



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

11TH SITTING - FOURTH ASSEMBLY: THIRD MEETING – FIRST SESSION

Thursday, 15th March 2018

The East African Legislative Assembly met at 2:30 p.m. in the Chamber, EALA Wing, EAC Headquarters, Arusha, Tanzania

PRAYER

(The Speaker, Mr. Martin K. Ngoga, in the Chair)

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF MPS FROM STATE ASSEMBLIES OF NIGERIA

The Speaker: Good afternoon, honourable Members. There is one chapter that is held up somewhere for some good reasons but they will be joining us shortly so I hope no one will be considering issues of quorum. They will be coming in a short while.

I am glad to announce that we have another group of very important visitors in the

Gallery and these are honourable Members attending the Parliamentary Skills Development Workshop at ESAMI. They are from different areas, as I am going to announce. They are:

1. Rt hon. Abubakar Yahaya Kusada - Speaker of Katsina State House of Assembly in the Republic of Nigeria;
2. Hon. Tassi Musa Maigari, MP, Katsina State House of Assembly, Nigeria;
3. Hon. Ibrahim Umar Diko, MP, Katsina State House of Assembly;
4. Hon. Bero Abdul Dan Musa, MP, Katsina State House of Assembly in Nigeria;
5. Hon. Abubakar Muhammed

Tota, MP, Katsina State House of Assembly in Nigeria
6. Prof. P. L. Banda, Programme Facilitator from ESAMI.

VISITING DELEGATION FROM
INTERNATIONAL COMMITTEE
OF RED CROSS REGIONAL OFFICE,
NAIROBI

We have a delegation from the International Committee of the Red Cross, regional delegation in Nairobi. The team comprises of the following members:

1. Mr. Olivier Duvoir - Head of regional delegation.
 2. Mr. Hillary Muchiri - Legal advisor
 3. Dr. Phillip Mwanika - Multi-lateral affairs advisor.
- (Applause)*

We still have the team of honourable members from the Republic of South Sudan but they are not yet in the gallery. We welcome you all. It is our honour to have you around. Thank you very much.

BILL

Second Reading

THE EAST AFRICAN COMMUNITY
OATH BILL, 2017

The Second Deputy Prime Minister and Minister for EAC Affairs, Uganda (Ex Officio) Dr. Kirunda Kivejinja: Mr. Speaker, Sir, I beg to move that The East African Community Oath Bill, 2017 be read a Second time.

The Speaker: Seconders?

(Hon. (Ms.) Isabelle Ndahayo, hon. Olivier Nduhungirehe, hon. Chris Opoka and hon. Adam Kimbisa seconded)

Chairperson, Council of Ministers, please, give your justification.

The Second Deputy Prime Minister and Minister for EAC Affairs, Uganda (Ex Officio) (Dr. Kirunda Kivejinja): I thank the colleagues that seconded, even those who did not stand because not all Members could stand.

The East African Community Oath Bill, 2017 seeks to provide for the taking and administering of the oath in relation to specific persons appointed to serve in the organs or institutions of the Community or required to take oath before giving evidence in the East African Court of Justice.

Mr. Speaker, Sir, an oath is a solemn declaration of attestation by which an individual signifies that he or she is bound and is conscious to perform particular function and truthfully, faithfully or with loyalty to a particular body.

The taking of an oath should be provided for by the statute. I emphasize that this is very important. We appreciate that there are specific persons who are required by the Treaty, like the judges, registrars of the East African Court of Justice or an Act of the Community like in the case of members of the East African Legislative Assembly but in all other cases, the oaths have been administered and undertaken in accordance with the Staff Rules and Regulations or by practice.

Mr. Speaker, Sir, the Oath Bill is designed to address these concerns. I submit the report of the Committee on Legal, Rules and Privileges of the East African Community Oath Bill, 2017. The Committee may present its report to allow debate by the Assembly. At the end of the debate, I will be called upon by the Speaker to respond.

The Speaker: Thank you, Chairperson, Council of Ministers. Chairperson, Committee on Legal, Rules and Privileges, you have the Floor to move the report.

PAPER LAID

REPORT OF THE COMMITTEE ON THE CONSIDERATION OF THE EAST AFRICAN COMMUNITY OATHS BILL, 2017

The Chairperson, Committee on Legal, Rules and Privileges (Amb Ndangiza): Rt hon. Speaker, I beg to lay on the Table the report of the Committee on Legal, Rules and Privileges on the consolidation of the East African Community Oath Bill, 2017.

(Hon. (Amb.) Ndangiza laid the document on the Table)

The Speaker: Chairperson, Committee on Legal, Rules and Privileges, you can now move the report.

MOTION

ADOPTION OF REPORT OF THE COMMITTEE ON THE CONSIDERATION OF THE EAC OATHS BILL, 2017

The Chairperson, Committee on Legal, Rules and Privileges (Amb. Ndangiza): Mr. Speaker, Sir, the Report of the Committee on the consideration of the East African Community Oaths Bill, 2017.

The East African Community Oath Bill, 2017 was introduced into the Assembly by the Chairperson, Council of Ministers and read for the first time on 8 February 2018 in Kampala, Uganda.

In accordance with rule 66(4) of the Rules of Procedure of the Assembly, the Bill was referred to the Committee on Legal, Rules and Privileges for consideration.

The object of this Bill is to provide for the taking and administering of oaths in relation to specific persons appointed to serve in the organs or institutions of the Community or required to take oath before giving evidence in the East African Court of Justice.

According to the Oxford English Dictionary, an Oath is a solemn or formal appeal to God or to a deity or something held in reference or regard in witness of the truth of the statement or the binding character of a promise or undertaking. Witnesses must provide truthful testimony and those holding certain offices must perform their official functions with a view towards upholding the truth. Juries must decide the facts and render verdicts, and judges must apply the law to particular circumstances guided by what is true.

On the other hand, the definition of affirmation is the act of confirming something to be true, or is a written or oral statement that confirms something is true. It is a solemn declaration but not under oath permitted to one who has solemn declaration. It is permitted to one who has conscientious objections to taking oaths.

