



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

Official Report of the Proceedings of the East African Legislative Assembly

90TH SITTING – SECOND ASSEMBLY: FIRST MEETING – FOURTH SESSION Wednesday, 15 September 2010

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the Burundi National Assembly, Bujumbura.

PRAYER

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

(The Assembly was called to order.)

PAPERS

The Following Papers were laid on the Table of the House: -

(by the Chairperson, Council of Ministers, Dr. Kamala):

The Audited Financial Statement of the EAC comprising the accounts of the three Organs namely; The East African Community Secretariat, the East African Legislative Assembly and the East African Court of Justice for the Financial Year ended 30th June 2009.

The Audited Financial Statements of the East African

Trade and Transport Facilitation Project for the Financial Year ended 30th June 2009.

The Audited Financial Statements of the African Capacity Building Foundation Phases 1 and 4 for the Financial Year ended 30th June 2009.

The Audited Financial Statements of the Lake Victoria Basin Commission for the Financial Year ended 30th June 2009.

The Audited Financial Statements of Lake Victoria Basin Commission Partnership

Fund for the Financial Year ended 30th June 2009.

The Audited Financial Statements of Lake Victoria Environmental Management Programme II for the Financial Year ended 30th June 2009.

The Audited Financial Statements of the East African Community Safety and Security Oversight Agency for the Financial Year ended 30th June 2009.

MOTION

TO SEEK LEAVE OF THE HOUSE FOR THE INTRODUCTION OF A PRIVATE MEMBER'S BILL

Mr. Dan Ogalo (Uganda): Mr. Speaker, I beg to move:

THAT, this House, pursuant to the provisions of Article 59 of the Treaty and Rules 26 and 62(1) (Introduction without publication) of the Rules of Procedure, do grant me leave to introduce a Private Members' Bill entitled "*The Inter-University Council for East Africa (Amendment) Bill, 2010.*"

Mr. Gervase Akhaabi (Kenya): Seconded.

Mr. Ogalo: Mr. Speaker,

WHEREAS the East African Legislative Assembly is the legislative organ of the Community empowered to enact legislation for the better functioning of the Community;

AND WHEREAS this august House in 2009 enacted the Inter-University Council for East Africa Bill, 2009, which was duly assented to by all the Members of the Summit of the EAC Heads of State;

AND WHEREAS the Secretary General of the EAC published the same Act in the EAC Gazette, which means that it is now an operational Act of the Community to give legal and functional effect to the Inter - University Council for East Africa;

NOTING that in its application, a lacuna in the law was noticed concerning accreditation of regional and foreign universities, something which can only be resolved through amending the law by this august Assembly under provisions of Article 59 of the Treaty for the Establishment of the East African Community, and Rules 26 and 64 of our Rules of Procedure;

NOW THEREFORE, THIS ASSEMBLY do resolve to grant me leave to introduce a Private Members Bill entitled "The Inter-University Council for East Africa (Amendment) Bill, 2010".

Mr. Speaker, Article 59 of the Treaty grants the right to introduce a Private Members' Bill. The same article lays down the areas that such a Bill should not infringe. What I propose to do is simply to show at this early stage that this Bill does not infringe any of our laws or rules of procedure, and that, therefore, it is befitting that leave be granted.

Mr. Speaker, the Bill that I have circulated relates to the functions of the Community as required by the Treaty. It

also relates to a matter on which we may enact an Act of the Community. It does not impose any charge to the fund of the Community, or remit any debt due to the Community.

Finally, as provided for under Rule 64, I have made the Bill available. Therefore, in terms of permission by this House, it meets all the criteria required. On the face of it, this Bill is a fit and proper Bill upon which the House can grant leave. Furthermore, practice has shown that the process of introduction and publication normally takes very long. A good example is the *Elections Bill*, which took almost a year to reach that stage. So, because of that urgency, I am requesting for its First Reading.

I am, therefore, praying that this House be pleased to grant me leave to introduce that Bill and to go on to the First Reading.

I beg to move.

(Question proposed)

Mr. Gervase Akhaabi (Kenya): Mr. Speaker, this Bill could not have come at a more opportune time. We are entering into the Common Market where issues of education and standards of education are going to play a paramount role in terms of employment opportunities, training, accreditation, and certification. We are already aware that a number of universities within the EAC region are operating across the borders. A number of learners are also crisscrossing our mutual borders seeking educational and training opportunities. Since the standards have to be harmonised, the Interuniversity Council for East African would provide the best institutional framework to do this.

Mr. Speaker, the procedure at present is cumbersome because for an educational institution accredited in one Partner State to operate in another Partner State they will need to apply for accreditation in that other State afresh. This is cumbersome, time wasting, and it can lead to procrastination and other delays in the delivery of education and training programmes in these areas.

Therefore, it is my humble view and submission that this Bill has come as a very handy remedy for both the learners and planners in the education and training sector. It is also going to help in research. It is for these reasons that I support the Motion, and I urge the Members of the Assembly to support it. As hon. Ogalo said, this Bill would not have budgetary implications at all.

I am happy that hon. Ogalo and I come from adjacent districts, and we experience these difficulties daily so, the Bill is very good for us. I am sure that hon. Lotodo will also support me, and so will hon. Kwekwe, and hon. Habumuremyi, since we are going through these difficulties together. I beg to support the motion. *(Applause)*

Mr. Mike Sebalu (Uganda): Mr. Speaker, I rise to support the Motion, and not from a very selfish perspective of being a neighbour, but from a broader picture of making a law, which more applicable and user-friendly for the entire East African region. So, I hope that hon. Akhaabi will allow me to support the Motion on the basis of that, although I am not a “neighbour”. *(Laughter)*

Mr. Speaker, I want to thank hon. Ogalo for his wisdom and time to scrutinise the law that we passed to be able to identify

areas for improvement. I think it is in the interest of the House in particular and the region in general to come out with a law that we can apply in the best interest of all the East African people. So, those areas that he has identified for amendment to improve the law are very welcome, in my view.

Mr. Speaker, this is even more critical now that we are operating under a Common Market. Our laws, undertakings, and activities must allow the people of East Africa to enjoy the rights and freedoms accorded to them by the Common Market. Therefore, this amendment seeks to create that enabling environment and to allow the universities to operate without hindrance.

Mr. Speaker, with those very brief comments, I wish to support the Motion and call upon all EALA Members, both near and far from the two areas mentioned, to support this Bill. *(Laughter)*

Dr. Odette Nyiramilimo (Rwanda): Mr. Speaker, I also wish to support this Motion. We visited the IUCEA offices as the Committee on General Purpose, and the honourable Members of the Committee will remember that we did study this Bill. When we visited the Council, they had a very big concern because many universities in the region were applying for membership of the Council but the Council did not have any legal framework to follow up on what they do, to scrutinise them or harmonise education standards in the East African region. Therefore, if we pass this Bill, it will give them a way to operate and increase the effectiveness of the universities in the Community.

Therefore, I beg to support the motion, and I thank hon. Ogalo for initiating the Bill. *(Applause)*

Mr. Christopher Nakuleu (Kenya): Mr. Speaker, I rise to support hon. Ogalo for coming up with this Bill. This Bill has come up at a time when most of the constitutions of the EAC Partner States have factored education as a compulsory requirement for everybody as a way of developing the human resource, which will subsequently contribute to national development.

Mr. Speaker, you will realise that most of the higher institutions of learning in the region are operating at different levels, with different curriculum, and different policies. There is, therefore, a need to come up with a law that will harmonise the differentials that exist in the education sector, and this will reduce the disparities in fees, constraints incurred when students want to transfer credits from one university to another, and it will ease the movement of human capital among the Partner States.

Mr. Speaker, in February last year, the Kenyan students at the Makerere University went on a strike because of an increase in fees. Their argument was that the government of Uganda was treating them like foreigners, yet they belong to the East African Community. Therefore, with such a law to govern such institutions and students, such incidents would not occur, but if they did occur, there would be a legal framework to resolve the problem.

Furthermore, this law will help eliminate incidents of individuals coming up with fake institutions that offer dubious and low quality degrees, thereby lowering the standards of education.

With those remarks, I beg to support the Motion. (*Applause*)

The Speaker: I am looking for the neighbours - (*Laughter*) - Hon. Kwekwe.

Ms. Safina Kwekwe Tsungu (Kenya): Mr. Speaker, I am a neighbour, although we may have no affinity for going to our neighbours to seek education.

I thank you, Mr. Speaker, for the opportunity to add my voice in supporting the Motion as moved by hon. Ogalo, and I also want to thank the people and Government of the Republic of Burundi for the warm, traditional welcome they have accorded us. To our colleagues, the EALA Members from Burundi, I say *asanteni sana*. (*Applause*)

Mr Speaker, the Act that the Motion seeks to amend is barely two years old. Therefore, one would ask; why amend the law so soon? What has changed? Mr. Speaker, sir, what has changed is that we have a Common Market. It is now a reality. At the time that this law came up, there were sceptics who thought that this stage would probably come later rather than sooner, and, therefore, the need to give teeth to the IUCEA was not urgent then, and neither was it the opportune time to grant powers of accreditation to the IUCEA. Now we have a Common Market, which prescribes the movement of persons, and some of those persons are students and workers who are in the field of education.

