



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly 122ND SITTING - SECOND ASSEMBLY: FIRST MEETING – FIFTH SESSION

Wednesday, 14 September 2011

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of Deputies, Parliament of Rwanda, in Kigali.

PRAYER

(The Speaker, Mr Abdirahin Abdi, in the Chair.)

The Assembly was called to order.

COMMUNICATION FROM THE CHAIR

THE SPEAKER: Honourable Members, I rise to notify you that the Republic of Kenya has a new Minister of EAC Affairs, hon. Musa Sirma. He is present and would like to take his seat in the House. However, in accordance with Rule 6 of the Rules of Procedure of this Assembly, he cannot sit or participate in the proceedings of the House until he takes the oath or affirmation of allegiance to the Treaty as a Member of the Assembly.

Rule 6(3) specifically states that whenever a Member first attends to take his or her seat other than the first sitting of the new House, he or she shall be brought to the Table by two Members and presented by them to the Speaker, who shall then administer the oath or affirmation of allegiance to him or her.

I, therefore, now request any two Members of the House who know the new member to present him to the Speaker to enable him take the oath.

ADMINISTRATION OF OATHS

The oaths were administered to:

1. Musa Sirma

LAYING OF PAPERS

DR JAMES NDAHIRO (Rwanda): Mr Speaker, I beg to lay on Table a report of the Committee on Communication, Trade, and Investment on Capital Markets Regionalisation Project. I beg to lay.

THE MINISTER FOR EAC AFFAIRS BURUNDI AND CHAIRPERSON, EAC COUNCIL OF MINISTERS (Ms Hafsa Mossi): Mr Speaker, in accordance with the provisions of Article 134(3) of the Treaty for the Establishment of the East African Community, I beg to lay on Table the following audited statements of the Community for the financial year ended 30 June 2010 -

THE SPEAKER: Honourable members, before I refer the Audit Commission report to the relevant committee of the Assembly, I would like to bring to your attention the following matters, which appear on the report of the Third Meeting of the Council of Ministers, which I have had the opportunity to read:

On page 6 of the Council report, the Audit Commission followed the provisions of Article 134 of the Treaty to present its report to the Council for onward transmission to the Assembly. The Assembly is required to consider and debate the report in accordance with the Treaty provisions and its Rules of Procedure. It is under this framework that I suppose the minister is now proceeding.

What, however, perturbs me is to learn that judging from the recommendations contained in your report on page 55, it appears that the Council has already considered the report and has even made recommendations to the Secretariat and partner states to follow. It is clearly stated that:

- (1) The Council took note of the issues and recommendations raised by Audit Commission.
- (2) The Council directed partner states and Secretariat to implement the audit recommendations contained in the Matrix Annex Report.
- (3) Adopted the audit accounts of the East African Community organs and institutions of the financial year ending 30 June 2010.
- (4) Tabled the audited financial statements for the East African Community to the East African Legislative Assembly for debate and such other consultations, and other actions as the Assembly may deem necessary.

The concern to this Assembly is that in recommendations one and two, it appears that the Council examined the report and even went ahead to direct the partner states and the Secretariat to implement Council recommendations.

On the same, using the previous practice, which conforms to the Treaty and our Rules of Procedure, I thought the Council, at this stage, would confine itself to the last two recommendations until such a time when the Assembly adopts its report on the Audit Commission report complete with recommendations. You would then issue your directives but after receiving the Assembly's report.

I am saying this in order to avert any complications that the Council may run into if the Assembly negates all or some of your recommendations because the requisite procedure was not followed.

In the meantime, the Accounts Committee of the Assembly will examine the report and also look at the matters that I have summed up, which are in contravention of what the Treaty and the Rules of Procedure stipulate.

BILLS

Committee Stage

The East African Legislative Assembly Elections Bill, 2011

Clause 1, agreed to.

Clause 2, agreed to.

Clause 3, agreed to.

Clause 4

THE CHAIRPERSON, COMMITTEE ON LEGAL, RULES AND PRIVILEGES (Mr Frederic Ngenzebuhoro): Mr Chairman, we have decided to delete Clause 4 (3)(e).

THE COUNSEL TO THE COMMUNITY (Mr Wilbert Kaahwa): Mr Chairman, the Council of Ministers is in agreement with the proposed deletion of sub clause (3)(e) to the extent that it imported matters, which would be inconsistent with the Treaty for the Establishment of the East African Community.

THE CHAIRMAN: Are you the Council of Ministers? For whom are you talking?

MR KAAHWA: Mr Chairman, you gave me an opportunity.

THE CHAIRMAN: You are talking on behalf of somebody else. I did not give you an opportunity as Council of Ministers; I gave you an opportunity as hon. Kaahwa, Counsel to the Community.

MS BYAMUKAMA: Mr Chairman, I would like to clarify that the Committee was persuaded by the arguments raised by hon. Mugisha Muntu who was in agreement with the principle but highlighted that it may be in conflict of interest. So, I would like to say that this is the premise and I second what has been moved. Thank you.

THE CHAIRMAN: Honourable members, before I put the question, is there anything else on this particular clause? There is another amendment on 4. There is 4(3) and 4(4) I know from hon. Kaahwa and also from the mover of the Bill, hon. Ngenzebuhoro.

MR NGENZEBUHHORO: Mr Chairman, 4(4) I do not see the amendment on that. If it is on the issue of gender, that is a Treaty matter so there is no reason to amend it. Thank you.

THE CHAIRMAN: I think when the chairperson was summarising yesterday, she mentioned 4(4) as having a problem with the Treaty or contravening the Treaty. Do you remember?.

MR KAAHWA: Thank you, Mr Chairperson. It is true that in her contribution yesterday to the debate on this motion, the Chairperson of the Council of Ministers expressed her reservations on the inclusion of sub clause (4) of Clause 4, which provides that at least one-third of the elected Members shall reflect either gender. The reasons for her intervention and the reason that this be excluded from the Bill is that the question of gender is already provided for in Article 50 and it is left to the national assemblies to determine when they are handling the election of Members of EALA. It need not feature in the Bill. I thank you.

MS BYAMUKAMA: Mr Chairman, the committee in its wisdom, supported by this House i believe, introduced this element of “at least one-third of the elected members reflecting either gender” on the basis of the fact that all partner states are signatory to international conventions. For example, we are signatory to the Convention on Elimination of all forms of Discrimination against Women.

All the constitutions I have seen in the East African Community make at least one-third as mandatory and in practice, this is what is happening in all parliaments across the region. I cannot appreciate and I do not understand as to why we should not clearly articulate the fact that we need at least one-third of elected members reflecting either gender.

I would like to implore the chair, Council of Ministers to support this particular article in light of the fact that if you do not mention it, there is likelihood that it may not be reflected because gender is understood differently by different entities. I thank you.

MS NYIRAHABINEZA: Thank you very much, Mr Chairman. I want to give information. With due respect to the hon. CTC, yesterday we had a discussion in the committee and the honourable Chairperson of the Council who was supporting this clause did mention that it should reflect two-thirds just to emphasise the weight she is giving to such a clause. So, what the hon. CTC is saying is not correct. Thank you.

THE CHAIRMAN: Hon. Nyirahabineza, I think what you say in the committee is said in the committee and we are talking about what is said in this House and that is what the minister said yesterday. So, we do not bring hearsay here.

MR KAAHWA: Mr Chairman, a short while ago, I was about to rise and seek your intervention as to whether the hon. Valerie was in order to suggest that I am telling lies to the extent that we have moved this far. Let me indicate that after further consultations with the Chairperson of the Council, we agreed to maintain sub clause (4) of Clause 4.

THE CHAIRMAN: Honourable members, I now put the question that Clause 4, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 4, as amended, agreed to.

Clause 5

MR NGENZEBUHHORO: Mr Chairman, we have an amendment. I beg to move that this Clause 5 of the Bill be amended to read as follows: We delete the words “close publication of the names in the official gazette of the partner states” and replace them with, “The Speaker of the National Assembly of each partner state shall, immediately after the election of the members of the Assembly, transmit the names to the Clerk of the Assembly.”

THE CHAIRMAN: Honourable members, I put the question that Clause 5, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 5, as amended, agreed to.

Clause 6

MR NGENZEBUHHORO: Mr Chairman, I beg to move that the new Clause 6 of this Bill read as follows. Insert Article 52 of the Treaty as follows, “Any question that may arise whether any person is an elected member of the Assembly or whether any seat of the Assembly is vacant, shall be determined by the institution of the partner state that determines questions of the election of members of the National Assembly responsible for the election in question.”

Two, “The National Assembly of the partner states shall notify the Speaker of the Assembly of the determination made under paragraph one of this article”.

Mr Chairman, I beg to submit.

MR KAAHWA: Mr Chairman, what hon. Ngenzebuhoro has read is in conformity with what we discussed between the committee and the Council of Ministers, and I participated as CTC and not as a minister. However, what we are handling now –

THE CHAIRMAN: Hon. Kaahwa, are you a member of that Committee also or not?

MR KAAHWA: I am a member of that Committee.

THE CHAIRMAN: Then why are you saying, “What we discussed with the committee”? I thought you should say, “What the minister discussed with us.” You may continue.

MR KAAHWA: I play double roles by virtue of my status in the Treaty. However, what we are now discussing on this Bill is legislation. According to the Acts of the Community, 2003 we refer to provisions of legislation as sections so with regard to the new sub clause (2), I propose that we substitute the word “section” for the word “article” at the end of that sub section. I thank you.

MR NGENZEBUHHORO: Mr Chairman, I do not see any harm in that, I can concede.

THE CHAIRMAN: Honourable members, I now put the question that a new Clause 6, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 6, as amended, agreed to.

Clause 7

MR NGENZEBUHHORO: Mr Chairman, under the new Clause 7, for clarity we have inserted Article 51 of the Treaty as follows:

- (1) Subject to this Article, an elected Member of the Assembly shall hold office for five years and be eligible for re-election for a further term of five years."*
- (2) The terms and conditions of service of Members of the Assembly shall be determined by the Summit on the recommendation of the Council.*
- (3) An elected Member of the Assembly shall vacate his or her seat in the Assembly after the happening of any of the following events:*
 - (a) After the delivery of his or her resignation in writing to the Speaker of the Assembly.*
 - (b) Upon his or her ceasing to be qualified for election as an elected Member.*
 - (c) Upon his or her election or nomination as Member of the National Assembly of a partner state.*
 - (d) Upon his or her appointment as a minister in the government of a partner state.*
 - (e) Upon his or her having been absent from the Assembly for such a period or in such circumstances as are prescribed by the Rules of Procedure of the Assembly. Or upon his or her conviction by a court of competent jurisdiction of an offence and sentenced to imprisonment for a term exceeding six months, if no appeal has been preferred against such a decision."*

In addition to this Article of the Treaty, a Member shall vacate his or her office:

- (a) Upon the dissolution of the Assembly.*
- (b) Upon his other appointment as an officer in the service of the Community.*

(c) Upon death.”

Mr Chairman, I beg to submit.

MR KAAHWA: Mr Chairman, again the committee together with the Council had extensive deliberations on the proposed amendment which is agreed save for first of all as I said in an earlier clause, substitution of the word “section” for the word “article” in accordance with the Acts of the Community Act, 2003.

I also propose that in the marginal note, it should read “tenure of office of elected members” rather than “tenure of office of members”. We are talking about elected members in this legislation. We are legislating for elected members so for clarity, the marginal note should read thus. We insert the word “elected” between “of” and “members”.

Mr Chairman, you will note that we have tried to be in conformity with Article 51 of the Treaty and we have bordered on three sub clauses, which are necessary and which will relate to the tenure of membership in this august House. Those are the last three as read out by the chairperson: “Upon dissolution of the assembly; upon his or her appointment as an officer in the service of the Community, or upon death.” Those should disable a Member from participating in the House and they are in harmony with other provisions where, for example, an elected member is appointed a minister and his tenure ceases *ipso facto*.

We all fear death. If we are told here that death is waiting for us outside, none of us would rush there but it is an eventuality which we should also provide for here to enable an election. I thank you, Mr Chairman.

MR NGENZEBUHORU: Mr Chairman, if it is right to talk about elected members, I do not see the problem and can concede with the consideration made by the CTC.

THE CHAIRMAN: Honourable members, I now put the question that Clause 7, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 7, as amended, agreed to.

Clause 8

MR NGENZEBUHORU: Mr Chairman, on Clause 8 sub clause (2), 30 days were proposed but now we propose that the by-elections should be held within a period of 90 days to be consistent. I beg to submit.

MR KAAHWA: Mr Chairman, that is agreeable but I hope the chairperson of the committee is referring to the new Clause 8 because originally it was under Clause 7.

MR NGENZEBUHORU: Mr Chairman, this is a new Clause 8 and that is what I have said. Thank you.

MR KAAHWA: Sorry, Mr Chairman, I seek your further direction. Is the committee referring to the clause on by-elections? Because 90 days appears under the old Clause 7 on vacation -

THE CHAIRMAN: Yes, it is the old Clause 7 and the new Clause 8.

MR KAAHWA: So we have not yet come to the Clause on by-elections have we?

THE CHAIRMAN: Not yet.

MR KAAHWA: Okay, thank you.

MS BYAMUKAMA: Mr Chairman, I just wanted to highlight an issue where we could get some more guidance. When you look at what we have just worked on, on the issue of tenure of office of elected members, we say that this can also be upon his or her appointment as an officer in the service of the Community. This particular aspect is not provided for under Article 52 of the Treaty nor is it a case where a person dies. Therefore, I am proposing that we should also refer to this particular aspect, which we have already catered for in this very Act, which provides for a vacancy where, for example, a person is appointed as an officer in the office of the Community. So, I would like to propose that the chairperson takes this on.

THE CHAIRMAN: Honourable, are you taking us back?

MS BYAMUKAMA: No, I am not taking you back. I am saying that the cross reference should refer to that particular section, which we have already worked on and which provides for a vacancy where a person is appointed an officer of the Community because 8 does not take into account that aspect and yet we have already legislated for it. I hope that is clearer, Mr Chairman.

THE CHAIRMAN: Can you propose something then?