According to Wikipedia, an affirmation is a solemn declaration made by and allowed to those who conscientiously object to taking an oath. An affirmation has the exactly same legal effect as an oath but it is usually taken to avoid religious implication of oath. It is legally binding but not considered a religious oath. Some religious minorities hold beliefs that allow them to make legally binding promises but forbid them to swear an oath before a deity.

With the regard to the content of the Bill, the East African Community Oaths Bill, 2017 provides for an obligation on persons in the employment or service of the Community and those appearing before judicial or *quasi-judicial* organs or institutions of the Community to take or

make oath before discharging their specific duties.

The Bill is composed of eight Clauses and three Schedules as follows:

- i. Clause 1 is for a short title of the Bill;
- ii. Clause 2 provides interpretation of key words or terms;
- iii. Clause 3 provides a legal obligation to take oath for persons elected or appointed in the service of the Community;
- iv. Clause 4 provides for unnecessary repetition of taking oaths;
- v. Clause 5 provides for omission to take oath;
- vi. Clause 6 provides for the form and manner in which oaths are taken;
- vii. Clause 7 is for affirmation;
- viii. Clause 8 empowers the Council to make regulations;
- ix. The First Schedule provides a manner of taking and administering oaths;
- x. The Second Schedule provides for oaths to be taken; and,
- xi. The Third Schedule provides for affirmation to be taken.

METHODOLOGY

The Committee conducted three meetings in Arusha to consider the East African Community Oaths Bill 2017. All the Meetings were held during the Third Meeting of the First Session of the Fourth Assembly scheduled for 4th to 23rd March 2018. In consideration of the Bill, the Committee reviewed literature regarding the subject matter of the Bill, reviewed existing legislation and held an interactive meeting with Mr. Denis Kibirige, the Principal Legislative Draftsman of the Community.

The Committee also received and considered written comments from the East African Court of Justice and the Inter-University Council for East Africa. Other organs and institutions of the Community

were invited to provide their comments, but they did not respond.

OBSERVATIONS OF THE COMMITTEE:

The Committee made the following observations:

- i. Mr. Speaker, Sir, this Bill is important to the Community because it legislates for the oaths or affirmation to be taken by people employed by or who provide services to the Community, as well as to individuals giving evidence before the East African Court of Justice and other organs of the Community;
- ii. That Paragraph 1 of Article 72 of the Treaty provides that “in the performance of their functions, that staff of the Community shall not seek or receive instructions from any Partner State or from any other authority external to the Community. They shall refrain from any actions, which may adversely reflect on their position as international civil servants and shall be responsible only to the Community.
- iii. Article 42 (2) of the Treaty provide for the oath to be administered to judges and registrars of the East African Court of Justice. The East African Legislative Assembly (Powers and Privileges) Act, 2003 provides for the oaths for the Speaker and Members of the Assembly while the Administration of the East African Legislative Assembly Act, 2011 provides for the oaths to be administered to the Clerk and other staff of the Assembly.
- iv. Regulation 29 of the East African Community Staff Rules and Regulation provides for the oath of allegiance and oath of secrecy to be

- administered to the staff of the Community;
- v. The Bill does not include oaths for the following:
 - a. The Counsel to the Community;
 - b. The Director General in charge of Customs and Trade; and
 - c. Individuals giving evidence before the East African Legislative Assembly or at its Committee.
 - vi. There is no cross reference to the other existing legislation that provide for the oaths to persons employed or in the service of the Community;
 - vii. The word affirmation need to be defined in the Bill;
 - viii. The procedure of taking oath for Members of the EALA as provided for by Section 13 of the East African Legislative Assembly (Powers and Privileges) Act, 2003, differs from the practice of taking oaths in the Assembly as provided for by Sub-Rules (2) and (3) of the Rules of Procedure of the Assembly, 2015 Edition;
 - ix. There are two different scenarios of taking oath for new Members of the EALA:
 - a. Members taking oath or affirmation at the inauguration of a new House where the oath/affirmation is administered by the Clerk of the Assembly; and
 - b. Members who join the Assembly at any other time apart from the inauguration of the new House where the oath/affirmation is administered to by the Rt. Hon. Speaker of the Assembly.
 - x. The Bill requires all Members of staff of the Community to take oath/affirmation before the

Secretary General or his/her appointed representative. However, the Committee noted that the Community has other semi-autonomous organs and institutions, hence staff of those institutions should be taking oath/affirmation before the executive heads of those organs/institutions;

- xi. There is a need to have a separate cluster to specifically cater for the oaths of heads of institutions and their deputies; and
- xii. The Bill provides that the Judge of the East African Court of Justice should be responsible for administering oath/affirmation to the Deputy Secretary General. However, the Committee is of the opinion that administration of oaths/affirmation to the Secretary General or Deputy Secretary General should be the responsibility of the Registrar.

RECOMMENDATIONS

The Committee recommends to the Assembly to:

- i. Adopt this Report of the Committee together with the attached schedule of amendments; and
- ii. Pass the East African Community Oaths Bill, 2017.

Thank you, Rt Hon. Speaker.

The Speaker: The proposal on the floor is that the East African Community Oaths Bill, 2017 be read for the Second time. Debate is open.

Dr Francois Xavier Kalinda (Rwanda): Thank you very much, Mr. Speaker, Sir. I take this opportunity to thank the Chair of the Committee on Legal, Rules and Privileges for the brilliant presentation of the report. (*Applause*).

From the outset, I have to declare that I am a member of this Committee and in this capacity, I support the report.

The East African Oaths Bill, 2017 is a very important Bill because so far, the taking and administering of oaths in relation to specific persons appointed or elected to serve in various organs and institutions of the Community are required to take oath before giving evidence in relevant organs. That is catered for in different legal texts in a manner that some of the authorities and officials of the Community have forgotten.

As an example, there are some authorities and officials of the Community -
(*Interruption*)

Ms Rose Akol Okullu (Uganda): Thank you, Mr. Speaker, Sir. I have looked at the schedule for members of this Committee and I see hon. (Dr.) Francis Kalinda, a member of this Committee and therefore, a member who participated in preparing this report. This is his report. Is it procedurally right for a member to debate his own report because as far as I know, in the Parliament I have been, Members who have prepared a report or members of such a committee can only respond to issues that may be raised about the report but not participate in the debate of their own report? Are we moving in the right direction or is he procedurally right to participate in the debate of his own report?

