

EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY



**REPORT OF THE CAPACITY BUILDING WORKSHOP FOR THE
COMMITTEE ON GENERAL PURPOSE**

*“The Legislative process of Bills: From initiation, enactment to oversight on enacted
law”*

6TH - 9TH AUGUST, 2014

NAIROBI, KENYA

Office of the Clerk
EAC Headquarters, EALA Wing - 5th Floor,
Arusha - United Republic of Tanzania

1. INTRODUCTION

In accordance with Articles 49 of the Treaty for the Establishment the East African Community and Rules 61, 62 and 64 of the Rules of Procedure, the East African Legislative Assembly, being the legislative arm of the East African Community has the responsibility and mandate to legislate for the EAC. This mandate is concurrently performed with EALA's oversight, representation and the budgetary functions.

In order to better execute the above functions, EALA, has through its Rules of Procedure established Committees. The functions of the Committees revolve around the progress made in the implementation of provisions of the Treaty. This therefore calls for continuous capacity enhancement for both the Members and Staff.

It is in line with the above that the General Purpose Committee undertook a specific training on the legislative process in a bid to empower the Members with the requisite procedural for the enactment of Bills. The workshop was a joint effort of EALA and AWEPA and was held between 6th - 9th August 2014 in Nairobi, Kenya.

2. OBJECTIVE OF THE WORKSHOP

The objective of the workshop was to enhance the capacity of Members of the Committee to better execute their legislative function through the initiation and enactment of the requisite regional laws. Members were enabled to review the modus operandi and processes through which Bills progress.

The workshop was therefore designed to enable proficiency in enacting laws with a strong basis for implementation.

3. PRESENTATIONS

The workshop was facilitated by Hon. Dan Wandera Ogalo, a former Member of EALA and an expert in legislative processes. The sessions were moderated by Hon. Dr. Martin Nduwimana, the Chairperson of the Committee, Hon. Dr. Kessy Nderakindo and Hon. Emerence Bucumi.

3.1. Principles and details of an effective Regional Law

Hon. Ogalo discussed the need to distinguish between the principles and details of an effective law, quoting Rules 67 and 68 (3) of the Rules of Procedure of the Assembly, which stipulate that the Committee shall not discuss the principles but details of the bill. He emphasized that the Committee initiates studies with the help of drafters and in this regard scrutinizes details of the bills. The First reading of a bill introduces it to the House and is referred to the Committee while the second reading is the debate on the principles of the bill by the House during its plenary session in accordance with Rule 68(3).

He pointed out that a Bill enacted by the Assembly at the Third Reading can only become an Act if it is fully assented to by all the Heads of State and published in the Gazette with a clear commencement date.

3.2. The First, Second and Third Reading of Bills and Principles of moving effective amendments.

The above reading(s) can also be equated to stages 1, 2 and 3 of enacting a bill or moving amendments.

The **First Reading** is presentation of the bill. A Private Member's bill has to be first consented to be presented then the member has to ask to read it to the parliament plenary before it is then later sent to a Committee for scrutiny of details and amendments. Committee stage is very important and

all the necessary due diligence needs to be done in which case the Committee needs to check the advantages and disadvantages of the law. There may be need to bring in experts for consultation to finalise the proposition.

The **Second Reading** comprises the Committee Chairperson (or the Minister responsible) presenting and giving justification for the bill. At this stage the bill is debated. The bill can now be taken to the Committee of the Whole House the Speaker moves from the Speaker's Chair and takes the Clerk's seat becoming Chair of the House Committee (representing informality). This is done to consider each clause of the bill until a consensus is reached. The Speaker then moves back and takes the Speaker's chair. The Committee Chairperson presents the bill and then any amendments can now be moved and a debate ensues. Amendments can be considered with wider gaps in amendments proposed being debated first then the lesser gaps considered subsequently.

The **Third Reading** is the preparation to pass the law and may involve re-committal of clauses of the bill, further debate and Passing ready for assent. The facilitator pointed out key considerations in the course of enacting regional bills notably:

- The complexity of the EA composition of States (francophone and Anglophone); it was noted that most errors are made in the Committee stage where debate can sometimes sway to discussing principles instead of details and scrutiny.
- Second reading requires serious preparation in order to make meaningful contribution. Furthermore, it is important that the Members master the Rules of Procedure for effective presentation.
- There is need for consultations and mobilisation within Committee Members and of as many Members of the House. In case a Member opposes the Committee's proposition, it is suggested that a minority

report be submitted together with the substantive committee report for plenary debate.