Mr. Speaker, the ease of accreditation can either promote or discourage investment in education. The Common Market has provided for what to do for the people within the EAC if they want to invest in services, for example,

services in education. Therefore, an enabling accreditation process in place would go a long way in promoting trade in services in the education sector. However, if we have a disabling environment, it would hinder trade in services in the area of education. Apart from the students and workers moving in the area of education, this Bill is timely because it will enable us to deliver the EAC Common Market to the East Africans who have interest in the areas of higher education.

With those remarks, I beg to support. (*Applause*)

Dr. F. Lwanyantika Masha (Tanzania): Mr. Speaker, let me first say that I feel a little ambushed because I only found this Order Paper on the table here. Therefore, my thinking is not yet complete. What I will say are preliminary comments in line with what is appearing as strong support for this Bill.

The draft we have is complete, I suppose, and it asks us to authorise an institution, which we have created to accredit foreign universities. I supposed here the intention is to accredit colleges as well. Now, let me, from my experience, indicate what accreditation involves.

Accreditation involves not only acknowledgement of the academic quality and programmes done by that particular university, but it also, according to this Bill, would involve allowing them to operate freely based on what this Council might determine to be the quality of those programmes. In some countries, there are very elaborate accreditation processes for the institutions that we call universities and

colleges, and in others, accreditation is by faculties, not by the entire university. Indeed, in the system that I am familiar with, which is the one in the United States, there is no central accrediting system for American universities and colleges. Each State has its own processes. They have voluntary accreditation systems by faculty according to the academic associations that exist there.

I would have felt more comfortable if this draft Bill was elaborate enough to indicate the kind of accreditation that we can expect for these institutions. Are they going to be accrediting institutions in their totality, or just certain programmes that these institutions do? It is not clear to me. In addition, in that accreditation, what will they be looking for? Does the IUCEA have capacity, in the event there was a flood of requests for accreditation, to handle it? I know that there are more than 3,000 universities and colleges in the world. Supposing about 50 of them wanted to come and operate in East Africa, does the IUCEA have the capacity to accredit them by programme, or would it just be accreditation in general? We might end up with fake degrees from some of these universities.

I am more concerned about the quality of the degrees that we would be accepting from some of these universities that might be accredited. I am equally worried about the capacity of the IUCEA, which already has a lot on its hands, to be able to follow in detail what these institutions do. We know that there are some universities in the world, which operate out of flats. We know there are some degrees from some universities which we would not want to

have, even though the universities themselves may be credible in some faculties. Does this organisation have the capacity to make that distinction?

Mr Speaker, we are giving a big job to an organisation, which already has a lot of work. I would like to be satisfied that, indeed, the level of accreditation that we are talking about is beyond the definition of accreditation given in this draft.

Therefore, because of the complexity of what we are talking about here, I would like to suggest to my friend hon. Ogalo to go back and draft a more comprehensive Bill, which will go into more detail. That will enable us to feel more comfortable that indeed we are giving authority to an organisation that has capacity to do it, and that it will be accrediting organisations and faculties worth accrediting, and worth encouraging our students in East Africa to go to.

Finally, let me say, as I have already indicated, that we have many fake degrees around us. We have many phoney degrees around us. I would hate to rush this authority only to end up with more of these fake degrees in our countries. The idea is good in principle, but I would appeal to my friend hon. Ogalo that before we ask our governments to concede this authority which is being requested in Article 6, we should have a more elaborate Bill that clarifies exactly what they will be doing and how they will be doing it.

I realise that there is an invocation for the Council to come up with regulations to guide this accreditation process later, but given the enormity of this job, I would rather have some of those regulations, if they exist, incorporated

into the Bill, so that when we pass it, we pass a very comprehensive Bill. Otherwise, at this stage I am not comfortable with it.

The Assistant Minister for EAC Affairs, Kenya (Mr. Peter Munya): Mr. Speaker, this is a Motion seeking leave to introduce a Bill. When we go into the merits, I think we are jumping the gun. *(Applause)*

Hon. Ogalo is simply asking us to allow him to bring the Bill. He is seeking leave to shorten the process. Once we give him leave, then we can look at the product he is bringing and see whether it is good, or we need to improve it. Therefore, for us to start, at this very early stage before we even give him leave, to say that the product is not good when we have not yet allowed him to bring it forward, with all due respect to Mzee Masha, is to jump the gun.

Mr Speaker, given the enormity and importance of this Bill, I think this Bill is very progressive, and it will help us to take forward a step that we have been hesitant to take. Whenever we want to create an institution, we start and then leave them hanging; we do not give them real teeth to bite. With the coming of the Common Market, we need to get that courage to create East African wide institutions that have teeth to bite; that can actually harmonise standards and sort out some of the problems the hon. Masha was talking about of fake universities. If we cannot give an institution like this one the power and mandate, how will we be able to sort out the problem that hon. Masha has pointed out? So, I think the way to go is to give hon. Ogalo leave, and then after that I am sure the House has the intellectual

capacity to improve whatever intellectual product hon. Ogalo may give us. *(Applause)*

The Minister for East African Cooperation and Chairman, EAC Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I thank you for giving me this opportunity to present the position of the Council of Ministers on this request that the hon. Ogalo has presented to us. Mr Speaker, the Council of Ministers agree that it is right to grant leave to hon. Ogalo. *(Applause)* Why do we think so?

The World Bank report of 2008 on the global enrolment in universities gave East Africa only 5 per cent. At the global level, it is 24 per cent. In Europe, it is 50 to 70 per cent. Now, what do we do in East Africa to increase the percentage of the rate of enrolment? We either continue with the current status quo or establish a good environment to attract big universities to operate in East Africa. One way of doing it is by granting leave to hon. Ogalo to come with a good Bill, which will help us to increase the rate of enrolment into universities in East Africa. *(Applause)*

Another reason for supporting the motion is that we think there is need to reduce the cost of doing business. For instance, the Aga Khan University operates across East Africa, but because we do not have a law that provides for a regional arrangement, this forces the University to have vice chancellors in Nairobi, in Dar-es-Salaam and in Kampala. In a few years' time, they will be opening up campuses in Rwanda and Burundi, which will force them to have five vice chancellors instead of one. Now, as we increase the cost of running

these universities, we will be punishing our daughters and sons. Therefore, one way of reducing the costs of education is to have an arrangement where you can allow a regional institution to operate at minimal costs for our benefit as a region.

I want to echo what the hon. Masha said that the process of accreditation is complex; you can accredit either the whole institution or just some programmes. Now, supposing we had a University based in Rwanda and it wanted to introduce a new programme, this arrangement would force the university to incur millions in costs to accredit one programme in the different Partner States. These are unnecessary costs. Therefore, I think it is the right time for us to work towards attracting international universities to come and operate here. *(Applause)*

As we move forward, we are moving towards a global world. We must work towards creating people who think regionally. Sometimes you hear people talking about the East African integration, but talking parochially; talking nationally. One way of moving out of that is to have universities that think regionally. *(Applause)*

We must equally encourage national universities to expand. I remember that we had an East African University, which had campuses in all our cities, and it operated very well. So, if we allow this Bill, we will revive this system, but you cannot do so under the current arrangement, unless we change our laws.

Finally, the Council would like some more time to consult our colleagues in the Sectoral Council on Education. However, as Ministers of EAC, we have agreed that this Bill is important and we

can promise this august House that we will come up with proposals to supplement or enrich the Bill so that we end up with a good Bill for the people of East Africa. *(Applause)*

Mr. Ogalo: Mr. Speaker, may I begin by thanking the honourable Members for the overwhelming support they have given to this Motion? I want to, especially, thank the Council of Ministers for the support of the Bill, and I want to echo the words of hon. Munya because they are important.

At this stage, I am just seeking leave; it is critical for us to know that I am just seeking leave, and if there are shortcomings in the Bill, when this Bill is before the Committee, when it comes up for Second Reading, Members will have an opportunity to enrich it. Stakeholders will also enrich it in the Committee, and this would take care of all the fears of hon. Masha. I welcome all of hon. Masha's ideas, and I am ready to take them on board.

With those remarks, I wish to end by thanking the hon. Ministers and hon. Members for their support. *(Applause)*

(Question put and agreed to)

BILLS

First Reading

The Inter-University Council for East Africa (Amendment) Bill, 2010

Mr. Dan Wandera-Ogalo (Uganda): Mr. Speaker, I beg to move that the “*Inter-University Council for East Africa (Amendment) Bill, 2010*” be Read for the First Time.

Mr. Gervase Akhaabi (Kenya):
Seconded

(Bill Read a First Time and referred to the Committee on General Purpose)

BILLS

Second Reading

Mr. Dan Wandera Ogalo: Mr. Speaker, I beg to move that the “*EAC Elections Bill, 2008*” be read for the Second Time.

