



## **EAST AFRICAN COMMUNITY**

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### **IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)**

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

**46<sup>TH</sup> SITTING – SECOND ASSEMBLY: FOURTH MEETING – SECOND SESSION**

**Thursday, 19 February 2009**

*The Assembly met at 2.30 p.m. in the Chamber of the Assembly, Sixth Floor, Ngorongoro Wing, AICC Complex, in Arusha*

#### **PRAYER**

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

*The Assembly was called to order.*

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#### **PAPERS**

The following Papers were laid on the Table:-

(by the Chairperson, Committee on Agriculture, Tourism and Natural Resources, Tanzania (Dr George Nangale):

The Report of the Committee on Agriculture, Tourism and Natural Resources on the Inter-Parliamentary Regional Liaison Committee Site Tour of the Tanzania Extractive Industries

#### **MOTION**

FOR THE CONSIDERATION AND ADOPTION OF THE REPORT OF THE COMMITTEE ON AGRICULTURE, TOURISM AND NATURAL RESOURCES ON THE INTER-PARLIAMENTARY REGIONAL LIAISON COMMITTEE SITE TOUR OF THE TANZANIA EXTRACTIVE INDUSTRIES

**The Chairperson, Committee on Agriculture, Tourism and Natural Resources, Tanzania (Dr George Nangale):** Mr Speaker, I beg to move that the Report of the Committee on Agriculture, Tourism and Natural Resources on the Inter-Parliamentary Regional Liaison Committee Site Tour of the Tanzania Extractive Industries be adopted.

**Ms Safina Tsungu Kwekwe (Kenya):** Seconded

**The Speaker:** You can continue hon. Nangale.

**Dr Nangale:** Hon. Speaker, in respect to Article 114 of the Treaty establishing the East African Community, Annex 5(D) of the Rules of Procedure of the East African Legislative Assembly and in line with the goals of the Inter-Parliamentary Regional Liaison Committee on Natural Resources (IPRLC), the Committee on Agriculture, Tourism and Natural Resources of EALA, through the IPRLC undertook a three-day tour of the Tanzania mining sector.

The site visit was facilitated by the East African Legislative Assembly with support from the National Democratic Institute (NDI), Washington DC. IPRLC is a fundamental component of the Arusha Declaration coming out of an Inter-Parliamentary Workshop on Extractive Industries, which brought together Members of EALA and the National Assemblies in East Africa in February 2008.

Mr. Speaker, the goals of the IPRLC include among others:

- To gain an understanding of local government's involvement in the monitoring of production of mining industries;
- To gain an understanding of the concerns and perspectives of local mining communities on the economic benefits they have gained from the mining sector;
- To gain an understanding of the environmental impact of mining;
- To ascertain the degree of contract and revenue management, transparency and accountability in the mining sector;
- To assess the level of corporate social responsibility carried out by mining operators; and
- To understand the regulatory framework of the mining sector.

The delegation comprised 15 members, including Members of EALA, NDI and the EALA Staff. They are:

1. Dr George Nangale, MP- Chairperson of the Committee on Agriculture Tourism and Natural Resources (ATNR)- EALA;
2. Hon. John Mututho, MP and member, Committee on Natural Resources - Kenya National Assembly;
3. Ms Safina Kwekwe Tsungu, MP and Member, ATNR - EALA;
4. Hon. Augustine C. Lotodo, MP and member, ATNR -EALA;
5. Hon. Sebtuu Nassor, MP and member, ATNR - EALA;
6. Hon. Abdul Karim Harelimana, MP and member, ATNR - EALA;
7. Hon. Leonce Ndarubagiye, MP and member, ATNR -EALA;
8. Hon. Mike Sebalu, MP and member, ATNR- EALA;
9. Ms Beatrice Ndayizeye, Senior Clerk Assistant - EALA (Secretary to the delegation);
10. Ms Elizabeth Gitonga, Secretary - EALA;
11. Ms Muthoni O. Kamuyu - NDI, Washington;
12. Ms Mahijja Dodd - NDI, Tanzania;
13. Mr John Lavdal - NDI, East and Southern Africa Region;
14. Mr Kehinde Togun - NDI, Washington;
15. Mr Jerry Lavery – NDI, Washington.