MR KAAHWA: Mr Chairman, the proposed amendment to the extent of cross referencing will be proper. Since I do not have it before me, I cannot say exactly how it reads but it will be as I understand the intervention by hon. Byamukama - it will be proper and clarify the provision.

MS BYAMUKAMA: Thank you, honourable Counsel to the Community for that support. I would like to propose that we should insert “where the seat of a member of the Assembly becomes vacant under Article 52 of the Treaty and under this Act.” We can start with “under this Act and under Article 52 of the Treaty”. I believe this will cure the defect.

DR NYIRAMIRIMO: Thank you, Mr Chairman. On the same article, I was trying to see why it should be the Speaker of the Assembly to notify the Speaker of the national assembly of the vacancy. For consistency, if we look at Clause 3, it is the Clerk who notifies and here it is the Speaker. I think it should be the Clerk. It is an administrative matter.

THE CHAIRMAN: I think this is a Treaty matter and the Treaty stipulates that.

DR MASSABURI: Thank you, Mr Chairman, for giving me this chance to also add my comment on this new Clause 8. I want to propose on the new Clause 8 sub clause (2), which says that “after notification of a vacancy under sub section (1), a by-election shall be held within a period of 30 days” - I think this is not practical because the national parliaments might not have a meeting during the 30 days. So I was suggesting that these 30 days be increased to “90 days.”

THE CHAIRMAN: Hon. Massaburi, I do not know which House you are seating in but that was the first amendment which was moved. It was 90 days already. We were talking of hon. Byamukama's amendment.

MR NGENZEBUHHORO: Mr Chairman, I concede to that proposal from hon. Byamukama.

THE CHAIRMAN: Honourable members, I now put the question that Clause 8, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 8, as amended, agreed to.

Clause 9

MR NGENZEBUHHORO: Mr Chairman, on Clause 9, we have three amendments: First of all, it is a problem of spelling. "A member of the Assembly elected under this section shall serve for the remaining period of the term."

On sub clause (3) we say, "A by-election shall not be held under this section within six months before the expiry of the term of the Assembly except when the matter applies to the entire membership of the partner state." That is what we have submitted as amendments.

DR MASSABURI: Thank you, Mr Chairman. I would like to propose an amendment to the amendments proposed by the Chairperson for the committee. That we should take care of the quorum rather than talking on the entire membership of the partner state. We might have three members from the partner states, which will make it possible for the members to meet.

Therefore, I propose that the words after "when the matter" be deleted and replaced with "is a subject for lack of quorum of the Assembly".

THE CHAIRMAN: Honourable members, I think we are a bit confused here. If you go by the rules, we should actually introduce new clauses after we have gone through the whole document. But now that we have gone the other way, honourable we are currently on a new Clause 9 which is Clause 8 in the old Bill. So, hon. Massaburi, you are a bit ahead. Hon. Frederic was on the old Clause 8.

DR MASSABURI: But the matter applies to the entire membership of the partner state. That is what he said should be the amendment and that is why I said I am proposing an amendment on the amendment. That is what he read.

MS BYAMUKAMA: Mr Chairman, I would like to support what hon. Dr Massaburi has said and maybe the amendment could be added so that you have the "except when the issue applies to the entire membership of the partner state or is subject to the matter of quorum." I would like the honourable counsel of the Community to help us here whether we should say "and" or "or" because I think it should apply in either - it cannot be both anyway so it is "or". I think I have resolved that; "or" is the word.

MR KAAHWA: Mr Chairman, I appreciate the proposed amendment moved by the hon. Chairperson of the Committee. With due respect, I do not appreciate the further amendment of

the chairperson's amendment reason being that this is a matter of principle. Matters pertaining to quorum are matters which are well pronounced upon and they are provided for in the Rules of procedure. So, I would advise that we go with this amendment subject to replacing the word "membership" with the word "representation" because it is not the partner states, which are members in the Assembly. What the Treaty provides for as far as participation is concerned is "representation". So, "the entire representation of partner states" and that is what I would propose.

I will come in with a further proposed amendment on this clause after we have taken care of this one.

DR MASSABURI: Mr Chairman, let us consider a case where we shall remain with two members from a partner state who cannot make the quorum and we cannot, according to this statement as is, do the election unless the entire members have gone. With the quorum, I am talking about three people as per the rules now. So we better put the "quorum" instead of the "entire members".

MS BYAMUKAMA: Mr Chairman, I just wanted to amend what the honourable Counsel to the Community proposed. We should not be seen as representing member states. We should say, "except the issue applies to the entire partner state membership" because once you bring in the representative angle, you are going to dichotomise this august House, which does not represent member states but the whole of the East African Community. I believe I have been understood. I thank you.

MR KAAHWA: I should not be the first person to dichotomise the process. I agree with the revised amendment by hon. Byamukama on the "entire partner state membership".

THE CHAIRMAN: I think everybody is amending and amending but right now we are with hon. Massaburi and he talks of quorum.

MR KIDEGA: Thank you, Mr Chairman. Earlier on, I had in depth discussion with hon. Massaburi on this matter. In essence, what he has done is to introduce to this debate a third scenario where not the whole chapter is absent but only two are present and, therefore, the quorum of the whole House is affected. His preposition takes care of either situation of when the whole chapter is absent or when only two members are present. I request that the chairperson and the House support his preposition. Thank you.

MR KAAHWA: Mr Chairman, with that clarification, the proposed amendment is clear and I wish to indicate to the committee that it is in line with the improvement of the Bill.

THE CHAIRMAN: Hon. Chairperson, do you agree with that amendment?

MR NGENZEBUHORU: Mr Chairman, I think I can concede to this amendment, there is no harm.

THE CHAIRMAN: Hon. CTC, do you have further amendments?

MR KAAHWA: Yes, Mr Chairman. On the old Clause 8 which is now 9, there is sub clause (2) which reads, “Notwithstanding sub section (1), a Member of the Assembly elected under this section shall serve for the remaining term.” Yesterday as I indicated, the words “remaining term” are not clear and I have proposed that we add on three words “of the Assembly” to read “remaining terms of the Assembly” because that is what a Member who comes in through a by-election will serve. I thank you.

MR NGENZEBUHORU: Mr Chairman, that is exactly what we meant because when you talk about the “remaining term” it is the term of the Assembly so I agree with him.

THE CHAIRMAN: Honourable members, I now propose that Clause 8, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 8, as amended, agreed to.

Clause 9

MR NGENZEBUHORU: Mr Chairman, we have an amendment on that new Clause 10 (2). We propose to say, “Pursuant to Article 55(i) of the Treaty, the Assembly shall determine the venue and appropriate periods of its sessions and sittings.” *(Interruption)*

DR MASSABURI: Mr Chairman, I wanted to propose a new clause before we go to the miscellaneous so I would like to seek your guidance.

THE CHAIRMAN: Yes, honourable we have not put the question yet so you can continue with what you wanted to say.

DR MASSABURI: Thank you, Mr Chairman. I wanted to propose a new clause before we go to the part of the miscellaneous and I am proposing that this clause reads as follows: “Any person who breaches any section of this Act shall be liable on conviction to a fine of \$2,000 or to imprisonment of two years or both”. If possible, we can also include the corporal punishment because the people who will be violating this Act are actually doing it negligently. Suppose a Clerk of the National Assembly does not send the names of the people who have been elected, it is just negligent and sometimes we need to -

THE CHAIRMAN: Hon. Massaburi, Speakers are never negligent because they are the ones who are supposed to send the names. Because you have not sent your written proposal here, it is out of order and procedurally it is not correct so hon. Frederic continue.

MR NGENZEBUHORU: Mr Chairman, on the new Clause 10, I have finished to formulate the proposal and I said that we have amended the clause to read as follows: “Pursuant to Article 55(i) of the Treaty, the Assembly shall determine the venue and appropriate periods of its sessions and sittings.”

MR KAAHWA: Mr Chairman, I agree in principle with the Chairperson of the Committee on Legal, Rules and Privileges but maybe for purposes of elegance and in conformity with the way

we enact legislation, this proposed amendment of his amendment could be more acceptable if it could read, “Subject to Article 55 paragraph (1) of the Treaty, the Assembly shall determine the venue and appropriate periods of its sessions and sittings.”

I am just trying to put it in a proper drafting context.

MR NGENZEBUHHORO: Mr Chairman, as it is for proper saying, I have no objection for that and I concede to that proposal subject to Article 55 paragraph (1).

THE CHAIRMAN: Honourable members, I now put the question that Clause 9, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 9, as amended, agreed to.

Clause 10, agreed to.

Clause 11

MR NGENZEBUHHORO: Mr Chairman, on this clause we have moved an amendment and we propose that this clause reads as follows: “The National Assembly of each partner state shall make rules governing the procedure for election of members pursuant to this Act and Article 50 of the Treaty.”

MR KAAHWA: Mr Chairman, the amendment through addition of those words “pursuant to this Act and Article 50” will be in order for purposes of clarity and I so advise this committee.

THE CHAIRMAN: Honourable members, I now put the question that Clause 11 be part of the Bill.

(Question put and agreed to.)

Clause 11, as amended, agreed to.

The Title agreed to.

MOTION FOR THE HOUSE TO RESUME

THE CHAIRPERSON, COMMITTEE ON LEGAL, RULES AND PRIVILEGES (Mr Frederic Ngenzebuhoro): Madam Chairman, I beg to move that the House do resume and the Committee of the whole House reports thereto.

THE CHAIRMAN: I put the question to the motion.

(Question put and agreed to.)

(The House resumed, the Speaker presiding.)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

THE CHAIRPERSON, COMMITTEE ON LEGAL, RULES AND PRIVILEGES (Mr Frederic Ngenzebuhoro): Mr Speaker, I beg to report that the Committee of the whole House has considered the Bill entitled, “The East African Legislative Assembly Elections Bill, 2011” and passed it with amendments. I beg to report.

THE CHAIRPERSON, COMMITTEE ON LEGAL, RULES, AND PRIVILEGES (Mr Frederic Ngenzebuhoro): Mr Speaker, I beg to move that the report from the Committee of the whole House be adopted. I beg to move.

THE SPEAKER: Honourable members, I put the question to the motion.

(Question put and agreed to.)

(Report adopted)

BILLS

Third Reading

The East African Legislative Assembly Elections Bill, 2011

THE CHAIRPERSON, COMMITTEE ON LEGAL, RULES AND PRIVILEGES (Mr Frederic Ngenzebuhoro): Mr Speaker, I beg to move that the East African Legislative Assembly Elections Bill, 2011 be read the third time and do pass.

THE SPEAKER: It is seconded. Honourable members, I now put the question to the motion.

(Question put and agreed to.)

Bill Read A Third Time.

A BILL FOR AN ACT ENTITLED THE EAST AFRICAN LEGISLATIVE ASSEMBLY ELECTIONS ACT, 2011

MR MULENGANI: Thank you, Mr Speaker. I wanted to move under Rule 71 of our Rules of Procedure to recommit the Bill in part of Clause 4(3).

THE SPEAKER: Hon. Mulengani, you have been overtaken by events. We have already passed it.

REPORT OF THE COMMITTEE ON COMMUNICATIONS, TRADE AND INVESTMENT ON CAPITAL MARKETS REGIONALISATION PROJECT

DR JAMES NDAHIRO (Rwanda): Mr Speaker, I would like to move that the report of the Committee on Communications, Trade and Investment be adopted. I beg to move.

MS LYDIA WANYOTO (Uganda): Seconded.

DR NDAHIRO: Mr Speaker, I would like to first of all request hon. Lydia Mutende Wanyoto to read the report on behalf of the committee but before she does, I would like to take this opportunity to thank the following: One is your Office, Mr Speaker, that facilitated the committee to tour the capitals in our partner states.

I would like to recognise and thank the ministries of East African Affairs in our partner states who co-ordinated our movement. I would also like to thank the Capital Markets Authorities and Stock Exchange officials who gave us enough information, which has been considered and is part of our report.

Mr Speaker, I would like to thank you and ask hon. Lydia Wanyoto Mutende to read the report on behalf of the committee. Thank you.

MS WANYOTO: Mr Speaker, I would like to make a small correction on my name. My name is Lydia Wanyoto Mutende not the other way round. I am representing the Committee on behalf of the Chairperson of the Committee on Communications, Trade and Investment on the assessment of the EAC Capital Markets Regionalisation Project.

The East African Legislative Assembly is one of the seven organs of the East African Community under the provisions of Article 49 of the Treaty for the Establishment of the East African Community.

It is mandated to exercise both legislative and oversight functions on all matters within the scope of the EAC.

The entry of the EAC Common Market provided an impetus to an already thriving cross border service industry. However, there are still restrictions on cross border capital flows that present unique challenges.

East African Community is in the process of regionalising the financial and securities market to create access to long term capital needed to spur economic development.

The World Bank has also undertaken to facilitate the integration of financial sector in East Africa under the Financial Sector Development and Regionalisation Program (FSDRP). The key objective in the regionalising of the EAC capital markets is to make them more attractive both to issuers and to investors as a result to expand those markets.

The creation of a single EAC capital market would offer domestic investors greater choice and domestic issuers greater potential to raise large amounts of capital from a wider range of investors, enabling the economy and employment to expand.

Further, the development of a single efficient and reliable EAC capital markets infrastructure would not only improve the capacity to complete transactions of issuers and investors, but it would also offer improved reliability and economies of scale thus greater cost efficiency.

The combination of a wider and deeper market and improved transaction efficiency and reliability should also result in the ability to attract a higher level of foreign portfolio investment than has previously been the case.

It is against this background that EALA Members of the Committee on Communications, Trade and Investment, as part of their oversight role, conducted an on-spot assessment of the EAC capital markets regionalisation.

The objectives of the on-spot assessment

The overall objective of the activity was to assess the status of implementation of Capital Markets Regionalisation Project in East Africa.

Specific objectives of this activity:

1. To establish the opportunities and challenges the EAC has in respect of capital markets development.
2. To establish the status of operationalisation of strategy of capital markets regionalisation in the EAC.
3. To establish the status of legal instruments necessary to regulate and deepen the capital markets in East Africa.

The Members of the Committee on Communications, Trade and Investment conducted an on-spot assessment in two groups: One group visited the capital markets authorities and stock exchanges in Dar es Salaam, Tanzania and Nairobi in Kenya while another group visited Kampala in Uganda and Kigali in Rwanda.