Mr. Gervase Akhaabi (Kenya):
Seconded.

REPORT OF THE COMMITTEE ON LEGAL, RULES, AND PRIVILEGES ON THE *EAC ELECTIONS BILL, 2008*

The Chairperson, Committee on Legal, Rules and Privileges (Mr. Frederic Ngenzebuhoro (Burundi): Mr. Speaker, in accordance with Rule 68(2), I have the honour to present to the House, the Report of the Committee on Legal, Rules and Privileges, on the EAC Elections Bill, 2008.

This Report has four parts, namely: Part 1- Introduction; Part 2- Observations and Findings of the Committee; Part 3- Recommendations and Part 4- Acknowledgements.

1.0 Introduction

The Committee acknowledges that the Treaty for the Establishment of the East African Community (Treaty) and the experience of conflict emanating from elections in the region is the premise for the East African Community Elections Bill, 2008.

Article 3(3)(b) of the Treaty on “*Membership of the Community*” states that matters to be taken into account in

respect to membership include adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice.

Article 5(2) of the Treaty on “*Objectives of the Community*” stipulates that the Partner States undertake to establish among themselves a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation. In order to attain a Political Federation there is need to kick-start the process by harmonising the conduct of elections in the East African Region.

Article 6(d) of the Treaty on “*Fundamental Principles of the Community*” states that the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include good governance including, inter alia, adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities and gender equality.

The Committee is also cognisant of the fact that Article 8(4) of the Treaty on “*General Undertaking as to Implementation*” states that Community laws shall take precedence over similar national ones on matters pertaining to the implementation of the Treaty, and that Article 49 vests the Assembly with the legislative, oversight and representative role in the East African Community. In line with this function, and during the Assembly meeting in February 2008, and while debating the *Report of the EALA Goodwill Mission to the Republic of Kenya* following the

election violence, the Assembly, *inter alia*, recommended the enactment of a law on Elections in the East African Community.

It is also worth noting that in the period 2009–2012, all the East African Community Partner States will be involved in elections at different levels, namely:

- Presidential and parliamentary elections in the Republic of Burundi in 2010;
- Presidential and parliamentary elections in the United Republic of Tanzania in 2010;
- Presidential elections in the Republic of Rwanda in 2010;
- Presidential and parliamentary elections in the Republic of Uganda in 2011; and,
- Presidential and parliamentary elections in the Republic of Kenya in 2012.

This sequencing of elections in the East African Community region calls for serious deliberations and determination of parameters, which they must adhere to in the conduct of elections, in order for such elections to be qualified as free, fair and credible, and also to avert violence emanating from electionsⁱ.

The Committee further notes that the *East African Community Election Observation Manual*, which was recently adopted by the Assembly is one mechanism that will enhance democracy, the rule of law and governance, which is essential for the political, social and economic

development of the East African region. It is in this context that hon. Dan Ogalo initiated a Private Member's Bill in accordance with Article 59 of the Treaty and Rule 64 of the Rules of Procedure of the Assembly.

The Bill was introduced in the Assembly, read a first time, and was committed to the Committee on Legal, Rules, and Privileges in accordance with Rule 66.

The object of *The East African Community Elections Bill, 2008* is to make provision to ensure the full, comprehensive, and effective management of presidential and National Assembly Elections through an established model East African Electoral Commission, which will manage free, fair and credible elections and processes incidental to the conduct of the elections in the EAC Region.

Mr Speaker, upon receipt of the *EAC Elections Bill, 2008*, the Committee undertook the following activities:

- a) Had a briefing from the Mover of the Bill;
- b) Invited stakeholders seeking for response, comments and proposals;
- c) Reviewed related documents on the subject matter in SADC and ECOWAS; the East African electoral systems and structures; and the Election Observation Manual of The East African Community;
- d) Discussed and made recommendations on the subject matter of the Bill.

2.0 Observations and Findings of the Committee

2.1 Briefing by the Mover of the East African Community Elections Bill, 2008

The Mover of the Bill presented an overview of the Bill, which has three parts and 21 Clauses arranged as follows:

Part 1- Preliminary: Part 1 covers the following clauses:

1. Short title and commencement; and,
2. Interpretation

Part II- Establishment of Commission: Part II covers:

3. Establishment of Commission;
4. Composition of Commission;
5. Seat of Commission;
6. Functions of Commission;
7. Demarcation of constituencies;
8. Independence of Commission.

Part III- Conduct of elections: Part III encompasses:

9. Appointment of electoral officers
10. Registration of voters
11. Nominations
12. Campaigns
13. Polling
14. Counting
15. Tallying

16. Avoidance of elections

17. Elections petitions

18. Election offences

19. Political Parties forum

20. Determination of complaints

21. Regulations

2.2 Stakeholders' Responses

2.2.1 The Committee requested for responses from the following entities:

- a) The Council of Ministers
- b) The East African Community Partner States
- c) Civil Society Organizations

The Committee received comments and proposals from the following:

- 1) The Government of the Republic of Burundi;
- 2) The Parliament of the Republic of Rwanda
- 3) The National Assembly of The United Republic of Tanzania
- 4) The National Council of Churches in Kenya dated 6th February 2008 signed by Rev. Canon Peter Karanja, General Secretary.
- 5) The Uganda Joint Christian Council
- 6) The Faculty of Law, University of Dar-es salaam
- 7) The Tanzania National Electoral Commission

2.2.2 Summary of Responses from Stakeholders

- a) The Bill provides for the establishment of a commission in charge of presidential and parliamentary elections in the East Africa Community Partner States, and this may lead to contradictions with the laws of the Partner States.
- b) The Bill does not consider the fact that EAC Partner States have national electoral commissions created under the provisions of the respective constitutions.
- c) There is currently no need to have an East African electoral Act since the EAC Partner States are yet to reach a political federation.
- d) The Bill does not spell out relations between the existing national electoral commissions but appears to replace them.
- e) There is absolutely no doubt that the Bill requires a budget for its implementation and thus gives rise to financial implications in as much as it will be necessary to create organs, which will require personnel and equipment, and yet a related budget line is not provided for anywhere. This is in contradiction with provisions of Article 59 of the Treaty establishing the East African Community.
- f) It is premature to create an East African Electoral Commission. We should instead recommend for the institution of urgent guidelines and policies for good governance, elections, and human rights among other things within EAC Member States.
- g) We must read the Bill in light of the constitutive Treaty for the Establishment of the East African Community, national constitutions, and other applicable laws of Partner States.
- h) The Bill seeks to supplement, compliment, and in various instances fully play the role of the electoral commissions of the Partner States in the management of presidential and national Assembly elections of these states. This is not tenable. The model East African Electoral Commission should play a facilitating rather than implementing role.
- i) The East African Electoral Commission should develop best practices and minimum standards for the management of elections, to which the Electoral Commissions of Partner States should adhere.
- j) The Partner States must continue conducting their presidential and parliamentary elections in accordance to their national laws.
- k) The East African Electoral Commission should facilitate peer management and learning in election matters among the Partner States. This should be in line with the NEPAD peer learning mechanisms.
- l) The East African Electoral Commission may have observatory status during elections in the Partner States.

The stakeholders proposed specific variations in reference to Clause 4 of the Bill, that:

- m) The Chairperson shall be a sitting judge or person holding such office, nominated by the Partner States and appointed by the Chairperson of the EAC Summit. The rationale advanced for this proposal was that the Chairperson of the Commission did not need to be a sitting judge. He or she could be a person qualified to hold that office, which would enable wider tapping of competent persons.
- n) The National Assembly, rather than the Judicial Service Commissions, should do the nomination of Commissioners because different Partner States may have different ways of appointing judges. Moreover, not all Partner States have Public Service Commissions and that this being a political process, the Public Service Commissions should not be involved nor be the ultimate authority on the membership of the Commission.
- o) Since EALA will do the vetting, there is no need for the East African Political Forum, the basis for which was the fact that different Partner States have different numbers of political parties, with other dynamics like coalitions and defections likely to complicate the process even further.
- p) The legal framework under which the said Bill is proposed conflicts with the fundamental or basic law of a Partner State, the Constitution of the Partner State, which, in the absence of any amendment, remains

and reigns supreme over any other law, institution or organ.

- q) The provisions of the proposed Bill also conflict with the national electoral laws because they purport to wholly assume and take over all the powers and functions of the electoral commissions of the Partner States, established in the constitutions of the Partner States, conferred with those powers, and mandated to carry out and perform those functions.
- r) the proposed legal framework would be appropriate In a federal system of government in East Africa, , but for the proposed law to be applicable, the constitutions of East African Community Partner States and pertinent Elections Acts enacted there-under will have to be amended first.

