAC Council of Ministers and the Executive Committee;
- lack of segregation of duties; and
- un-accounted for funds.

Coupled with the information provided by the Audit Commission that IUCEA got worse and worse as they attempted to reconcile the Financial Statements; first in Kampala, then in Arusha and finally in Nairobi where the Senior Accountant conceded to the Audit Commission and the IUCEA Management that she is unable to reconcile the accounts; the Senior Accountant was allowed to take leave from work at a time when the IUCEA Management had to meet with the Accounts Committee to clarify their Financial Statements.

Realizing that IUCEA attained qualified status of accounts in the audit for the FY ended 30th June, 2011.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the EAC Council of Ministers to commission a forensic audit and report to the Assembly by March 2014.

GENERAL OBSERVATIONS:

The Committee observed the challenges below and recommends to the Assembly to urge the EAC Council of Ministers to urgently address the following challenges in the EAC Organs and Institutions.

1. Non refund of VAT and WHT by the Partner States who host the EAC organs and institutions and non issuance of exemption certificates.
2. Lack of linkages, uniform systems and interconnectivity of EAC organs and institutions.
3. Inadequate staffing across EAC organs and institutions.
4. Lack of investment strategy for EAC, especially on the reserves.
5. Lack of sufficient supervisory role by the EAC Secretary General over the institutions of the Community.
6. Unauthorized use of gratuity by some EAC institutions.
7. Non implementation of Treaty Provisions especially Article 9 (3).
8. Non installation of imprest recovery system across EAC organs and institutions.
9. Alarming trend of donor dependency that has led to decline of Partner States contribution to the integration process.
10. Delay of institutional review process leading to decline of human resource capital.

Evident from the above mentioned challenges, the Committee notes laxity of the Council of Ministers to fulfill their mandate hence breaching article 14 of the Treaty for the establishment of the East African Community.

COMMITTEE RECOMMENDATION

The Committee recommends to the Assembly to urge the Council of Ministers to revisit their functions clearly spelt out in the Treaty and as directed by the Summit to execute their mandate.

PART VII

ACKNOWLEDGEMENTS

The Committee wishes to thank the Rt. Hon. Speaker, the Clerk and the entire Management of EALA for the excellent facilitation accorded to it while executing its mandate. Despite limited time, the Committee finalised the bulky and demanding exercise within the financially dictated timeframe.

The Committee further wishes to thank the Audit Commission for fulfilling their mandate bestowed on it by Article 134 of the Treaty.

Finally, the Committee commends the EAC Secretariat and other EAC Organs and Institutions for the continued cooperation.

Madam Speaker, I submit the report of the Committee on Accounts on the EAC Audited Accounts for the Financial Year ended 30th June/ 2012 for deliberations and adoption.

I beg to move.

The Speaker: Thank you very much, hon. Ndikuryayo for that maiden report presentation. I acknowledge that you took over leadership from hon. Jacqueline Muhongayire and I am sure you have ably represented her. Thank you very much.

(Applause)

Certainly, I note that the Secretary General is not in today's sitting - he sought permission and took leave because there was urgent business to attend to. But I note that Mr. Phillip Wambugu and other senior staff of the Secretariat are here and have heard these very serious observations by the committee.

I am sure the Chair Council has also heard and I am sure that Members are burning to make very serious contributions. But considering that there are two reports – and I want to congratulate the committee because I think they were able to summarize the report – but I think it would be fair to the Members that they get ample time to read the report.

(Applause)

So, I want to suggest that we suspend the debate on this very important report to Tuesday next week-*(Applause)* - so that Members get the opportunity to internalize the report and be effective during debate. So, this report will stand suspended until Tuesday next week.

(Applause)

Before we proceed, allow me to recognize in our midst- in the Speaker's gallery- hon. Members from the Parliament of Uganda; hon. Sarah Mwebaza, the Chairperson of the Committee on East

African Community, hon. Anne Aruu, hon. Kabaale, hon. Odonga Otto and hon. Badda and members of staff of the Parliament of Uganda. Welcome again and you have come at a time when this very important session is dealing with the audited accounts of the EAC organs and institutions. So we thank you in that you should be able to take feedback on some of the issues raised because they concern mostly on our Partner States also. Thank you very much.

MOTION FOR A RESOLUTION OF THE ASSEMBLY TO CONDOLE WITH THE
GOVERNMENT AND PEOPLE OF KENYA OVER THE TRAGIC LOSS OF LIVES IN THE
WESTGATE MALL ATTACK

Mr. Jeremie Ngendakumana: Madam Speaker, I beg to move that this Assembly do resolve to condole with the Government and people of the Republic of Kenya over the tragic loss of lives in the Westgate Mall attack. Madam Speaker, I beg to move.

The Speaker: Seconder; hon. Ndahiro, hon. Angella Kizigha, hon. Abdu Karim Harelimana, hon. Bucumi, hon. Mumbi, hon. Hafsa Mossi, hon. Bhanji, hon. Rwigyema, hon. Hajabakiga and hon. Valerie Nyirahabineza; proceed. You have been overwhelmingly supported.

Mr. Ngendakumana: Motion for a resolution of the Assembly to condole with the people of Kenya over the tragic loss of lives in the Westgate Mall and urging the Council of Ministers to expedite the establishment and ratification of regional mechanisms for effective implementation of decisions made in the area of peace and security in this Assembly;

“AWARE THAT in order to promote the achievement of the objectives of the Community set out in the Treaty, the Partner States agreed under Article 5 (3) (f) of the Treaty to promote peace, security and stability within and good neighborliness among themselves;

AND FURTHER AWARE THAT a number of regional efforts aimed at promoting peace and security are in place;

ALTHOUGH NOTING that the EAC Protocol on Peace and Security is being negotiated at a snail’s pace;

RECALLING THAT under Article 124 of the Treaty, the Partner States agreed that peace and security are a prerequisite to social and economic development within the Community and vital to the achievement of the objectives of the Community;

CONCERNED THAT the recent Westgate Mall tragedy has taken lives and inflicted a lot of pain and suffering of Kenyans, East Africans and the global friends and citizens who call Nairobi home;

FURTHER CONCERNED THAT the agents of terror themselves craven wretches and lowly cowards had the agenda of perpetrating grievous mayhem in one of our Partner States senselessly killing, maiming and traumatizing harmless and innocent people;

COGNIZANT OF THE FACT that President Museveni of Uganda and Chair of the EAC Heads of State as well President Jakaya Kikwete of Tanzania, President Paul Kagame of Rwanda and President Nkuruziza of Burundi all being members of the Summit issued statements of solidarity and have been following the events on a daily basis to maintain the solidarity with the people of Kenya and to encourage President Uhuru Kenyatta in these trying moments;

APPRECIATING THE EFFORTS by all the other categories of leaders who stood by the people of Kenya and given them further assurance during this time of despair that the Kenyan spirit shall remain ever growing since Kenyans are one indivisible family that cannot be deterred by acts of cowardice;

FURTHER APPRECIATING the efforts of the Kenyan security forces to put an end to the three days siege of the Westgate Mall by the cowardly forces of the Al Shaabab;

MINDFUL THAT peace, security and strong political relations are critical factors in creating a conducive environment for regional cooperation and integration;

CONSCIOUS OF THE FACT THAT close cooperation, mutual understating and collaboration in matters of peace and security will be the mutual benefit of the Partner States;

NOW THEREFORE this Assembly hereby do resolve as follows:

- (i) To condemn in the strongest possible terms the tragic incidence that took place during mid-day of 21st September, 2013 at the Westgate Mall where more than 60 shoppers, staff and soldiers were killed; more than 200 people injured, properties of millions of dollars damaged in the attack occasioned by the Al Shabaab criminals;*
- (ii) To extend our deepest heartfelt condolences to the bereaved families, relatives and friends of those who have lost their lives and to wish the injured a quick recovery in this moment of deep sadness and loss. The assembly expresses its solidarity with H. E. Uhuru Kenyatta, the President of the Republic of Kenya and the Government and people of the Republic of Kenya.*
- (iii) To pay our tribute to the gallant soldiers, the General Security Unit (GSU), the police officers, members of the medical team, rescue teams, blood donors and all those who worked tirelessly, putting their lives on the hook so that victims of the siege could live.*
- (iv) To salute the international community for providing expertise to diffuse the situation and for assisting in one way or another to address the problem.*
- (v) To urge for expeditious establishment and ratification of regional mechanisms for effective implementation of the decisions made in areas of peace and security to*

consolidate further ties of friendship and fraternity among Partner States in the hour of need.

Madam Speaker, I beg to move.

The Speaker: Thank you very much, hon. Jeremie Ngendakumana. Hon. Members, before I call on Members to support, I invite hon. Ngendakumana to give his justification.

Mr. Ngendakumana: Rt hon. Speaker and hon. Members, six months ago in Kigali we adopted a resolution to congratulate H.E. Uhuru Kenyatta upon his elections as the fourth President of Kenya. We also congratulated all the people of Kenya for their commitment to peace after their elections held on 4th March, 2013. Since then, Madam Speaker the Kenyans and all of us as citizens of East Africa have enjoyed the post-election peace.

Unfortunately, on 21st September, the Westgate Mall in Nairobi was attacked by a group of terrorists named as Al Shabaab. More than 60 persons have been killed; more than 200 have been injured; and properties damaged. In brief, we have been watching some very sad movies.

Madam Speaker and hon. Members, what happened in Westgate Mall on 21st September, 2013 can happen elsewhere in any EAC Partner State.

Madam Speaker, as MPs, it is our responsibility to condemn with all our energy such an act of terrorism aimed to disturb the quietness of our electorates.

Madam Speaker, it is also important that this House do adopt the resolution to condole with our brothers and sisters who were victims of that act of terrorism.

It is also important, Madam Speaker that necessary measures be taken and proper action done to prevent such a tragedy from happening.

More important, Madam Speaker and hon. Members, there is a need for all the five Partner States to stand firm and fight terrorism. Us together as a strong team, we can achieve this objective. Therefore, common mechanisms and harmonized legislation in the area of defense and security must be put in place to ensure that the appropriate measures of prevention are taken.

Let us take this opportunity to express our support to the process of putting in place the EAC Protocol on Peace and Security. Its signature and implementation will be an assurance that our Community is on the right track to secure lives of our citizens.

Madam Speaker and hon. Members, with those observations, I beg that all the Members do support this motion and adopt it. Madam Speaker, I submit.

(Applause)

The Speaker: Thank you very much, hon. Ngendakumana. Hon. Members, the motion on the floor is that this Assembly do resolve to condole with the Government and the people of the Republic of Kenya over the tragic loss of the lives in the Westgate Mall attack. Debate is open.

Mr. Mike Sebalu (Uganda): Thank you very much, Madam Speaker. I join the rest of the Assembly in supporting this motion that have been moved by hon. Jeremie Ngendakumana.

Indeed it is very timely; it is very necessary for a regional Parliament like ours to associate with one of our own at such a time of need.