These groups held meetings with officials from respective capital markets authorities, securities, stock exchanges to assess the status of the regionalisation process.

The committee took stock of the observation, recommendations and made the following findings:

Findings from the visits:

Capital markets are markets that trade in financial products known as securities such as shares and bonds. Countries use capital markets to raise long term capital, which is done through the selling of government bonds, corporate or company bonds, commercial paper, equity instruments, company shares and units of shares in collective investment schemes.

The importance of capital markets is as follows:

- (a) Act as a bridge between issuers and providers of long term capital finance.
- (b) Encourage local savings and channel them to productive enterprises.
- (c) Providing the public with saving instruments.

- (d) Capital markets are used by government for privatisation that is broadening share ownership and transparency, among others.
- (e) Encourage higher standards of the accounting corporate governance, resource business management in listed companies.
- (f) Fostering growth related financial services like pensions and provident funds schemes.
- (g) Offering companies a choice of sources of long term capital.

Capital Market Authority (CMA) in Uganda:

Members were received by the officer in charge of Legal and Compliance on behalf of the Chief Executive Officer who informed them that the Capital Market Authority in Uganda is a semi-autonomous body responsible for promoting, developing, and regulating the capital markets industry in Uganda.

It was established in 1996, following the enactment of the Capital Markets Authority Act, cap 84. The CMA in Uganda is governed by a board of directors drawn from public and private sector.

The officer informed Members that the key function of CMA Uganda is to regulate and promote a fair, transparent and efficient capital markets industry by setting regulatory standards, establishing conducive rules and regulations and promoting investors.

It also provides all public offers to securities such as shares and bonds. This means that no company or person can issue shares to the public without the CMA approval.

In terms of operations, CMA Uganda ensures continuous disclosure of material information to the market through publishing of annual audited accounts, adequate notice to shareholders on annual general meetings and agenda, declaration of dividends, changes in management and company performance.

CMA Uganda is governed by the rules and regulations under CMA statute and these include establishment of stock exchanges regulations, prospectus requirements regulations, advertising regulations, conduct of business regulations, licensing regulations, accounting and financial requirements regulations, interim stock trading facility rules, exempt dealers regulations and Collective Investment Schemes Act, 2003.

Uganda Securities Exchange (USE)

The EALA delegation was received by Uganda Securities Exchange team. The team informed Members that USE is an entity whose securities are traded. It is the principal stock exchange of Uganda and was founded in June 1997.

The USE is operated under the jurisdiction of Uganda's Capital Markets Authority, which in turn reports to the Bank of Uganda.

The exchange doors opened to trading in January 1988. At that time, the exchange had just won listing a bond issued by East African Development Bank. As of June 2011, the USE trades 14 listed local and East African companies and had started the trading of fixed income instruments. Two new listings are expected in early 2012 and USE has also cross-listed seven companies.

During the first quarter of 2010, the exchange adopted the settlement and clearing depository electronic trading system. Other electronic modalities are being considered for the exchange.

In 2010, the Uganda Securities Exchange was the best performing stock exchange in Sub Saharan Africa with all shares index return of 74 percent between January and November 2010.

Legal Framework

Since the inception of the stock exchange regionalisation, harmonisation of rules regarding disclosure and listing obligations has been considered. USE rules were amended and these included, among others, offer preferential treatment of East African companies cross listing on the USE by prescribing lower fees for this category in comparison to companies from outside the region. This rule enforces the regional integration objectives in the East African region.

Regional Integration

USE is a member of the East African Securities Exchange Association (EASEA), which is East African regional body dealing in trading of securities.

Capital Markets Advisory Council in Rwanda

The Capital Markets Advisory Council (CMAC) was established in March 2007, to initially guide the development of capital markets in Rwanda. CMAC operated as a capital market regulator pending the creation of the capital markets authority in Rwanda as provided for by the law, which was later published on 9 June 2011.

The board of the Capital Markets Advisory Council consists of 11 non-executive directors representing different interest groups appointed by the Minister of Finance. The board works through periodic board and committee meetings and is answerable to the Minister of Finance.

CMAC facilitated the creation of Rwanda Stock Exchange (RSE) as a stock exchange and admitted ten members of the RSE awaiting licensing powers provided in the newly published CMA law. The CMAC also established the Rwanda over the counter market in January 2008 and trading operations on the RSE commenced thereafter with the launch of their bond market.

Rwanda Stock Exchange

The Rwanda Stock Exchange was incorporated on 7 October 2005, with the objective of carrying out stock market operations and all the trading functions under CMAC were transferred to Rwanda Stock Exchange. However, it was launched on 31 January 2011.

The RSE secondary market operations are conducted through a dual process. Members trade over the counter and also through open outcry systems. The stock exchange was demutualised

from the start and was registered as a company limited by shares. RSE is 60 percent owned by brokers and 20 percent by the Government of Rwanda while 20 percent by other share holders. RSE has two domestic listings: the first domestic IPO, Bwaliwa Limited was launched on January 2011 and the second one Bank of Kigali in June 2011.

Currently, five treasury bonds and one corporate bond are listed on the RSE. RSE has also cross-listed two companies. For clearing and settlement, Rwanda has a fully fledged central distributor coupled with real time cross gross settlement under the national payment system at the Central Bank of Rwanda.

All equities that is, shares on the Rwanda Stock Exchange, are done electronically.

Legal Framework

The status of Rwandan Capital Markets legal framework is as follows: The central distributor law governing the holding and circulation of securities was gazetted in May 2010. The new capital markets fiscal incentives such as list taxes were gazetted in May 2010. The law regulating capital markets in Rwanda was gazetted in March 2011, and the law establishing the Capital Markets Authority was gazetted in June 2011. The Collective Investments Scheme Bill is in the last stages for legislation and the Trust Law has been adopted by the Parliament as now under consideration for gazettelement.

Regional membership and integration

The integration of Rwanda capital markets into the East African Capital Markets is in progress within the implementation of the EAC Common Markets Protocol and the CMA is a member of the East African Securities Regulators Association. RSE is also a member of the East African Securities Exchange Association.

Capital Markets and Securities Authority (CMASA) in Tanzania

The chief executive officer welcomed the members and thanked them for following up issues of regional integration of the EAC capital markets. He briefed the members that in early 1990s, Tanzanian Government embarked on comprehensive financial sector reforms aimed at, among others, developing capital markets to provide appropriate mechanism for mobilising long-term savings in order to fund productive sector thus fuelling economic growth. These reforms rose to CMASA, which was established in 1995 following the enactment of Capital Markets Securities Act No. 5 of 1994. It became operational as an autonomous body at the beginning of 1995/96 financial year. CMASA's main functions are spelt out in section 10 of the Act as follows:

1. To develop and promote capital markets in Tanzania
2. To licence the stock exchanges market professionals including brokers, dealers and their agents, investment advisers, authorised dealers, representatives, investment advisers representatives as well as authorising collective investment schemes.
3. To regulate capital markets and market professionals.

4. To advise Government on matters related to securities industry.

Once the CMS's Act was passed, the need to have an organised market became apparent. Stock exchanges are normally established by private sector and can prosper in the presence of a well developed private sector. Tanzania did not have a developed private sector and as a result, it was deemed necessary for the CMSA to facilitate the establishment of the Dar es Salaam Stock Exchange (DSE).

CMSA facilitated the incorporation of the DSE in 1996 as a private company limited by guarantee, which became operational in 1998 with the listing of TOL Gas Limited as its first listing. By the end of August 2011, there were 16 equities, which included five cross listed from Kenya, seven corporate bodies and 168 government bonds.

Regional co-operation link with other partner states securities regulations from Tanzania is as follows: The members were briefed that the CMSA works closely with other securities regulators in the region towards harmonising the regulatory framework in line with the EAC Common Market Protocol.

It was reported that the East African Member States Securities Regulatory Authority, a forum for East African Capital Markets Regulators, was established in 1995 with objectives, which among others include information sharing among members, mutual assistance, and co-operation between members and advancing integration of the East African capital markets.

EAC has registered considerable progress towards the harmonisation of the securities market and this progress has given way to the cross listing of companies in the region. The CMSA is in collaboration with the other EAC partner states securities regulators and are engaged in discussions and privatisation of activities required to be accomplished under the EAC Common Market Protocol.

CMSA is working towards a proposal for enactment of a central depository system Act aimed at facilitating the establishment of an independent CMSA outside the stock exchange. Their proposal is intended to bring issues relating to the operationalisation of the central securities depositories in line with the ongoing regional initiatives on the establishment of the appropriate financial infrastructure that supports competitive East African capital markets.

Dar-es-Salaam Stock Exchange

The chief executive officer received the delegation and briefed them about the Dar es Salaam Stock Exchange (DSE) Limited incorporated in 1996 under Cap. 2/12 as a private company limited by guarantee and not having share capital.

The formation of the DSE followed the enactment of the CMSA Act, 1994 which established the CMSA industry regulatory body mandated to promote an orderly, fair, and efficient capital markets in Tanzania.

DSE became operational in 1998. It is a chartered body with a governing board whose membership comprises representatives of brokers, investors, institutions and professional bodies.

The governance structure is built on three pillars thus the apex pillar being the general meeting of members of the company, the governing council under management of the DSE under the leadership of the chief executive officer.

The functions are as follows:

1. Provision of the market for listed securities.
2. Facilitation of the price discovery.
3. Facilitation of the transparency.
4. Facilitation of privatisation and wider ownership of resources.
5. Creation of wealth through investing on listed securities.

Assisting in raising capital for enterprises contributes to the cultural transformation of people of Tanzania by bringing them to invest in securities.

Members were briefed that the trading floor at the DSE is fully automated. The automated trading electronic system software matches bids with offers on line. The software has alleviated operational delays as well as the likely human interventions in the process.

On listings and market assessment, the DSE has 15 listed equity securities with Precision Air being recently approved and seven corporate bonds and several treasury bills belonging to the Government of Tanzania. It was reported that the share index reviewed the improvement of 8.4 percent per month on equities.

Regional linkage with the other stock exchanges

Members were informed that DSE is a member of the East African Securities Exchange Association (EASEA) that came into being after signing of the Memorandum of Understanding between the EAC exchanges namely: the Dar es Salaam Stock Exchange, Nairobi Stock Exchange, and the Uganda Stock Exchange.

The exchanges under the umbrella body EASEA have established a work relationship amongst themselves in the spirit of integrating and developing capital markets in the EAC region. EASEA is a member of the capital markets development committee of the EAC.

Capital Markets Authority in Kenya

The members were received by a manager, corporate communications market development who informed them that the CMA was set up in 1989 through an Act of Parliament as a body corporate, which later instituted an inauguration in 1990.

It is a statutory agency charged with the prime responsibility of regulating the development of orderly, fair, efficient capital markets in Kenya with a view of promoting market integrity and investor confidence.

The authority derives its powers to regulate and supervise capital markets industry from the Capital Markets Act. The regulatory functions include licensing and supervising all the capital

markets intermediaries; ensuring proper conduct of all licensed persons and market institutions; regulating issuance of the capital markets products - those are bonds and shares among others; promoting market development through research, products and institutions; promoting investor education and public awareness and promoting investor interest.

Regional re-cooperation

The CMA of Kenya is a member of the EASEA an umbrella forum for the East African Capital Markets regulators.

Nairobi Stock Exchange (NSE)

The members were received by the head of operations and technology who informed them that the NSE begun way back in 1954 as an overseas stock exchange. Their mode of trading was very friendly; it was a call over system and operated in such a way that one had to shout his or her bid during the bidding process until 2006 when it was automated.

The NSE has a governing council and it is owned under mutual guarantee. The NSE has 57 listed companies, small and medium enterprises. It is also a major driver in the market by the NSE as a part of its products.

The trading system at the NSE is fully automated and centralised. This ensures security of investor's shares as no broker can trade any investor's shares without their approval.

NSE will be demutualised before the end of 2011 to enhance transparency, commitment, and good governance. Internet trading is also in the pipeline.

In terms of legal framework, two Bills have been enacted so far to deal with the public finance, which would introduce municipal bonds.

NSE is a member of the EASEA and it is pursuing membership of the World Federation of Exchange to attain the status of an international market.

The EAC capital markets integration

Capital markets integration refers to the process of opening up different capital markets to allow for cross border trade in securities among partner states without any restrictions. If any restrictions exist, they should apply symmetrically across board with no discrimination based on location where the securities are primarily traded.

In an integrated capital market, the intermediaries also have unfettered access to all different integrated markets without any discrimination based on their primary location of business. In order for the capital markets integration to be effective, the following minimum requirements should be fulfilled:

1. Issuers should be able to sell newly created securities to investors located in other parts of the market without encountering regulatory or administrative barriers or additional compliance costs. These opportunities should be open to all types of capital raising including initial public offers, SMEs and capital venture.

2. Investors should be able to purchase a financial asset traded on a member state market without additional impediment or delay.
3. Risk uncertainty or costs when compared to the same transaction executed in local markets. Infrastructure suppliers or providers of infrastructure, those are trading systems clearing settlements and depositories, should be free to offer services, establish in partner countries on the basis of home country authorisation.
4. Supervisors or regulators should be able to rely on the seamless web of market supervision, which guarantees stringent and effective real time enforcement of commonly agreed provisions to all securities related activities and structures. Intermediaries should be able to transact freely with clients in other member states on the same terms and conditions as business transacted in their home country and should be constrained for legal, administrative or fiscal purposes to establish a fiscal presence in their partner country. Brokers should also have a known discretionary access on commercial terms to essential services or facilities required to the effective provision of investment services.

Progress made towards the EAC capital markets integration

Mr Speaker, a number of steps have been taken with respect to EAC capital markets integration. These include, among others:

- (a) The capital markets then in existence in the EAC partner states signed a Memorandum of Understanding (MOU) establishing East African Securities Regulatory Authorities to harmonise their operations since 1997.
- (b) The EAC capital markets development committee was introduced in April 2001 at the EAC Secretariat.
- (c) The securities or stock exchanges in EAC partner states signed a MOU establishing East African Stock Exchanges Association in 2004.
- (d) The EAC strategic plan 2006/2010 on regional stock exchanges was put in place in December 2009 as part of the financial strategy.
- (e) The IFC/World Bank/SIDA mid project undertook studies on EAC capital markets integration. In 2007/2009, the S-Mid Consultants submitted reports with a roadmap for EAC capital markets integration. In March 2009, a new EAC capital markets integration roadmap was submitted which envisages a fully integrated market by 2015.
- (f) The establishment of the regional certification programme and a regional CDS and automated trading system is also ongoing.