2.3 Review of Related Documents

In respect to the review of related documents; systems and structures, the Committee made the following observations:

- a) At the regional level, there exists several legal instruments that govern elections, these include the following: AU Declaration Governing Democratic Elections in Africa ; and The AU Guidelines For African Union Electoral Observations and Monitoring Missions;
- b) The Southern African Development Cooperation (SADC) Region has evolved Principles and Guidelines Governing Democratic Elections. These SADC principles and

guidelines inter alia commit the Member States to promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective. It also commits Member States to consolidate, defend and maintain democracy, peace, security and stability in the region;

- c) The Economic Community of Western African States (ECOWAS) has also evolved a Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security. The Supplementary Protocol On Democracy and Good Governance is considered as a tool which takes into account the deep seated political causes of conflict, instability and insecurity;
- d) The Election Observation Manual of The East African Community establishes a common standard through which the East African Community and other stakeholders, can refer to, to determine the credibility of the electoral processes and the legitimacy of electoral outcomes in Partner States. However, the Committee noted several variations in Partner States' governance systems and structures. For example, some Partner States have adopted "proportional representation"; while others use the "First by the Post" electoral system. It was further noted, inter alia, that some Partner States have affirmative action; and or bi-cameral parliaments whereas others do not.

In light of the above findings, the Committee noted the need for the East African Community to evolve a legal framework that consolidates citizen's participation in the decision-making processes and consolidates democratic practice and institutions.

2.4 Specific Observations of the Committee on the Bill

The Committee made the following observations:

2.4.1 Title

- a) The Title lacks clarity; it does not aptly capture or reflect the contents of the Bill. The content of the Bill covers several issues such as the establishment of The East African Political Parties Forum under Clause 19. Whereas the Committee notes that political parties have a critical role to play in elections, establishment of such a Forum has no direct connection with the conduct of elections.
- b) The title of the Bill refers to 'East African Community Elections' and yet there are no such elective offices at the Community level.
- c) The Treaty is silent on conduct of elections.

2.4.2 Memorandum

In respect to the Memorandum of the Bill:

- a) There is no cross-reference to the Treaty in the Memorandum. In essence, the proposed Bill does not seek to operationalise any specific provision of the Treaty. The fact that the Treaty provides for adherence to

the principle of good governance does not override the cardinal principle of sovereignty. There is thus need for Partner States to agree on the definition of this principle and harmonise Constitutional principles and laws before enactment of such a law. It should also be noted that free, fair and credible elections are but a component of the principle of good governance

- b) The Bill has conceptual difficulty. The intention of the Bill is not clear on what mischief it intends to cure especially as relates to the Memorandum.
- c) The East African Community does not have a mandate under the Treaty to conduct Presidential and National Assembly elections. The question is whether we can do this through a model East African Electoral Commission. The Committee is not convinced that the East African Community can conduct elections in Partner States. The Committee recommends that Partner States adopt a comprehensive law on good governance; democracy and the Rule of law encompassing free, fair, and transparent elections.
- d) The Committee was of the view that the Commission should be a Board vested with an advisory function. Such a Board could have the following functions:
 - i) To set and harmonise electoral standards to be adhered to by the National Electoral Commissions;
 - ii) To ensure adherence to the set standards by the National Electoral Commissions;

- iii) To establish conflict resolution mechanisms to resolve election disputes, tensions and violence in case of occurrence;

- iv) To coordinate, monitor and evaluate elections in Partner States;

- v) To prescribe sanctions for non-adherence to set standards;

- vi) To provide a consultative forum for political parties in the East African Region.

- e) The Committee noted that there was a pre requirement of attaining the political federation, or at least political agreement and therefore the commission has had no political basis at a regional level. Additionally, national electoral laws should cater for aspects such as fairness and transparency in the electoral process.

2.4.3 Part 1 Preliminary

Part I of the Bill covers the Short title, commencement, and Interpretation.

The Committee noted that the interpretation of the “Assembly” and “National Assemblies” is different from the interpretation of the same in the Treaty.

- a) The Bill defines “Assembly” as meaning the East African Legislative Assembly, whereas the Treaty defines it as “the East African Legislative Assembly established by Article 9 of the Treaty”.

“National Assembly” is defined in the Bill as “having the same

- meaning as Parliament” whereas the Treaty defines “National Assemblies” “with its grammatical variation and cognate expression means the national legislatures however designated of the Partner States”.
- b) The Committee further noted that the interpretation of ‘constituency’ and ‘Returning Officer’ have different meanings attributed to them in each Partner State; which interpretation needs to be harmonized.
 - c) The Committee further noted that it was highly unlikely that the Judicial Service Commissions, the Public Service Commissions and political parties would agree on the nominated persons. This appointing procedures and process was lengthy, highly political, tedious and not tenable.
 - d) Clause 4 (4) refers to address of the Assembly. This is not the mandate of the Assembly, ‘address’ of the Assembly also needs to be established as well as the mechanism for ‘address’.
 - e) Reference is made to ‘Speaker’s Committee’ which is not in existence would require that the Committee legislate in anticipation, which is not practical.
 - f) The Committee noted that the removal of a Commissioner by the Chairperson of the Summit or the Council was not possible; only the appointing authority could undertake it.
 - g) The Committee noted that the emoluments of the Commissioners being determined by the Council which should rather be determined by the Summit on advice of the Council.
- 2.4.4 Part II- Establishment of the Commission**
- Part II of the Bill covers establishment, composition, seat, functions of the commission; demarcation of constituencies and independence of the Commission. These Clauses are not clear in respect to the following issues:
- a) Establishment of the East African Electoral Commission is not premised on any Treaty provision.
 - b) Organs of the Community are created by the Summit directive as per Article 9 of the Treaty;
 - c) Provision that the Chairperson shall be the sitting Judge of the highest court, potentially excludes Judges of lower courts;
 - d) The Bill presumes that all Partner States have Public Service and Judicial Service Commissions; such entities may be non- existent in some Partner States. It is not clear on how the independence of the commission is secured and maintained.
 - e) Vetting by the East African Political Parties Forum has potential to politicize appointments.
 - f) Appointment by Chairperson of the Summit on address of the Assembly – it is not clear. What would such an address entail?

- g) It is not clear as to why the Chairperson has to take leave of absence and to serve for a non-renewable term of five years; especially in light of the fact that other Members of the Commission can have their terms renewed; and the practice is such that the position of Chairperson is rotational.
- h) There should be restriction on other kinds of office that a Member of the Commission can hold.

2.5 PART III – Conduct of Elections

Part III of the Bill covers appointment of electoral officers; registration of voters; nominations; campaigns; polling; counting; tallying; avoidance of elections; election petitions; and election offences.

- a) The Committee noted that respective Partner State laws already cover aspects provided for under Part III on conduct of elections. In light of this, it was recommended that these laws and practices be harmonized bearing in mind exceptions based on the historical context.
- b) In respect to election offences, the Committee noted that National laws, which give jurisdiction over these matters to national courts, should determine such offences.

2.6 PART IV- Miscellaneous

Part IV covers Political Parties Forum; Determination of complaints and Regulations

In respect to this Part, the Committee observed the following:

- a) In respect to the composition of the East African Political Parties Forum, it was noted that political party representation in the Forum is restricted to parties represented in a National Assembly of a Partner State. This restriction leaves out political parties with no representation in the National Assembly.
- b) The composition of the East Africans Political Parties Forum does not provide for inclusion of persons who stand on an Independent ticket.
- c) Provision that “no appeal shall lie from the decision of the court confirming or reversing the decision of the Commission” does not specify which court. The word “court” is not provided for in the interpretation.
- d)
- e) Reference to court should take into account jurisdiction vested in such a court, for example, the East African Court of Justice, it should be noted that this Court currently has no jurisdiction on such matters under the Treaty.

3.0 Recommendations

The Committee makes the following recommendations to the Assembly:

- a) In the absence of a Protocol or an agreed position on the fundamental elements of the Bill; it is difficult to ascertain the extent of sovereignty that East African Community Partner States are willing to cede at this stage of integration; therefore the Committee recommends that this

- Bill awaits further political agreement among East African Partner States.
- b) Bearing in mind that the ultimate aim of integration is Political Federation, the Committee urges East African Community Partner States to adopt the East African Community Election Observation Manual as the framework for the conduct of and observation of elections.
 - c) That Constitutional provisions and laws on elections of East African Community Partner States should be harmonized in order to establish the basis for constitutional convergence principles that will form the basis for political federation.
 - e) In light of recommendation (a) above, the Committee urges the Assembly not to approve the Bill.

4.0 Proposed Committee Amendments

These are as per the recommendations attached to this report.

5.0 Acknowledgments

- The Committee acknowledges the critical facilitation that the Honourable Speaker of the East African Legislative Assembly provided
- The Committee recognizes the work executed by the Mover of the Bill, hon. Dan Ogalo.
- The Committee commends the stakeholders who submitted

responses and comments on the Bill, which assisted the Committee to capture a wider spectrum of the aspirations of the people of the East African Community.