The Speaker: Thank you. Hon. Rose Akol, actually, he is Dr Francois Xavier Kalinda and not Francis. He wants it that way.

Hon. Akol, the practice in this House has been that members can debate, only that they have to declare that they are actually members of that particular committee. In addition, it is stipulated that they should not contradict the content because if they are in a position to challenge the content, they should have written a minority report. If the debate is not challenging the content, it is in

order for Members to debate after they have declared their interest.

Hon. Dr Kalinda, you can proceed.

Dr Kalinda: Thank you, Mr Speaker for your guidance to the honourable member. I was supporting the report by mentioning that the report put together all the provisions of other legal text that are catered here and there and bridged or filled the gap that has been left by these different legal terms.

I was giving some examples of some authorities and officials of the Community who are not considered in the existing legal text such as the Secretary General, the Deputy Secretary General, the CTC, the Judge, the Clerk, the Registrar and others as it is clearly mentioned in the schedule that is annexed to this Bill.

Mr. Speaker, Sir, the Bill fills all these gaps and provides a schedule as I have already mentioned and gives persons required to take oath or affirmation of allegiance the authority – who are competent – to administer the oath and the organs or institutions or persons before whom the oath is taken.

In so doing, the Bill creates a harmonised statutory basis for taking oath of affirmation by persons in the service of the Community before they start discharging their specific duties.

For these reasons, I support the report and I urge all Members to do the same.
I submit, Mr. Speaker, Sir.

The Speaker: Thank you, hon. (Dr.) Kalinda.

Ms Akol: Thank you, Mr. Speaker, Sir, for giving me this opportunity to participate in the debate of this Bill; the East African Community Oath Bill, 2017.

Mr. Speaker, I have gone through the Bill and I have also listened carefully to the report that has been presented by hon. (Amb.) Ndagiza. I would like to thank the committee chaired by hon. (Amb.) Ndagazi for the well prepared report on this Bill.

I have looked at the clauses of this Bill – there are those which prefer punishment where a member or those supposed to take oath fail to take this oath. For example, a person who declines or neglects or fails to take the oath of affirmation has to face certain consequences.

I just want to know whether it should also not be in this Bill that since when members take the oath of secrecy or oath of allegiance, they are not supposed to disclose certain information regarding the office that they hold. Where such a person, having taken this oath of allegiance, discloses information that they are not supposed to, what are the penalties or consequences?

My thinking is that where such an occurrence happens, it should also be in this Bill. What is the punishment for such a person? That is the main issue that I thought I needed to get clarification on. I thank the Committee for the well-prepared report

I beg to rest my case.

The Speaker: Thank you, hon. Akol. May I know whether the draftsman is in the House?

Dr Gabriel Garang Aher Arol (South Sudan): Thank you, Mr Speaker, for the opportunity. First, let me take this chance to congratulate the Chairperson of the Committee and Committee Members for putting doing this good report.

I made some observations – probably they were not intended – typos or maybe somebody who was putting the report

together did not actually take time. For instance, I am asking whether Wikipedia is the only site that could actually provide the right definition of affirmation. Wikipedia is usually not the right place or correct resource. Therefore, you need to check other sources for the definition of the word “affirmation”.

On page 3 on methodology, I am wondering whether the word “principle” should end with ‘ple’ or ‘pal’. It says, “... The principle legislative draftsman of the Community ...” You need to take a look at that and see whether you are correct or not.

On page 5 – Are we together?

The Speaker: I am glad you have asked that question because I am looking around and I do not know who is taking notes. Are you together with those who are supposed to take notes? Even if I confirmed that the draftsman is around, he does not speak in the House. Therefore, those who are responsible for providing responses at the end should be alert.

Dr Arol: Let me read the entire paragraph so that we are on the same page. “The Committee conducted three meetings in Arusha to consider the East African Community Oaths Bill.

All the meetings were held during the Third Meeting of the First Session of the Fourth Assembly scheduled for 4-23 March 2018. In consideration of the Bill, the Committee reviewed literature regarding the subject matter on the Bill, reviewed existing legislation and held interactive meetings with Mr ..., the Principle ...”

In my thinking, it should be ‘principal’ and not ‘principle’ but I might be wrong. I stand to be corrected.

The Speaker: Do we have people who are good in languages here that can help?

Dr Arol: In addition, let us go to page five under (viii), which states, “There is two different scenarios ...” I did not understand that. There is something wrong there, right?

Skip (a) and go to (b); “Members who join...” Is it members who join or members who joined?

Those are just some of the observations that I made. Otherwise, thank you for your work.

The Speaker: Thank you, hon. (Dr.) Gabriel. Those details are very important.

The Cabinet Secretary for EAC and Northern Corridor Development, Kenya (Ex Officio) (Mr Peter Munya): Mr. Speaker, Sir, may I also support this Bill and the recommendations of the Committee that has done a very good job in analysing and proposing amendments to the Bill.

Mr. Speaker, Sir, it has been observed earlier by the members and the Chairperson of the Council that this Bill is simply intended to improve on the systems, practice and legislation of taking of oath of affirmation to make sure that there are no gaps and no critical individuals occupying key offices in the Community is left out of affirming or solemnly swearing to carry out their duties in accordance with the law and the mandate provided in the laws.

It is a very straightforward Bill, Mr. Speaker, Sir, therefore, without much ado, I also wanted to enjoin the Member who has just spoken before me in pointing out a few typographical errors in the report. I want to agree with him that Wikipedia cannot be a reliable source of definitions. Wikipedia is a front editing encyclopedia online. I can go in and write – I can even amend what somebody else has written before and provide my own understanding of information. Wikipedia should never be relied on, and I would suggest that since that paragraph is already complete without

is quoting a reference, we can edit any reference to Wikipedia and look for reliable definitions in English.

Mr. Speaker, Sir, I also want to refer to page 4 (iii) of the report towards the end; the last three words. There is again the use of the word ‘principle’, the same one referred by the earlier contribution from one of the honourable members. Instead of ‘principal’, somebody is still insisting on using ‘principle’. As a matter of principle, I therefore would like to correct that the report should read ‘principal’ in (iii).