Mr. Speaker, the objectives of the tour were:

- i. To enhance the committee's understanding of policy issues surrounding Tanzania's mining sector, particularly transparency and accountability in the government's management of mining revenue;
- ii. To enhance economic and social benefits generated by the sector for ordinary citizens and in particular local mining communities;
- iii. To improve the IPRLC's technical knowledge of the mining sector;
- iv. To familiarise the IPRLC with the political and economic context in which the mining sector operates;
- v. To observe the impact of the mining activities on the environment.

### **Methodology**

- A courtesy call was made to the regional and district authorities where the delegation explained the purpose of the visit.
- Tour of mining sites and interaction with management and staff of the visited mining companies.
- Roundtable discussions after each visit comprising IPRLC members, local leaders and NDI representatives.
- Internal debriefing sessions.

### **Site Tour**

#### (i) El Hillal Diamond Mine

This mine is locally owned and located in Kishapu District of Shinyanga region. It covers 39 square kilometres and extracts alluvial diamond, which according to the Manager, is one of the best type. El Hillal pays \$200,000 per annum to the Kishapu District Council as a social obligation fee, which is a statutory requirement. From the interaction with the management and staff of this mine, Members of the delegation established that:

- There is no defined corporate social responsibility framework that the company has to adhere to;
- Diamonds extracted are registered with the Ministry of Energy and Minerals and tracked throughout the markets they pass through.

#### (ii) Bulyanhulu Gold Mine (Kahama)

This is the largest mine that the delegation visited. It is owned and operated by a Canadian company known as Barrick Gold. The operations at Bulyanhulu, which began in July 1999, are underground with tunnels of 120 kilometres and depth of 1.5 kilometres. Other than the gold, the deposits also contain silver and copper ore. Fifty five per cent of the gold is refined locally whereas the rest of the gold, copper and silver are refined in China and Japan. Ninety per cent of royalty on gold, silver, and copper are paid before the extracted concentrate is exported and the remaining ten per cent is paid after final refining of the ores.

The delegation was informed that:

- The mine generates US \$71 million annually;
- The government collects US \$200,000 and royalty annually through the local government and central government respectively;
- The company has been operating at a loss and therefore has not been paying the statutory 30 percent corporate tax;

- The company is committed to supporting rural development within its area of operation through self help programmes designed to promote sustainable economic wealth generation for local communities. It has so far invested US \$18,047,882.54 in community projects which include construction of schools, roads (93 kilometres) and a clinic for the local citizens.

(iii) Geita Gold Mine

This mine is situated in Geita District of Mwanza region and covers a surface area of 176 square kilometres. Mining operations began in 1994 – 1995 and extraction levels are up to 18,000 tons per day. Operations are conducted in open pits namely:

- Geita Pit
- Lone Cone Pit
- Kukuluma Pit

The delegation observed that:

- The rock appeared to be rich in Copper and Iron.
- Cyanide, as informed by the management, is used during processing to separate gold from Iron Ore. Cyanide is a very dangerous substance and how it is handled and disposed of is of utmost importance.
- Liquid residue from the processing plant is held up in open and pan, where it stays for a period of time to allow for detoxification.
- No information was given on what is done to the Iron Ore and Copper, which are by-products, after processing of the gold.

**Concerns from Stakeholders:**

In the course of the round-table discussions at the sites visited, the delegation noted concerns from the following stakeholders:

- Local government Authorities
- Mining companies
- Civil Society Organizations

(a) Concerns from the Local Government authorities

- There is no mechanism to monitor what is produced by the mine.
- The mining sector has been experiencing significant losses in revenue because of inefficient management procedures and revenue collection mechanisms. Furthermore, local administrative authorities do not have a clear understanding of the tax regime in place.
- Local government lacks the power to influence mining policy.