- The Committee highly appreciates and commends Ms. Elizabeth Barinda for her effective and efficient work as Clerk.

In conclusion, the Committee hereby submits this report to the Assembly; and humbly urges the Assembly to support it fully. *(Applause)*

Major General Mugisha Muntu (Uganda): Mr. Speaker, let me first take this opportunity to thank hon. Ogalo for moving this Private Members' Bill, and to thank the Committee for considering it. I would like to make some comments on the recommendations, but before I do that, let me first give my own perception of the Bill.

Mr Speaker, in the Bill there are several things. There is the principle, and then there are the technical details. I would like to separate the two. My reading of the situation is that the Committee has not managed to differentiate the two things, which to me is unfortunate. So, I would like to urge the Assembly that as we debate this Motion, we should separate the two, namely; the principle, which is about whether or not we should have a regional electoral body, and then the details, which, to me, the owner of the Bill can discuss with the Committee so that we can have a harmonised position, as long as we agree on the principle of the Bill.

Mr Speaker, the recommendations of the Committee have made this a sad day for me. Nevertheless, I hope the end of the day will be joyful, if the Assembly agrees on the principle. I have had several sad days in this Assembly, both in the First Assembly, and a few times in the Second Assembly. All the times that I have experienced sad days have been because, as Members of the Assembly, we always seem to fail to separate or understand the principle of separation of powers, which is a fundamental foundation for good governance, stability of countries, administration of justice, and the building of trust for those that are led. It is a time-tested principle. When you manage it well, it works.

Mr Speaker, you will find that most of the countries that are stable and serve the interests of their people, take time, even when they make mistakes, to always work towards ensuring that they observe the principle of separation of powers.

There is the Legislature, the Executive, and the Judiciary. It is true that they do coordinate their activities, but there are times when they have to act individually. That is fine for as long as they know that whatever they do is in good faith, and for purposes of advancing good governance, or of building a firm foundation for leading a country, or in this case, a region.

Our role in this particular case as an Assembly is to ask ourselves several questions. Many of the uncertainties in the countries that we come from are rooted in mismanagement of elections. You may want to hide your heads in the sand, but I would like it to be put on record. The beauty of history is that it judges all of us. History is merciless.

That is the beauty of it. Time is good; it never discriminates. You do what is right, it judges you right; you do what is wrong, it judges you wrong. It knows no kings, presidents, Members of Parliament, or pedestrians on the streets. It judges all of us similarly.

As far as I am concerned, this is a historical moment that we need to grasp. Why do I say so? I have heard the Committee saying that we have not federated yet and, therefore, we cannot have a regional electoral commission. Which comes first? I think they are trying to put the cart before the horse. In my own understanding, having a regional electoral body is for purposes of building trust. How are we going to federate, if we ever federate, unless we build trust?

I was just talking to the honourable Member seated on my left, and I was comparing this with marriage. You know, when two people are going into a marriage, there is usually the initial period when they have to understand and know each other. They have to understand each other's character and to meet each other's family to know if this is the person that they want to spend the rest of their life with or not. If not, they opt out. Now, because they have had the opportunity to understand one another and to build trust, when they find that this is the person that they want to spend the rest of your life with, then they go into an engagement, they go to church or the mosque, and swear to live together in happiness or illness, or whatever. That is because they know each other; they commit! This is what we need to do as a region.

We have about 120 million people in the region, and we are growing. In some of the countries, the population is growing very fast. In Uganda, for example, they estimate the population to grow to about 80 million people within the next 30 to 40 years. That means that in the region, we are likely to hit the 200 million mark very soon. Now, tell me, if as countries we do not embark on some necessary processes that will enable us to build trust, what will happen at the time we commit and say now we want to federate? Will we have known each other; will we have conducted elections, like in this case, once we agree on the principle?

I understand that the EAC has commissioned a team of experts to work on a draft constitution. Now, on one side you are saying that because we have not yet federated, we cannot have a regional electoral body, and on the other side, the Community has commissioned a team to work on a draft constitution! Do you want us, tomorrow when the Summit, or the Council of Ministers, say that now we are going to federate, to start running backwards to have an electoral body? We need to have in place a regional electoral commission, which can conduct at least one or two elections in each country. This will help to build trust, to know that we will be stable, and that even when we make mistakes, we are able to correct them and maintain the path of stability. How exactly do you want us to evolve as a region? That is my dilemma. I cannot understand – *(Interjection)* -

The Speaker: Hon. Masha, we are not at a basketball game, so there is no timeout. Are you rising on a point of information or a point of order?

Dr. Masha: On a point of clarification, Mr Speaker, he is addressing principles, which he hoped the Committee would have addressed. However, Rule 67(1) states that a Committee to which a Bill is committed shall not discuss the principles of a Bill but only its details. Therefore, I hope the Member will not go on addressing the Committee as if it missed a point, or misdirected the Assembly.

Major-General Muntu: Mr. Speaker, I want to thank hon. Masha for seeking that clarification. I did hint on the Committee, and I am glad that he has corrected me. However, the thrust of my presentation relates to the Assembly.

I know that we have powers to have this Bill re-committed, and I think we can also ask the mover to work out a number of amendments so that we pursue the principle. In fact, I am going to request the mover of the Bill...I know that talk about laws, the demarcation of constituencies, and such provisions in the Bill it creates resistance. That is why I think we should only pursue the principle for now and then do the amendments once we agree on a regional body. It can conduct elections based on the laws of each country. It is my observation that, in fact, each of these countries has comprehensive electoral laws, and if they implemented the laws in a fair and transparent manner, I can assure the august House that all the five countries would have free and fair elections.

Mr Speaker, the biggest problem that I have noticed, and which is why I am focusing on the principle, is always on the implementation of electoral laws. In a situation where there are no strong

institutions to check power, for us to put our trust in human beings or the good faith of man, is to condemn the millions of people around us in this region. This is because there are very few men or women who are able to withstand the temptations of power when there are no institutions to check them.

Mr Speaker, I speak this from experience. For the last 30 years or so, I have been part of struggles to do a number of certain things right. Where I come from, it is still a journey; it is still a hard road to walk. I have seen many people who would ordinarily be good men or women if they were doing their own things becoming overwhelmed the moment they get into roles of exercising power. Power has its own temptations, and very few men or women are able to withstand those temptations if there are no strong institutions to check them.

It is therefore up to us as an Assembly to ensure that we put in place mechanisms that will protect us from those temptations; strong institutions that will enable us to do what we would ordinarily want to do for the good of our people. That is why I would like to appeal to this Assembly, and to the mover of the motion, if he is willing, to make the necessary amendments and we forget about creating regional electoral laws. We should restrict ourselves to creation a regional electoral body, which will conduct elections based on the national electoral laws, as they exist in each country. Why? It is because we want to build trust! I would not understand anybody at any level in any of these countries, including in this Assembly, who would be opposed to a body that would run elections based on national laws. Why would anybody be

against that? I would really want to hear that. That is the only way to avoid the uncertainty in some countries that are about to go into elections.

We do not know whether those countries will come out intact or not; it is too late to ask such a body to conduct elections in those countries, but at least if we agree in principle, we can move it on to the Summit and they will consider it and make their own decision. Nevertheless, we have to play our role. It may have a cost, I know; I have operated in the corridors of power, but is that cost not worth incurring to make a decision such that anybody in this region who believes in the future, in stability, in justice and fairness would say, "yes, what you did was correct"? There are costs in many areas in which we function in our life, and whether we are ready to pay such a cost or not, will be our test, but at least let us do something that will have a historical bearing on the future integration process of this region.

I cannot understand how we operate as human beings. Look at a country like Kenya. They have just adopted a new constitution, which I think is progressive, but did more than 1,000 people have to die first before they could come to their senses and agree on a way forward? You could say that for quite a number of African countries; it is not only in Kenya. However, to avoid that, we who are in positions of responsibility must think ahead; we must do things that can pave the way, things that we know the moment they are in place they will enable us to avoid conflicts that could emerge.

You cannot know whether all of the countries that are going into elections

will come out intact or not. There are millions of people in the countries but the actors are normally very few, and they are the ones who make the mistakes for which millions of people pay with their lives. We must make the right decisions, and if we have to make difficult decisions, it must not be because of technical reasons. We must not hide behind technicalities.

Mr. Speaker, I am very sorry for taking a lot of your time, but this is something I am so passionate about myself because I have been involved in too many things. Mr. Speaker, there are choices that we must make in life, and when we are making the choices, we must always understand whether the choices which we make are just going to benefit us as individuals, or they are choices which are supposed to ensure that there is peace; that there is justice; that there is fairness for our people?

I thank you. (*Applause*)

Mr. Pierre Damien Habumuremyi (Rwanda): Mr. Speaker, permit me to have a contrary view to that of Gen. Muntu on the contents of this Bill.