We need to appreciate as East Africans that any attack on any one of us is an attack on all of us. *(Applause)* And in view of that, we need to pull all our synergies together to ensure that we have a stable region.

Madam Speaker, this tragedy brought out certain things that are worth mentioning. And in my view, they are worth writing home about. The way the Kenyan population responded to this tragedy although it was a bad event - because we were in Kenya doing some work of the Committee of Regional Affairs – the response made me feel proud to be an East African.

(Applause)

When I saw the unity of purpose and putting Kenya first when it mattered most, I really felt very proud. When I watched on TV all the leaders of Kenya regardless of their political affiliation joining H.E. Uhuru Kenyatta in State House to issue statements condemning the attack and reiterating their commitment to be one for Kenya, I really felt very proud.

(Applause)

I saw President Uhuru; I saw former Prime Minister, Raila Odinga; I saw the Leader, hon. Mudavadi and many others including the former Vice President who was not in the country was but still took off time to make a statement - I think he was in Mauritius or one of those countries but he still made a statement that was aired on TV.

Now, that is leadership and that is something we need to emulate. There are times when we have to put our countries first regardless of the differences that we may be having in terms of our internal political dynamics. So, that was a best case scenario for me in terms of response and in terms of the leadership that was offered.

Madam Speaker, because of that, the people of Kenya had to respond in equal measure; the leaders had led by very good examples. And I was able to witness the true Kenyan spirit which was manifested in the way the Kenyan people responded in terms of mobilization of money to help the victims. You would expect that at a time like that the people would be condemning Government – even calling upon Government to bring money to assist victims, some may even be looking at an opportunity to make a windfall but people never went in for any blame game.

Rather, they complimented- (*Applause*) - Government's efforts and within no time using MPesa over Kshs 60 million was raised from the ordinary people.

That is a very good example to the rest of us. There are situations that happen in our countries and rather than the population coming out to work with Government, they are looking for money from Government even at a very difficult time. So, the Kenyan experience is a very good experience that is worth emulating by all of us.

Mobilization of blood – you know people went out, cues that were stretching for miles and miles and some of the people could not even make it to donate their blood and were advised to come the following day and even the following day the cues were still crisscrossing the streets of Nairobi. Now that is unprecedented; that is real patriotism; that is dying a little for your country and country men and women, which is indeed very exemplary.

The volunteers who came out in rescuing the people, in handling matters of emergence- and there are people who really turned out as heroes of this tragedy. The Secretary General of the Kenya Red Cross; that gentleman did wonderful work in terms of doing what he was supposed to do for the good of the country.

Finally, Madam Speaker, the media; the media displayed a very high sense of responsibility, maturity and patriotism in the way they managed and handled the tragedy. The fact that the national anthem was being played whenever there was a news bulletin to show solidarity with the country and even within the studios, the Kenyan flag was flying at half-mast especially the televisions. And even the manner in which the reporting was done was indeed something to write home about.

Let us not forget the members of the security forces some of whom lost their lives in defence of the sovereignty of their people and the efforts they made while trying to get on top of the situation. They need to be commended as we condole with the Government and people of Kenya.

We need to work together; fighting terrorism is not an individual country's effort. It is collective. We are under threat as a region in terms of terrorism because almost all our Partner States have had their fair share of the same. So we need to collaborate; we need to work together to ensure that our systems are in place and are functional in such a way that we proactively empty any such barbaric attacks on any of our sovereign states. Madam Speaker, I beg to support this resolution.

(Applause)

The Speaker: I now invite hon. Ndahiro.

Dr. James Ndahiro (Rwanda): Thank you, Rt hon. Speaker. I would also like to support the motion and also extend my condolences to the families who have to endure the barbaric attack on Westgate.

Madam Speaker, the motion indicates to us that under Article 5 of the Treaty, Partner States have agreed to work jointly to fight these barbaric attacks and others of a similar nature. It is important that as a Community we develop a sustainable mechanism to fight, not only these well-known terror groups, but also to prepare ourselves to deal with such situations any time they occur.

Madam Speaker, I would like to move an amendment to this motion by adding resolution No. VI to call upon the Summit to develop a joint sustainable mechanism to fight Al Shabaab; to fight the Lord's Resistance Army; to fight ADF; to fight FDR and all other ideological bankrupt militias in our region. Madam Speaker, I beg to move.

The Speaker: Thank you very much, hon. Ndahiro. Hon. Jeremie, take note of that amendment and comment on it when time comes. I invite hon. Bucumi.

Ms Emerence Bucumi (Burundi): Thank you very much, Madam Speaker for giving me the floor. I am rising to support the motion. But before that allow me to welcome you, Madam Speaker since it is the first time I take the floor and to welcome all Members to the Republic of Burundi; a beautiful country in the heart of Africa with beautiful people. *(Applause)* I invite you to enjoy whatever you will find here in this town especially Lake Tanganyika with its *Mukeeke* and *Ndagara*.

Madam Speaker, what happened at Westgate Mall in Nairobi was like an arrow piercing through my heart. It was just two weeks after an eventful visit there with my family and that of my sister-hon. Pareno and hon. Abisai know that. You cannot imagine how the scene was.

Madam Speaker, remember that this was not just a national crime but an international one – depending on the origin of the people who perished there. The tragedy inflicted by the team of Al Shabaab was not the first one and it won't be the last. It was first done in Kampala within the Republic of Uganda; tomorrow it could be in the Republic of Rwanda or in the United Republic of Tanzania. The same team of late has been planning to attack the Republic of Burundi. It is the reason that the EAC feels greatly concerned.

I take this moment to present my condolences to the people of the Republic of Kenya especially those who lost members of their families.

Madam Speaker, something must be done to eradicate this kind of terrorism. We need to combine our efforts to combat these terrorist. Thank you one again, Madam Speaker.

(Applause)

The Speaker: Thank you very much, hon. Bucumi and thank you for welcoming us to Burundi. I will take hon. Abdul Karim.

Mr. Abdul Karim Harelimana (Rwanda): Thank you, Madam Speaker. I would like to commend our colleague, hon. Jeremie for coming up with this important resolution.

Madam Speaker, I also had an opportunity to be in Kenya at least on the second day after this tragedy had taken place. But someone must be some kind of a rock or a stone not to feel how Kenyans were feeling at that time. Innocent people had just gone to the mall for fun, shopping and many other reasons not knowing that behind the scene there was someone called Al Shabaab or any other bad name planning to kill them and end their lives without any sin they had committed.

Madam Speaker, my own daughter and her cousin were in Nairobi at that time. They were planning to go to the mall just for fun. When they called a colleague to come and pick them, she told them that the place they wanted to go to was burring. Can you imagine these animals who take people's lives without mercy; without humanity?

Madam Speaker, the alshabaab said that they had reason for killing these people. One of their reasons was to revenge on the Kenyan Government. I think Government is represented by the presidency, the Cabinet, Parliament, the army, the police etcetera. They did not go to attack these places because they know that they are strong. They cannot dare. So, they saw the soft target-innocent people, women, children and the elderly and went and killed them. So, their reason in the first place is not acceptable.

Madam Speaker, as the hon. Jeremie puts it in the motion; I think we need to urge the Council of Ministers and the Secretariat to push for the Peace and Security Protocol to be brought in place so that, as hon. Sebalu put it, "When one of us is attacked, we have been all attacked and we move together to defend." Why should we wait for the USA, UK, Germany and Israel to come and assist us to fight that small group of people? I am told they were between five and 15 only in the mall. And it took us three days to fight and stop them from what they were doing- causing atrocities to the people.

I think once we have this Peace and Security Protocol in place and have that Standby Brigade, which we hear of – I don't know what it is waiting for if it is in place? So, we should come up with the Peace and Security Protocol and forget the reason why it must walk – as the hon. Member is saying it is negotiated at a snail's pace- *Mwendo wa kinyonga*, why? I think we need it in place.

The reason which we have is the so called sovereignty of our Partner States, which sovereignty do we have if 15 people can attack us and kill our people for three days as we are just trying and not able to do. So, let us forget about the weak sovereignty and have a bigger and stronger sovereignty whereby we can stand all of us - five Partner States and those ones who will join us later - and fight these people.

And I think that we need to have preventive measures instead of waiting to be attacked like they did in Uganda- hon. Bucumi has ably put it- now they have attacked Kenya and before that, by the way, they attacked Nairobi and Dar-es-Salaam in the twin bombings. Any one of us can be attacked anytime. So you must put in place preventive measures.....

Tape 4

Mr. Issa Twaha Taslima: I want to agree with my colleagues that indeed it was a very sorrowful thing to happen amidst our people in East Africa. And as hon. Abdul Karim said, I was also one of those who were in Nairobi just two days after the incidence had occurred. Really the tension was very clear for any one coming to Nairobi to see and it was very sorrowful.

But then it has happened; we have to do something to ensure that we at least in a position to combat such incidences whenever they happen sometime in the future.

I am in full agreement with what hon. Abdul Karim has said concerning the Standby Brigade. If we happen to have it in motion, let it be trained; let it be equipped so that we are in a position to use it to either rescue or reduce on the rate of killings.

I don't have much to say but I would like to point out one thing about – I think it will amount to an amendment. At page 3, Resolution No. V, we are saying, *“To urge for expeditious establishment and ratification of regional mechanisms for effective implementation of the decisions made in areas of peace and security to consolidate further ties of friendship and fraternity among Partner States in the hour of need.”* But it doesn't show whom we are urging. But looking at the heading- line No. 4, you will find words like *“...urging the Council of Ministers to expedite the establishment and ratification...”* these are the same words that you find under V.

Therefore, I propose that we make an amendment saying, *“To urge the Council of Ministers to expedite establishment and ratification of regional mechanisms...”* it will augur well with the heading. Otherwise, when we say *“To urge for expeditious establishment and ratification of regional mechanisms...”* there is no one we are urging and, therefore, it is wanting.

In No. I, we are saying, *“To condemn in the strongest possible terms the tragic incidence”* I would like to remove the word “possible.” When we are saying we are condemning, we must be condemning in the strongest terms. If you are saying “strongest possible,” it is like we are not quite sure of the margin of the strength that we are exerting. *(Laughter)* That is all Madam Speaker, and I support the resolution.

The Speaker: I am sure hon. Jeremie is taking note of these amendments. I will take hon. Hafsa Mossi.

Ms Hafsa Mossi (Burundi): Thank you, Madam Speaker. I am also rising to support the motion on the floor. But before I do that, I will also want to add my voice to welcome you all to Burundi. (*Applause*) I hope you are feeling at home away from home.

Madam Speaker, this motion is a very important one. We want to commend hon. Jeremie for having brought this motion in solidarity with our brothers and sisters of Kenya and indeed all East Africans. The tragedy which happened in Kenya did not affect only Kenyans but all East Africans.