I would also probably get some explanations on (ix) where reference is being made to the last line where it is said, ‘as staff of those institutions should be taking oath of affirmation before the executive heads of those organs or institutions.’

It is not too clear which staff is referred to. Is it all the staff working under those institutions who should take the oath or are there particular staff? I do not think every employee of an institution is required to take oath. I am informed that is already provided for in the table. Then it is already clarified because this is general reference to staff whereas it would be specific to specific officeholders.

Mr. Speaker, Sir, I would like to join the Members in congratulating and thanking the Members who have done a good job in preparing this report and making recommendations.

I thank you, Mr. Speaker, Sir.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM PARLIAMENT OF KENYA

The Speaker: Thank you very much, hon. Munya. Allow me to recognise more

visitors that we have here. You see, it is very important that we recognise them immediately. These are people who elect us to this Parliament so as we speak and we know they are in the gallery, we take necessary precaution. (*Laughter*)

I would like to recognise the presence of hon. Capt Luweida Muhammed, vice Chair, Regional Integration Committee, Parliament of Kenya; hon. Kassait Kamket from Kenya Parliament. He is very experienced in matters of Parliament because he was a *Hansard* reporter in EALA before. You are most welcome. Sometimes we have to interact with him and get that institutional memory.

Ms Gai Deng (South Sudan): Thank you, Mr. Speaker, Sir, for giving me the opportunity to respond to some of the issues.

The Speaker: For the *Hansard* to get a proper caption of the Member on the floor, she is hon. Deng Gai. I have to be very attentive of these names.

Ms Deng: Thank you, Mr. Speaker, Sir. From the outset, I would like to also declare that I am member of this Committee and would like to take the opportunity to congratulate the Chair, hon. (Amb.) Fatuma Ndingiza for the excellent presentation.

One of the first questions that I will take was referred to by hon. Gabriel. Indeed, Wikipedia is a very informal source and definitely not to be relied on. However, the reference to it in the report was casual but we relied also on our draftsmen that will give us proper definitions and amendments. In the schedule, there is a legal definition of ‘affirmation’ and we can assure the House that we will not insert the word ‘Wikipedia’ in the report. Therefore, the reference is a casual one only in the report but we did not rely on that for the definition. We have a legal definition in the amendment that gives

us a clear definition of what affirmation is. That is in answer to hon. Gabriel’s question.

The other question hon. Gabriel also raised was in reference to the different scenarios. These scenarios refer to Members of Parliament when they are administered the oath, when the House is constituted and some members might join after the House is constituted. Therefore, these are the two scenarios that are referred to and there will be a clear definition and explanation in the amendments that are attached.

The Speaker: Hon. Deng, are you taking the information?

Ms Deng: Yes, I will.

Dr Arol: I was actually focusing on the English part of it. I was not looking at what the scenario was. It says ‘there is two different scenarios’. There is a problem of English construction there and that is what I was trying to point out. Thank you.

Ms Deng: So, you were pointing out the structure of the sentence rather than what scenarios we were referring to so that is taken on board.

I will refer also to the word ‘principle’. We agree and that will be corrected. The correct spelling is with an ‘a’, that is just a typo error.

I believe these are the two questions that were raised by hon. Gabriel. The other question raised by hon. Munya with regard to what staff is referred to – I think that question was answered; that it is already in the schedule attached and it is already explained there. Thank you, Mr. Speaker, Sir.

The Speaker: Thank you, hon. Deng Gai.

Mr Abdikadir Omar Aden (Kenya): Thank you very much, Mr. Speaker, Sir, for the opportunity. Let me join my colleagues

in congratulating the Committee and the Chair for a job well done on this Bill. I think this probably marks the first substantive Bill that this House is looking at and I would like to congratulate my colleague, the Chairperson of Legal, Rules and Privileges, for this particular report.

Having said that, I think the East African Community as an entity, gauging by what we are likely to achieve or aspire to be in the very near future; to be moving from being small to being the East African Federation is going to mean a lot of importance being placed on issues to do with commitment to the work done by staff and members and senior employees of the Community.

For that reason, Mr. Speaker, Sir, I think this Bill is very timely. This Bill indeed sets the pace and tone. It sets very high standards for people who opt not to take oath, for example, to vacate the office with immediate effect. This is very good and I find this very progressive. I must say that this is the level of seriousness that we should aspire to.

I would have liked to see an inclusion – probably at the Committee of the Whole House - I might be one of the people proposing further amendment to this Bill, and I think my colleague touched on it. What are the penalties beyond dismissal and what are the penalties of violation of this particular oath of office for example?

This Bill should indicate that violation of this oath leads you to be accountable, subject to those other laws. I do not see that coming out very clearly.

Mr. Speaker, Sir, I am also encouraged that I do not have to speak much on this.

On Clause 6(2), the Bill is so progressive that it takes into consideration people with disability. This is often ignored a lot in many of our legislative works and it must

have been a well thought of thing to say it because we have members in this House who are disabled and might not be able to hold, for example, the Bible or the Koran in their hands. This Bill stipulates what is supposed to be done in that kind of a situation.

I think my colleagues before me have done justice to the other areas, I do not need to repeat that. I stand to support the Bill.

The Speaker: Thank you very much.

Mr Habib Mohamed Mnyaa (Tanzania): I thank you, Mr. Speaker, Sir. I rise to support the Bill with some reservations.

In Clause 6, it has been mentioned here that for the Muslims, they will hold the Koran and for the Christians, they will hold the Bible. However, I have not seen a specific clause for those who do not have a religion. What will they hold and what will they do?

Section 7 says, “A person appointed in office of the Community who does not take oath as required under section 3 ...” but section 3 says, “A person appointed in the office specified in the first column of the First Schedule shall take oath of allegiance and the oath of secrecy for the Community.”

The oath of secrecy is one part of my reservation. The oath is supposed to be taken in public so that everybody can know that so and so has taken oath of office. If it is taken in secret, how will others know that so and so has taken oath?

The Speaker: Hon. Abdikadir, do you want to provide a point of information? Hon. Mnyaa, do you want to receive information?