All the EAC partner states have enacted capital markets legislations with the exception of Burundi, which is also in the process of developing a framework for capital markets development. The capital markets framework being developed will be in line with the other EAC partner states.

In EAC, there are a number of features which have been harmonised while others are yet to be harmonised. Harmonised features are as follows: common English law system except for

Burundi, a framework for collective investment schemes, guidelines on the issuance of corporate debt, cross border listing requirements regulations, compliance with international financial reporting standards, corporate governance guidelines, disclosure requirements and CDS legislation with the exemption of Tanzania which is yet to have a CDS law to enable it operate outside the stock exchange.

Unharmonised features include the following: trading rules and procedures, the manual vis-à-vis those that are automated, cross border dispute resolutions and market supervision practices. However, the harmonisation is ongoing.

Compliance with international organisations on securities commissions principles. The process of harmonisation is also ongoing.

Prejudicial and capital adequacy requirements, licence categories, investor compensation framework, and restriction on ownership of capital market intermediaries. These are areas where they have not harmonised fully.

Models of Capital Markets Integration

The first model is a Single Supranational Regulatory System Authority Model. In this model, there is one legal regulatory framework and one regulator that cover the integrated markets.

A single supranational regulatory authority can provide the most comprehensive and consistent application of regulatory standards in the region. However, such a single authority would be in a better position to set and enforce regulations consistently across the region.

The Single Supranational Regulatory Authority Model is applicable in the following regions:

1. The West African Monetary Union has a regional council for public savings and financial markets, which acts as a regional capital markets regulator at the regional stock exchange.
2. The East Caribbean Currency Union, which acts as the regional capital markets regulator and the East Caribbean securities market and regional stock exchange.

Harmonisation and Mutual Recognition Model

In this model, different legal frameworks exist in an integrated market. Laws in the different legal frameworks are either harmonised so that one law applies across the member states or where it is not possible for mutual recognition, regime is adopted where the home state law is recognised across the member states.

The mutual recognition regime is based on the agreed minimum state of standards that the legal frameworks in the different member states must adopt to ensure cross border transactions across the different member states. The European Union provides the best example of the application of the Harmonisation and Mutual Recognition Model.

The East African Community Model

At the recent capital insurance and pensioners' scheme meeting in Nairobi on 10 August 2011, the chief executive officers of the securities regulators and stock exchanges adopted a

Harmonisation and Mutual Recognition legal regulatory model that maintains the national securities regulators.

A set of common standards to govern regional capital markets operations is going to be developed by a task force to be set up by the EAC Secretariat. From the European Union experience, the EAC partner states need to put in place a robust implementation and enforcement framework that will ensure both the speedy implementation of the agreed upon standards and their enforcement in each of the EAC markets.

Findings and observations

The members observed and noted the following:

- (a) That due to different settlement cycles, the central depository systems are not integrated thus causing high transaction costs. This makes investors unable to compare costs of doing business in the region.
- (b) Some EAC partner states have put in place investor protection fund meant to compensate investors who suffer financial losses as a result of misappropriation of funds or negligence by licensed dealing members.
- (c) World Bank, IFC and SIDA established the efficient securities market institutional development project to integrate the five markets of the East African Community member states with a view to harmonise capital markets or create a single capital market as well as rolling out the necessary infrastructure throughout the EAC countries.
- (d) World Bank established the EAC financial sector development and regionalisation project to prepare a regional integration roadmap. The project tackles issues of Common Market Protocol in terms of free movement of goods especially capital.
- (e) There is still lack of total liberalisation of East African economies, which hinders the capital markets integration.
- (f) The East African securities regulatory authorities, East African Securities exchange associations are not recognised in the EAC structure yet they play an important role in the East African capital markets integration process.

Challenges

- (a) Disparities in trading, clearing, and settlement infrastructure make market access difficult for investors.
- (b) Insufficient capacity and skills in the capital markets discipline.
- (c) Lack of harmonised legal and regulatory framework is hindering common tax regimes and investor policies.
- (d) Low levels of public awareness on what capital markets offer.
- (e) Low levels of domestic savings.

(f) Inadequate supply of financial instruments into the capital market.

(g) Exchange rate risk is another impediment to the securities transactions.

Mr Speaker, I now move to the conclusion of the committee report.

The capital markets originally confined to domestic boundaries have increasingly become global with domestic exchanges and CDS seeking alliances across national borders in order to remain viable in an increasingly competitive environment. Thus to maintain the status quo in East Africa is not an option.

The EAC needs to aggressively pursue the integration agenda backed by a well-developed and executed strategy that will yield the optimum benefits for all the stakeholders. The regional stock market is likely to succeed if commercial motivation remains a guiding principle rather than the political reasons.

In accordance with the provisions of the EAC Common Market Protocol, there is a necessity to expedite removal of any existing restrictions on the movement of capital, goods and services, transfers and on a current payments connected with movements between partner states.

The regionalisation process, therefore, must not lose sight of the fact that there is great potential to be harnessed if it is operationalised in line with the provisions of the East African Community Common Market Protocol.

Mr Speaker, the following are the recommendations of the committee report:

- (a) The committee urges the Council of Ministers to work on the roadmap to regionalise the capital markets under the financial sector development programme in order to align with the Common Market Protocol.
- (b) The committee urges the EAC partner states to expedite harmonisation of the regulatory frameworks and operational procedures in the securities market.
- (c) The committee urges partner states to improve financial literacy through sensitisation and capacity building programmes of our people.
- (d) The committee urges partner states to demutualise the stock exchanges to allow private sector players and consequently improve investor confidence.
- (e) The committee urges partner states to use existing financial infrastructure in the mobilisation of long-term capital adequate to fund regional projects such as through the issuance of infrastructure with the period of 10 to 20 years bond.
- (f) The committee urges the Council of Ministers to extend observer status to both the East African securities regulatory authorities and the East African securities exchange association to the East African Community.

Mr Speaker, on behalf of hon. Ndahiro, I beg to move. *(Applause)*

THE SPEAKER: Honourable members, the proposal on the Floor is that the report of the Committee on Communications, Trade and Investment on Capital Markets Regionalisation Project be adopted. Debate is open.

Dr Didas Massaburi (Tanzania): Thank you, Mr Speaker, for giving me this opportunity to contribute. First of all, I would like to declare that I am a Member of the committee and I fully support this report. However, I would wish to actually contribute on the issues, which are indicated on the recommendations.

With reference to the specific objectives that are written on page 3, I find that the report did not cover properly or appropriately objective number two and three, which are talking of establishing the status of the re-operationalisation strategy of capital markets regionalisation in the EAC. The third objective is on the establishment of the status of legal instruments necessary to regulate and deepen the capital markets in East Africa.

All the recommendations which are written there are urging either the Council of Ministers or the partner states - they are about six urging recommendations, two of which are urging the Council of Ministers and the remaining are urging the partner states. I think it is high time that we took bold decisions and recommendations. We need to express our concerns on the strategic direction on where the capital markets in East Africa should be focusing.

If you go through the paragraph on conclusion on page 15, the second and third sentences are actually indicating that the current status should not be maintained. It reads, "Thus maintaining the status quo in East Africa is not an option. EAC needs to aggressively pursue the integration agenda backed by a well developed and executed strategy that will yield the optimum benefits for all the stakeholders."

A regional stock market is likely to succeed if commercial motivation remains a guiding principle rather than the political reason but there is nothing in the recommendations, which captures this conclusion seriously.

When you go back to page 13, we are talking of the East African Community model for the common markets and we have identified two models in the previous paragraphs where we are talking of the Single Supranational Regulatory Authority Model and the Harmonisation and Mutual Recognition Model. But it seems as if the East African Community has decided to adopt the second one, which according to this report is giving the European Union as an example but the other one is giving examples on the West African Monetary Union, East Caribbean Currency Union of which are the African countries but we have decided to adopt the European One, I do not know why. Maybe because they are white, I am not very sure.

They are saying in the last sentence on that very page on the East African Community model – *(Interruption)* -

THE SPEAKER: Hon. Massaburi, you started off by saying you are a member of this committee. Now I am wondering whether you are a member of this committee. Did you take part in this report because the way you are talking is as though you are reading something that you are not part of or a committee you are not part of?

DR MASSABURI: Mr Speaker, I declare that I am a member of that committee but I wanted to just add on the recommendations so that the members of this House could assist me to get my proposal in this report.

THE SPEAKER: Hon. Massaburi, if you did not agree with this report, you should have had a minority report so that you could better guide this House. You are part of the committee, you have signed the document and you are telling us to do other things. I think you are misleading us in terms of how we should move forward as a member of that committee. But you can continue, honourable.

DR MASSABURI: I am sorry, Mr Speaker. It is very unfortunate that I was not in that meeting when they were adopting the recommendations because I was in the House Business Committee

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THE SPEAKER: Hon. Massaburi, if you look at page 16 of this document, you signed that document and I think out of the signatures, yours looks very big. So please –

DR MASSABURI: Sir, I withdraw my statement. I am still a member of that committee and I also endorsed the report. I just wanted to make some few clarifications and urge the Members if they can see the points, to improve on the report.

Mr Speaker, the East African model according to page 13, the last sentence says that from the EU experience, the EAC partner states need to put in place a robust implementation and enforcement framework that will ensure both speedy implementation of agreed upon standards and their enforcement in each of the EAC markets.

My proposal, based on those quotes which I have just mentioned, is that we add in this report one specific recommendation which takes into account the strategic direction which the East African countries should take to operationalise the common markets regionalisation in the Community. Therefore, I would propose that we adopt the Single Supranational Model, which will eventually enable us to enact a law and therefore I urge the Council of Ministers to come out with a Bill, which will enable us implement that model rather than going through the harmonisation, which adopts the European Union's model which to me is not reflecting the nature and uniqueness of our integration for the East African Community. Thank you, Mr Speaker.

MS MARGARET ZZIWA (Uganda): Thank you very much, Mr Speaker. Before I support the report, let me also take the opportunity to thank the people of Rwanda, the Government and the Parliament of Rwanda for being gracious always to us, hosting us and making us feel at home.

In addition, allow me, Mr Speaker, also to extend my condolences to the families of our people of East Africa who have perished in a boat or vessel from Zanzibar to Dar es Salaam. It is a very sad affair and we condole with them! Also to our brothers and sisters who have perished in the fire in the Lungu Lungu slum in Nairobi, we pay our condolences as well as to our people of the Elgon region who perished in the landslides about a week and a half ago. We pray to the Almighty God that He grants eternal rest to their souls and also comforts the families of the deceased.

Mr Speaker, I want to say that I have been away and I want to thank you for your gracious appreciation that I could not be with the House at the beginning. But I want to say that the way the House has dealt with the business is very impressive, and I want to congratulate you.

On the issue of the report on the Committee of Communications, Trade and Investment, I want to salute the committee and thank hon. Dr Ndahiro the chair and the committee members including hon. Lydia Wanyoto for the good presentation.

The issue of Capital Markets Authority is a very important topic in the financial muscling of our economies. First and foremost, I want to say that the recognition that Capital Markets Authority can be a very important weapon or vehicle in which local savings can be mobilised and encouraged for productive enterprises is crucial. It is also true that public savings can easily be drawn together through Capital Markets Authority and which in most cases in our economies is grossly lacking.

It is also very true that the issue of provident funds, which are crucial particularly as drawn from other financial services like health insurance, pensions among others, is always more attracted when there is a Capital Markets Authority infrastructure in place. So, I thank the committee for recognising this very important aspect and also knowing that we are moving into the monetary union phase of the integration process, organising the Capital Markets Authority will give us chance to make sure that by the time the monetary union phase is in place, all the necessary ingredients which are prerequisite to robust economies have been attended to.

I want to confess that this is a very new topic to some of us. So, I would suggest that it would be good that perhaps the committee could propose an opportunity to have a seminar or workshop as preparation to the Members as we go into this next phase of the monetary union. It will help us to grasp, understand and conceptualise some of these very important contexts and concepts of the Capital Markets Authority.

Also considering that there are different stages to which our capital markets authorities and stock exchanges are operating. If you look through the report, Kenya's Stock Exchange was established in 1954, Uganda's was established in 1997, Tanzania's also still around that time and Rwanda is in the process of establishing its stock exchange and Burundi - Okay, it is about to start listing its shares –(*Interruption*)

THE SPEAKER: Honourable, let the honourable member contribute. I think she already said that she is new to this subject. Honourable, go ahead.

MS ZZIWA: Thank you, Mr Speaker, for the protection. What I am trying to say is that, there are different levels of development irrespective of the time and Burundi has not even started or it is in the process. So what I want to suggest is that, in the process of recommendations, we should be able to see how best we can have a support mechanism to some of the capital market authorities, which are not yet in place or those which are in place but are not yet there. How do we pick the principle of asymmetry as talked about in the Treaty to be able to move forward the Capital Markets Authority but also considering that the different five partner states are not at the same level?

Mr Speaker, I congratulate the respective capital markets authorities and the various security market exchanges. Some of them have a very long listing: some seven, 10 and others over 15. If

I quote from Uganda, Capital Markets Authority has been able to list many of the government parastatals, which were floated for privatisation and they have been able to attract a lot of shareholding from the Ugandan nationals.

What I need to find out is whether the opportunity across board is open, when these shares are floated to members throughout East Africa? If shares are floated in Uganda, an East African of Rwandese origin can purchase shares there and vice versa. I think this is important because it will promote the process of integration and help in the way we look at ourselves as East Africans.

I also want to ask about the aspect of the inequities, which are going to be seen in when we move into the stage of joining the five security exchanges. I could not see a recommendation which could come through to mitigate these inequities, and I would say that that is what should have kept the confidence of members to promote or accept that they should be members of one supra stock exchange or common markets authority.