Madam Speaker, we watched on TV innocent children, women and men – East Africans and friends of East Africa helplessly being killed in a barbaric way. And at some point I felt so ashamed because I thought to myself why we don't have a standby force which can intervene when any of our Partner States is in difficult times?

And indeed I felt even more ashamed when my mother, an old woman told me, “But I hear you have an organization which comprises of five countries, which Burundi and other countries are members, why can't you do something to help those people being killed?” I felt really bad.

So, Madam Speaker, I am joining my colleague here, who was suggesting that the Protocol on Peace and Security should be fast tracked. Why do we have all these military exercises in our Partner States? What are they for? Why are they training when they cannot intervene when one of our countries is in a very difficult moment?

I want also to commend the people of Kenya for their solidarity; for their unity. I think this is a very good example that other countries should learn from. In difficult times, they should be together, comforting each other instead of being insensitive to what is happening to their country.

Madam Speaker, I want to also urge the international community to put their efforts together to help in combating terrorism. Because as you have seen, it is not only Kenyans or East Africans who were killed but also friends of East Africans. Madam Speaker, with these few remarks, I wish to support the motion.

The Speaker: Thank you very much, hon. Hafsa Mossi. I will take hon. Mulengani.

Mr. Bernard Mulengani (Uganda): Thank you very much, Madam Speaker for the opportunity. Just to follow the trend of my colleagues, since this is the first time I am taking the floor, I wish to also add my voice to those who spoke earlier on to thank the President of this country, H.E. Pierre Nkuruziza in his address to the Assembly and to thank the people of Burundi for their hospitality that we have continuously enjoyed as we rotate.

Madam Speaker, in support of this motion, I want to approach it in a way that when you look at Article 5 (3) (f) that is referred to in the first paragraph, it talks about peace, security and stability. To me as a Member of EALA, these are technical areas; technical areas that I would

urge the Council of Ministers to look at the designations where they are placed and place them correctly.

Madam Speaker, either in the 18th Council or thereabouts but I cannot recollect very well, the Council of Ministers on Security had directed that there be formed a directorate in charge of peace and security in the region, that would technically answer and address such calamities in the region.

My colleague, hon. Hafsa Mossi is asking us that what is the reason of Military Police training in the region and they are unable to intervene? The question has not been answered for reasons that the placement of this particular function under the DSG Peace and Political Federation is misplaced, according to me. And I would urge the Council that there is need to relook at placement of sections and sectors in the Community in the right places where they belong.

Madam Speaker, the other issue we need to understand is the seriousness in which the people that have been bestowed with authority to take decisions at the regional level on behalf of the many East Africans are relaxing; they leave a lot to be desired in the manner in which they are handling issues of the region. Why would we wait for such calamities to continue happening and then we continue bringing motions and motions in the House whose resolutions and recommendations are at times not implemented?

I am urging our Council, Madam Speaker that it is time we are tired of mourning; we are tired of grieving in the region. The reason we are integrating is to empower ourselves in security and we need to see ourselves move.

There have been a lot of directives by the Summit, Council recommendations and recommendations by the Assembly in the same direction of peace but – (*Interruption*) - I will take it.

The Speaker: Hon. Valerie Nyirahabineza, information.

Ms Nyirahabineza: Thank you very much, Rt hon. Speaker for giving me the opportunity to give information. And I thank my colleague, hon. Mulengani for giving way.

The information I want to give is that on 5th April, 2011 all the EAC Partner States Counter Terrorism Departments met to discuss security and draw plans to combat terrorism. So, it means that all the recommendations are there. They were even submitted to Council; according to the information we were given. But up to now, like my colleague, hon. Mulengani is rightly saying, nothing has been done in that line. So, that is the information I wanted give.

Apart from the Standby Brigade and the military exercises that are being carried out, we have those chief of coordination entities related to peace and security in our Partner States who draw plans for security and combating terrorism. Thank you.

Mr. Mulengani: Thank you very much, hon. Valerie for enriching my submission. And truly as you informed me and the House, these are the things we are saying that if there was a directorate on peace and security at the region, it would ably and technically handle these decisions that were taken. But because there is a conflict of people who are implementing where the sector has been placed, the DSG in the sector is technical in nature in that for him he is an administrator, they confuse things to do with peace and security.

I want to encourage this House that as the institutional review is going on, we continue urging the Council of Ministers to relook at the placement of the issues to do with security.

Lastly, Madam Speaker, as I take my sit, I want to join our colleagues and the citizens of Kenya and the region to condone those people and condemn the so called Al Shabaabs who led to loss of life. As one of the colleagues said, it is not the first time that they have attacked the region and maybe it is not the last time. We want to urge Council to find mechanisms to expeditiously implement decisions and resolutions that have been done and taken on by relevant bodies in the region. With those few remarks, Madam Speaker, I support the motion.

The Speaker: I will take hon. Ussi followed by hon. Shy-Rose, followed by hon. Celestin and we wind up from there.

Ms Maryam Ussi Yahya (Tanzania): Thank you, Madam Speaker. First of all, I would also like to take this opportunity to condemn this tragedy. This tragedy comes as a reminder of the threat of terrorism that we have in the region and along the borders of the region. I remember in one of the previous plenaries I was talking about IDs and I mentioned that we still have terrorists' threats along our borders. So, this has manifested that we still have terrorism within our borders and inside the region.

But, Madam Speaker, I stand to give a clarification because most of the time these terrorist attacks are associated with Islam. So, I just want to clarify that in Islam and especially the Book of Islam, which is the Koran, condemns, and actually there are several verses that say that killing of one person, not one Muslim, actually killing of one person is equivalent to killing all humanity. So, I would like to clarify that terrorism should not at any one time be involved with religion. Thank you.

(Applause)

The Speaker: The one you wanted to inform has finished.

Mr. Sebalu: The information is useful.

The Speaker: You are judging it even before you give it to us. You were supposed to give information to hon. Ussi and she has finished. Hon. Ussi, are you taking the information?

Ms Yahya: Yes, Madam Speaker, I am taking the information from hon. Sebalu as long as it is positive.

Mr. Sebalu: Yeah, my information is always positive. The information I want to give is that during the 51st Independence celebrations in Uganda which took place in Rukungiri, amongst those that performed the parade were Muslims from Uganda led by their leaders with a very big placard reading: “*Muslims united against terrorism,*” which was a very good message and I thought that it goes to what you rightly stated.

The Speaker: Very useful information. I invite hon. Shy-Rose.

Ms Shy-Rose Bhanji (Tanzania): Thank you, Madam Speaker for giving me the opportunity so that I can also add my voice in conveying my sincere condolences to the people of Kenya and the Government of Kenya following the tragic loss of human lives during the Westgate attack in Nairobi, Kenya.

Madam Speaker, these were innocent human beings that were conducting their activities in a free and democratic Kenya. Unfortunately, they became victims of Al Shabaab by accident.

Madam Speaker, this is not the first time that Kenya was suffered such an attack. Previously, on the 7th of August, 1998 in tandem with Dar es Salaam, Al Qaeda attacked US embassy buildings in Nairobi and many lives were lost in both places.

Madam Speaker, coming from Tanzania I also have firsthand experience and this is not a good experience.

Similarly, Madam Speaker, on July 11th 2010, in Uganda Al Shabaab made another political scar when they bombed one of the clubs whereby 76 innocent lives were lost. The loss of innocent lives and damage to the economy has far reaching implications in our region.

It is my prayer that besides offering these words of condolences and condemnation, the EAC Partner States should come up with very tight security measures so that we are all safe.

Madam Speaker, I am pleading with the governments of all Partner States in our region to institute very tough precautionary measures in order to prevent further attacks. The EAC we want for better integration should be safe and secure for trade and investment to be meaningful. Madam Speaker, I support the motion and once again we condemn in the strongest possible terms, however, my colleague has suggested that we remove the word “possible.” I stand to support the motion.

(Applause)

The Speaker: Thank you very much, hon. Shy-Rose. I invite hon. Rwigema and perhaps Chair, Council to wind up and then hon. Ngendakumana will respond.

Mr. Pierre Celestin Rwigema (Rwanda): Thank you, Rt hon. Speaker for giving me the floor. And as it is my first time to take the floor during this session, allow me to join my colleagues, but I would like to start by thanking you, Madam Speaker, for having a very successful beginning of this plenary session. I have no doubt that the ending will be the same, thank you.

Madam Speaker, I want to thank H.E. Pierre Nkuruziza, President of Burundi for his address and for his availability to come and open our plenary session and launch our strategic plan.

Madam Speaker, I followed the speech of H.E. the President very well and it was full of wisdom; it was full of guidance and clear direction to help us fulfill our mission.

Madam Speaker, I would also want to congratulate the Government and people of Burundi for their hospitality and warm welcome extended to us here, in Burundi. (*Applause*) But I cannot forget our colleagues, the hon. Members of the Burundi Chapter for what they have done to make us feel at home.

Coming back to this motion, Madam Speaker, I was also in Kenya at the time with my colleagues of Regional Affairs. I saw too many bad things but I also saw how the people of Kenya were united and having a strong solidarity to fight, intervene and contribute towards everything. I thank them very much.

I want to extend my condolences and support to the people of Kenya. Kenyans are our brothers and sisters; they are one of us. If something happens in Kenya, we have to feel it. We cannot feel secure when Kenyans are in trouble. That is the reason why we have – and by the way, I forgot to thank hon. Jeremie for moving this motion because it is very important for us.

I think fighting terrorism is very hard; it is not an easy matter even for countries which are very developed like the USA. You remember what has been happening there, in the World Trade Centre in New York.

I also support the addendum presented by my colleague, hon. Ndahiro not to see only Al Shabaab but to see all terrorist groups and try to develop mechanisms to fight terrorism. And among the strong tools so far developed by Western countries is not only the Army but the intelligence. Because even if we have an army it doesn't sufficiently protect more than if we could have avoided it.

That is the reason why I would like to suggest that the development of intelligence mechanisms and sharing of information, which is now a very important tool developed by Western countries. You sometimes even hear how they are struggling between themselves saying that they are spying on each other. But this is a way of avoiding tragedies happening in their countries.

In our religion, I think these attacks have been in Kenya several times and it may happen in another Partner State tomorrow. You know in Africa it has become common to have terrorist attacks because Nigeria and Mali are all the time in trouble. I cannot really go on to mention that

but what I need to focus on is the solidarity between us and feel real brothers and sisters so as to develop mechanisms of sharing intelligence so as to avoid terrorism acts. Madam Speaker, with these few remarks, I beg to support this motion. Thank you very much.

The Chair Council of Ministers (Mr. Shem Bageine): Thank you very much, Madam Speaker. I would like to thank the mover of this very important motion giving an opportunity to Members of this august House to formally express their solidarity with the people of Kenya over the loss of lives occasioned by the attack on the Westgate Mall a few weeks ago.

Madam Speaker, I communicated our condolences as Chair of the Council to my counterpart in Kenya on behalf of the Council and the people of East Africa affirming our solidarity with the people of Kenya.