(b) Concerns from the Mining Industries

- Government bureaucracy hinders efficient management of the sector.
- Inadequate system of compensating the citizens displaced from the potential mining sites, thus putting the local communities' pressure to the mining companies.

(c) Concerns from Civil Society Organisations

- Consultations between local government authorities and mining companies are not transparent as they exclude local communities. The civil society organisations are concerned that the local communities are not taken on board.

**Findings of Members:**

- Through discussions at each round-table, the IPRLC determined that there is no trickle down effect of revenue to the local citizens. It should be noted that little, if any, economic activity was visible in each area visited by the delegation. Economic activity in the areas surrounding Geita Mine appeared a little more vigorous than the other areas traveled.
- There are no mechanisms for the citizens or local governments to monitor mine production.
- There is no corporate social responsibility policy in place that mandates mining operators to invest in local communities.
- Investments from mining companies in social amenities vary across districts.
- Local governments do not play their role in minimizing environmental degradation in the mining areas.
- Investment in local expertise in the mining sector appears minimal and is underscored by the gap in salaries between expatriates and local citizens (employees).

**Overall Observations:**

After the visits, the following issues were noted and interventions proposed:

	ISSUES	PROPOSED INTERVENTIONS
1.	Lack of transparency in the management of mining revenue	<ul style="list-style-type: none"> <li>• <i>The government should develop mechanisms to separate mining revenue from other revenues to ensure that it is effectively and efficiently monitored and tracked. This would allow ease in monitoring the contribution mining revenue makes toward development projects particularly projects undertaken in mining communities.</i></li> </ul>
2.	Lack of transparency in contracts negotiations	<ul style="list-style-type: none"> <li>• <i>The government should be transparent during contract negotiations.</i></li> </ul>
3.	Inadequate capacity within government to oversee the management, collection, distribution and expenditure of mining revenue	<ul style="list-style-type: none"> <li>• <i>The government should develop and institute effective mechanisms and procedures to monitor mine production, collect tax revenue, and administer the day-to-day operations associated with the sector's production.</i></li> </ul>
4.	Lack of local government involvement in contract negotiations and mining policy	<ul style="list-style-type: none"> <li>• <i>The local government should be included in policy making. As a stakeholder in the sector, the input of local government should be included in policy decisions at the national level.</i></li> </ul>
5.	Inconsistencies between the districts and their interaction with the industry and the local population	<ul style="list-style-type: none"> <li>• <i>The government should harmonise the way local government authorities relate to mining activities in their areas.</i></li> </ul>
6.	Lack of knowledge of the amount of revenue generated by mining operations	<ul style="list-style-type: none"> <li>• <i>There is need to create systems that would separate mining revenue from other revenue to ascertain the contribution of the mining sector to the national budget.</i></li> <li>• <i>Mine Production reports should be made public.</i></li> <li>• <i>There is need for government to educate the public about the upfront investment of mining operations and its impact on profitability of mining operators. This would damper unrealistic expectations of the mining sector, particularly, in the mining communities as there is an expectation that once operations start, companies should begin making profits.</i></li> </ul>
7.	Lack of knowledge of the local government	<ul style="list-style-type: none"> <li>• <i>Local government authorities should be consulted during the drafting and actual execution of the mining contracts</i></li> <li>• <i>The national Parliament through the oversight committee of the mining</i></li> </ul>

	authorities in regard to tax regimes in place, particularly, the purpose of levies and other taxes.	<p><i>sector should increasingly play the oversight role to ensure transparency and accountability in the sector.</i></p> <ul style="list-style-type: none"> <li>• <i>The government through the relevant sectors should inform, educate and sensitise local communities on the existing regulations related to taxation.</i></li> </ul>
8.	A lack of mechanisms to empower local government to influence mining policy at the national level	<ul style="list-style-type: none"> <li>• <i>There is a need to build the capacity of local government authorities so that they can influence mining policy formulation at national level.</i></li> </ul>
9.	Insufficient consultation with local communities on the mining policy	<ul style="list-style-type: none"> <li>• <i>To mainstream gender, especially needs of women in mining contracts that include employment and remuneration.</i></li> </ul>

Members noted in general that the local communities surrounding the mines visited do not sufficiently benefit from tangible economic and social benefits derived from the mining sector.