Mr Abdikadir Omar Aden (Kenya): Mr Speaker, I would like to inform my colleague that oath of secrecy does not mean you go and hide in a corner and take

an oath. It means taking an oath saying that you swear to keep the secrets of the House and the Community; to be bound by the obligation of secrecy. It is not going behind the doors to take an oath.

The Speaker: It is actually oath of secrecy and not oath taken in secret.

Mr Mnyaa: I thank you. Still, for those who do not have a religion, I have not seen here how they will do it.

In addition, for the Muslims, actually a Koran is not just to be held. Somebody should be clean. For our mothers, sometimes they do not want to be seen because of the position they are in; in their special days. What should they do regarding this? I need some clarification on this issue.

The Speaker: Thank you, hon. Mnyaa. Yes, these matters touch on people's religion and when they are raised, we must pay due attention.

Mr Kim Gai Rout (South Sudan): Thank you, Mr. Speaker, Sir. I stand to support my chairperson for presenting the Bill to the House for the Second Reading. I am also a member of the Committee.

Regarding the concern raised by my colleague about affirmation, if you look at the report, there are introductions which are made by the chairperson to give you a background about oaths and that is why she mentioned Wikipedia.

If you look at page 5(vi) in our observations, it states that the word "affirmation" needs to be defined in the Bill. This is one of our observations. We observed that the word 'affirmation' needs to be defined in the Bill.

I beg to support the report, thank you.

The Speaker: Thank you, hon. Kim Gai.

Ms Mary Mugenyi (Uganda): Thank you, Mr. Speaker, Sir. I would like to take the opportunity to join my colleagues and thank the Chair of the Committee of Rules and Privileges. In the same spirit, I would like to thank the Minister who presented the Bill to be read.

Indeed, this Bill is timely; oaths are being taken and I think they need to be legally supported.

I have a few questions or clarifications to seek as well as reservations. I would like to focus my attention on page 5, Nos.9, 10 and 11.

One, the Bill requires all members of staff of the Community to take oath of affirmation. To me, this is too much. Normally, swearing an oath before you take an office is a preserve of high offices of any institution. If we open it up to swearing in everybody that comes in to be employed by the Community, including the sweepers and cleaners, I think this is unnecessary ceremony. Normally, this person should be served by a simple contract which is signed and protects the individual and the institution without having to go into ceremonies.

I find it unnecessary. That is my opinion. Unless there is justification that everyone who is employed by the Community has to take an oath, I would understand if it was for members of Parliament, the judges of the East African Court, the Secretary General and the Deputy Secretary General. Why do we want to stretch it to every employee of the Community wherever they are? If you go on to read the report, the proposal is that even those who are serving in the institutions of the Community should take an oath. To me, this is overstretched.

Secondly, when you look at Clause (10), it proposes that a separate cluster of individuals should administer the oath.

What is this cluster? I think we need more clarity on this. Are we referring to those already employed by the Community? It is not clear to me, and I think I would need more explanation on that.

Regarding (11), it is not again convincing or clear as to why you would specifically recommend that the oath is administered by the Registrar and not the judge of the East African Court of Justice. What is the justification there? Maybe you needed to write more than you did in the report in order to justify this proposal.

I thank you, Chair of the Committee for a good report and the brilliant presentation that you have made.

The Speaker: Thank you, hon. Mary Mugenyi.

Ms Francine Rutazana (Rwanda): Thank you, Mr. Speaker, Sir, for giving me this opportunity to express myself in front of this august House.

I rise, first of all, to congratulate the Committee on Legal, Rules and Privileges chaired by hon. (Amb.) Fatuma Ndagiza for the work well done in a very short time.

Mr. Speaker, Sir, I observed in the report that some members of the Committee have not signed the report yet and I was wondering if signing a committee report is optional for Members or if they were not around to sign it. This is because this will have an implication for the Assembly to own a report whose Members are not –

The Speaker: Maybe we can clarify that first. When the majority of Members have signed, and when it has not been noted that there is any minority report, those few whose signatures are missing are considered to have been likely inconvenienced but are generally in agreement with the content.

Ms Rutazana: Thank you, Mr. Speaker, Sir, for the clarification.

Going to the report, I did not find some elements related to the practicability of taking oath. For instance, in December when we were sworn-in, some of our colleagues tried to memorise the oath of allegiance and at a certain point could not find the track to continue. No one stopped them as it was well done, so I am wondering how the oath can be administered if we have to read or memorise it.

Lastly, I did not find some provisions regarding the punishments for those who are not accountable to their engagements. Thank you very much.

The Speaker: Thank you very much, hon. Francine.

Ms Susan Nakawuki Nsambu (Uganda): Thank you very much, Mr. Speaker, Sir. Allow me to also add my voice in appreciating the Council of Ministers for being proactive this time round by bringing a number of Bills. We only knew the Council for bringing Appropriation Bills, Amendment Bills or Bills for repeal of Acts of the Assembly, but now I am happy that Council is very determined to keep this Assembly busy. Please, do not relent, keep it up.

I would like to thank my Chair, hon. (Amb.) Ndagiza Fatuma, for the job well done.

From the outset, let me declare that I am a member of the Committee on Legal, Rules and Privileges.

Mr. Speaker, Sir, I rise to support the report of the Committee of Legal, Rules and Privileges and I would like to request Council in particular to accept and take on the proposals of the Committee.

The Committee consulted widely; different stakeholders who also gave us an input when it comes to this very important Bill.

Different members of the Assembly have expressed their concern when it comes to penalties for people who, for example, do not keep the oath of secrecy and they wanted it to be included in the Bill. I would like to inform Members that the EAC Staff Rules and Regulations, together with the proposed East African Legislative Assembly staff rules and regulations cater for that. They are all included so there was no need of repeating that one in the Bill which is strictly to provide for what kind of oath is supposed to be taken. Therefore, that is already taken care of and Members should not be worried. There are different provisions for penalties when you breach any of these rules and regulations or any of the provisions that are included in the Bill.

Hon. Munya made reference to a paragraph where the Committee used a definition from *Wikipedia*. I would like to inform this House that in circumstances where all the statute books of the Community do not provide a definition, we are at liberty to look for any definition so long as it makes meaning and add it. We were concerned because we checked in the Treaty and there was no definition for affirmation and yet we found it important that we provide meaning.