Madam Speaker, I recall the last time I was in Nairobi, I went to that mall for a meal with my son and I just imagined that it could have happened when I was there eating my meal.

Madam Speaker, Members have raised a number of issues during their contributions but I would like to clarify on a few of them. One, the Peace and Security Protocol is not being negotiated anymore but rather it was negotiated, signed and is undergoing the process of ratification. And it has been given a timeline of February next year when it should be fully ratified by all Partner States and then come into force.

Madam Speaker, in the meantime, there is an understanding amongst the Partner States to collaborate in matters of peace and security and indeed when this unfortunate incident took place in Nairobi, the forces in the Partner States were not sitting back.

(Applause)

Madam Speaker, we are already collaborating in very many areas of security including those that these people are hitting at us like they did in Kampala some few years back and now recently in Nairobi again.

Madam Speaker, we as East Africans share a lot in common, peace and security being among those fields. And as I said, we are waiting for the formal ratification of the Peace and Security Protocol but that is a formality because we are already collaborating in matters of peace and security.

I would like to thank Members of this House for the solidarity they have shown with the people of Kenya; for the support they are giving to our armed forces to continue in their effort to try and build a State in Somalia. I believe that once that is done, then the threats will be reduced.

Madam Speaker, one of our Members commented and said that those people behind the attack were animals. But I want to observe that animals are better behaved because they would not do a thing like that. When you imagine a human being entering into a shopping mall with all innocent

people and begins shooting indiscriminately, killing babies and women who are pregnant, that is beyond animal behavior. It is something else.

Madam Speaker, I join my colleagues in condemning in the strongest terms that kind of barbaric act and I want to assure Members of this august House that the governments of the Partner States are keenly moving towards full collaboration in ensuring security of our people in the region.

I have taken note of what the Council of Ministers is urged to do and I want to assure Members that we will do what is expected of us. Once again, I thank you.

The Speaker: Thank you, Chair Council of Ministers. I now invite hon. Jeremie Ngendakumana to wind up this debate.

Mr. Ngendakumana: Thank you, Rt hon. Speaker. I appreciate the strong contributions given to this motion. For me, this motion is a particular one because I remember when I was presenting my credentials to President Mwai Kibaki as the Ambassador of Burundi to Kenya, he told me kindly like a father to his son: “Feel at home; make Kenya your second country.” This meant that I became an East African citizen even before my country, Burundi joined the East African Community. *(Applause)* So, what happened in Kenya on the 21st September, 2013 is a terrible tragedy and we did appreciate that as Members of EALA.

I appreciate that we now have a common language as regards to this area of peace and security. We want our countries to move like a strong team against terrorism.

I have got very excited to hear from the Chair, Council that the Protocol on Peace and Security has been signed and is in the process of being ratified.

Madam Speaker and hon. Members, it has been highlighted somewhere by one Member that to ratify a protocol is one thing and to implement it is another thing. I am happy that we are now in the presence of the Chair, Council of Ministers who is from Uganda a country which has already experienced terrorism attacks. With this I am sure that as long as he is the Chair of Council, he will do his best to make this protocol implemented.

Madam Speaker, hon. Taslima had a proposed amendment when he said, “*We urge for expeditious...*” whom do we urge? I think he is right when he says that we can add, “...the Council of Ministers.” I agree with this proposal.

It is the same when we say in point No. I, “*To condemn in the strongest possible terms...*” when it is the strongest terms, there is nothing above. So, we can also retain “...the strongest terms...” I also agree with hon. Taslima there.

Madam Speaker, the strongest support to this motion has been well appreciated. I recognized the contribution of hon. Mike Sebalu, hon. Ndahiro, hon. Bucumi, hon. Abdu Karim, hon. Taslima,

hon. Hafsa, hon. Mulengani, hon. Ussi, hon. Shy-Rose, hon. Rwigema and the Chair of Council. Madam Speaker, I submit.

The Speaker: Thank you very much. There was an amendment moved by hon. James Ndahiro. I just need you to pronounce yourself on it so that it can be carried.

Mr. Ngendakumana: Madam Speaker, I asked him to write it down so that I can appreciate what he meant exactly but he said that-

The Speaker: Sorry, I think it came my side and didn't come your way but it has been written.

Mr. Ngendakumana: I didn't capture it very well in order to comment on it.

The Speaker: We appreciate that at times we don't have the quick typing services particularly for hon. Ndahiro but the clerk can read it again for you and if you think it has no major injury on the motion, then you can either accept or turn it down. Clerk, can you read it for hon. Jeremie to appreciate it?

AN AMENDMENT MOVED BY HON. DR. JAMES NDAHIRO AS RESOLUTION VI READS AS FOLLOWS; CALL UPON EAC SUMMIT TO DEVELOP A JOINT SUSTAINABLE MECHANISM TO FIGHT AL SHABAAB, ADF, LRA, FDLR AND OTHER IDEOLOGICALLY BANKRUPT MILITIA GROUPS IN THE REGION

Mr. Ngendakumana: Madam Speaker, now we are focused on Kenya and specifically on the attack of the Westgate Mall. So, if we put this in everything, then the focus we have now will not be seen.

(Applause)

The Speaker: Okay, thank you. I think hon. James Ndahiro, you will have to move to organize another motion specifically in this direction. But I think hon. Jeremie has moved to say that let this one be specific.

Now, hon. Members, the motion on the floor is that the Assembly do resolve to condole with the Government and the people of the Republic of Kenya over the tragic loss of the lives in the Westgate Mall attack. I now put the question.

(Question put and agreed to.)

MOTION FOR A RESOLUTION URGING THE INTERNATIONAL CRIMINAL COURT (ICC) TO DEFER THE CRIMINAL CASES AGAINST THE PRESIDENT AND DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

Mr. Christophe Bazivamo: Thank you, Rt hon. Speaker. I beg to move that this Assembly do resolve to urge the International Criminal Court (ICC) to defer the criminal cases against the President and Deputy President of the Republic of Kenya. I beg to move.

The Speaker: Okay, seconded by hon. Sebalu, hon. Rwigema, hon. Nyiramilimo, hon. Mathuki, hon. Nkanae, hon. Kiangoi, hon. Mumbi, hon. Ngenzebuhoro, hon. Ndarubagiye and others. Proceed; it has received overwhelming support.

Mr. Bazivamo: Thank you once again, Rt hon. Speaker.

“RECALLING THAT this Assembly by resolution made unanimously carried from a motion urging the International Criminal Court to refer the Kenya cases related to the post 2007/2008 election violence to the East African Court of Justice for hearing and final determination;

NOTING THAT the President and Deputy President of the Republic of Kenya both now stand charged at the International Criminal Court for alleged crimes against humanity related to the 2007/2008 post-election violence in Kenya. The case against the Deputy President is ongoing while the case against the President is scheduled to commence on 12th November, 2013 thereby necessitating attendance of the two leaders at the Hague based court in the Netherlands;

NOTING FURTHER THAT the Kenyan President and his Deputy respectively and the Government of the Republic of Kenya even as they continue to observe the commitment to cooperate with the International Criminal Court have previously applied to the court without success for deferment of the cases or exemption from physical appearance to enable the two leaders to execute their constitutional obligations bestowed upon their respective offices by the people of Kenya;

AWARE THAT by virtue of their respective offices of President and Deputy President is by authority derived from the people of Kenya required to execute their constitutional mandate for the wellbeing and benefit of the people of Kenya and hence their absence while attending trial will not be compatible to the principle of giving service to the people of Kenya;

FURTHER AWARE THAT the African Union has previously urged the ICC to refer the cases to Kenya and more recently where the African Union Summit has resolved to support the Kenyan application for the withdraw and further taken the position that no President or Head or Leader of Government should be prosecuted while in office;

NOTING FURTHER THAT the Kenyan Constitution like all the East African Partner States' Constitutions makes a provision for protection of a president or person performing the functions of the office of a president from criminal proceedings during their tenure of office;

CONCERNED THAT the continued prosecution and requirement to attend trial of the two Kenyan leaders by the ICC has subjected not only the President and Deputy President to humiliation but also to the people of Kenya who elected them to office.

FURTHER NOTING the rallying call for the East African Community Summit of Heads of State and the two resolutions of Kenyan Parliament in respect of Kenyan ICC cases as well as the unequivocal support from most African leaders;

NOW THEREFORE this Assembly resolves:

- (1) To support the position adopted by the African Union at its extraordinary meeting of summit held in Addis Ababa, Ethiopia on 12th October, 2013 and the Parliament of Kenya respectively relating to Kenyan cases pending at the International Criminal Court;*
- (2) To urge the International Criminal Court to defer the Kenya cases against the President and Deputy President respectively for the period that they will be in office;*
- (3) Do retaliate and urge the Heads of States Summit to fast track the establishment of a court with criminal jurisdiction where cases of similar nature should be referred to;*
- (4) To direct the Secretary General to transmit this resolution to:*
 - (i) The President of the International Criminal Court;*
 - (ii) The UN Security Council;*
 - (iii) The EAC Summit and national assemblies of the EAC Partner States for appropriate action; and*
 - (iv) The African Union.*

Rt hon. Speaker, I beg to move.

The Speaker: Thank you very much, hon. Bazivamo. You can move to justify your motion.

Mr. Bazivamo: Rt hon. Speaker, following the aftermath of the 2007/2008 Kenya General Elections, the ICC was used to prosecute the cases of four Kenyans and as you know, since 2007 efforts made by the Republic of Kenya, let us say, the Government and people of Kenya have reached a high level of reconciliation amongst themselves. And in a short time, this level of maturity has enabled Kenya to move forward.

They have put in place a successful coalition government, a new Constitution and have held successful and peaceful elections early this year, 2013.

The elected President and the Deputy President both stand charged in the ICC. But as you know, Kenyans have made the choice of their leaders democratically using the citizens' rights of voting and actually judging. Who are those who want to contravene the choice of the people of Kenya? Is the right of the ICC really right? I doubt that.

In order to allow Kenyans their right to be led as they have chosen, it is important for the ICC case of the President and the Deputy President of Kenya to be deferred. It is most important to give them time to focus on the development of Kenya.

On the other hand, Rt hon. Speaker, we find very logical for our Partner States to have their own competent jurisdiction which can handle similar cases. This has already been highlighted several times but what is requested for here, is to fast track the establishment of such a jurisdiction so that we can have such a court to handle cases of that nature operational within the shortest time possible.

Rt hon. Speaker, with these few words, I beg to move. Thank you.

The Speaker: Thank you very much, hon. Bazivamo. I invite hon. Sebalu.

Mr. Mike Sebalu (Uganda): Thank you very much, Madam Speaker. First of all, thank you very much, Madam Speaker for having found time and space on the Order Paper to allow this very important motion to be moved. If we didn't move this motion in good time, then we would be overtaken by events.

Besides that, as a regional Parliament, we need to express our concerns in a timely manner. So, I begin by thanking you for your indulgence for having allowed this motion space on the Order Paper.