Mr. Speaker, allow me to congratulate hon. Ogalo for his initiative aimed at the promotion of the core principles of good governance and democracy within the Community, in compliance with the provisions of the Treaty in Articles 3(b) and 6(d). However, although I share his concern on the necessity to ensure free and fair elections in our region, which is also a pre-requisite for the achievement of durable peace and sustainable development, let me highlight some of my concerns in this Bill.

While it is common knowledge that laws are an attempt to resolve problems in various communities, in my view, and in as far as the promotion of democracy and good governance in our region is concerned, our priority today, before we reach a political federation, should not be the establishment of a common electoral body. I believe what we need urgently is a framework in the Partner States for enhancing and ensuring free and fair elections. The framework would enhance and ensure an independent, impartial, and credible elections management body, level-playing ground for all election contestants, and finally, reaffirm the commitment of the actors in the political scene to avoid divisionism and violence among the people during the election period. In my opinion, this Bill does not seem to have effectively addressed these concerns.

Mr. Speaker, another point regards the irrationality as far as the implementation of the contents of this Bill is concerned. As we all know, the preparation and management of elections requires some core conditions, like the permanent presence and moral authority of the electoral management body.

For the local people and stakeholders to recognise and have confidence in the electoral commission and for them to commit to collaborate with the commission requires the electoral institutions to have good knowledge of the social and political environment as well as value the culture of the people.

Mr. Speaker, elections have always been regarded as one of the channels through which a country exercises national sovereignty. The good conduct of an election has an implication on the

commitment of the government to the people and to the international community. For instance, this is the reason why in federal systems like the ones in the USA and in Germany, the federal elections body has the mandate to conduct federal, presidential, and parliamentary elections, while the municipal electoral commission conducts elections in the federal states. This Bill did not respond to those worries.

Mr. Speaker, considering all the concerns that I have pointed out, there is need to redraft this Bill as proposed by the Committee. I, therefore, support the report of the Committee on Legal, Rules, and Privileges. *(Applause)*

Mr. Gervase Akhaabi (Kenya): Mr. Speaker, I do appreciate and share with my good friend hon. General Muntu the passion that he uses to express his views, but it does appear to me that General Muntu is not speaking at variance in a substantial way from the Committee. The Committee has made a recommendation to this Assembly not to approve this Bill in the form in which it is at present. Let us appreciate this fact. The Committee was concerned about the form of the Bill. It does appear to me that General Muntu is also concerned about the form in which the Bill appears.

Mr. Speaker, we all agree that there is a need for a legal framework for the conduct of elections in the East African Community. This Bill is much more concerned with the establishment of an institution to conduct elections within the Community. The concern of the Committee is that one could have a very good institution to conduct elections, in name, but if there were no principles by

which that body were to operate, that would render the operations of that body nugatory. That is why the Committee proposes that at this point in our integration process we should establish parameters, principles upon which to conduct elections, hence the Committee recommendation for the establishment of a framework of good governance, democracy and the rule of law. The principles would include the conduct of elections within the Partner States, the rules that every Partner State must abide by, and the establishment of a framework to enforce compliance with such rules. So, it is not true that the members of the Committee do not appreciate the need for a framework on principles.

Mr. Speaker, this Bill in its present form does not address the principles, and it is the view of the Committee that any legislative framework on the conduct of elections should place priority on the principles.

With these few remarks, I beg to support the report of the Committee.

Dr. George Nangale (Tanzania): Mr. Speaker, I want to thank the people, the government, and the Parliament of the Republic of Burundi for once again availing us time and space, as well as hospitality, to conduct our business here in Bujumbura.

I also want to congratulate the people of Kenya for conducting a historical referendum on the new constitution. I commend the government of Kenya for inviting its neighbours to witness the signing of the new constitution.

Mr. Speaker, I stand here to support the position of the Committee to drop this

Bill at this particular point in time for the reasons forwarded by the Committee. I happen to come from a united republic where our two countries have enjoyed more than 45 years of union. However, the two sides of the united republic still have different electoral commissions, and we are still struggling to harmonise them.

Mr. Speaker, the integration process, through the harmonisation of policies and laws, is on course. I would appeal to Members to give this process time so that we can guide the integration process in a progressive manner.

With those remarks, I beg to support the report of the Committee.

Ms. Dora Kanabahita Byamukama (Uganda): Mr. Speaker, I would like to declare from the onset that I am a Member of the Legal Committee, and that I did take time to participate in its deliberations, notwithstanding that my signature is not on the report. I would like to make some few comments. The first one is on the issue of recommendations. It is my belief that if we leave it as it is, we will be shooting ourselves in the foot.

Recommendation 3(a) says, *“In the absence of a protocol or an agreed position on the fundamental elements of the Bill, it is difficult to ascertain the extent of sovereignty that the EAC Partner States will cede at this stage of integration. Therefore the Committee recommends that this Bill awaits further political agreement among the Partner States.”*

I would like to say, as we did say before on the Floor of this House, that we do not need a protocol. The Treaty is very

clear on the issue of a political federation. Therefore, I would like to agree with the mover of the Bill, hon. Ogalo, and with hon. Muntu, that we need to make progress in respect to the issue of a political federation. However, I would also like to agree with hon. Habumuremyi, because when we looked at the Bill, we found the structures proposed in it to be rather extensive. In some of our Partner States, we usually have a certificate of the financial implications of the Bill, which gives the evaluation, and quantification of the kind of resources needed to implement the law.

So, in light of this, we felt constrained, as a Committee, to support the Bill in this form. Nevertheless, we agree with the principle, because it is this House, which produced a manual for the observation of elections. In that manual, we set clear standards. Therefore, when we say that we do not think the time is right and therefore we think that we need to look at it further, we are not saying that we should completely not look at another Bill, maybe taking into account the considerations that we have put across.

Having said this, I would like to implore my learned brother, hon. Ogalo, to consider these issues and take off some time to look at ways we can progressively move towards the attainment of a united system of handling our elections in the Community – (Interruption)

The Speaker: Hon. Byamukama, you said you are a Member of the Committee, but you have shot down all the three recommendations of the Committee.

Ms. Byamukama: Mr. Speaker, I would like to clarify that I have not shot down any recommendation, but I have given more clarifications; I have shed more light, and I hope it will help this House to make some headway.

The Minister for East African Cooperation, Tanzania, and Chairperson of the EAC Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I thank you very much for giving me this opportunity to present the position of the Council of Ministers on the Bill before us. First, let me say that the Council of Ministers does recognise, respect and appreciate hon. Ogalo for the good job that he has done. In most cases, someone must initiate whatever we do. Therefore, we congratulate hon. Ogalo for the initiative, and we respect, appreciate him. I would also like to thank the Committee for its report, and a job well done. The Committee has done a good job in correctly advising this august House. *(Applause)*

The Council of Ministers, therefore, subscribes to the point of view of the Legal, Rules, and Privileges Committee. However, Mr. Speaker, allow me – *(Interruption)* -

Mr. Ogalo: Mr. Speaker, I beg to move that this House do postpone the further discussion of this Bill under Rule 15(1). This rule states, *“A Member who wishes to postpone to some future date the further discussion of a Question which has been proposed by the Chair may move that the debate be now adjourned.”*

Mr. Speaker, I am moving this Motion because of a few reasons. You can find the first one page 10 of the report of the Committee. Paragraph (b) states that

“The Committee was of the view that the Commission should be a board vested with an advisory function. Such a board could have the following functions...”

Secondly, I have listened to the submissions and arguments of the honourable Members, first, hon. Muntu who called for the examination of the principle and requested that I consider accepting that we look only at the principle and not go into having a law. He proposed that we should use the law of the Partner States to manage the elections.

I have also listened very carefully to my learned friend, hon. Akhaabi who stated that the Committee does not approve of the Bill in the form in which it is. The quarrel of the Committee is that the Bill is in a form which it does not approve of, and then he went ahead to say that *“We are in agreement that there is a need for a legal framework in the Community, but the Bill is more concerned with an institution to conduct elections.”* The important thing in what I quote here is that the Committee agrees that there is need for a legal framework in the Community. In addition, as a way forward, my learned friend, hon. Byamukama, requested that I should consider looking at this matter afresh.

Mr. Speaker, taking into account the arguments advanced, and recognising that there is a possibility of coming to an understanding....

(Hon. Ogalo paused as the Speaker consulted)

The Speaker: You can proceed with your contribution, hon. Ogalo. I have two ears, and I can listen to both of you.

Mr. Ogalo: Mr. Speaker, taking into account the arguments advanced, and considering that there is seemingly a possibility for us to come to an understanding over this very important matter, I believe I could sit with the Committee and try to harmonise those areas of contention and work out something agreeable.

So, for that reason, I pray for an adjournment of debate on my motion.

I beg to move.