Therefore, we worked together with the Principal Legal Draftsman of the Community and decided to borrow the definition from *Wikipedia* so that there is at least somewhere a person can refer to get the meaning of the word 'affirmation'. This is because not everyone would readily understand it.

Members have also been equally concerned about the reason why all staff would have to take the oath. It has been a practice in this Community that as long as you fall in the category of professional staff, general staff or temporary staff, you take the oath

because you are going to undertake an obligation. Therefore, you must take oath that you will faithfully be able to serve and keep the Community's information confidential and not just be reckless with it. It is only the short-term staff that do not take oath but the rest do. You are feeding into a position which has been occupied by somebody else and you are occupying it for just a short time.

This oath is intended for so many things. There is actually no ceremony – they do not have to call for a meeting or a party for people to come and take the oath. However, after you give in your letter of acceptance for a job, you come, assume office and then the head of your department will now come and say, you have this oath that you need to take. It is just in the office and that is why not everyone gets to find out when people are taking the oath.

Hon. (Ms.) Mugenyi was also wondering why the oath of the registrar is not taken by the judge. Initially, the proposal in the Bill as per Council was that the judges of the East African Court of Justice would participate in administering the oath. However, when we consulted with the court, the registrar wrote back and intimated to the Committee that the judges do not administer oath.

As such, we cannot force it on them; we accepted to take the proposals that they made whereby they guided that the registrar would administer the oath to the Secretary General, the Deputy Secretary General, among others. We decided that where the court advised, we took most of their proposals. However, there are also proposals that we did not take. For example, they had proposed that the oath of the registrar be taken by the Deputy Registrar but when we consulted the Principal Legal Draftsman of the Community, he guided that he did not agree with the position of the court and advised that, that oath be taken by

the counsel to the Community, which advice the Committee complied with.

My colleague, hon. Francine, was concerned as to why all Members of the committee did not sign the report. Just to add to the guidance from the Speaker, it is not mandatory that everyone has to sign as long as the majority of the Members have signed. The reason is that sometimes Members of the Assembly are given other assignments to do and they might not be present at that time when you are finalizing the report. However, they support – *(Interruption)*

Ms Mary Mugenyi (Uganda): Mr Speaker, I would like to be guided as to whether hon. Nakawuki is replying to the issues raised by the Members or she is making her own submission because I believe that the Chair of the Committee is going to reply. I do not know whether they have divided the work and agreed that she replies to some of the issues or she is just helping the Chair of the Committee.

The Speaker: Hon. Mugenyi, actually, this is where Members of the Committee are expected to be useful; to help clarify issues to the rest of the Members. However, the slot for the Chair to reply is still there and it is the preserve of the Chair to provide a different clarification, if she wants to explain these issues in a different way. She can still do that, otherwise there is nothing wrong with a Member of the Committee clarifying issues that are not clear to the rest of the Members who do not belong to that Committee. It is part of the debate.

Ms Nakawuki: Thank you very much, Mr Speaker, for that clarification. I would like to inform the Members that all Members of the Committee are actually obliged to work together with the Chair. That is why I am seated next to the Chair to ensure that all Members get the clarification they require to support the report of the Committee.

Mr. Speaker, Sir, I beg to support the report of the Committee and I ask my colleagues to do the same.

The Speaker: Thank you.

Ms Chris Okumu Opoka (Uganda): Thank you, Mr. Speaker, Sir. Permit me to congratulate the Committee for a job well done and to congratulate the Chair for ably presenting the report to the House.

I would also like to thank the Council, just like my colleague, hon. Nakawuki, did, because they are beginning to bring in Bills and not limiting themselves to Appropriation Bills. *(Applause)*

I rise on one point. On page 5 (vi), the Committee raised the issue that the word ‘affirmation’ needs to be defined in the Bill. I agree but when I looked at the oath itself on the last page; page 29 of the Bill, it says, “... solemnly, sincerely and truthfully affirm ...” When you look at the oath on page 13, it also says, “solemnly swear”. Therefore, the word ‘solemnly’ appears in both the oath of affirmation –

My view is that could be cured on page 4 of the Bill which defines “oath” and “affirmation” to mean a solemn declaration signifying an undertaking to serve the Community. If you look at the text of both, it is all an undertaking to serve sincerely. I think that could be cured, in my view. Thank you, Mr. Speaker, Sir.

The Speaker: Thank you. Can you now reply, Chair of the Committee?

The Chairperson, Committee on Legal, Rules and Privileges (Amb. Fatuma Ndagiza): Thank you, Mr. Speaker, Sir. Let me; first, take this opportunity to thank all honourable Members who have contributed to this Motion. Let me recognise hon. Kalinda, hon. Rose Akol, hon. Garang, hon. Dennis, hon. Peter Munya, hon –

The Speaker: Excuse me, did hon. Dennis speak?

The Chairperson, Committee on Legal, Rules and Privileges Amb. Fatuma Ndagiza: Sorry. Hon. Aden Abdikadir, hon. Habib, hon. Kim, hon. Mary Mugenyi, hon. Francine, hon. Opoka as well as my neighbour and friend, hon. Susan Nakawuki. Thank you for the any clarifications.

Mr. Speaker, Sir, I would also like to thank some of the Members of my team who have clarified certain issues and also complemented the report. I think the question hon. Akol was raising was about penalties for those who do not observe the stipulations in the Bill. I think hon. Susan Nakawuki clarified that, and I agree with her. There are existing EAC Staff Rules and Regulations but there is also the EALA draft. Therefore, we thought that the Bill does not have to go into restitutions which these other regulations and existing rules cater for. (*Interruption*)

Ms Akol: Thank you, Mr. Speaker, Sir. There is a schedule of the people who are supposed to take the oath of secrecy. As the Chair is trying to respond to my question, I still have issues.

Hon. Susan Nakawuki referred to a document that is before her; the Staff Rules and Regulations, and another one yet to be prepared. We are dealing with law – I am not a lawyer but my experience is that we cannot presume or refer to a document that is yet to be prepared and rely on it. I think we need to be very specific here. If it is the rules, then the Chair needs to read to us that rule so that we are comfortable that the penalties we are talking about are well taken care of and so that it is on record.