Secondly, I would like to thank hon. Bazivamo for taking the lead in moving this motion, which is very important.

Thirdly, I would also like to thank our colleagues, the Kenyan Chapter because we are in this together and we must always act in tandem when matters of our Community are subjected to any form of attack, be it overt or covert. We have a duty to stand up and be counted among those that are always available to put their lives on the firing line in defence of the Community.

Madam Speaker, I supported the motion for referral in the Second Assembly and the reasons that I did so have not changed but the circumstances have drastically changed. So, I supported the referral then and I support the deferral now for the same reasons. And my support is not in any way to condone impunity. If anything, I condemn impunity, but dealing with it should be within the confines of the notion of sovereignty as espoused by the constitutional order of the country in question. Kenya has a robust Constitution; very progressive and which is dealing with a wide range of issues in a proactive way.

Madam Speaker, available legal and institutional framework of the concerned country need to be exhaustively applied in the spirit of fairness, mutual trust and respect. I find these glaringly missing in the way this matter is being handled and the way the process is being undertaken.

Madam Speaker, we are not doing this as EALA because of any selfish reason. But we are being very objective in the way we are handling this matter. And there are a few observations that need to be appreciated in this regard.

I specifically want to thank hon. Bazivamo for moving this motion because he is looking at the big picture of the region. We are now not dealing with sovereignty issues. We have gone beyond sovereignty because if it were an issue of sovereignty, he would have confined himself to matters of Rwanda. But are applying the big picture and that is what we are supposed to do as a regional Parliament.

We are looking at the supreme organ of the Community, which is the Summit. The President of the Republic of Kenya is a member of Summit. Anything that happens to him in a manner that is not properly followed has the effect of affecting the work of our Summit and that of our Community.

(Applause)

In that regard, we cannot sit back as if all is well. Definitely there is a potential that can have far reaching implications on the operations of our Community. And as a regional Parliament, as peoples' representatives, we are duty bound to respond and supplement the efforts of the leaders of the Community.

Madam Speaker, EALA has already pronounced itself as I said before and that is the level of importance that EALA attaches to issues of regional concern like this one.

All Heads of State of our Partner States have raised their concerns; they did raise so with the ICC and that was communicated. We are yet to get very convincing response on that because what was given, in my view, was diversionary. But it is good to note that all the Heads of State are on record in this regard.

Africa has spoken in support of one of our own. The resolutions that were passed in Addis Ababa recently are a clear indication of Africa's position in this regard. And beyond, because some people have confined this debate to Africa; it is not an African debate. It is a global debate on fairness and mutual respect. And I have had occasion to listen to Western scholars and politicians who have come out to clearly state that it is not in the spirit of fairness; it is not in the spirit of mutual trust and mutual respect. This has been espoused by many people of good will to Kenya in particular and Africa in general.

Madam Speaker, I want us to take note of the following; that the Kenya of 2007 is fundamentally different from the Kenya of today in so many aspects: in terms of the legal framework; in terms of the constitutional order; and in terms of the structural arrangements that have been put in place to address the issues of the post-election violence that was meted on the Kenyan people.

Kenya at the moment boasts of one of the most robust and progressive Constitutions in the whole world. Appointment to offices - actually there are moments when I feel that aspiring for an office in Kenya is like exposing yourself to a level because you are interviewed publically before television cameras. Everyone has a right to raise any issue of concern.

Now that level of transparency and accountability that has come with the new Constitution should be encouraged and appreciated. By appreciating it, the international community ought to give motivation to these innovations by appreciating what is happening in Kenya.

Structures and institutions are already in place. The Judiciary is very highly reformed and is operating optimally; the road to total reconciliation is on track and the issues to do with victims have been addressed. Many have been resettled and it is work in progress although a lot has been achieved and it is on record which everyone can appreciate.

The leadership in Kenya has cooperated well. As we speak, the Deputy President is in the Hague as per the commitment they undertook to cooperate. I have been listening to many speeches of the President and the Deputy President and they are on record indicating that they will cooperate. But as leaders who have been given the mandate to lead, they have put on the table certain requests that need to be appreciated because they have to lead the country and leading the country must be from within the confines of the country. You don't lead a country on remote; you don't lead a country from outside the borders of the country. And the Constitution of Kenya is very emphatic on this. That at any one time either the President or the Deputy President must be in the country in order to discharge the mandate for which they were elected.

Now, this kind of scenario is creating a situation where at one point in time you could have a possibility of having both of them out of the country. That is breaking the Constitution of Kenya. So, the international community ought to be mindful of such provisions because they were put there for a good reason.

Madam Speaker, the mandate to lead includes one very important thing, that is, managing security. Kenya is a target of terrorism and we are creating another front that could even motivate terrorists to take Kenya as a haven for their activities; a situation where the commander-in-chief is not in the country. I just want to put a case; assuming the Westgate happened when the President was not in the country, the situation would have been much more disastrous. But he was available to give the leadership; to give a statement of commitment and the people were able to rally behind their leader and dealt with the situation in the most responsive manner.

So, this is not desirable for Kenya. We as a region, we need a secure Kenya. A secure Kenya is good for the entire region.

I would like to end by raising this issue of a sitting President being arraigned in the courts of law. Definitely all our constitutions have provisions that protect presidents. But they don't insulate

them after their tenure of office. It is clearly indicated that if there are any issues to be answered, then those issues can be raised once one has left power. This applies to all constitutions in the world including the Western constitutions. But it is interesting – I read somewhere where it was indicated that the Foreign Secretary of UK commented when the Rome Statute was signed that it was never meant to try any British Prime Minister or Western Head of State or American, and left it at that. The practice is for all of us to witness.

So, the idea of arraigning a sitting Head of State before courts of law is not something that must be encouraged. We must deal with that within the confines of our constitutions where they can be tried after their tenure of office to answer for their omissions or commissions. This precedent is definitely not desirable. Madam Speaker, I beg to support and all upon all Members of EALA to stand up and be counted in defence of our Summit; in defence of our region; and in defence of an East African. Thank you very much.

(Applause)

The Speaker: I will take hon. Hajabakiga and then hon. Kiangoi and we move like that.

Ms Patrica Hajabakiga (Rwanda): Thank you, Madam Speaker. Since it is my first time to take the floor, I would like to thank you, Rt hon. Speaker for having organized this session in Bujumbura and also to thank the Head of State, President Pierre Nkuruziza for the opening. I would also want to thank our colleagues, Members of the Burundi Chapter for their hospitality and more so hon. Dr Martin Nduwimana for taking care of me when I got injured on Monday and ensured that I got all the necessary attention at the hospital where I was taken. *(Applause)* I would like to thank all those who have either sent messages or come to see me during this difficult period when it hasn't been easy to even wash my body.

Rt hon. Speaker, I would like to be counted among the people hon. Sebalu requested to stand to support the motion. I wish to congratulate our region, the African Union for coming up with this resolution of asking the ICC to defer the cases of H.E. President Uhuru Kenyatta and his Deputy President, William Ruto so that they can discharge their duties given to them by the Kenyans.

Hon. Bazivamo in his submission indicated that the Kenyans have trusted these two people to lead them. There is nobody else in the world who should take away the responsibility they have been given by the citizens of Kenya in order to lead that country in the period before their term ends.

(Applause)

As earlier said, we are not saying that we would like impunity. But we are also saying that the way the ICC has conducted itself in the past few years since it began its work have not been very fair to African. And I would like to support our Head of State in Addis who said no to this whole aspect of undermining Africa and looking at us like second class citizens who don't have the

same rights as the rest of the people in the world. Rt hon. Speaker, with those few remarks, I wish to support the motion.

Mr. Joseph Kiangoi Ombasa (Kenya): Thank you, Rt hon. Speaker for giving me the opportunity to contribute to this very important motion. In the first place, I want to thank the hon. Bazivamo for moving this motion and the hon. Mike Sebalu for seconding it.

Madam Speaker, I want to also thank the people of Burundi for the warm hospitality that they have accorded to us. I also want to thank the Members for the previous motion of condoling with Kenyans for the tragedy that happened at the Westgate Mall.

(Applause)

Madam Speaker, I will not take long on this motion so that I can give other Members a chance to contribute. The President exercises executive authority and executive authority is derived from the people. It is the people who have given the President the mandate to guide them and to preside over their affairs during a given time.

Madam Speaker, any disturbance on the President impacts directly on the people of that country. This has been seen in many other African countries. When the presidency is destabilized, the effects are felt amongst the people. The President is a symbol of unity in any nation.

Now, we have a situation in Kenya where the President and the Deputy President are charged with alleged crimes; they are alleged crimes because nothing has been proven against them. And again they are charged far away in the Hague, in the Netherlands.

Madam Speaker, one hon. Member said that if the Westgate tragedy had taken place when the President was away, in fact he was going to be away for the UN General Assembly that was taking place in New York. But because the Constitution demands that one of them be present, he didn't go. And it is our belief that it was timed to happen when he was away so that there would be total chaos and the peace that they have nurtured - the President and Deputy President have nurtured peace from the pieces that Kenyans were thrown into in 2007/2008 into a nation that has now harmony amongst the communities.

There is nowhere else in the world other than for Africa where the President can be taken away to be tried in a foreign country. It is not in America; not in Germany; not anywhere; this ICC was only meant to discipline Africans.

So, what this motion seeks to achieve is just deferment. We are not saying, excuse at this stage. It is just deferment and then the Partner States do establish a court of competent criminal jurisdiction where similar matters can be tried in future.

This is not too much because it is the people of Kenya who will suffer. If world peace is important to Europeans, Americans and others it is equally important to Africans and Kenyans. Madam Speaker, I support the motion. Thank you very much.

The Speaker: Thank you very much. I will take hon. Nakawuki.

Ms Susan Nakawuki (Uganda): Thank you very much, Rt hon. Speaker for this opportunity accorded to me to also contribute towards this motion. I would like to thank the mover of the motion for moving it in timely manner. I rise to support this motion and I entirely agree with all the resolutions hereunder.

Madam Speaker, allow me to add my voice to those of my colleagues who have supported this motion. As far as I am concerned, history is very important. I know the Chair, Council has a contrary view that we cannot live in history. But it is very important that we learn from history because history repeats itself.

Madam Speaker, if you can recall very well, one of the former presidents of Uganda, President Milton Obote had travelled to Singapore when he was toppled from office. And when he was trying to return, he was told not to dare travel to Kampala because he had been toppled.

Apparently, the President of the Republic of Kenya is supposed to be at the Hague in Netherlands standing trial for all those offences that they have levied against him. This is going to be happening at the same time when the Deputy President is also standing trial in the same court.

Last week, we were given some news that actually the President of the Republic of Kenya had been allowed to skip some of the proceedings of the court though not all because he is required to attend the opening and closing statements; he is also required to attend the judgments; and he is also supposed to attend when the victims are testifying. Apparently, the way things are, every witness of ICC takes more than a week testifying and with all the procedures of examination, cross examination and re-examination, it means that he is going to be away for quite some time.