### **Recommendations:**

The committee recommends the following:

1. Streamline the process and procedures of compensation with the view of minimising unnecessary delays.
2. Inclusion of a clause in mining contracts that obliges the mining companies to invest in areas relevant to the needs of the local communities.
3. Local communities play an active role in identifying projects/initiatives that private industry invests in as part of their corporate social responsibility.
4. National Assemblies to review their national legislations related to extractive industries.
5. The East African Legislative Assembly shares the findings of this report with the National Assembly of Tanzania.
6. During such tours, the itineraries should provide for active interactions with, and where possible, participation of local leadership and communities surrounding mining sites.
7. EALA takes steps to enhance its knowledge of best practices in the management of extractive industries from model countries to identify prospects and challenges facing the industry.
8. Invigorate the IPRLC for collective action through increased participation of related National Assembly committees.
9. The decision making process should as much as possible involve all stakeholders including the local communities.
10. Investors in mining industries to train and motivate local citizens to improve indigenous expertise, while giving priority to the local labour markets and upholding gender equality.
11. Production reports and accounts of the mining companies should be availed to the local government authorities.
12. All aspects of environmental protection are taken into account.
13. While the committee appreciates the support of NDI in this venture, the committee highly recommends internal funding for such important and sensitive committee activities.

### **Conclusion**

Through direct observation and discussions with the mining operators, the IPRLC enhanced their general knowledge and understanding of the mining industry. Discussions that the committee's delegation had with local government officials and civil society representatives

based in Mwanza and Shinyanga regions, and briefing materials that the delegation received, allowed the committee to gain a clear understanding of the mineral resource potential of the area.

Based on the three sites visited, the committee noted that this region is endowed with high value minerals such as Diamonds, Gold, Silver and Copper, which if well managed, have the potential of transforming the local community in particular and the country at large in terms of socio-economic well being of the people.

The local government representatives appreciated EALA as a regional Parliament for having drawn interest in the mining sector, which is central to their livelihood and the local economy.

From the discussions and interactions that ensued, it was evident that this visit helped to stimulate their interest and enhanced their need for active participation in the mining industry.

The Tanzanian site visit provided the committee with an opportunity to undertake its oversight role in the mining sector and set a precedent that should be replicated in other partner states. Such interactions with the partner states will empower EALA to come up with regional legislation to regulate the mining sector.

The committee intends to have the next site visit in the Republic of Uganda. The committee seeks for adoption of this report by the Assembly.

Mr. Speaker, I beg to report. (*Applause*)

**Ms Safina Kwekwe Tsungu (Kenya):** Mr Speaker and honourable colleagues, I thank you for this opportunity to support the Motion as moved by Dr Nangale, to adopt this report. Maybe I should begin by saying that I am a member of the Committee on Agriculture, Tourism and Natural Resources and, therefore, I subscribe to this report fully.

I also wish to congratulate hon. Mossi for joining this August House and for her appointment to the Cabinet of the Republic of Burundi. *Asante sana kwa watu wa Burundi* for the good work they have done, and it is an honour and pleasure to have you, hon. Mossi, with us.

The tour of Tanzania and the extractive industry of the United Republic of Tanzania took the committee to the two regions of Shinyanga and Mwanza, and as has been reported, indeed these are the regions, from the observations of those in the delegation, which have the potential, not only to turn Tanzania into the land of not just gold and diamonds, but the land of all goodies, which also has the potential to have a spill-over effect to the entire region. However, as the report has indicated, there are good things that have come with this mining industry as well as the not very good ones that accompany the activities in this industry, and I want to only talk about two of these. One is the issue of mining contracts.