Otherwise, I want to salute the efforts by the Secretariat in attracting World Bank among others to come into this sector. As hon. Massaburi said, however, we also need to define what I would call the actual East African interest and be able to see them being built right from the start into this capital markets authority.

Mr Speaker, I salute the Members for this important report and I want to ask at an appropriate time for them to work out with an arrangement so that we can have a workshop or conference to enable us internalise more and become advocates to this very important issue.

To date, the fluctuations of the dollar is hard biting our economies. Perhaps if we were together, maybe we would see how to cushion our economies against some of these challenges.

Mr Speaker, I beg to support the report.

MS CATHERINE KIMURA (Kenya): Thank you, Mr Speaker. Let me at the outset declare that I am a Member of this committee and take this opportunity to thank our chairman for the way he led this particular oversight mission, and really gave us guidelines of what we would be looking for as we interacted with the various players in the capital markets sector.

Mr Speaker, let me acknowledge the role that the private sector has played so far in helping EAC operationalise what is in the Treaty. Article 85 of the Treaty spells out exactly what the Council of Ministers or the partner states should do in regard to the development of the capital markets. In our interaction both in Dar es Salaam, Nairobi, Rwanda and in Uganda, it was very clear that the private sector has taken a lead in sort of fulfilling what the partner states were supposed to do.

If I read Article 85(d) it says, "Harmonise the regulatory and legislative framework and regulatory structures." In our deliberations, we found that this is work in progress and this is being done. At the same time, they are promoting the establishment of a regional stock exchange within the Community with trading floors in each of the partner states. All our partner states with the exception of Burundi have trading floors and we are encouraged by the work that both the Stock Exchanges Securities Authority and the East African Exchange Association are doing in the integration process.

They have taken this on board and we commend them for their carrying out a lot of work. What is happening is that, they are trying to align the capital markets with the Common Market Protocol so even as it is the Secretariat or the partner states that are supposed to do this, the private sector, driven by business and concerns, have taken this on board.

It is, therefore, important for the Secretariat and Council of Ministers to take note of the committee's recommendation in regard to putting these two institutions within the EAC structures or indeed finding a way of them interacting on a regular basis with the committee that is charged with the pension's financial sector within the Community.

Mr Speaker, I take part in the question asked by hon. Zziwa as to whether people within East Africa can participate in buying of shares in our partner states. I want to quote the recent very successful initial public offering for the Bank of Kigali. It was an offer that was oversubscribed by three fold. In the domestic retail pool, the subscription was 120 percent and the participation was by domestic investors which included EAC nationals. This indicates that indeed the investing public in our region is not bound by borders and indeed East Africans want to be facilitated and want to invest in our various stock exchanges.

So in answer to hon. Margaret, yes we can participate as East Africans in any securities or in the existing markets. What has the Bank of Kigali IPO done in the region? What we see is that we have investor confidence in the region and that is why there is an over subscription; that our nationals are looking for investment opportunities yet there are limited investment opportunities - *(Interruption)*

MR KIDEGA: I thank hon. Kimura for giving way. Further to clear more on the question asked by hon. Zziwa, I think a year and a half ago, Safaricom Kenya also floated shares on the market and East Africans were treated as domestic investors. I know that some of us seated here are directors of Safaricom. I thank you.

MS KIMURA: Indeed, traded or bought across the region and so was one of the banks in Uganda. I must of course put a note here that with the exception of one of our partners, we were not able to participate because I believe their capital account continue to be closed and, therefore, they are limited in what they can do in the capital market - *(Interruption)*

MS MMARI: Thank you, Mr Speaker. I am just standing to give information that the capital account in one of the partner states - and I know she is referring to Tanzania - is not closed, it is partially liberalised. *(Laughter)*

THE SPEAKER: What does partially mean, honourable?

MS MMARI: Partial liberalisation means that there are certain laws that have not been revised, and they are on track to be revised as long as we are in the Common Market Agreement and those are things that we need to look at positively. Thank you, Mr Speaker.

THE SPEAKER: So, they are still closed until you have liberalised the laws.

MS KIMURA: Thank you for that information but the bottom line is that the Tanzanians could not participate in the Safaricom IPO and neither could they participate in the Bank of Kigali nor – I cannot remember the name of the bank in Uganda that was also listing.

However, as hon. Mmari says, we are moving towards a common market and I believe that once this is fully operational, the issue will probably not arise but for the time being, there are restrictions. It is clear from our interactions that the region is ripe for regional bonds that can be used for our infrastructure development. This is borne out by the over subscription of any equity that is put in the market over the last three years. Any equity that has been put on the market, some of the corporate bonds that have been put on the market in our various stock exchanges have been oversubscribed. Therefore, it is clear that we can, in a way, mobilise local resources for our development.

It will also deepen and widen the financial markets in our region. The challenges are there and one of the challenges is what I have alluded to and hopefully that apart from being partially open, there will be full liberalisation and that indeed it will be possible to transact across the border. I say this because when we were in Dar es Salaam, we were told that there are several cross listed companies in the Dar es Salaam Stock Exchange but there is almost zero trading in these listed securities because of those financial transaction payment systems challenges.

We were given a scenario where a buyer wants to sell their shares, they are in Dar es Salaam or they want to buy one from Kenya and they are in Dar es Salaam. Those shares have to be put in the Akamba bus. I mean, we cannot transact business that way in the kind of technological world that we are in! So, you can see the challenges that are there. If you do not have a fully liberalised market, if you do not have central depository systems that talk to one another within the region, this will continue to hamper investment opportunities for our people within the region.

So, it is important that our capital markets move towards a shared platform so that East Africans can transact shares and other securities in a manner that is consistent with the 21st century. I want to mention an issue that was raised by hon. Massaburi and that is that the committee did not come up with any recommendation in regard to putting a law in place. I want to refer to the committee's report on page 15 7(b) where the committee is urging the EAC partner states to expedite harmonisation of regulatory frameworks and operational procedures in the securities market. This recommendation was well thought out, Mr Speaker, because it mirrors what is in Article 85 of the Treaty. Further, it is clear that work is going on in this area of regulatory reform.

When we talk about two models being looked at, the committee discussed this very exhaustively and the committee felt that we neither had the technical expertise to recommend one or the other whether it would be one national law or it should be a harmonised one. We felt that at that particular time, we did not have enough technical knowledge to say which one is applicable to us. But we are encouraged that indeed under the auspices of the Secretariat, there is work going on and if we look at our report page 13, we are told that the capital markets issuers' and pensioners' committee, which is based at the EAC Secretariat met as late as 10th August 2011 where they adopted this particular model of Harmonisation and Mutual Recognition.

This of course does not prescribe that as we move towards a fully operationalised common market and as we move towards the Monetary Union that we cannot then move to one national

law. But for the time being, we are encouraged that work is going on and that East Africans are investing in each other's stock exchange markets.

Mr Speaker, I want to say that until the common market is fully operationalised and the various pillars in the common market are operational - that is free movement of people, labour, goods, services and capital - our security exchanges and our capital markets will continue to have challenges.

There are challenges of brokers and other intermediaries moving freely from one country to the other to do business. We want a situation where a broker in Kenya or Rwanda does not have to go and set up a business in Rwanda in order to take care of people who are buying shares from there. So, the issue of movement of services, because these people are offering services, is very critical in the development of the capital markets. But it is very clear that the East African region has resources that are waiting to be used in the development of this region.

Mr Speaker, I beg to support this report and I urge other Members to support the recommendations that have been put there. Thank you.

DR JAMES NDAHIRO (Rwanda): Thank you, Mr Speaker. I would like to first of all recognise and thank Members who have contributed particularly hon. Massaburi, hon. Zziwa, hon. Kimura without forgetting hon. Lydia Wanyoto Mutende.

Mr Speaker, Sir, issues of capital markets development are not simple decisions to make. I thank our partner states for having taken bold decisions to make capital markets development a centre of our development strategy. They help mobilise long term capital at a lower cost. You cannot compare it with somebody moving into a commercial bank to raise money. In equities, members of the Community agree that they are ready to share in losses and profits which means, it is a mark of confidence in our economies.

Mr Speaker, all partner states have put in place what they call "investment codes" and all the five partner states are busy calling international or foreign investors to come and take opportunities in our region. It is until those investors can have a well functioning infrastructure, like the stock exchanges, that they will make such a decision to invest in a region because they have an exit strategy. They can only exit this market through stock exchanges because they will be able to front their shares, pack their bags and go.

Without such infrastructure, sometimes they are hesitant to make such decisions. Our young and emerging market has got companies that lack capital or focus in a single line of production. With this infrastructure in place, it allows our companies to raise capital for diversification purposes so that those companies can be able to compete on the global scale.

Our partner states have invested in different parastatals or companies using domestic savings and taxes from our people. It is only fair that they share in the national cake using those shares fronted by Government. And I would like to thank our governments for the decision to privatise all their holdings in different companies through the capital markets thus empowering our people to own shares or those stocks.

Mr Speaker, our partner states have moved another step to make sure that they recognise that we have a single market. In the Common Market Protocol, all domestic portions of any offering

should be shared among all East African citizens on a 60 to 40 percent basis. That means, if an IPO in Kenya is offered to the market with a proportion of 70 percent domestic and 30 percent foreign, it means that the 70 percent domestic portion will be shared between East Africans in a proportion of 60 to 40: 60 percent for Kenyans and 40 percent for all other East Africans. That is in the domestic pool and that is the requirement of the Common Market Protocol.

This has been a practice in all our markets apart from one partner state. This is because of our level of liberalisation. Our economic liberalisation, if fully completed, will allow all those other barriers to be removed and then we can talk about a single or supranational institution.

Two out of four stock exchanges are still owned by governments. Dar es Salaam Stock Exchange is 100 percent owned by the Government of Tanzania because it is a company limited by guarantee. Uganda Securities is owned by the Uganda Government although we are told that they are in the process of demutualisation, which means they will exit and allow private players to invest in the company through the subscription of shares. Nairobi Stock Exchange is by association; few people came together, agreed back in 1954 in a hotel called New Stanley and started transacting. Allow me to point out that until recently, there were some political and social differences in that market because of the nature of the association. It is only recently that they have embarked on the process of demutualisation and people are gaining more confidence in that market.

It is fortunate for Rwanda because it started after all those other markets. It borrowed from the experiences and avoided those mistakes and gaps and created a stock exchange as a company limited by shares, which other markets are now pursuing. The Republic of Burundi is going to do even better because it is starting after the four markets. I think the capital market in Burundi is going to learn from our past mistakes, avoid them and we shall all harmonise with the Republic of Burundi.

Mr Speaker, the East African Community has initiated a committee under the Secretariat to take care or charge of the integration process of the capital markets. That committee brings together capital markets regulators, stock exchanges, pensions and insurance firms. But when you look at the Financial Sector Regionalisation Project, it is particularly focusing on capital markets and we did not want to go into those other areas.

We would request the Secretariat to look at the possibilities of splitting the committee into one in charge of the capital markets and another one charged with pensions and insurances because they are not the same. They are both under the financial market but their operations and needs are quite different.

We were very careful to recommend a particular model simply because none of the models is perfect. Each model has got its weaknesses, strengths but because we believed that our integration process is indeed a process, we have different pillars. We have successfully negotiated the Customs Union the Common Market and we are in the process of negotiating the Monetary Union and our ultimate goal is political federation. We can as well say that our ultimate goal is a single supranational institution so that we allow the current initiatives by the associations of regulators and the association of stock exchanges to go ahead with their model of harmonising the rules and legal frameworks to allow people to transact easily, to allow free

movement of capital so that as we reach our ultimate goal, we shall turn back to them and say, “guys you are being left. Let us now build regional institutions.”

In order to move together, we recommended to the Council of Ministers to extend an observer status to these two important associations in our integration process so that we move together and plan together, and we are all together in the federation as we enter the political federation. Otherwise we can - (*Interruption*)

MS MMARI: Thank you, Mr Speaker, for allowing me to interject. I thank hon. Ndahiro for giving me way. I really appreciate what hon. Ndahiro is saying regarding the steps that have been taken by the EAC Secretariat, and that is, setting up a team that is going to work to ensure that the common market efforts are put together as we look at East African Community model.

I wanted to bring up a subject that we have been talking about - this one partner state, Tanzania, with its partial liberalisation of capital accounts. I was going to say that there is a seminar that is organised by Capital Authority and Unit Trust of Tanzania sometime in January next year where people can have an opportunity to participate. It is a seminar where people are going to make decisions and -

THE SPEAKER: Honourable, give your information. Is it the seminar?

MS MMARI: The information is the seminar and also that EALA has been invited to participate. At least I got that information.

THE SPEAKER: Thank you.

DR NDAHIRO: Mr Speaker, in the schedules to the Common Market Protocol, the United Republic of Tanzania has undertaken to fully liberalise up to 2015. So that partial liberalisation maybe will be over by 2015 but the question is, how do we deal with the issue of regionalisation before 2015? Or can we go ahead and agree on the basic standards that will allow the capital markets to flourish and then wait and move according to our integration process?

Mr Speaker, there was a recommendation by one of our committee Members which we discussed at the committee level. Members of the committee felt that that recommendation is not necessary now. However, because we are a democracy, the Member has an opportunity to present his recommendation here so that the whole House can make a decision. The recommendation requires the Council of Ministers to establish a supranational institution, which is in line with our integration process because if we are talking about regional institutions or projects, then we should aim at having regional stock exchanges and regional capital markets authorities and if it is agreeable by the House, I will have no problem.

I want to take this opportunity to ask one colleague to read the recommendation in its totality; the whole paragraph and then if the House feels that we can go along with it then I will have no problem personally. With your guidance, Mr Speaker, I can ask hon. Massaburi to read the recommendation himself.

THE SPEAKER: Honourable, finish your contribution, it is his recommendation. Be brief, please summarise.

DR NDAHIRO: Thank you very much, Mr Speaker. With those contributions, I feel that the House should support the recommendations of the committee and also allow the process that we have initiated as a Community to proceed with specific attention to the recommendations in the report. Thank you, Mr Speaker. *(Applause)*

THE SPEAKER: Honourable members, before I put the question this being a very important report, I am going to allow the Chairperson of Council to say something but in future Chairperson, I think you are a member like any other here. If you want to contribute, you stand up and catch the Speaker's eye.