3.3. Challenges to effective implementation of the Community's Acts

The facilitator explained various challenges to the effective implementation of the Community's Acts notably laws resisted by Ministers. He added that some laws are more effective than others because they are backed for instance by Directives of the Summit. He emphasized the need to cross reference regional laws with the applicable national laws to ensure harmony between the two. He further reiterated the need to establish why some laws passed by the Assembly and assented to by the Summit are still not effective; highlighting the need to address this situation.

3.4. Oversight and implementation of laws of EAC - historical perspective and success stories with regard to status of implementation

Hon. Ogalo explained that a number of issues have also contributed to delay in implementation. Notable among these are:

- The Summit may have more pressing issues at the point in time when assent is due or imminent ;
- Implementation of the law in Partner States varies in time with line ministries;
- Conflict in implementation of laws of partners states and that of the EAC laws;
- Funding challenges for the enforcement or the implementation of the laws, mechanisms for implementation in Partner States are weak.

The Facilitator, using several EAC Acts in force, pointed out the status of Acts passed by the Assembly, and what is limiting implementation and impact as well as the Laws that are being implemented with a measure of success thus:

(i). The East African Customs Management Act, 2004

The law has been operationalised and implemented by all partner states. Its success, it was explained, is seen in the volume of trade between the partner states which has increased tremendously. The Directorate of Customs and Trade at the Secretariat has played a leading role in initiating trade policies and coordinating implementation of the Act.

(ii). The East African Community Standardisation, Quality Assurance and Testing Act, 2007

The law ensures quality of services and goods whose importance lies in its protection of the people of East Africa from hazardous imports. By 2012 over 1,200 standards have been established throughout the region and were gradually being operationalised but still at a slow pace.

(iii). The East African Competition Act, 2006

The object of the law is to establish and promote fair trade practices, promote competition, provide consumer protection and encourage industrialisation. As envisaged by Article 74 of the Treaty, it is essential in any single trade regime but it is not operational at all as the competition authority provided for is not operational.

Other laws cited as having a degree of success in implementation include among others, the East African Civil Aviation Safety and Security Agency Act, The Appropriations Act, and The Community Emblems Act, 2003.

4.0 THE CONCEPT FOR A BILL ON EAC CREATIVE AND CULTURAL INDUSTRIES - AS A CASE STUDY

This concept would provide for a bill that would seek to enhance books and publications, film, visual arts, performing art, crafts and music industries among other cultural activities. The concept was used as a case study for the

specific purpose of the capacity building workshop and as a basis for further discussion and research.

The facilitator used various examples to discuss the basis of such a bill notably; Lupita Nyong'o's film (*Twelve Years a Slave*); the Nigerian President's support for the Nigerian film industry (*Nollywood*) and the revenue from the Film Industry (nearly 600 million dollars) in addition to 125 billion dollars from export of American music; 161,000 fulltime jobs in Great Britain; 12,000 jobs created in South Africa; among other benefits that accrue from the industry.

Other key discussions that revolved around the bill would include, but not be limited to the following aspects: Cultural imperialism can influence local people therefore content and distribution is very critical; the need for a deliberate campaign by government on local content as is already happening in Uganda; Creative arts for cohesion and solidarity is useful; talented local artists are working in a vacuum with no legislative framework; engagement, relationship and awareness are key to capturing the interests of the youth; the law will provide framework for artists to performance standard; language and intra-cultural activities should be addressed within the law and; the infrastructure is in place and therefore there is need to enhance and activate it.

Hon. Ogalo identified key sections that would need to be critically looked at during consultations with respective stakeholders in the industry to collect views including **Clauses relating composition and functions of governing bodies and to avoid bureaucratic review if the supervision is under the Secretary General as well as the procedure of Audit.**

5.0 EMERGING ISSUES

Issues emerging from the presentations included the following:

- 5.1 Funding** (budget) is a key challenge for the Assembly. The inadequacy of funding undermines the institutional capacity of the Assembly and limits its ability to present and debate bills.
- 5.2 The Treaty is “executive heavy”**
The Facilitator explained that the Treaty Establishing the East African Community was initially focused on setting up the Secretariat and only at the later stage did EALA and the EACJ come to be included and it is for this reason that fewer articles of the Treaty were dedicated to the two Organs. The ongoing institutional review process and revision of the Treaty should ideally fill the existing gaps.
- 5.3 Harmonisation of national laws and EALA laws** was an issue in respect to precedence being given to some national laws over regional laws despite clarity that the latter supersedes national laws on matters of the Community in as far as the specific inconsistency is concerned.
- 5.4 The Treaty is appended to the various national constitutions** and as such the national constitutions remain the supreme law in any partner state.
- 5.5 Initiating bills by private members.** Private Members’ bills are a legitimate and good source of initiating bills even though in many cases they are viewed differently by the Council of Ministers. Private members bills which have financial implications may be avoided because they will be resisted (legitimately) at various stages by the Council of Ministers. It is the right of every Member to initiate a bill although it is good practice to consult partner states and other stakeholders
- 5.6 Institutional Review.** The Facilitator explained that according to him, there is need for goodwill and institutional integrity and thus the need to revisit the architecture of EAC since the Assembly and Court of Justice were inaugurated much later. Nevertheless, the Legislative Assembly can still adequately perform the oversight role. Further to

this, there is usually need for clarity and harmonisation between national parliaments and EALA laws.

- 5.7 Delays in completing the law making** process sometimes at the Summit level. It was explained that when there was a delay, it was useful for the Speaker to handle the issue by discussing it with the Summit of the Heads of State.

The effective implementation of EALA laws was in some instance problematic and varied from country to country. The need to review method of communicating EALA laws to partner states was crucial.

6.0 RECOMMENDATIONS

- 6.1** Owing to the fact that there is no effective mechanism to monitor implementation of laws, **there is need to establish a well-founded directorate in the Secretariat to continuously monitor and evaluate implementation of regional laws.**
- 6.2** It is recommended that the role of the coordination committee be re-examined from the role of implementation of laws since this body meets twice a year. It may be unrealistic to expect Permanent Secretaries to implement regional laws that in some instances may conflict with national laws.
- 6.3** With regard to the lack of Public awareness of EALA laws, it was agreed that Public hearings are a good medium and where possible can be used to create awareness. **It is recommended that the bills should be transmitted, not only to Parliaments, but also to Ministries of Justice, Courts of Judicature, Higher Institutions of learning, public libraries and Administrative officers.** The Committee further recommends that careful selection of appropriate participants during the process is done with clear reporting and feed back mechanism to decision makers in the partner states institutions is established.

6.4 The ineffective or partially effective implementation of national laws needs to be revisited in order to ensure proper and effective operation of these laws and a mandatory period of implementation could be considered. Institutional capacity of the Assembly limits its ability to present and debate bills mainly arising from inadequacy of funding. **It is recommended that the institutional review as well as the proposed funding mechanisms address the problem in terms of providing increased financial capacity.**

6.5 **It was recommended that the best legacy the Assembly can leave is playing its part in enacting laws since implementation was largely dependent on partner states.**

This so far, was being done and was exemplified by the proven record whereby the Acts of the Community including **The Laws of the Community Act 2004, The Acts of the East African Community Act 2004 and The East African Legislative Assembly (Powers and Privileges) Act 2003** (which were Private Members' bills brought by the Committee on Legal Rules and Privileges) are implemented every time the Assembly enacts a law or a Committee carries out its functions in relation to oversight and considering bills referred to it. Since they are facilitating laws, oversight in the usual sense is not applicable but they are laws to facilitate the work of the Assembly and also provide for enactment of bills into law and the process of assent.

6.6 **It is recommended that the Assembly and the Council of Ministers re-engage to work out the problems creating passive resistance to passing, (particularly) of private Members' bills.**

7.0 ACKNOWLEDGEMENT

The Committee would like to express its appreciation to the following for the facilitation:-

- (i) The Rt. Hon. Speaker EALA for facilitating the Committee to undertake the activity;
- (ii) The Committee Members for their active participation;
- (iii) The Facilitator, Hon. Dan Wandera Ogallo; and
- (iv) The Office of the Clerk for ensuring that all necessary arrangements were made for the success of the activity;
- (v) AWEPA for funding the workshop.

8.0 CONCLUSION

EALA Committees need to pass comprehensive bills that suit the needs of the East African Community. Furthermore, all stakeholders including the Summit, Council of Ministers and Members need to play a positive role and embrace all regional laws taking into consideration the aspirations of the integration process. It is the enactment and implementation of effective Community laws that will ensure the realisation of the integration Agenda of the East African Community.