It was apparent in all the three sites that were visited, two of which are in Shinyanga region, that mining contracts are a very secretive affair. In every site that we went to, there was a local government in place -there were local leaders elected and appointed- and there were the people themselves who live in those areas, but they had no idea whatsoever what the contracts that were entered into between the government and the mining companies entailed.

There is an African saying that he or she who sleeps with a sick man or woman knows how they snore. The loud snore can either mean that the person is about to die or they are getting better. Let us sleep with this sick person, the mining industry, and understand its needs, dear colleagues. The English version of what I am trying to say is that it is the wearer of the shoe who knows where it pinches most, and both versions mean the same.

Hon Speaker, if mining activities are taking place in a village in Kishapu District in Shinyanga region where the El-Hilal Diamond Mine is situated, and the people there do not know, first the terms of the contracts and, second, the projects expected to operationalise these terms, how will the benefits trickle down to the community? What is the relationship that they should be having with the company? I think we cannot expect any good faith to emanate from such a community towards such a company. We cannot expect such a community to understand that probably the company is making losses and, therefore, it is not capable of having a trickledown effect to them! What such a scenario creates is ill-faith, sabotage, insecurity and unrealistic expectations from the communities against such companies. Two of the companies told us that they had been incurring losses but that is not known by the communities, so the communities are expecting their roads, clinics and schools, and if the companies do not provide them with those amenities, then they are labelled as very bad people.

Why should we shroud contracts in mystery? Why are contracts shrouded in such secrecy to the extent of making communities hostile to the mining companies? They should be living in harmony to enhance economic development in the mining regions, but the current status is a strained relationship between the communities and the mining companies!

Also on the matter of contracts, and in regard to environmental concerns, people indicated that there is no standard in this area, other than having the blanket requirement that obliges mining companies to undertake environmental impact assessments. There were no clear guidelines on how, for example, to reclaim extraction sites. So, it is at the will of every company to do so in a manner they so wish. If I start filling up the pits and I go away, *sawa sawa*; if I feel like turning my quarries into a sanctuary that too is okay! There is no standard regulation that shows how land should be reclaimed, nor how waste -like the cyanide waste in Geita- should be disposed of. It is at the will of every company to do it as it wishes. This is a very dangerous trend.

Further, because the contracts are secretive and the public or even the local leadership is not privy to these contracts, they do not know about the recruitment procedures and processes. How do the companies recruit their staff and how are they managed? Nothing is clear! It is no wonder that when we went to one site, the only woman we saw there was a security guard managing the gate! She was the only one, yet in that mine, they are sorting diamonds. Surely, you do not need heavy muscles to sort diamond. There were vehicles there that anybody can drive -even I can drive a caterpillar- but there are no guidelines on employment. So, everybody does what they want, and you will find communities living around the mines that have never seen the inside of the parameter wall surrounding the mines. And, therefore, what do they do? They go at night and steal from the heaps of sand. If they had felt involved, surely, they would not have resorted to such primitive behaviour? Contracts are a major issue because if you have a contract that does not say how the revenue gets back to where it was generated and how the revenue is used to uplift the social standards of the people who are hosting that goldmine, definitely there is a problem.

I know that in this age of liberalisation, states are being asked and encouraged to relinquish their stakes and holding rights in economic ventures, and this is the case with Tanzania, but where as a state you relinquish all your shareholding rights, say in the mining industry, without putting in place functional regulatory institutions, you are creating a problem. And this is the case in Tanzania.

Hon. Speaker, Tanzania is well endowed with mineral resources; Tanzania should be the envy and pride of the entire region. That too is a fact because it is well endowed, but when these resources are generated in Tanzania, they are by extension generated in East Africa, but we in the EAC do not have functional regulatory systems to monitor the production and marketing to be able to trace the resources, like diamonds, gold, copper or magnesium as they move from market to market.