THE CHAIRPERSON COUNCIL OF MINISTERS (Ms Hafsa Mossi): Thank you, Mr Speaker. I am sorry I had thought maybe I would have some time to give my contribution to this House but suddenly I saw the chairperson rising.

I would like to congratulate the chairperson of this committee and the Members for undertaking this assessment, but also to come up with a very elaborate report. I would not like to come back to everything that has been said about the report but only to some of the issues, which were addressed to the Council of Ministers.

There was a recommendation on the issue of having a roadmap for the integration of the EAC capital markets, and I would like to report to this august House that this roadmap has been developed based on a study which was undertaken in 2009.

On the issue to expedite harmonisation of regulatory framework, this has been done and agreed upon under the auspices of the Capital Markets Insurance and Pension Committee, which met in August 2011 in Nairobi. The sub sector agreed to adopt this regional integration model that maintains separate national securities authorities, applying and enforcing common standards with respect to regional capital markets operations.

On the issue to improve financial literacy through sensitisation and capacity building programmes, I would say that in addition to existing programmes for partner states, support for financial literacy and capacity building for both the securities market and the other broader financial sector will be provided through the EAC Financial Sector Development and Regionalisation Project.

On demutualisation of the stock exchanges, it has been undertaken in Kenya and Uganda as it has been said and Rwanda Stock Exchange commenced as a demutualised stock exchange. From the information I got, any further support that the partner states may need in the demutualisation process may also be provided to them with a view to regionalisation of stock exchanges.

On the need to use existing financial infrastructure in the mobilisation of long term capital adequate to fund regional projects, I have these answers: The existence of capital markets infrastructure will ease the speed, security and efficiency with which transactions are undertaken, integrating these trading systems and also will ease the undertaking of cross border securities transactions in the region.

The development of the region's capital markets will facilitate the raising of long term finance to undertake regional infrastructure projects.

Lastly, on the issue of the need for the Council of Ministers to extend observer status to both the East African Securities Regulatory Authorities and the East African Securities Exchanges Association to the East African Community, I wish to report that the EAC has a process that is followed for entities seeking for observer status so I would like to state here that the applications of these two bodies will be handled positively. Thank you, Mr Speaker. *(Applause)*

THE SPEAKER: Honourable members, before I put the question, I have a recommendation or amendment to the report from hon. Massaburi and it reads thus: “The committee recommends that the Council of Ministers develops a Bill to allow for the adoption of a Single Supranational Regulatory Authority Model of the Capital Markets Regionalisation. This Bill should be able to take into account all figures currently prevailing in the EAC partner states, and provide for the different stages of the capital markets development in the EAC countries.”

DR NDAHIRO: Mr Speaker, as I said, we discussed it at the committee level but we could not reach a consensus and agreed that the House takes a decision on it. Thank you, Mr Speaker.

MR AUGSTINE LOTODO (Kenya): Thank you, Mr Speaker. I just want to say that the recommendation is in line with the rest of the recommendations because there is no way in this world where we can exist without – *(Interruption)* -

THE SPEAKER: Honourable Member, this recommendation is in line with the recommendation itself or with the report?

MR LOTODO: I am saying it is a new recommendation but it is in line with the report. In this current world, these capital market authorities are a barometer on how our economies are performing and I wish to support it to the extent that East African partner states need to concretise the Common Market Protocol. So, I am in agreement that we need that institution so that we are able to further the gains of the integration process. Thank you.

THE SPEAKER: Honourable members, I put the question that hon. Massaburi’s recommendation be inserted in the report.

(Question put and negatived.)

(Motion rejected)

THE SPEAKER: Honourable members, I now put the question that the report of the Committee on Communications, Trade and investment on the Common Market Regionalisation Project be adopted.

(Question put and agreed to.)

(Motion adopted)

MOTION

FOR A RESOLUTION OF THE ASSEMBLY TO CONGRATULATE SOUTH SUDAN ON ITS INDEPENDENCE OF

MR DANIEL KIDEGA (Uganda): Thank you so much, Mr Speaker. Pursuant to Article 59 of the Treaty establishing the East African Community and Rule 26 of our Rules of Procedure, I rise to move that this Assembly do resolve to congratulate the Government and people of Southern Sudan upon the landmark Independence of Southern Sudan on 9 July 2011. I beg to move.

MR LEONCE NDARUBAGIYE: Seconded.

MR KIDEGA: Thank you so much, Mr Speaker. Since I am taking the floor substantially for the first time, I would like to take this opportunity to register my appreciation to the people and Government of Rwanda for the respect, hospitality that has been extended to us. I use my diction very carefully and that is why I have added respect. I have enjoyed my stay in Kigali and I think Members have done the same. We are so blessed by the beautiful words that the President of the Republic gave to us at the opening session. *(Applause)*

Mr Speaker, before I go to my motion, I would also like to register my condolences and sympathy to the families of the East Africans, who have perished in the various partner states due to the different disasters that have befallen us. May their souls rest in peace! Where I come from, when death occurs, people ask questions to make sure that there are preventions to the causes of those deaths. So, may it be with our governments as well that questions be asked to prevent more deaths in the region. Never again!

Mr Speaker, I would like to start by thanking you as the Speaker of this House and the overall administration of this Parliament for initiating a cordial relationship with the Parliament and people of Southern Sudan. *(Applause)*

This motion does not come in isolation. It all begun when your wise leadership had a visit to Southern Sudan prior to the referendum, observed the referendum exercise and indeed you further went and represented us with the able delegation of persons during the 9th celebration. I thank you and the people who went there.

Mr Speaker, the governments of the East African Community partner states were effectively represented by very powerful delegations. We would like to thank them and congratulate them for attending that function.

The Independence of Southern Sudan came like a prolonged labour pain to the people of Southern Sudan. A prolonged labour pain because when our sisters, wives and mothers are in labour pain, we keep in a state of anxiety, some bit of pain waiting for a beautiful thing to come out. During the prolonged period when the people of Southern Sudan were waiting for the birth of this new state, they went through a lot of suffering. Mr Speaker, I beg to give a preamble and summarise with reading the motion.

THE SPEAKER: Honourable, do not listen to them, continue.

MR KIDEGA: The people of Southern Sudan suffered under the administration of their own country. The administration of the day deprived them of being citizens who were entitled to enjoy rights like other citizens of other countries. They were considered as second-class citizens and deprived of the basic rights to life. Children and women were displaced; they lived without food and water.

The establishment of the day used difficult strategies to deal with the rebel group that was operating in the South, including a very difficult strategy of draining the water to catch fish. They went where the SPLA had support and meted atrocities with the hope that the rebel group would not have support and succeed in having this nation born. But the people stayed firm, kept with their support and that baby was born.

They deprived citizens of food. Access to food was more difficult than access to AK 47 and bullets. Children had ease of access to guns and bullets than to access food. Children under age, incapable of understanding when and how to employ the use of guns, had access to guns and this caused a lot of distortion in the development of communities of Southern Sudan.

Militia were used to unleash atrocities on neighbouring communities, raid them, and take them as captives and eventually sold as slaves in these modern times of ours. It is a sad thing to know but it took place!

On the ninth at about 1.00 p.m., I was in my sitting room watching on television and I saw men, women, and children shedding tears when the flag of Sudan was being lowered. I was wondering whether the tears were those of joy or memory of the sad past. But personally, I was at peace because of what the leadership of Southern Sudan did. The practice has always been that when a new nation is born, the flag is lowered, at times, it is burnt, and at times, it is returned back to the centre of that authority. But the Government of Southern Sudan did a respectful thing. They did not return the flag of Sudan, they kept the flag and mentioned that it is to symbolise that Southern Sudan will continue to co-operate with Sudan. To me that was a big sign of unity and co-operation for the future. (*Applause*)

The countries that neighbour Sudan and particularly in East Africa like Uganda, Kenya - not to say Tanzania, Rwanda and Burundi - have not contributed or felt the heat of what was taking place in Southern Sudan. I come from a border community. Occasionally people had to sleep out of their houses because there were always rumours that planes are coming from Sudan to bomb and indeed occasionally it happened and people died. I think hon. Nusura Tiperu can share the same sentiments with me.

I know that hundreds and thousands of refugees went into Kenya and the good people of Kenya shared with them the little food and water they had and gave them a home. We must applaud the Government of Kenya and the people of Kenya for that. (*Applause*)

I remember vividly in 2006, I was in a small township called Pabbo in Northern Uganda, when the President of Uganda was addressing people. The people demanded from the President of Uganda why they were suffering the way they were because there was confusion in Southern Sudan. The president told them the analogy I have just given you; that it is a prolonged labour pain. The people of Northern Uganda will eventually reap from the birth of a new state, and, indeed, as I speak, the people of Northern Uganda and Uganda as a whole are very happily relating with the Sudanese from the South in terms of trade, and other social and economic activities.

We need to congratulate all the stakeholders who participated in helping Southern Sudanese attain their independence directly or indirectly.

Having said that, I now request kindly that I read the motion:

“WHEREAS Southern Sudan became an independent country on 9 July 2011, making it the newest member state of African Union and United Nations;

AND WHEREAS the clamour for the independence was a long standing issue arising out of the perceived repressive measure by the central authority in Sudan against the people of Southern Sudan, which culminated into sporadic fighting particularly from the time when the Southern Sudan Peoples’ Liberation Movement was established in 1983;

CONSIDERING that, the people of Southern Sudan endeared themselves to the pursuit of justice, peace, prosperity, and inherent freedom to counter the repressive measures against them by the ruling government of the time;

FURTHER CONSIDERING that their struggle was of regional, continental and international concern which resulted into a negotiated Comprehensive Peace Agreement (CPA) in 2005, to guide the future relations between the South and the North Sudan;

AWARE that the quest for freedom and independence was galvanised by the desire of South Sudan to tread the path to political, social and economic prosperity;

FURTHER AWARE that South Sudan looked upon the neighbouring states and the international community for political, social and economic frontiers thereby striving to maintain good neighbourliness with them and especially with the countries of the East African region;

ALSO AWARE of the strong economic ties between some of the EAC partner states and South Sudan, which all parties are expected to reap from owing to the Independence of Southern Sudan;

ALSO AWARE of the strong and cordial relationship between the political leaders of EAC partner states and those of South Sudan, which stand at intensifying following the Independence of South Sudan;

NOW, THEREFORE, this Assembly do resolve to:-

- 1. unreservedly congratulate the Government and citizens of South Sudan upon the landmark achievement of independence;*
- 2. unreservedly congratulate the Government and people of East Africa upon the Independence of Southern Sudan;*
- 3. urge the EAC partner states through the Council to develop regional infrastructure that links up to our borders with South Sudan to enable the EAC and South Sudan to unlock the vast economic potential of the region;*
- 4. urge the partner states through the Council to pursue sustained and increased trade, political and socio-economic co-operation with South Sudan;*
- 5. work closely with EAC Council, the Summit and Parliament of South Sudan to strengthen the ties between the East African Community and the Republic of South Sudan;*

6. *empower the Speaker of the Assembly to transmit this resolution to the President and Speaker of Parliament of Southern Sudan.*”

Mr Speaker, I beg to move.

THE SPEAKER: Honourable members, the proposal on the floor is that this Assembly do resolve to congratulate the Government and people of South Sudan upon the landmark Independence of South Sudan on 9 July 2011. Debate is open.

MR LEONCE NDARUBAGIYE (Burundi): Thank you very much, Mr Speaker. I also express our condolences to the families of the East Africans who died recently. I also wish to express our gratitude to the people of Rwanda for giving us very good hospitality.

I want to say that I have been very lucky to be part of the delegation that you, Mr Speaker, led to the Independence of South Sudan. I remember with emotion and although it is very recent, the first visit we made there and we found a country that has been colonised by their next of kin; black people colonising other black people and giving very little contribution in the development of that country.

I remember that while we were in Sudan just before independence, I saw a plaque written, *“Tomorrow it will be the 194th UN member state and the 54th African Union member state and the 6th East African Community member state”*. Independence is emotional especially for those who have seen this twice like me. I saw the flag of the Belgians being lowered in Burundi, and I saw the flag of Northern Sudan being lowered in Juba, it is emotional!

For those who were born long after independence, they do not know how racial discrimination can hurt. I will give a small example of a former head of state of one of the partner states who gave an example of how different a white man and a black man, a coloniser and the colonised can be different. In the territory, a white man and a black man were fighting pests. The black man was called rat catcher and the white man was called rodent officer. Even when doing the same job, there was a big difference. I remember, for example, that while in school, if a white man teacher came to look for another white teacher and did not find him in the classroom he would say, *“There is nobody here”*. We were about 40 young pupils but he would say, *“There is nobody here!”* (*Laughter*) Independence is the end of that discrimination.

I stand to congratulate my dear colleague hon. Kidega for raising this motion and I support it. Thank you very much. (*Applause*)

MR GERVASE AKHAABI (Kenya): Thank you, Mr Speaker. With your permission, may I take this opportunity to thank the people and the Government of Rwanda for the hospitality that has been extended to us since we started coming to this country? At the opening of this sitting, it was noted that this might be the last time this Assembly will be sitting in this country on plenary. It might also be the last time those of us who are opting for other openings elsewhere to visit this country as members of EALA. We are, therefore, saying bye to the people of Rwanda. (*Applause*)

I wish to thank hon. Kidega for this motion. This motion is important for all human beings who care about their dignity; the dignity of human beings. The people of South Sudan had to go through harrowing experiences, under not only the Government in Khartoum, but also over a

long period of history. They had to suffer discrimination despite the fact that Sudan, as we know it was the centre of civilisation for a very long time. Many of the pharaohs of Egypt in fact originated from the Sudan.

The Independence of Sudan is a tribute to the steadfast and sustained endeavour by the people and especially the black person on this planet to emancipate themselves. It has been suggested in many a fora that the problem in Sudan was based on religion. My view is that it was not a religious struggle. In fact, quite a number of people in South Sudan who support SPLM are Muslims. So, the issue was not that of religion. It was an issue of respect for the dignity of a person, the dignity of a human being. It was a question of politics of exclusion, and we have seen this in many other places where people are excluded from participation in their own development simply because they appear different from those in power.