But none the less, Madam Speaker, as the motion stands, we are talking about the issue of deferring and really when I look at the literal meaning of that word, “defer,” it doesn’t mean that they are actually taking away the charges but rather postponing to later date of which I don’t see any problem. If actually our Heads of State in the African Union have agreed to that, who are we to reject that?

Madam Speaker, allow me to quote the Constitution of the Republic of Kenya, Article 143(1): *“Criminal proceedings shall not be instituted or continued in any court against the President or a person performing the functions of that office during their tenure in office.”* And the same Constitution under Article 2 talks about the supremacy of the Constitution of the Republic of Kenya and still Article 2(3) of the same Constitution talks about the validity and legality of the

Constitution, which is not subject to challenge. It is not subject to challenge by any convention or protocol of whichever sort.

I would also love to draw our attention to Article 3 of the Rome Statute which provides that: *“The Court [ICC] can sit elsewhere whenever it considers it desirable.”* So, I am, asking myself if the ICC is really out to offer justice to the victims, what is so hard in shifting their sittings to the Republic of Kenya because the President and the Deputy President have to serve their sovereign country? They were elected by the majority – so the Kenyan people spoke; they needed these people to be their leaders and I feel the ICC should respect the President and the people of the Republic of Kenya.

Madam Speaker, allow me also to add that if we allow this kind of incident to happen, it is going to set a very bad precedent in Africa. Today, it is President Uhuru Kenyatta. Tomorrow it might be my President, Yoweri Museveni. Already the President of Sudan is on the list. As my colleague, hon. Kiangoi said, there is no single President from the Western world. But is it that for them they are holier than thou or they are not committing any atrocities? They are doing this.

So, to me, this appears to be extending their Neo-Colonialism to Africa and we shouldn't condone this. Otherwise, we all stand to lose.

When I was looking at the Rome Statute, I looked at Article 77, which talks about the applicable penalties which are only two; either it is life imprisonment or imprisonment for a period not exceeding 30 years, but whichever way, it is imprisonment. I can imagine, God forbid, of the President and the Deputy President of the Republic of Kenya are to be imprisoned in the Hague, what would happen in Kenya? I suppose it would be worse than what happened in 2007.

So, I would put everything on the scale of preference. What do we want? Do we want peace in Kenya or we want to penalize and pass judgment?

Madam Speaker, as we talk about the President and Deputy President, we should also be mindful of the other accused person, Joshua Arap Sang. I believe we don't need other people to help us solve our own problems. We can solve our problems as Africans. Unless Kenya has lost confidence in their Judiciary- in fact I keep on asking myself how these cases ended up in the ICC. Who took these cases to the ICC?

I am hesitant to say that it is the Kenyan people but at the same time I will still ask myself; don't we have courts in Kenya? So as we consider the President and his deputy, let us also look at these people who are merely victims. Thank you, Madam Speaker. I beg to support the motion.

The Speaker: I will take hon. Frederic Ngenzebuhoro.

Mr. Frederic Ngenzebuhoro (Burundi): Thank you, Madam Speaker for giving me the opportunity to contribute to this very important motion. This motion is timely that is why I full support it. But before I go ahead with my contribution, allow me to pay tribute to the people of

Rwanda and H.E. Paul Kagame and his government for holding successful parliamentary elections, which took place last month in a peaceful manner and which were very well organized.

From what I have witnessed, I think that it may not be that easy for other Partner States to do what I saw in Rwanda. I have hope that one day this House will share a report on those elections.

The Speaker: We shall.

Mr. Ngenzebuhoro: I say, one day because I am not sure whether we shall get it very soon because even the report on the Kenyan elections is not yet available.

Madam Speaker, I stand to support this motion for four main reasons. First of all, I would like to support this motion because it is right from the will of the entire Africa as expressed by the Heads of State during the last Summit in Addis Ababa.

The second reason is that this resolution has taken the right position of our colleagues from the Kenyan Parliament.

The third reason is that this resolution aims at dismissing the humiliation of our own leaders especially elected leaders, H.E. Uhuru Kenyatta and his Deputy William Ruto. They are our leaders who should not be disturbed.

The fourth reason is that this resolution came to strengthen the will of the great majority of the people of Kenya. This means that it is going to make the country more peaceful and they will totally reconcile with each other.

The will of the people was shown in the last elections where the people of Kenya entrusted the future of their country in the hands of those two leaders, H.E. Uhuru Kenyatta and his Deputy, William Ruto.

Other than that, Madam Speaker, the people of Kenya sent us a very important message, a message of reconciliation and a message also that the people of Kenya are committed to burying their past hatred and are committed to building their country. For those reasons, I must support this resolution.

Lastly, Madam Speaker, I would like to say that as a Member of the Burundi Chapter, we have been touched by the kind words that you have expressed about the Burundi hospitality. I just wish to say that we shall continue to do that and after the meeting for those who will have some time, Burundi still has many things to show you. Thank you, Madam Speaker. *(Applause)*

The Speaker: Thank you very much, hon. Frederic. I would like to alert you that microphones on the last row are not working. So, anybody I choose from the last row should have to move. I take hon. Mumbi and hon. Nkanae.

Ms Agnes Ngaru Mumbi (Kenya): Thank you, Madam Speaker. I rise to support the motion with amendments but before I do that, I would like to appreciate the people of Burundi, the government and the President of the Republic of Burundi. I am especially thanking him for his address on Tuesday.

I would like to appreciate the Burundi Chapter in a very special way. I am a beneficiary of their hospitality at a very personal level. On Monday, in church I almost collapsed but I was taken and helped out by the State protocol who identified me and so hon. Bucumi and hon. Isabelle were called and they helped me back to the hotel.

Later after the service, the two of them and hon. Mossi came to check on me in the hotel. Thanks to hon. Dr Martin who is our standby doctor - (*Applause*) - and he is always at hand. So, I have enjoyed the principle of when we are in a country, the Members from that country are our next of kin. I can't thank them more because there was even no need to call my family.

I would like to support this motion. It is timely and I would like to thank hon. Bazivamo who is my neighbor. I mentioned to him that he should allow me to do an amendment because when we talk about the President and the Deputy President only, and yet we have another ordinary Kenyan who is at the Hague – I can tell you from a very personal experience that the Kenyan case was not referred to the Hague by an outsider. We did it ourselves- the Kenyans did it themselves through our National Parliament.

We were not taken there by anybody. The Parliament then after a sitting in Parliament where the then President, the Prime Minister and other leaders - the Minister for Constitutional Affairs tried to ask our Parliament to allow a motion to set a local tribunal and our members of Parliament shouted in unison that: “We don't want you to be vague; we want to go to the Hague.”

Another motion as tried by the then hon. Imanyara and it met the same chorus, “Don't be vague; we want to go to the Hague.” And when the case went to the Hague, I can tell you I felt violated like I am feeling even now, when members of Parliament can really sing our national anthem in front of the ICC like we are receiving a medal. It is humiliating to the Kenyans. I felt then that I was humiliated and violated and even today as I speak in this august House, I feel the same.

Two weeks ago, my name was mentioned in the Hague twice, two days in a row. I can tell you it is not funny. You feel violated whether you are mentioned in good faith or bad faith. Therefore, as I make the amendments, to remove or to have the third Kenyan, Sung, to be deferred with the two leaders, I am doing it because we have to think about the people we represent. Are we going to encourage as citizens of East Africa, and of Africa, that when our Summit members do that kind of thing that was done in Kenya in the midst of our madness that the small people can be left to roast in any court. It is not fair.

Therefore, I am asking that we do an amendment in the motion that my colleague has moved. We remove all the Kenyan cases – we defer all of them because there is no need for some to be tried while the rest enjoy State protection.

I respect the President; I respect the Deputy President but what justification will Kenyans have for one of them – just because he is ordinary, his trial can continue. It is not fair. In fact probably, he fell a victim because he happened to be in the trail of one of them.

I was an actor in the party – ODM. I am still a member and I can dare say on the floor of this House that even before Koffi Annan took us there, even before the East African Community Summit members came to negotiate the accord, our party had written to the ICC, and I beg any one of them to contradict me, to report genocide in Kenya. I dare say, and I want any one of them to contradict me that the party then –PNU – had already written to the ICC to ask them to come and investigate genocide in Kenya.

It is important; it is with humility; it is intellectual honesty to say that we erred; we were all mad at that time. But we have recovered. That is why we have had an election that has been peaceful. That is why we have a new Constitution, and that is why there is peace in Kenya. But it is fake for us as leaders to stand in front of cameras and condemn ICC that we were dragged there by anybody. It is not true.

I dare say on the floor of this House; were we not at the ICC after the ruling of the last general elections, Kenyans would have gone to the dogs again. Let us appreciate that we were there. Let us also appreciate that we have a new Constitution we have trusted.

Very many people- ordinary Kenyans have been going throughout the country making peace by themselves and, therefore, I propose this amendment where all the Kenyan cases including Arap Sung are deferred until the Summit here in Arusha or anywhere can prepare a case where all those cases can be brought dealt with on the African soil.

It is important for me, I will not want any one of us to have their national anthem sang on a foreign land. It doesn't matter whether one is a President or a sweeper on the streets of Nairobi. It doesn't matter whether it is a sweeper on the streets of Dar es Salaam. We are Africans and I am proud of it and I urge all of us to be honest that we were not taken there.

I want to respect my President; I want to respect my Deputy President but I want them to be humble enough to say it was a moment of madness for the whole country. I support the motion with amendments. Thank you. (*Applause*)

The Speaker: Thank you very much, hon. Mumbi. I will take hon. Nkanae.

Mr. Saole Nkanae (Kenya): Thank you, Rt hon. Speaker. I will not waste a lot of time because most things have been said. I thank hon. Sebalu because he has really stated what I wanted to say. The same goes to hon. Nakawuki.

Madam Speaker, as I stand here, I am emotionally, psychologically and politically affected by the ICC case for a simple reason; in the history of mankind, no one Head of State and his deputy have ever been arraigned in a court of law or in any kangaroo court at such.

(Applause)

One of our writers wrote that: “The guilty are afraid.” These two, H.E. the President of the Republic of Kenya, Uhuru Mwigai Kenyatta and William Ruto are not guilty as far as I am concerned and they are not afraid for the simple reason that they were not at stake for the presidency at that time in 2007/2008. They were not also, if there was any stealing of votes, participants.

Madam Speaker, there was nothing for them to lose because they were just struggling to become MPs. In this case, there are two scenarios; ICC is just interested in justifying their legitimacy of existence and Africa is being tested through the gateway of Kenya.

(Applause)

They are going to dilly dally between now and 2017 – that case will not end until August 2017- I suspect so that they can say these Africans are guilty or not so that they will affect our elections. They are ahead of us thinking.

Alternatively, they may find them guilty for a simple reason that is to deter any other African behaving in that manner.