Mr Speaker, in one site, only 55 percent of the gold is processed. Mathematics says that there is 45 percent of gold remaining, but other than that 45 per cent remaining, we also have copper and silver; what happens to it when it goes to Japan and China to be processed? Are we saying that it is okay for these people to take away the 45 per cent of gold and everything else which is within it? What are the companies paying royalties by percentage based on? What is the denominator; because I do not know whether we get 45 percent in China or we will get 60 percent, and neither do I know how much copper, silver etcetera is extracted in China because we do not have efficient regulatory institutions! Yes, we have relinquished our rights as states to economic ventures, but we need to put in place mechanisms that can trace how much will be harnessed in China and Japan. How much copper shall we get in China and Japan after the final processing?

Hon. Speaker, those are issues that this site tour revealed to the Committee on Agriculture, Tourism and Natural Resources, and I am sure that if we had gone beyond just Shinyanga and Mwanza, to probably Mererani where we have Tanzanite and to the copper mining belt or coal mining belt, we would have witnessed similar issues. Mr Speaker, the bottom line is that our region is being plundered; it is losing what it rightfully owns because we do not have functional regulatory systems to track what we produce.

With those remarks, I support the motion of hon. Nangale that this report be adopted and after adoption I am sure the future site visits to the other Partner States and beyond this region shall be able to tell us how, as a region, we can manage our natural resources better for the benefit of the East Africans. I thank you, Mr Speaker. (*Applause*)

**Dr Odette Nyiramilimo (Rwanda):** Thank you, Mr Speaker. I rise to congratulate the Committee on Agriculture, Tourism and Natural resources upon a good job done. They have produced a report that shows how our countries have been treated for many years. I remember a Member of this House saying that long ago, people from Rwanda used to go to Uganda to work in the mines and they would return with radios, kerosene lamps and many other things because mines were being exploited in Uganda during that time - I think it was hon. Abdul Karim who was describing how fathers from Rwanda would go to Uganda.

Tanzania has a lot of mines, and maybe Rwanda and Burundi have too, but we do not yet know. We should not say that there are no mines because when you consider the geology of this region, our countries should be rich. Libya and the other Arabian countries - when I went to Dubai, I was told that only 30 per cent of the population who might work are working because the others stay at their homes living off revenue from their petrol. But our minerals are being taken away by other people. I think this situation has to be reversed, and the proposal of this committee to regulate the exploitation of mining should be done very fast. I

support this Motion that the legislation on mining should be prepared and adopted very soon. *(Applause)*

**Dr Said Gharib Bilal (Tanzania):** Thank you, Mr Speaker, for giving me this opportunity to make a contribution to this report, but before I do that, let me extend my sincere congratulations to hon. Hafsa Mossi for joining the ranks of dedicated East Africans. I think that is what we are here for. *(Applause)*

I congratulate the committee upon undertaking this tour of the mining sector in Tanzania, and I hope this will not be the last tour they will take because the picture that is painted by the report about Tanzania is the same picture that we might find in Kenya and Uganda.

This report needs serious digestion. What is haunting in this report is lack of transparency. That is what is lacking and it has been a historical concern that the mining industry has been shrouded in secrecy, and we have very little knowledge of what is going on with very limited participation by the locals and even the institution that should be responsible. They are also not availed with enough information about what the process is all about.

I support the concerns raised by hon. Kwekwe about the need for know-how in the mining sector operates. We have mentioned the Arusha Declaration here; let us not confuse it with the famous Arusha Declaration on Self Reliance in Tanzania. It is also good that the Arusha Declaration on Mining and Extractive Industries has come out in the New Arusha Hotel in Arusha, Tanzania, but this one is about self sufficiency. What we need here is knowledge on how to go about the mining sector. What we should also see as relevant here is that whenever you have information on mining activities -be it in petroleum or other minerals- there is controversy. Tanzania is undergoing controversy, which at one time pointed to a need for self re-examination on how we go about this sector.