It is, therefore, a tribute to the people of South Sudan that they withstood harassment, suffering and through sustained struggle, they have been able to achieve this freedom. As hon. Kidega has said, it is also a tribute to the people of East Africa. The people who welcomed the long suffering people of Sudan into Uganda, Kenya, and indeed in Tanzania - because you may recall that when the late John Garang left Sudan as a child and a young man, he went to Ethiopia, came through Kenya, and ended up in the Republic of Tanzania where he honed his political acumen to be able to lead a sustained struggle for the independence and freedom of his people in South Sudan.

The people of East Africa shared in the mystery and suffering of the people of South Sudan. The achievement of political independence of the people of South Sudan should be a reason for us in East Africa to embrace the people of South Sudan as our brothers and sisters; to welcome them into the fold of the East African Community, help them to integrate with the rest of us and make them feel that they are respected and welcome, and that they are at home in East Africa. *(Applause)*

It is for that reason that I urge the Council of Ministers to go this extra step; to approach and ask the Government and the people of Sudan to come quickly into the fold where they belong, and that is the East African Community. *(Applause)* It would be a failure on our part as East Africans to leave our brothers and sisters in the north of us in South Sudan, to continue to suffer deprivation and hope that we wait for them to indicate that they come to us. We should go and tell them, "Come, brothers and sisters. There is a house here for you, let us share it".

Mr Speaker, as East Africans, we should also help South Sudan in other spheres not just politics. We should help them to develop economically. I support, therefore, this motion that calls for a resolution for the establishment of firm infrastructure in terms of roads and railways and other infrastructure so that the people of South Sudan and the people of East Africa can integrate more intimately and more closely, so that we can develop the South Sudan as we also develop the entire East Africa.

As we develop East Africa, it is all of us that will be beneficiaries. For these few reasons, I support this motion wholeheartedly as a human being and as a proud black African from the Republic of Kenya and from East Africa.

Mr Speaker, I beg to support the Motion. *(Applause)*

MR CLARKSON KARAN (Kenya): Thank you, Mr Speaker, for giving me this opportunity to support this worthy motion but before I do that, allow me also to congratulate the people of Rwanda. I want to say that their usual courtesy, which they extend to us when the Assembly is sitting, is appreciated. I want to thank the President of the Republic of Rwanda His Excellency, Kagame, for always finding time for the Assembly and giving us wise words of wisdom. *(Applause)*

Also, allow me to send my condolences to the families of the East Africans who died in various parts of East Africa. We urge our partner states to ensure that we take care of our people and stop what is within our means to stop.

I want to support this motion because there is nothing else I can do. It must be supported. I had the opportunity to visit South Sudan under your courtesy, Mr Speaker. First, I went when we went to check whether the Comprehensive Peace Agreement was being followed. I went ahead when we were doing the observation of the referendum, and I went to witness the birth of her nation.

Mr Speaker, when I was still a young man, there was a gentleman who used to pass around our home. He used to come from Kisumu town to go to school. He was well dressed in a white shirt and a tie but the story he used to tell was that, he ran away from Sudan when there were problems and he was now being assisted by people, and perhaps teaching in some of the schools and getting assistance from well-wishers. I did not understand, but when I got the opportunity to go to South Sudan to try to understand their problem, it dawned on me that these were the people who ran away from their country because of the existing situation.

The lesson we have learnt from Southern Sudan should be a guiding principle for East Africans, because if we do not take care of our people and stop inequality amongst ourselves then we can develop fights even amongst us as a family. There are emotions with which the people of Southern Sudan received their independence and it demonstrated the sufferings, which these people had undergone. I could see people with their fingers cut, people who are maimed and the dimensions with which they were expressing their anxiety is something, which overcame most of the guests who were there.

My only message to the people of Southern Sudan is that they should avoid the problems that we the other nations of East Africa have gone through. They should consider themselves as a nation, as one people and should not fight because if they develop the country properly, it has plenty for all of them regardless of where one is coming from. So, they should not start fights amongst themselves but focus on developing their country.

When I saw the heads of state from various African countries stroll into Southern Sudan - in Kenya the President and Prime Minister were there on the first day, which means it was important for them that they all be there. The next day, the Vice-President was there so the entire leadership of Kenya was concerned about the issue of Southern Sudan. When I saw the motorcade of His Excellency, Yoweri Kaguta Museveni, of over 20 vehicles - I think East Africans were demonstrating that they have achieved what they wanted! As if it was not enough, the President of South Africa also came there in his usual style and it was moving. President Kikwete was there also. I want to thank you again, Mr Speaker, because you gave me an opportunity to share a hotel with a number of heads of state. *(Laughter)*

Finally, but not least, when Bob from Harare also arrived, it indicated that all leaders of Africa were concerned about the birth of a nation called South Sudan.

I want to say without any fear of contradiction that we as East Africans must move first and ensure that we work together with our brothers. When I was coming here the other time, there was a story in the *East African* newspaper that Sudan had applied to be included in the East African Community. That is not bad -

THE SPEAKER: Hon. Karan, you talked about East African leaders but you forgot about the Prime Minister of Rwanda.

MR KARAN: Mr Speaker, yes, the Prime Minister of Rwanda was also there who ably represented the President of the Republic of Rwanda. So, the entire East Africa was there. Burundi was also ably represented and we were sharing the same hotel with the delegation. *(Laughter)*

The East African Community was also represented by the Secretary General but the leader of the delegation was the Speaker himself. You were ably represented as East Africans but my message is this: As the Secretariat of the East African Community, we should not wait for Southern Sudan to apply. These people had applied a long time ago but could not be accepted because they were not an independent state. Why don't we bring that letter from the archives, reactivate it, and admit South Sudan as part of East African Community instead of allowing these funny stories in the newspapers that Sudan has applied before Southern Sudan? If Sudan wants to apply, they will get it but they can only get it when South Sudan is a member of the East African Community.

Finally, I want to congratulate hon. Kidega for thinking about this motion because it is a worthy motion. We must go on record as congratulating them in a manner that befits a new country, and we have done it in this new Parliament.

With those few remarks, Mr Speaker, I wish to support this motion.

MS NUSURA TIPERU (Uganda): Thank you very much, Mr Speaker, for giving me the opportunity. I would also like to thank hon. Dan Kidega for having thought about this motion at this critical moment. I would like to be counted among those in support of this noble resolution. As East Africans, we are proud of the fact that South Sudan has been liberated and it is now counted among the independent states within Africa.

Indeed, it is true that the independence in South Sudan did not come the easy way. We regard it as an expensive liberation process with very many sad memories, the worst being the loss of their gallant son, John Garang, at the eve of their independence. We would have loved him to be present but it was not possible. This liberation struggle was not cheap because we saw a number of lives being lost. It left a number of East Africans orphaned and widowed in a number of our areas; landmines planted all in the name of that liberation struggle.

Mr Speaker, I remember at one moment when the President of Uganda was tasked to be supporting the SPLA group and it forced the members of the party to ensure that we enshrine within our party constitution the fact that we were struggling for Pan-Africanism, and it based on those reasons that the Southern Sudanese were given refuge. On that regard, I wish to thank the

East African heads of state and those who gave the Southern Sudanese homage during the time of the struggle.

I have been a refugee myself and I know how hard it is to be a refugee. Most of the Ugandans were refugees in Sudan and Congo and concepts like *akangi na kamba* were got from Congo. If we translate it maybe in Luganda it is called *kandooya* - and maybe hon. Zziwa can help me translate it further. But *kandooya* means tying people with their hands on their backs, and that is how many of the refugees who were in Congo were treated.

But I would like to thank the people of East Africa because when these sons of Africa were traversing within the region in these countries, they were received with maximum hospitality, they were given homes, shelter and even in cases where they were told to hand them over to the Khartoum Government, our leaders stood very firm. I will give a case in point of the time when the Khartoum Government sponsored rebels in Northern Uganda. Having looked at the number of deaths at one moment, one would assume that the government would hand over these people and say, "No, we cannot continue losing our people." But they stood firm, protected them, and said, "These are our own Africans, we have to safe guard them till the end".

Mr Speaker, I support this motion because indeed Sudan is in a strategic location to the East African region. The Sudanese look at East Africa as one of their biggest routes for their supplies. So, whenever there is a problem with any of the partner states, the multiplier effect is bigger to Sudan. So as East Africans, when they are getting independence, we really celebrate with them and join with them in their happiness.

Secondly, I would like to join my brother hon. Karan who was among the delegation that represented us in saying that, indeed the Secretary General and the Council of Ministers must expedite the process of South Sudan joining the Community. Indeed, they have shown interest in joining and as we speak, we have a big number of East Africans trading in Sudan and facing a number of challenges that require mitigation and the intervention of our member states. But because we do not have serious binding agreements with them, most of the people who have suffered have lost their goods and so forth. So, I believe that if the process of South Sudan joining the Community is fast tracked, the business community in this region will go ahead in ensuring that their goods or their businesses are protected.

In conclusion, I would like to say that South Sudan has its independence but it is upon us as a region to work with them in protection of that expensive independence and jealously safe guard this independence. Otherwise, where there are cases of bad governance, there could be a repeat of what was there before and it will have a worse effect to the countries within East Africa.

With those remarks, I wish to conclude and support the motion with all its recommendations.
Asanteni sana. (Applause)

THE MINISTER FOR EAC AFFAIRS, KENYA (Mr Musa Sirma)(Ex-Officio): Mr Speaker, I want to thank you for giving me this opportunity to deliver my first maiden speech in this august House. I am happy to join you in the East African Parliament and that we want to develop this region through this Parliament by enacting legislations, which touch on all our East

African states and, therefore, bring to conclusion the integration process within the East African region.

On the issue of Sudan, I want to thank the mover of the motion hon. Kidega for having thought wisely about this motion. This is because the issue of Independence of South Sudan cannot be wished away by this Parliament. It has to give its input and recognition of the fact that we played a role as the East African states.

I want to say also that during independence on 9th July, I got an opportunity to be with the people of Sudan and other dignitaries in celebrating the Independence of Southern Sudan. It was tears and joy, as they saw the flag of the north being brought down and the flag of South Sudan being raised. It was a joy for all and I think it will go down in the memory of those who were in the struggle.

I also want to say that many died during the struggle including the leader of Southern Sudan, Dr John Garang. When he took the Comprehensive Peace Agreement after negotiation, he told the people of South Sudan, "I have brought you independence on a golden plate. It is you to decide to either go back or remain and become independent." Finally, on the referendum, the people of the South overwhelmingly voted for separation and that happened.

I also want to say that during that Independence Day, the President of South Sudan Salva Kiir declared - and I do not know whether he knew that there was going to be a process to be followed before you join the East African Community - that his country is going to be part of the East African Community in his speech. (*Applause*)

Therefore, the hearts of the people of South Sudan really believe that they are part and parcel of the East African Community. It is time now that we fast track the process and bring our brothers who had been colonised by others. It is time that we embraced and give the people of Southern Sudan what they have lacked for years.

I managed to go back to Sudan one month after their independence - it was a sad affair! There was no fuel, the borders to the North had been closed, and on the night of independence, the currency of the North was changed meaning they have no good will for their brothers who have gotten independence. It was as if they were forced to and yet it is the people of the South who voted for separation. I thought once you have fought with a brother and he defeats you, you shake hands and brush off the dust but instead, the people of the North were not happy. They wanted these people to suffer more.

We have seen refugees as a country in Kenya. We have hosted refugees because of instability and we are happy that right now, we do not have refugees from the former countries, which had problems because we now have East African Community, and all their people are living peacefully. We still pray for the people of Somalia to come together because they are our brothers. We pray that they understand one another and bring independence and agree to put down their arms and embrace democracy. The cost of doing business in the Indian Ocean is because of the instability in Somalia. Therefore, we need the Somali people to be peaceful so that we can be able to trade.

There are countries in Africa known to have helped others to gain independence like Algeria, Tanzania, Zimbabwe - those who stood firm for others to ride on their backs and get

independence - we do not want to forget them. They did their part and I think I can say Kenya has now played that role on the issue of South Sudan alongside other African countries, including Uganda. Therefore, we want to thank all those who stood firm. We now need to coexist peacefully, integrate, and complete what is intended in the Treaty of the East African Community so that we can be able to move forward.

We cannot be stuck only by reading the Treaty without being innovative. We need to change and even think about making one country. You do not need to stop anywhere. We should not have border points like when you are in Europe. You should just be walking across the borders. I am saying I am going to visit my brother on the other side of the country. It is time that integration is taken more seriously by the East African states, so that we have a free market, and possibly in future a federation with one currency. Thank you, Mr Speaker. *(Applause)*

THE SPEAKER: Hon. Kidega, I think everybody has overwhelmingly supported your motion, and I do not think you have to say anything. Honourable members, I now put the question that this Assembly do resolve to congratulate the Government and people of South Sudan upon the landmark independence of South Sudan on 9 July 2011.

(Question put and agreed to.)

Resolution adopted.

QUESTIONS FOR ORAL ANSWERS

THE SPEAKER: Honourable members, as you are aware, yesterday there was a question that was deferred to today for the minister to give an answer to the main recommendations of the meeting of the committee.

Question Ref: EALA/PQ/OA/14/2011

Ms Safina Kwekwe (Kenya): Asked the Chairperson, Council of Ministers_

“Article 111(2)(c) and (d) requires that the activities by the Community relating to the environment should ensure sustainable utilization of natural resources like lakes, forests, and other aquatic and terrestrial ecosystems. The EAC Partner States are further urged to jointly develop and adopt water resources’ conservation and management policies that ensure sustenance and preservation of ecosystems.

Lake Chala, a shared water resource between the United Republic of Tanzania and the Republic of Kenya, is a unique water body that is replenished by underground streams originating from Mt Kilimanjaro. It has the potential to service the domestic and agricultural water needs of the citizens of Taita Taveta County (Kenya) and further to the south east Savannah plains of Kenya due to the fact that the lake is on raised ground thus making distribution of the water to the low-lying lands through the force of gravity easy and economical.