(Question proposed)

Mr. Dan Kidega (Uganda): Mr. Speaker, I would like to support the position that the mover of this Motion has taken. The passions, the emotions, and the interests expressed on this Floor on the subject are enormous. I think there is a spirit emerging in this House, which is similar to what we termed the “Kigali Spirit”; a spirit of convergence of views and compromise on matters where people have divergent views. The Committee expressed very clearly their constraints to handling the Bill in view of the rules of our procedure, whereby they could not tackle the principles of the Bill. Looking at the views expressed on the Floor of the House, I would like to support the position of the mover to adjourn debate until such a time that we can attain a congruence of minds on the Bill. *(Applause)*

Mr. Mike Sebalu (Uganda): Mr. Speaker, from the debate on the floor it came out clearly that the spirit and the principle of the Motion is something that can be very useful for the East African region. However, there were issues of the timing of the different stages of integration as we undertake them and

appropriateness of the Bill now. Therefore, the proposal to adjourn debate and continue with some level of engagement over the subject matter is something that is worth consideration. The mover’s argument that he was just putting across what the House had already agreed upon particularly interested me. Further engagement in this process of building consensus is welcome, as long as it will give this Assembly opportunity to conclude this matter in the best interest of the East African Community. For that matter, there is a need for due consideration.

With those comments, I beg to support the Motion. *(Applause)*

Mr. Augustine Lotodo (Kenya): Mr. Speaker, I am a Member of the Committee on Legal Rules and Privileges, and I fully support the recommendations of the Committee. I just want to re-state that the Committee was not opposed to the Private Members’ Bill, per se, but felt that the time was not right for the Bill to come the way it was. I think the House has agreed that the mover should look at the Bill afresh. Therefore, I just want to state the position of the Committee that there is a need for an East African electoral body to manage the processes of elections within the region. Therefore, as much as the mover is seeking adjournment of debate on his Motion, I would support its adjournment until a time when the Partner States propose a way forward.

The Speaker: Hon. Lotodo, we do not seek permission from Partner States to make decisions in this Assembly. I do not know from where you are getting that. Secondly, the House has not agreed

on anything; honourable Members are just debating. So, to say that you are waiting for permission from Partner States, as a Member of this House, I don't know where you got that.

Mr. Lotodo: Mr. Speaker, I was just commenting on the first recommendation of the Committee. Maybe I can withdraw the word "permission".

The Speaker: Hon. Lotodo, you are still going the same path. I do not think you need permission from anybody to legislate in this House.

Mr. Ogalo: Mr. Speaker, there has been support for the Motion that the House do adjourn this debate. I am grateful to the Members for supporting this Motion so that we can explore ways of looking at this afresh and see how far we can go. *(Applause)*

(Question put and agreed to)

MOTION

FOR A SPECIAL RECOGNITION OF THE INTERNATIONAL DAY OF DEMOCRACY BY THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Mr. Byamukama: Mr. Speaker, I beg to move:-

THAT, this House, pursuant to the provisions of Article 59 of the Treaty and Rule 35 of the Rules of Procedure, do collectively observe the 15th Day of September as the International Day of Democracy.

Mr. Leonce Ndarubagiye (Burundi): Seconded.

Ms. Byamukama: Mr. Speaker, sir:

WHEREAS the 15th day of September is observed as an International Day of Democracy and coincides with the adoption, in September 1997, of the Universal Declaration on Democracy by the Inter-Parliamentary Union (IPU);

AND WHEREAS this year's theme: "Political Accountability: Strengthening links between Parliament and Citizens" is directly linked to Parliament, and the East African Legislative Assembly has mandate under Article 49(2)(d) to discuss all matters pertaining to the Community and to make recommendations to the Council of Ministers as it may deem necessary for the implementation of the Treaty;

AND WHEREAS the Treaty for the Establishment of the East African Community (Treaty) provides for Membership to the Community, and in particular Article 3(b) states that: "matters to be taken into account by the Partner States in considering the application by a foreign country to become a member of, be associated with, or participate in any of the activities of the Community, shall include that foreign country's adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice";

AND WHEREAS Article 6(d) of the Treaty states that "the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include good governance including adherence to the principles of democracy, rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well

as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights";

AND WHEREAS Article 123(3)(c) of the Treaty provides that the objectives of the common foreign and security policies shall be to: develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms;

AND WHEREAS in keeping with the spirit and letter of the Treaty, and in upholding the principle of democracy, the Assembly has, in the recent past:

- 1. Consistently participated in election observation missions as follows; in the Republic of Kenya for the Referendum on the Constitution; in the Republic of Burundi for the Parliamentary and Presidential elections; in the Presidential Elections in the Republic of Rwanda; and is set to observe the general elections in the United Republic of Tanzania in October, 2010; and in the Republic of Uganda in early 2011;*
- 2. Developed and adopted an Elections Observation Manual to streamline election monitoring and observation in the East African Community Partner States;*
- 3. Received and is considering a Bill proposing to establish an East African Electoral Commission for the East African Community;*

NOW THEREFORE this Assembly do:

- 1. Collectively pronounce itself on recognizing the 15th day of September of every year as the International Day of Democracy, as a day on which the importance of democracy shall be emphasized, and a day to take stock on how well the Assembly performs its democratic functions and to analyze what democracy involves, the challenges it faces as well as opportunities it offers.*
- 2. Urge the East African Community Partner States to, in conformity with the Treaty, define and implement a common policy to develop and consolidate democracy and rule of law and respect for human rights and fundamental freedoms.*
- 3. Urge the Council of Ministers to issue a statement to observe the 15th day of September on an annual basis as the International Day of Democracy, initiate activities to observe this day, and to promote and develop mechanisms to raise public awareness amongst the people of East Africa on the values of democracy.*

I beg to move.

(Question proposed)

Mr. Leonce Ndarubagiye (Burundi):

Mr. Speaker, I really do not have much to say, because I guess that very few Members, if any, can be against democracy. We are all for democracy. We have seen what and where dictatorship and all other regimes

opposed to democracy have brought to our region. However, let me just remind Members of a few facts.

In the 1960s when we got independence, we were multi-party democracies, and those who won the elections ruled the countries. However, very quickly, some army officers took over and they started to frustrate democracy by bringing in tribalism, nepotism, exclusion, violence, war, death, and even genocide, in the region. This is why I totally support the Motion.

While democracies cannot be the same all over the world, they share common features. You cannot exercise the same rights in Scandinavia and Bosnia Herzegovina or the Fiji Islands because of the very different cultures. In addition, you cannot expect the same forms of democracy in Europe, Africa, or America. However, one common thing that we share is the benefits of democracy.

We all know what has happened in our region. Whenever there was no democracy there was death and refugees. Where did these refugees go? They went where there were civilian governments, like in Tanzania, in Zambia and in Kenya, running away from the Rwanda, Burundi, and Uganda military dictatorships. Therefore, we are committed to democracy to make sure that we do not go back to dictatorships.

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

Dr. Said Bilal (Tanzania): Mr. Speaker, I rise to register my support for this Motion.

Let me also begin by thanking the Government of Burundi for giving us an opportunity to hold our sittings here.

Mr. Speaker, I was wondering a little bit because we have two versions of the Motion here. However, since hon. Byamukama read the second version of the motion I will make my comments on that one.

Mr Speaker, hon. Byamukama's statement on page two interested me. It reads, "*Collectively pronounce ourselves in recognising the 15th day of September as the day on which the importance of democracy should be emphasised, and to analyse what democracy involves, the challenges it faces and the opportunities it offers...*" I believe that we can put this in a better way.

Mr. Speaker, I want to say that I have read so much about these pronouncements on the good intentions of democracy that I have finally decided to keep on fighting or supporting the fight for democracy.

Hon. Ndarubagiye correctly stated that democracy means different things to different people. I want to add that it means different things at different stages as well. I do not want to sound repetitive, but I must say that to some people, democracy means the opportunity to elect or reject a leader.

Here, we have been talking about an electoral commission at the regional level. We have been talking about a way of ensuring the proper election of people. That is one aspect, which we are emphasising here. However, I want to say that we have to go beyond elections; we have to go beyond choosing, to choosing by whom.

We have seen that many times the forces outside our states dictate our elections, and for intentions beyond our own intentions. The people rarely elect whom they want. It is rarely a government of the people, by the people, but rather a government by other people for us.

Therefore, I stand here to support the particular emphasis for us to get involved in what democracy involves, and what it is all about, because I am sure that it means different things to different people and we are still getting confused about democracy. I thank you.

Mr. Dan Kidega (Uganda): Mr. Speaker, I would also like to go on record for congratulate the people of Burundi for democratically electing a new government. Burundi is a good country. I was part of the Observer Mission, and I spent about five days in Rutana. I saw how democratic the people of Burundi are. If it were not for the respect and wisdom of our ancestors, I would have moved in this House to move headquarters of the East African Community to Burundi. *(Applause)*

Mr. Speaker, addressing myself to the subject matter of democracy I would like to domesticate this Motion by bringing it to Africa, and to our Partner States in particular. As African nations, we have a reason to celebrate, or pat our backs. Africa has gone a long way, and there is progress in the direction of democracy. My yardsticks for progress are, as follows: If you look at the number of coups, coup attempts, assassinations, and assassination attempts in the continent, they have gone down. This means people have accepted an alternative means of getting into government, which is democracy. Therefore, Africa has a

reason to rejoice on this. Regular elections in whatever shade they appear in is also a sign that people have chosen democracy. Freedom of the press is on the rise, and I think this is a clear sign that Africans have accepted democracy.