They might not find them guilty for a simple reason that they did it and they were very good so that they deserve justice and they go scot free and remain there and retain their jobs and serve the bug five who never signed the Rome Statute- you know them.

Madam Speaker, we need to ask ourselves a few questions; who killed and is still killing the Iraqis?

Madam Speaker, who allowed and encouraged our brothers and sisters, the Rwandese to butcher themselves during the genocide of 1994?

Madam Speaker, who obliterated 6 million Jews in the infamous holocaust? Who relocated 11 million Africans to the American in form of slavery?

Who killed Gadhafi in a culvert?

Madam Speaker, I am saying this because we are being treated like guinea pigs - experimental.

(Applause)

Madam Speaker and hon. Members, how would you feel today if your Head of State as an East African is in the Hague? I feel humiliated, embarrassed and degraded. The ICC has violated the human rights of 49 million Kenyans. They elected them.

Madam Speaker, coming to the end of this, I would like to urge this august House to support this motion in totality and beseech you, when you leave this building and this House raise your eyes and do the undulating deeds of the **Bugarema** and thank God that we are sovereign States of East Africa. Thank you, Madam Speaker.

(Applause)

The Speaker: I will take hon. Mbidee. Meanwhile, hon. Ogle move in any of the middle seats so that you can be able to get a better microphone.

Mr. Fred Mukasa Mbidde (Uganda): Thank you very much, Madam Speaker. First of all, let me equally take this opportunity to thank the mover and seconder of the motion. For this motion is going to be the test the East Africans and Africans and the world peoples at large on the implementation of the multi-national agreements, laws and the Bills of rights including the constitutions and ground laws in their Partner States.

Madam Speaker, let me make these preliminary corrections before I begin to descend into my submission. When you are reading the Kenyan Constitution, for example, particularly Article 143 mentioned by my learned sister, hon. Nakawuki, you read it in tandem with the Article that defines the term “court” within the Constitution. And that article is clear that court refers to courts established under this Constitution. That now excludes any court established from the Rome Statute. That is the position of the law.

It is also not true that the President and Deputy President of the Republic of Kenya were indicted by the ICC. What is actually true is that persons that were indicted were eventually elected President and Deputy President of the Republic of Kenya. All those must be made specifically clear for us to have a valid debate for this august House that will either be supported or on the contrary.

Madam Speaker, it is also not legally true within the meaning of the Rome Statute that a matter can be deferred for more than 12 months in the ICC. Under Article 16 of the Rome Statute deferral refers to a period of 12 months. Therefore, if we are to descend on the analysis of this august motion, then you must put into consideration all these for you to get into the closer meaning of this motion.

Now, this motion could only be supported if it avoided accepting the resolutions of the African Union and because of that, Madam Speaker - it is not the practice in this House to oppose motions and I will oppose this motion, Madam Speaker, as a new practice.

Madam Speaker, I will also move under rule 44 of the Rules of Procedure of this august House and declare my interest that I am a member of the Uganda Law Society; I am a member of the East African Law Society; I am a member of the Pan African Lawyers Union and Madam Speaker, we have positions to defend in that regard. I am equally a Member of the Parliament of the East African Community, which under Article 6 B and 7(2) have very clear regard to respect Treaty obligations.

Madam Speaker, what is the ICC? Is it a court for Europeans that is intended to discredit, discriminate and in fact deal with African leaders as it has been adulated in this august House? How do cases get there? It is very important for hon. Colleagues to also tell this House how cases commence in the ICC. They are just three mechanisms; the first mechanism is where the prosecutor on his own volition begins investigations. But then a case cannot be investigated until a trial chamber has approved such investigations.

Two, State Parties refer any magnitude of violations that has occurred on any soil within the jurisdiction of the ICC to the prosecutor for investigations.

Madam Speaker, the third one should be that referral that is done under Chapter 7 of the UN Security Council.

I have not seen anything referring to war, force or anything under such references and we have close to 28 cases within the ICC. And some of them have been referred to the ICC by State parties including Uganda, that is, Prosecutor vs Joseph Kony and others; Congo DRC- we have even some acquittals that have been referred. We have had questions and we should not be threatened. Genocide took place in Rwanda but which court can now try the FDLR? I would like anybody to give me an answer.

Madam Speaker, I am lucky to have attended a committee meeting of experts. I was only invited to represent the Uganda Law Society recently at Mandela Institute. And we were talking about the role, challenges and whether there exists any sub regional courts in Africa that re respectable.

There is what we call a complementarity principle of the ICC. It doesn't try a case that can be tried by any State party.

Madam Speaker, this august House passed a resolution in the Second Assembly for the increment of jurisdiction to the East African Court of Justice to the effect that crimes against humanity can be tried on the East African soil. Where has that procedure ended? *(Applause)*

So, what comes first? We do not have a court that can try anybody suspected of such wrongs. All procedures have been faltered and then we are saying, no, let us defer. What comes first? Is it the egg or the chicken?

For me once confronted with such an argument during childhood, I would say, but God must have created the chicken first because how would he suffer the humiliation of sitting on an egg trying to hatch it. *(Laughter)* He had to create the chicken to do its job.

The East African Community should have created a court capable of trying persons suspected of having participated in crimes against humanity, first before any deferral or withdrawal from the ICC is established.

Madam Speaker, we cannot gloss over issues. Now, there are those saying – *(Interruption)*

The Speaker: You are protected.

Mr. Mbidde: Much obliged, Madam Speaker. My learned sister here doesn't want to protect me. It is not true that none State parties to the ICC can't be tried. Ask yourself matter to do with Darfur, why did they get referred to the ICC?

There is what we call the Jewish Scogan Principle which is to the effect that whoever violates by the manner of a violation that an international obligation doesn't entertain which -of course that makes you a proper candidate for the ICC to retrial-whether you are a State party or- *(Interruption)*

Mr. Harelimana: Thank you, Madam Speaker and thank you hon. Mbidde for giving way. There are killings which took place in Iraq and they are still taking place. Killings are taking place in Syria today, Gadhafi was killed and many people were killed in Libya. People were killed by drones in Afghanistan day and night, where is ICC in all this? Thank you, Madam Speaker?

(Applause)

Mr. Mbidde: Much obliged my senior legislator. That question requires answers. What are the available cases before the ICC that are under investigation? Now the refereed cases there that are under investigations include; one, cases on activities that took place in Libya; cases on activities that took place in Afghanistan; cases on activities that that took place in Georgia, Guinea, Columbia, Honduras, Korea and Nigeria and actually the court is open to any communications whether individual referral or by organizations for any other matters- in fact the resolution that the AU should have done, which is really not within our jurisdiction here to debate, should have been: one, pushing for nondiscrimination - *(Interruption)*

Dr. Ndahiro: Thank you, Madam Speaker. I would just like to seek clarification from hon. Mbidde that the Iraq war took place before the Kenyan problem, even Georgia, Columbia etcetera, why is it that it is the Kenyan case that has come before the earlier ones? Thank you.

Ms Nakawuki: Further clarification, Madam Speaker.

The Speaker: Briefly; we are running out of our legislative time.

Ms Nakawuki: Also like my neighbor, just for the purpose of the record, to give us the interpretation clause of the word “court” in the Kenyan Constitution. Thank you.

Mr. Mbidde: Thank you, Madam Speaker. I can check for it if the hon. Nakawuki would like but actually it is within the mannerisms of drafting constitutions. There is an interpretation article, which interprets including court. It can either be traced in Article 2 or any other article thereof or Article 1, whichever is applicable in the circumstances.

The Speaker: That is normally in the Bill.

Mr. Mbidde: The Constitution has an interpretative clause. If it does not, then an interpretative act of a substantive nation also interprets courts and whichever is applicable court cannot refer to what it has not established as a constitution. That is jurisprudence, Madam Speaker.

Institutions that are established under treaties – majorly you can determine from Article 9 of the Treaty which establishes its own court. So, rules of procedure cannot emanate from the Ugandan court.

But as I proceed, Madam Speaker - you have advised me against time but I will take this one because this is my senior.

Ms Hajabakiga: Thank you, Madam Speaker. I would like to give information to hon. Mbidde that actually – I don’t know whether it is the Kenyan Constitution is different but constitutions are above the international agreements, which we sign. This means that they are subsidiary to constitutions. Therefore, when they refer to a court which Kenya agreed upon as ICC or under the Roma Statute, it becomes part of their Constitution. So, it can never be outside that constitution.

The Speaker: Hon. Mbidde, try to wind up. I know you are being consulted from all sides.

Mr. Mbidde: Madam Speaker, I will refer my colleagues to the Pactus Savander Principle of respect for treaty obligations. And I think my learned colleagues also will bear me witness.

So, Madam Speaker, when you are considering a deferral of the matter from ICC, you do not now consider the resolutions of the African Union because those resolutions include among others the desire to withdraw en-block. They even referred to it as en-block from the jurisdiction of the ICC without establishing alternate juridical mechanisms to try the kind of crimes that are trial able under the Rome Statute. I think it is improper; it is an infringement of the Versailles Treaty, for which we are established here and it cannot be supported that we can say we are the East African Community that is people centered. I thank you very much, Madam Speaker.

The Speaker: I shouldn’t be debating but I wanted to ask hon. Mbidde that when you look at 3 and put a time frame to the EAC Heads of Summit of say 12 months, would that cure your

concern or you exactly want to be on the other side? That notwithstanding, you can think about it and I invite hon. Ogle.

Mr. Abubakar Ogle: Thank you, Madam Speaker. In the interest of time I will be very brief and precise. But from the onset, I would like to say that it is very heartening and I am personally implored by the fact that even the most floriferous critics of candidate Uhuruto who were shouting from roof tops calling them inductees and criminals during campaigns have now seen the light and are following. (*Applause*) That is acceptable in the interest of East Africans.

I have personally been a steadfast supporter of the President ever since he was indicted and all the way. I thought and it has been very clear in my mind that these were hatched up evidences and there was nothing concrete about the charges before the ICC.

If truly this court is a court of justice, if truly this is a court that will determine judgment on the basis of evidence that is being adduced before it, what is being presented before it is just some tramped up trash. There is no other word to call it. It is a lot of trash obtained from coaching based on some report done by some busy bodies – the so called civil societies. They have no charges. So, I have no fear. In fact I want to repeat the very words of H.E. the President and the Deputy President along with Mr Joshua Sung that they do not fear this thing because there is really nothing concrete about it. There is nothing of evidential value before the court.

The only thing we are saying is, if it was the previous status of President Kenyatta and Ruto where they were individuals, they would have gone there and sat through for two or three months or for as long as it takes and that wouldn't have been a problem. All we are saying is circumstances have greatly changed. This is the President and Deputy President of Kenya respectively. They are the men in charge of our security. They are the men we look up to for guidance and development in all these matters. A court of justice does not give any direction that you sit throughout the proceedings when there are other matters to attend to.