We also need to understand whether we should also keep relying on the document which hon. Nakawuki talked about, which

document is yet to be a document of this House. It is non-existent. Therefore, I am seeking clarification on that.

The Counsel to the Community (Dr. Anthony Kafumbe): Thank you, Mr. Speaker, Sir. Hon. Akol is raising a very serious issue on penalties. Penalties should actually be provided for, as we do not have a law in the Community, unless the Partner States which have a specific Act. We do not have a law in the Community that prescribes penalties for abusing information that has come to a person in the service of the Community. What we have right now are the Staff Rules and Regulations but that is not good enough.

We think that in addition to what is being provided for under Clause 5, in the fullness of time, the Council will come up with another Bill, the equivalent of an official Secrets Act of the Community.

There are challenges because at Partner State level, you have penal codes and there are courts that enforce these laws but at the level of the Community, we have an East African Court of Justice but it does not have criminal jurisdiction. Therefore, it will take some time to figure out how this law will be implemented because the implementation means that it will be implemented at Partner State level. However, we agree that actually penalties should be a feature of the law but because of that challenge, we are referring to the line of East African regulations.

The Speaker: Thank you, CTC.

Mr Abdikadir Omar Aden (Kenya): With your permission, Mr. Speaker, Sir, I had earlier spoken to the issue of the penalty on this in the hope that there was a law. I am very concerned that the CTC actually confirms that there is no law. I wonder then why we are making this law because a person can take an oath here, walk out and violate the oath and nothing happens.

I really think we have an opportune moment now, as we go to the third reading of this Bill that in the meantime, even if it is on an interim basis, I suggest that since the EAC is domiciled in the United Republic of Tanzania, we could suggest that the violation of this law, with clear explicitly, the member violating it, if it is a Kenyan, should be held responsible or charged in the courts of law in Kenya under the relevant laws as per this in Kenya.

I do not know whether it is possible because I know there are diplomatic immunity issues involved, whether we can say that they should be charged in the United Republic of Tanzania because that is where we are domiciled.

Mr. Speaker, Sir, we are making this very important law yet the violation of this law is inconsequential. How does it work? I think your guidance, Mr. Speaker, Sir, as an experienced lawyer, and maybe even hon. Peter Munya, certainly as a senior lawyer can put his advice to risk but we will require some guidance on this.

The Speaker: Thank you, hon. Aden. Let me try to contextualize this. This is not the only law of the Community that we shall have. Every year we pass the Appropriations Act, there are breaches there, and we do not have a punitive regime. Therefore, the Community generally lacks a punitive mechanism for various violations.

Therefore, even if we direct ourselves to the Bill to the House today, there are so many other laws and every law has the potential of being violated. We can think about this situation in holistic terms and not limit ourselves on one particular Bill.

Mr Adan Mohammed Nooru (Kenya): Mr. Speaker, Sir, on the same issue of penalties, I think this law we are passing talks about witnesses appearing before the Assembly and the court. If you have

summoned or invited a witness to come and he fails to appear, what do you do? It is part of that issue.

On page 4(iv) (c), you are talking about the individual giving evidence before the East African Legislative Assembly or its committees but in the First Schedule which shows who are supposed to take oath and who is supposed to administer the oath, it does not appear anywhere; that is, witnesses supposed to appear before the Assembly and the committees appear to have been omitted. Is this an oversight or by design?

The Speaker: Thank you, hon. Adan Noor. Because I have the privilege of sitting here, although I am not part of the debate, I think the CTC should guide further. We have a situation where we pass various laws but we have no mechanism for punishment in case of violation. This is a general situation. Is there a plan to deal with that or we just pass laws on assumption that everyone is going to act in good will and there will be no violations?

The Counsel to the Community (Dr. Kafumbe): Mr. Speaker, Sir, you have guided properly. The counsel is going to consider a criminal regime. I think this is the trigger so that we have a law that can address all the shortcomings.

However, with respect to the court, they can cite someone for contempt of court so judicial proceedings are actually much better catered for. The same applies to EALA because under the EALA Powers, the committees have powers of the high court and you can compel witnesses to appear before you. I know that when you are issuing summons, because I have seen some of them, you actually cite that if you do not appear, you will invoke your powers

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The Speaker: CTC, you know very well that we have powers in as far as compelling people to appear before us. However, what

do we do after the process? You are talking about the procedure, and I am talking about the end.

I think we can make this process simpler that we have a serious voice in our legislative process in the sense that we pass laws but we do not provide for a mechanism to deal with violations. I am not sure whether the best approach would be to task now or just go ahead the way we have always done but address that bigger problem differently.

The Second Deputy Prime Minister and Minister for EAC Affairs, Uganda (Ex Officio) Dr. Kirunda Kivejinja: I would say that even a journey of 1000 miles starts with one step. Having already realised that we do not have a law, this law can be the beginning so that we criminalise the people who violate the summonses.

The Speaker: Let me try to guide further because when we talk of punishment, we are not necessarily talking about criminal punishment. I am trying to deal with the phraseology of criminalising. We can provide for a punishment that is not criminal in nature. I am just guiding the debate on how it should proceed.

Ms Nakawuki: Thank you, Mr. Speaker, Sir. I wanted to give information on two issues raised by Members. On the issue raised by hon. Noor, the concern you raised actually had the very concern before the Committee when it comes to witnesses who come before the committees of the Assembly.

When we consulted the Principal Legal Draftsman of the Community, he actually showed us the provisions in the East African Legislative Assembly Powers and Privileges Act from sections 15, 17, 18 and 19, which cover all scenarios. For example, when a witness refuses to appear, who administers the oath, for example the Chair of the Committee and the Clerk, they are all

provided for. Therefore, we were actually convinced that there was no need to include that provision in the Bill because the EALA Powers and Privileges Act addresses this. All we needed to do was to include what kind of oath is supposed to be taken in the East African Community Oath Bill, 2017.