Could the Chairperson Council of Ministers inform the House:-

- i) *Whether there are any plans to jointly develop such shared water resources, other than Lake Victoria, to promote the wellbeing of East African citizens?*
- ii) *Whether EAC has any plans to formulate and implement national and Community irrigation programmes as espoused under Article 109 of the Treaty and whether Lake Chala has been considered as one of those sources of irrigation*

THE MINISTER FOR EAC AFFAIRS, BURUNDI AND CHAIRPERSON, EAC COUNCIL OF MINISTERS (Ms Hafsa Mossi)(Ex-Officio): Thank you, Mr Speaker. I wish to answer by giving the recommendations following the question, which was answered yesterday.

During the consultative meeting concerning joint cross border integrated water resources management programme in the Lake Chala, Lake Jipe and Uмба River systems between Tanzania and Kenya, the following are the recommendations which were put as a way forward:

1. Formation of a trans-boundary committee comprising of permanent secretaries responsible for water resources, environment, fisheries, agriculture, regional development or local government, East African Community and other related sectors with the following functions:
 - Ensure smooth implementation of the agreed institutional arrangement for the management of Lake Chala, Jipe and Uмба River ecosystems.
 - Provide policy guidelines on sustainable and equitable management and utilisation of the shared water resources and ecosystems.
 - Establishment of technical sectoral committees on shared water resources and ecosystems, mobilisation and utilisation of resources, but also to ensure data and information exchange between partner states.
2. Establishment of an institutional framework under East African Community through the Lake Victoria Basin Commission for management and development of shared water resources and ecosystems.
3. Establishment of an interim technical committee comprising of the Ministry of Water, Pangani Basin Water Board, COs Development Authority, Water Resources Management Authority, Local Government Authority and Ministry of Regional Development Authorities. The chair of the committee will be Tanzania, Kenya being the secretary.
4. Co-operation and collaboration on the ongoing programmes and projects in both Kenya and Tanzania, including involvement of technical experts from both parties.
5. Enhance exchange of data and information between the two countries
6. Strengthen regular technical consultations at different levels
7. Joint cross border stakeholders' involvement in water resources management at different levels

8. Development of joint water resources management development plans, programmes and projects with monitoring and evaluation framework.
9. The Tanzanian side to study the draft Memorandum of Understanding text presented and submit it for discussion by February 2011.
10. The Lake Victoria Basin Commission to report on the progress of this co-operation to the relevant EAC organs.

Thank you, Mr Speaker.

Question Ref: EALA/PQ/OA/17/2011

MS DORA BYAMUKAMA (Uganda): Mr Asked the Chairperson, Council of Ministers_

The EAC Treaty advocates for strong adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice, as the precursor to the strengthening of integration within our region.

To fulfil its stated objective, the EAC established organs and institutions among them being the East African Court of Justice – the judicial body.

Article 27(2) states that the Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council through a protocol to operationalise the extended jurisdiction.

Aware of the universally accepted principles stated above; could the Chair of the Council inform this august House the progress of implementing Article 27(2) of the Treaty and when is it envisaged to be operationalised?

THE CHAIRPERSON COUNCIL OF MINISTERS (Ms Hafsa Mossi): Mr Speaker, it is true that against the fundamental principles of the Community as provided under Article 6 of the Treaty, the Treaty provides in its Article 27(2) that the East African Court of Justice shall have such other original appeal to human rights and other jurisdiction as would be determined by the Council. This extended jurisdiction would be in addition to the court's current jurisdiction to ensure adherence to the law in the interpretation and application of and compliance with the Treaty.

In 2005, the Council acting on the advice of the Sectoral Council on Legal and Judicial Affairs and taking into account the growing magnitude of integration, adopted a draft protocol of operationalised extended jurisdiction of the court. The Council directed the partner states to study the protocol and make comments.

It has taken long to get partner states' comments but this is on account of different legal systems, the different hierarchical systems of the partner states' courts of judicature, constitutional provisions pertaining to the jurisdiction of national courts of judicature, and the fact that this court is still rendering ad hoc services.

Mr Speaker, I am aware that the Court has, in Reference Number (1) of 2010, declared that this consultative process has taken long. However, at the moment, all the partner states have submitted their comments. The draft protocol is undergoing review, which takes into account those comments and is on the agenda for the next meeting for the Sectoral Council on Legal and Judicial Affairs.

Accordingly, operationalisation of Article 27(2) of the Treaty should be concluded by mid next year.

MS BYAMUKAMA: Mr Speaker, I would like to, first of all, thank the Chair, Council of Ministers for her candid response to the question that I raised. Permit me to seek clarity on a few issues before I come to the substantive part.

The first aspect I would like to seek clarification on is that, if this draft protocol exists and maybe if she has it here, she could lay it on Table. This would obviously enable us to move forward along with the Council of Ministers.

Secondly, I do not appreciate what is meant by the different “hierarchical” systems. We are talking about the East African Court of Justice and I believe that in the last sentence, where it says that, “the court renders ad hoc services”, it should not be on record because the court may be working on a part time basis because the judges are not full time but the services that the court renders cannot be ad hoc. So, I believe that this should be expunged because it renders the declarations, judgements and interpretations done at this level ad hoc and this cannot be so.

On the issue of substantive clarity, there is mention of the fact that it has taken - since 1999, when the Treaty was promulgated, the only action cited is in 2005. Between now and 2005, which is six years, the different countries have not been able to submit comments on this particular issue. The practice as is noted has moved on. The case of Katabazi clearly has shown that the East African Court of Justice needs to take into account the human rights aspect – *(Interruption)* -

THE SPEAKER: Honourable, come to your question please.

MS BYAMUKAMA: My question is, taking into account the court directive and the practical reality that there is free movement of people can justice be delayed any longer?

Also bearing in mind that the Legal and Judicial Affairs Committee Council has not sat for the last three years, can she give a concrete answer as to when we will have this particular Article of the Treaty adhered to? I just wanted to say that, Sir. Thank you.

MS HAFSA MOSSI: Regarding the first question as to whether I have the protocol here with me, I do not have that protocol but as I said, the protocol is undergoing review and it will take into account the comments that were the input from different partner states.

On the issue that has been raised by hon. Byamukama on whether the Sectoral Council on Legal and Judicial Affairs will be able to address the issues which were stipulated before, I wish to inform this august House that even if the Sectoral Council on Legal and Judicial Affairs has not

met for a long time, it will address all the issues that will be put on the table, and which have been pending for quite some time.

I did not get the question with regard to the issue raised as to whether the court is still rendering ad hoc services. I did not get the question.

MS BYAMUKAMA: Mr Speaker, maybe for clarity, and I believe this is very important, the last sentence of the question on page 1 says, this is on account of the different legal systems, “different hierarchical systems” and it goes on: “... and the fact that this court is still rendering ad hoc services.” My contention is, the court cannot render ad hoc services. It may be working on a part time basis, because the judges are not full time, but the services it renders cannot be described as “ad hoc”. So, I just wanted this to be expunged and clarified because this is an anomaly.

Mr Speaker, I want to conclude that in view of the fact that I have no clear timeline and that justice delayed is justice denied, this august House cannot continue to look on and, therefore, I do not want to have an ambush. I think that we need to have a concerted action with a plan so that we can have jurisdiction of human rights extended to this court in the shortest time possible. I thank you.

MS HAFSA MOSSI: Thank you, Mr Speaker. I fully understand that some actions need to be taken with regard to operationalisation of Article 27 of the Treaty, but also with regard to the fact that the East African Court of Justice, as I said, is rendering just ad hoc services. It is in the provision of Article 140 of the Treaty and sub article (3).

MR MWINYI: Thank you, Mr Speaker. It is apparent from the responses from the Council of Ministers that the current method of decision making within the Community needs to be addressed. Will the Council of Ministers first acknowledge that the decision making process, such as the Legal and Judicial Affairs Committee that has not met for the last three years, is impaired and will they recommend to the partner states a new method of decision making in order to push forward the integration process? Thank you.

MS HAFSA MOSSI: Mr Speaker, this issue was discussed during our last sectoral council meeting and we were concerned by the fact that this sectoral council has not met for quite some time. We urged the sectoral council to meet, which is going to happen in the near future.

But, yes, we acknowledge that there was a failure on behalf of those who were supposed to be taking decisions. When hon. Mwinyi talks about a new method of decision-making, I do not know what he is alluding to.

THE SPEAKER: Honourable, if you could please be brief. To what are you alluding?

MR MWINYI: Any method other than consensus, Mr Speaker. It seems that when one member is not in a meeting or in agreement, we cannot move and this can take place for five or ten years. If we are serious, we need to come up with a new methodology.

MS BYAMUKAMA: Mr Speaker, I do not want to belabour the point on rendering ad hoc services. What could have been stated is “rendering services on an ad hoc basis”. I am averse to even the word “ad hoc” because the Treaty does not talk about “ad hoc”.

Allow me to say this, Mr Speaker. When we came into EALA, we were being termed as being “ad hoc” and this is an egg and chick kind of situation. You do not give jurisdiction to the court. Therefore, it has to operate on an ad hoc basis. You do not give to EALA bills and work; you have to work on an ad hoc basis. So in effect, what is making the court continue operating on an ad hoc basis is the fact that it is being denied jurisdiction even when the court has declared otherwise.

I am sorry I have belaboured this but I hope I am understood better. Thank you.

MS HAFSA MOSSI: On the first question raised by hon. Mwinyi, as Council of Ministers we are considering reviewing the Rules of Procedure to accommodate the concern that if one of the partner states is not present in a meeting then the meeting should not take place. We have realised that this is hindering the integration process and we are ready to consider the matter.

On the issue raised by hon. Byamukama, we agree that she is quite right and we are going to put a proposal before the Council of Ministers to see how best we can address this issue.

QUESTION REF. EALA/PQ/OA/18/2011

MS BYAMUKAMA: Asked the Chairperson Council of Ministers: -

In the pursuit of policies and programmes aimed at widening and deepening cooperation particularly in the economic sphere the EAC Partner States are required to among other things strive for an accelerated, harmonious and balanced development in order to expand economic opportunities.

It also aims at eliminating barriers to trade including non-tariff barriers. Given this understanding and noting that the EAC Partner States have differing time zones and driving regulations (especially regarding driving sides) which have in turn affected trade and other economic opportunities;

Could the Chairperson of the Council inform this august House of the steps being taken to harmonise policies and practices of:-

- (a) Time zones;*
- (b) Driving Regulations.*

THE MINISTER FOR EAC AFFAIRS, BURUNDI AND CHAIRPERSON EAC COUNCIL OF MINISTERS (Ms Hafsa Mossi)(Ex-Officio): Mr Speaker, the Council appreciates that differentiated time zones could be a challenge to the harmonisation processes of the Community. However, I appeal to this House to note that the differentiated time zones, where Burundi and Rwanda are zoned one hour behind the other three partner states, has not been raised as a critical challenge by either the partner states or other major Community stakeholders in their engagements.

As a matter of fact, it may be possible that in this era of interconnectivity through ICT and the business process outsourcing, countries that are one hour ahead could outsource an hour of valuable capacities or services from the countries that are an hour behind. In which case, both

sets of states benefit from the differentiated time zone. This principle could easily be applied by businesses or companies that are establishing across the borders to their advantage.

With regard to the driving regulations, the Council agrees with hon. Byamukama on the need to harmonise driving regulations to, among others, enable mutual recognition of requisite driving documentations, training curricula, reduce on road accidents, and generally lower the associated costs of driving in the region.

It is pursuant to the foregoing that the Council approved the implementation of the East African Community Trade and Transport Facilitation Project. Under the project, a draft road safety law and regulations, as well as road transport legal and institutional framework with proposals on the change of driving side, have been developed.

The reports will be considered by a Partner States Task Force meeting to be held from 19th to 23rd September 2011 in Dar-es-Salaam in Tanzania. During the meeting, the impacts of changing the driving side will be considered in detail. Some of the questions that have come up during the partner states consultations on this matter relate to the cost of the transformation and who pays for them, time frame for the transformation, re-training of road users and road re-designs and markings among, others.

Mr Speaker, given that work on this matter is in progress, I request this august House to give the Council time to conclude the discussions on it and make a comprehensive report at a subsequent EALA session.

MS BYAMUKAMA: Mr Speaker, I have some supplementary questions. The first one goes to the issue of time zones. This is not the first time we are discussing this matter. When we brought it, we were in agreement that we need to work on it but now I hear a different tune justifying continued existence of the time zones. Actually, I remember somebody saying that if you bring a cock from Uganda to here and you time when it crows, it would be the same time.

We even gave justification where timeframes are in place. Some of it is political and some geographical. So, I do not understand. Has the Council of Ministers now shifted gears that it wants to maintain the issue of time zones as is because we have it on record where we agreed that it was systematically being worked on?

Secondly, on the same issue, the answer says that, "It has not been challenged by either the partner states or other major community stakeholders in their engagements." I would like to ask, are there major and minor stakeholders? Isn't this Assembly a stakeholder? Do we have to have an outcry before we can act?

On the second part, driving regulations, we have had deaths. Even in the recent past, a journalist died, a bus crashed. Let me go quickly to the issue. The issue at hand is, instead of these meetings and reports, what actions do we need to take in order for us to converge. Whether we all decide to go left or right, what timelines are in place?

Because these meetings are endless and sometimes it is the same kind of meetings of people who either lack quorum, consensus or never meet. I thank you.

MS HAFSA MOSSI: Thank you, Mr Speaker. On the issue of time zones, I do agree that this is not the first time this issue has come up in this august House. That is why we as Council of Ministers, urge that actions be taken in this sense that we are going to fast track the idea of having in place a team of experts that can come up with concrete proposals to address this issue.

On the second issue, I beg to say that there are no major or minor stakeholders. I wish to correct and say that this is indeed a mistake, and that we should take into account each and every concern that goes in this direction. We are aware that so many East Africans are dying because of not having in place the same driving regulations across East Africa.

THE SPEAKER: Honourable members, we have come to the end of business today. As you are aware, we were supposed to have a group photograph but I will give the challenge to the honourable minister. It is 6.00 O'clock here and it looks like 7.00 O'clock in East Africa so, it is dark outside we cannot have our group photograph right now. We will have it tomorrow just before plenary at 2.15 p.m.

With those few remarks, I would like to adjourn the House until tomorrow 2.30 p.m.

(The House rose at 6.25 p.m. and adjourned until Thursday, 15 September 2011 at 2.30 p.m.)