Mr. Speaker, in spite of all these, we also have some trends in our countries that we must check if we are really to celebrate democracy. We must find means of stopping these trends. One of them is political violence. It is not democratic to have elections marred by violence and then celebrate that we are democratic nations. Our people deserve better. All parties, both government and opposition, must stop this trend.

Mr. Speaker, another trend that we need to check is intolerance of the opposition by the ruling parties. There are countries in this continent that still feel and think that the opposition is an enemy. I perceive opposition as government-in-waiting, which helps the sitting government to perform better. The institution mirrors the performance of the sitting government. Let me explain this by way of a simple analogy.

If you are dressing up and you do not have a good mirror in your house, the chances that you will walk out with your zip open are very high. Alternatively, if you have broken mirrors in your house, the chances that you will fasten your buttons wrongly are very high. Therefore, a good political opposition is a good mirror for the sitting government, and it is the responsibility of sitting governments to make sure that institutionally and legally, there are frameworks that create good and functional opposition political parties.

Mr. Speaker, the other trend that worries me is the way people manipulate democracy to perpetuate themselves and their cronies in power at the expense of good leaders. This is not democracy. Democracy allows freewill to choose who should lead whom, and the voters must choose whomever they want to choose. I think this is not correct.

Mr Speaker related to that trend is another where you will find that some people do not agree with the outcome of an election and therefore a situation of confusion arises. Then some people considered prominent on the continent come to create calm where there is confusion. It is not only in East Africa; it is a growing trend in the continent now, and I think we are may witness more where democratic elections fail and then there are mergers or compromises. My personal opinion is that light and darkness never live together. You can never treat cancer by using Vaseline! Where elections have taken place and some political group has lost, they must be told in the face that they have lost, and the winning group must be given the chance to rule. I know they say that compromise is important for amicable co-existence, but democratic principles require that one must win and another one must lose.

Mr Speaker, after the end of the Cold War, many things happened in Europe to allow for the proper practice of democracy. One of them is the re-adjustment of the border points. New States emerged, particularly in Eastern Europe, to allow for co-existence with and accommodation for a group of people who want to be independent. I think that Africa should borrow a leaf from there.

Since we gained independence and got maps that our colonial masters drew, indicating our national borders, there have been very many hiccups along the way. Therefore, Africa may need to redefine its geographical borders to allow for the proper functioning of democracy. For example, just next door in Sudan, there is going to be a referendum in January.

Mr Speaker, all these are tendencies to allow for the proper functioning of democracy. We as the African nations should not be shy to redefine our borders, maybe by creating other states, or by co-opting other states into one to allow for the proper functioning of democracy.

With those few points of view, I beg to support the Motion.

Dr. George Nangale (Tanzania): Mr. Speaker, I rise to support this Motion to commemorate the International Day of Democracy as moved by hon. Byamukama, who is the Vice-President of the E-Parliament Council, a council that subscribes to democracy as its core agenda.

Mr. Speaker, democracy in our countries is just emerging, and therefore needs nurturing. This cannot be over-emphasised. For example, for the first time since independence 49 years ago, my political party, Chama Cha Mapinduzi, nominated its candidates for the coming elections through universal adult suffrage. I can tell you that it was not easy. Therefore, we have a long way to go, and we have a lot to learn. Recognising such a day as an annual event is a significant step towards building democratic values.

With those remarks, I beg to support the Motion. (*Applause*)

Mr. Mike Sebalu (Uganda): Mr. Speaker, I rise to support the Motion.

It is good to talk about celebrating the day of democracy, but there are challenges that we need to look at, especially when it comes to the African context. There are some commitments regarding democratic practices that we have acceded to as African countries, but you will find that we are still struggling to get the numbers that are necessary for ratification for the practices to take effect.

A case in point is the African Charter on Democracy and Good Governance. I recently attended a meeting in Kampala where they put a challenge to the EAC Partner States, which are yet to ratify the African Charter on Democracy, and Good Governance to which they are signatories, to achieve this by 2011. They made the commitment much earlier, but raising 11 signatories to make the 15 required for its implementation is still work in progress as I speak. I think we need to look at some of the aspects of our commitment to democracy so that we walk the talk and join the civilised nations in democratic practice.

Mr. Speaker, we also have challenges, especially in the cases where we talk about democracy but do not practice it. It is not easy to have democracy without democrats. You need democrats in order to enhance democracy, but we merely talk about it. A case in point is a situation where if one loses an election, then he or she claims that there is no democracy, just by virtue of the fact that he has lost it. I think we need to graduate

to a level where we can lose honourably, and if we are to win, we do so decently. We need a combination of the two, but the practice that we have is such that once there is a loss, then we say the elections were not democratic. I think it goes beyond just winning and losing; it should be at all levels. Democracy should remain democracy whether you have won or lost.

Mr. Speaker, we also need to look at the issue of enhancing democracy amidst poverty. How democratic is a very poor person? How are they going to take their rights? What are they going to base their decisions on? The issue of poverty is something that we need to look at. It is an inherent right to empower the population because once you have poor people it almost erodes their right to making a right choice. Therefore, that issue of poverty is something that we need to look at as we celebrate the day of democracy.

Finally, I think one area that we have not done well in, especially in the African context, is the issue of empowering the citizens in terms of civic education and economic empowerment as well as education. These issues influence the quality and quantity of democracy. Repeatedly you hear of people disenfranchising themselves just by getting a piece of soap or just few pounds of sugar, and yet that is the biggest asset any citizen ought to have in terms of participation in the democratic processes of their country.

Nevertheless, we have made some achievements in that direction of democracy, but it is not yet *uhuru*. We need to do a lot more in terms of empowering the people, bringing the

governments to account, and delivery of services to the people so that we create the enabling environment under which they can exercise their rights in a democratic setting.

With those comments, I wish to support.
(Applause)

The Minister for East African Cooperation, Tanzania, and Chairman, EAC Council of Ministers (Dr. Diodorus Kamala): Mr. Speaker, I rise to support this Motion. The Council of Ministers subscribes to the Motion.
(Applause)

The Motion proposes for the Council of Ministers to issue a statement for the observation of this day annually. I want to assure hon. Byamukama that the current Chairperson of the Council of Ministers, who is speaking right now, will sign the first statement issued by the Council of Ministers. Therefore, using my capacity, I am now directing the Secretariat to prepare for me a very good statement to sign for distribution within East Africa and beyond. (Applause)

The last issue, which I think we must be talking about as we celebrate the International Day of Democracy, is, what democracy are we referring to? Is it African democracy, Western democracy, British or American democracy? I think it is time now in Africa to re-define democracy, which should take into consideration our environment, our systems, values, and taboos. This is because democracy cannot be over-generalised.

With those remarks, I beg to support motion. (Applause)

The Speaker: Dr. Kamala, I think when we get your statement then we will know to which one we subscribe. Therefore, we will be waiting for your statement.

Honourable Members, I think the Motion received overwhelming support. I do not know whether hon. Byamukama wants to add anything.

Ms. Byamukama: Mr. Speaker, I only want to thank all those who graciously contributed, and to give clarification on the issue of the two versions of the Motion. I think that is the work of the Clerk's office. I gave my version, and I am not aware of the other one. However, let me just say that when we talk about democracy, it is clear in the documents given to all the members that it is universally accepted and recognised. The very first Article says, "*Democracy is a universally recognised ideal, as well as a goal, which is based on common values shared by people throughout the world and communities, irrespective of cultural, political, socio-economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility with due respect to the plurality of views, and in the interest of the polity.*" Therefore, that is our benchmark. We can build on that; we can re-define it, but that is universal.

Finally, I would like to share with the honourable Members some experiences we have had in Uganda of elections, which His Excellency, President Yoweri Kaguta Museveni summed up the situation with the biblical story of Isaac who had twin sons, Jacob and Esau, and Esau sold his birthright for a bowl of soup. The issue of poverty and lack of a cognitive environment to appreciate the

value of a vote, for example, can be costly for us.

I would like to conclude by thanking the Republic of Burundi for hosting us and for clearly showing the whole of the East African region that we can carry out elections peacefully and democratically. We are proud of the Republic of Burundi, and we wish you well as you implement your government programmes. (*Applause*)

There was a question whether 15th September would always be on a Wednesday. I want to clarify that we should commemorate it on the 15th of September. Therefore, whatever day of the week it falls, we should celebrate it.

I beg to move.

(Question put and agreed to)

ADJOURNMENT

The Speaker: Honourable Members, I think we have come to the end of our business today. I now adjourn the House until tomorrow at 2.30 p.m.

*(The House rose and adjourned until
Thursday, 16 September 2010 at 2.30
p.m.)*