We know what courts are. They have competent lawyers handling this matter. It is not much to ask for an excuse. Forget about referral or anything.

In addition Madam Speaker, as we speak here much as I support this motion, some of the prayers seem to be shallow. As we are seated here, the African Union pronounced itself on this matter and it was not just mere political pronouncement but went ahead on behalf of the AU; Madam Zuma wrote a letter and followed it up with five foreign ministers. In fact from next week, five Presidents of the African Union shall be going to present this case before the United Nations Security Council, the only body mandated with authority over the ICC to defer the case.

Kenya as an entity that signed the Rome Statute on its own also made a request to the UN Security Council backed up by some evidence of how the President is required along with his deputy to be present in the country throughout. So, asking for a deferral or even a total excuse of this matter isn't much but this court doesn't seem to be doing it that way. They only hear what

the prosecutor wants, understandably because the judges are making some bit of business out of accepting what the prosecutor says. I support the motion. Thank you.

The Speaker: Can I take hon. Mathuki, hon. Bonaya and hon. Abdu Karim and then Chair, Council and we close this debate. If everybody should take just two minutes so that we are able to be within our legislative time.

Mr. Peter Mathuki (Kenya): Thank you very much, Madam Speaker. I will be very brief. I thank the mover and seconder for really taking off time to draft and see the need to support this very important motion. Of course I appreciate remarks by colleagues but also remind them that democracy if it is what we know then some of us would be at pain to say democracy is under attack in Kenya because Kenyans overwhelmingly elected their leaders and spoke in one voice and, therefore, to take their leaders away and be prosecuted in a foreign nation is the worst violation the y can face.

So, Madam Speaker, I would like to say as a firm believer of international standards that we as African states are in danger to contribute to the standards that are used at ICC. And as you are talking about the laws that are used at ICC, we hardly contribute to them as African States and, therefore, we are likely to be subjected to laws that we may have contributed to very minimally to if at all any. So, we may become victims of others if we are not very careful.

I agree with colleagues that deferment simply means adjusting the calendar of the ICC to a longer period to allow the President and his deputy to work and deliver what they pledged to Kenyans. Therefore, Madam Speaker by saying this we are not in any way supporting impunity. But let the process be fair and respect the voice of the Kenyan people.

As a way of going forward, we have to be very careful because again if at all we allow this happen, they could be using this as an experiment and going forward to the rest of the Partner States in the East African Community and possibly in Africa could follow. So, we must be very careful and strengthen and guard our position all the time.

But I agree that there is an urgent need to strengthen our institutions locally and in the region. So, that again they have the capacity and of course are properly prepared to handle matters like what our Kenyan leaders are facing at the Hague. In the interest of time, I support the motion.

Finally, Madam Speaker, allow me to thank the people of Burundi the Speaker and President, H.E. Pierre Nkuruziza for appreciating you and the Assembly for resolving to do rotational sittings. I thank you, Madam Speaker.

Ms Sarah Bonaya (Kenya): Thank you, Madam Speaker for giving me the floor. I would like to add my voice to this very important motion. I will start by thanking the Parliament of Burundi and the entire Government and in particular the President who gave us his time and wise counsel at the beginning of this session.

Madam Speaker, in particular I would also like to thank you for appointing me to attend the IPU because through that process, I had the opportunity of also visiting our leaders in the Hague as the process was on going and I had the rare privilege of witnessing the processes that were on going. And the fact that it was a very humiliating set up for Africans from their normal habitat being removed and put in a very dull and very cold and unfriendly set up for their cases and also very far from their families and the scene of crime. That is what they were supposed to resolve. So I would like to thank you particularly for that.

I would like to state here that as Kenyans we made our choice and elected our leaders. And we expected them to deliver certain promises and give us leadership. But through this process, I think a sitting President and Deputy President leaves a very huge gap in terms of the security of our State, the social economic development and all other sectors and I think by Kenya being exposed and being left vulnerable. Actually being the gateway to East Africa we are also extending the vulnerability to the rest of East Africa. So, that is why this prayer is very important as long as we do it within the acceptable international standards.

Madam Speaker, the process that I have mentioned has exposed us to insecurity as we have experienced in the Westgate Mall. It also undermines the stature of our leaders and also undermines our Community's integration process because as you all know, we have to work through consensus and God knows what happens if our President is kept away and is not able to attend any of these meetings that we are supposed to hold jointly so as to be able to guide our integration process.

Madam Speaker, because of the time constraint, I would like to support the motion. Thank you.

Mr. Abdul Karim Harelimana (Rwanda): Thank you, Madam Speaker for giving me this opportunity to contribute to this motion, which I support 100 percent.

I would like to declare on behalf of the supporters of the motion that you are not condoning impunity. Never at all shall we do that. But what we are doing here is to fight humiliating African leaders; only that.

Madam Speaker, I remember during the campaigns of the last elections in Kenya, some "big brothers" urged the people of Kenya not to vote for H.E. President Uhuru Kenyatta and his deputy. The reasons were based on these cases which are in the Hague today. But despite all that, the people of Kenya decided to vote for them overwhelmingly. So, following them in those cases means humiliating the people of Kenya also. And we cannot support that at all.

Madam Speaker, as I said in the clarification in Ghaza Strip some few years ago there were mass killings and **Gemin** also found in Palestine something like that also happened. Some people wanted justice for the people who were killed down there but the UN didn't respond or it responded negatively – I remember there was a resolution asking the UN to go there and carry out investigations but the State of Israel refused that. No one has condemned that so far.

Iraq was attacked twice on the grounds that they were making massive destruction weapons but it came to appear that this was not taking place at all. But hundreds of thousands of people were killed in Iraq and people are still suffering from those attacks. We are told the same in Georgia, Afghanistan and so forth.

What is going on in Syria for now more than a year and the world is just looking on. No one is investigating or even asking the ICC to take up the matter. It was only once when there was suspicion that they were using chemical weapons that people stood up because it concerned them.

Madam Speaker, why is it that it is only Africans who are taken to the ICC? I wouldn't want to go further because the cases are known but I support the motion. Thank you.

(Applause)

The Speaker: Thank you, hon. Abdul Karim. I now invite the Chair, Council. Meanwhile hon. Bazivamo prepare to respond.

The Chairperson, Council of Ministers (Mr. Shem Bageine): Thank you very much, Madam Speaker. I have listened intently to the debate by several Members on this motion and I only have a few remarks to make.

The first one, madam Speaker is when I used the phrase “living in history,” which my young sister has referred to again, I simply meant to say that we can learn from history but we do not have to live in history. We use history to focus on the future and pave a way forward as in what we would like to do.

Madam Speaker, the people behind the ICC are living in history. Why am I saying this? When they came into Africa during Colonialism they found in certain countries some order which was in existence - authority that was in existence. *(Applause)* They despised that authority, put it aside and reigned over our people. They are trying to do the same thing today.

Madam Speaker, we are not debating legalities in this matter. We are talking about politics and we have to take a political decision in order to maintain the dignity of our African people and their leadership. In fact, I was looking at the word “deferral” and I was wondering whether that doesn't imply that there is a case. I was thinking that it should be withdrawal of the case against the President and Deputy President of the Republic of Kenya. To me deferral is soft; withdrawal if the case would be in tandem with what the African leadership has decided in taking a political decision that verges on withdrawal from ICC if this case goes on.

Madam Speaker, I do not know, perhaps I am not well informed on the decisions by the African leaders but I would like to imagine that that is the line of thinking in which this decision was made. And if necessary, therefore, for us not to go against the decision of the African Heads of

State, we could look at the use of “deferral” and “withdrawal” and decide which one we would want to go for. Otherwise I support the motion. I thank you.

(Applause)

The Speaker: Thank you very much, Chair, Council. I don’t know whether you have moved that as an amendment or you envisage that hon. Bazivamo will pick it from there and carry it as an amendment to his motion. I think I will hear it from him.

Mr. Christophe Bazivamo (Rwanda): Thank you very much, Rt hon. Speaker. I really appreciate and recognize everyone who has made a contribution and supported this motion. I recognize specifically hon. Sebalu, hon. Patricia, hon. Kiangoi, hon. Nakawuki, hon. Frederic, hon. Mumbi, hon. Nkanae, hon. Mbidde, hon. Ogle, hon. Mathuki, hon. Sarah Bonaya, hon. Abdu Karim and hon. Bageine.

I really thank you for the support and for information given by hon. Mbidde because he was clear saying that he doesn’t support it because of conflict of interest. As a lawyer he has clarified the reason why he didn’t want to support it. But also the information given by the Chairperson, Council of Ministers is clear so that we can look at an alternative thinking.

I want to say that at the beginning I had clearly said that there was an amendment on point No. 3 where we do not come back only on a criminal court to be established in East Africa not only to deal with the Kenya cases because it is said: “... *as amended to retaliate and urge the Heads of State Summit to fast track establishment of a criminal jurisdiction where cases of a similar nature should be referred to.*” It means that it is not only the cases of the President of Kenya and his deputy but all the cases including other Kenyans who are accused in the Hague.

But what I would like to say is that for the amendment wished by hon. Mumbi is already taken into consideration by the motion because normally we have two cases; one case of the President and another case where we have the Deputy President and the other one highlighted by hon. Mumbi. So, in our motion we clearly talk about the two cases. It is not only one case. So, this has been considered, therefore, we don’t see why we have to amend.

The other thing I have said, maybe, to be amended is highlighting what the Secretary General has to send this resolution to: The East African Community Summit, National Assemblies of the EAC Partner States for amendments before sending it to the African Union. With all these clarifications, Rt hon. Speaker, I beg to move. Thank you.

(Applause)

The Speaker: Thank you very much, hon. Bazivamo. Hon. Members, the motion on the floor is that this Assembly to resolve to urge the International Criminal Court (ICC) to defer the criminal cases against the President and Deputy President of the Republic of Kenya. I now put the question.

(Question put and agreed to.)

ADJOURNMENT

The Speaker: Hon. Members, we have come to the end of today's deliberations. Before I adjourn, allow me to let you know that tomorrow we are having a seminar on peace and security in the Great Lakes Region. It is going to be facilitated by the International Conference of the Great Lakes Region Secretariat which has its headquarters here in Bujumbura. We shall start at 10.30 a.m. initially it was 9.30 but the Chamber will be in use by the National Assembly of Burundi. So we shall start at 10.30 in the Chamber.

I want also to inform you that in the afternoon we shall have the EALA Amani Forum. All of us are members of EALA Amani Forum and so we need to converge and lay new strategies on the issues of peace and security in the region.

Perhaps I should add that stay tuned for the program of Saturday with where we were invited by H.E. the President. The hon. Minister, Leontine Nzeyimana will let us know where we are going to join the Burundians for the *Ibikorwa bya Rusanje* exercise.

House stands adjourned until Tuesday, 2:30 p.m.

(The Assembly rose at: 18:30 p.m. and adjourned until Tuesday, 29th October at 2.30 p.m.)