Regarding the issue raised by hon. Akol, I happen to be on the sub-committee of the Commission that is handling the proposed EALA staff rules and regulations. These proposals are coming directly from the current EAC Staff Rules and Regulations, 2006. For example, from rule 29 –

The Speaker: Hon. Nakawuki, I think I have to try to save time here. What hon. Akol was concerned about is to act in anticipation. Yes, we know that process is there but we do not know how it is going to be treated here. We do not even know the content, so we may not have to emphasise much about it. That is the concern she had and I find it –

Ms Nakawuki: Mr. Speaker, Sir, I was trying to explain that the substantive law is the East African Community Staff Rules and Regulations, 2006 which provide under Rule 29, the issue of the oath of secrecy and goes ahead to provide the penalties in case you infringe including having your immunity waived – (*Interruption*)

Mr Aden Mohammed Nooru (Kenya): On a point of order, Mr. Speaker, Sir. If the law has been in existence and you repeat half of it here and leave half of it – She has mentioned here that the Bill does not include the oath of the following. If you put those things here and then you talk about another law that is in existence, why do you put the first law if it is already in existence? You are the ones who are confusing Members -

The Speaker: Well, I think it is more about clarification than being a point of order.

Can you conclude hon. Nakawuki? Can we hear from hon. Munya?

The Cabinet Secretary for EAC and Northern Corridor Development, Kenya, (Ex Officio) (Mr Peter Munya): Mr Speaker, I just want to add to what the Chair, Council and the CTC have said in relation to the issues of violation of the law and Treaty and any infringement that may happen.

The Treaty is usually domesticated in the Partner States and therefore, all the laws that are enacted in implementation of the Treaty become part of the domestic laws in the Partner States. If you steal money and you are working for the Community, there is no *lacuna*; you will be taken to court in whichever country you did that act and you will be charge under the laws of that country because the Treaty and its protocols and all other laws are part and parcel of the domestic laws of that country.

Whereas we may require a bigger legislation to expand on this, the local courts will charge you because they are also allowed under the Treaty, if you read carefully, to apply and implement the Treaty. You do not have to be charged under East African Court of Justice. The local law and the local prosecutor will prosecute because the Treaty is part and parcel of the legal regime in Partner States.

The Speaker: Thank you, hon. Peter Munya. It is good that it is coming from the Council. I think this House has a challenge to interrogate this question further and see how we can also go around issues of immunity because that has been a big pretext to field offenders. However, there can never be a system that does not have ways to punish offenders.

For us to be able to conclude, hon. Nakawuki, can you conclude very fast? Remember all these are clarifications to the responses being given by the Chair of the

Committee so that we have to make progress.

Ms Nakawuki: In conclusion, Mr. Speaker, Sir, the penalties for infringement are provided for in the East African Community Staff Rules and Regulations. These are the ones being implemented now. They also provide for scrapping immunity and prosecution. However, there is no harm if the Council is ready to bring a comprehensive law to cater for penalties. I think there is no harm much as they are there in the staff rules and regulations.

Therefore, I just wanted to allay the fears of my colleagues that tentatively, Members can have copies of these rules and regulations from the library.

The Speaker: Again, I do not think the Community will ever have a Penal Code because the different punishments must be provided in different legislations. We have this particular legislation here; I think there is an idea that Chair, Council has provided that we should take into account because we will never have a situation where we have one compilation of punishments like in the Penal Code.

Mr Simon Nganga Mbugua (Kenya): Mr. Speaker, Sir, we have the Bill before us, we could move an amendment. The lacuna is already there and we cannot leave the Bill with some loose ends.

The Speaker: The challenge here is that we are debating a substantive issue. We have to agree that we need a punishment, and then we have to decide what kind of punishment that is. I am wondering whether this is going to be a simple exercise here. That is substantive in a piece of legislation. We are not dealing with a formalistic idea here. We are dealing with a core piece of legislation, so I do not think this is something we can handle now.

Mr Aden: Mr. Speaker, I propose that we direct a joint initiative by the Council and the Committee of Legal, Rules and Privileges to go and look at this issue and probably report back to this House on recommendations in the next sitting on what exactly needs to happen.

The Speaker: Now I want you to help me. What is coming into my mind is to provide more time to deal with this situation. I am looking at the procedure; the best way to do it, I think is to adjourn. More experienced legislators, how do we go about that?

Mr Aden: Mr. Speaker, Sir, it might not be appropriate for the whole Assembly to deliberate on that matter as you rightly guided earlier that it is a substantive issue. I know you are interrupted by the Clerk but would it be more appropriate if the Council with the CTC and our legal committee sat down and looked at this issue instead of disturbing all our minds so that they can progress in this direction in the future?

Mr Nooru: Mr. Speaker, Sir, we have no option. What hon. Abdikadir is saying is the process. As we sit now, I think the only option we have is to defer the Bill and if it can be brought at a later stage and we proceed with other business of the House on the Order Paper.

Mr Mathias Kasamba (Uganda): Mr. Speaker, Sir, I concur with my colleagues that we could proceed by referring the matter to the Committee to review and to include some of the provisions which will combine both the Council and the Committee on Legal, Rules and Privileges to come up with the necessary amendments so that we can proceed with the Bill at the next stage.

Mr Aden: Mr. Speaker, Sir, looking at the circumstances and the manner in which the debate is and the suggestion that many Members are looking at, I would like to move under House procedure Rule No.30 –

The Speaker: The Chair of the Committee is responding, so whatever we do must be accommodated at that stage. You have moved that we adjourn under the rule you have mentioned. Seconder?

(Ms. Leontine Nzeyimana and Mr Chris Opoka seconded)

I now put the question –

Mr Aden: Mr Speaker, was it referral –

The Speaker: It is an interruption of the debate that can be resumed at a later stage. When it is resumed, it proceeds from where it ended. I now put the question.

(Question put and agreed to.)

The Speaker: Hon. Members, I understand that you have serious business to do in your tour teams, which is why today I had decided to have just one item on the Order Paper. I think it is very convenient that when we adjourn, you proceed with that programme.

This is our maiden piece of legislation that we are dealing with, so we have to handle it very well. I want to clarify that you have some other business to do next week. Thank you, hon. Members.

ADJOURNMENT

The Speaker: The House now stands adjourned *sine die*.

The House rose at 16:20 p.m.