We know that when you extract copper or iron ore, there are also other minerals that they call precious metals, which are not in plenty but whatever the amount, you get dividends from them. This is what we do not know. This is what we need to know. I would like to see this report pointing to that direction. We need to be aware or to be given enough information on what goes on with iron ore, copper as well as the other precious metals that always go along.

The Arusha Declaration on Extractive Industries: we were not refreshed in this report of the existing clauses but I would like to see us working on the need to prepare a critical mass of qualified people to undertake these activities. That too is lacking in East Africa.

I would like to see from this report a clear statement on the need for Tanzania, Kenya, Uganda, Burundi and Rwanda, before they undertake any other activity in the extractive sector, to prepare ourselves on the technical know-how even if it takes 11 years or more. We were reminded of Norway, which took about 11 years before they undertook to explore their petroleum reserve, and that is the way to go.

I support this Motion, and I thank the Committee for the vision. I also urge them to see what is obtaining in other parts of East Africa. *(Applause)*

**Mr Augustine Lotodo (Kenya):** Thank you, Mr Speaker. I just want to declare that I am a member of the committee, and I wish to support the Motion. I rose to add one issue that we observed during the tour, which I felt was very important. The Government of Tanzania does not hold shares with these companies. You will find that whatever the companies mine, they export, and we did not see any mechanism put in place by the government to observe what is going out. At all these sites, they have airstrips and planes, and every morning, I could say,

the gold is being taken a way. We thought that perhaps if the Tanzania government had invested 50 per cent or 40 per cent shares with the companies, Tanzania would be richer than it is now. We seriously felt that we are losing a lot of money under the current status quo. One company informed the Committee that when they approached the government to propose shareholding in the company, the Government refused. It is a lesson we learnt that we need to do something about.

Another issue that I want to emphasise is to do with compensation to the locals in as far as land is concerned, and those issues have been addressed. The other issue is about poverty. This was a very serious observation that we made in Shinyanga. And it was ironical that the richest person in the diamond sector called Williamson wrote in his will that he had to be buried in Shinyanga. Most of the people there are very poor. It is a contradiction that the country is producing minerals but the people are poor.

Lastly, after the processing of gold, 40 percent of whatever could not be processed was taken to China and Japan, and we thought that if we could establish refinery industries in Shinyanga rather than going to create jobs in Japan and China, it would create more employment to the people and hence improve standards of living of the people. Thank you very much. I support the motion. (*Applause*)

**The First Deputy Prime Minister and Minister for East Africa Affairs, Uganda (Mr Eriya Kategaya):** Thank you, Mr Speaker. I am going to contribute as a Pan-Africanist in this debate because if I speak as a Ugandan, Tanzanians may be offended that we are interfering with their internal affairs. I thank the committee for this report, particularly, when I read their observation on the Buliankulu Gold Mine in Kahama.

One time, I was watching CNN, and they were showing mining in the Democratic Republic of Congo where they were extracting one of the most expensive minerals. But the miners, those who actually get the mineral from the ground, the Congolese, had no shoes; no housing and they were paid in beer and *posho*. (*Laughter*) This is a very old story of Africa, where we have resources extracted to give value to the outside countries. I wish members of the Committee had gone even to see the structure of employment and expertise in those mines. Where do the natives fall, if I may ask? Are they only guarding the gates? Who is in the engineering section, chemicals section, accounts and all that?

My second issue was hinted on by two Members; the towing of jobs with this 45 per cent plus others. Minerals go to China and Japan - who actually gets the jobs? Is it Tanzanians or East Africans? I am not saying Uganda is better than what we are reading here. When you come to Uganda, you may find the same problems, but that should not stop us from commenting on our miserable way of handling our resources. This has been our biggest problem. I am sure if we operate on the East African basis it may be very useful, and I will show you why. Because these mining companies deal with us on individual basis, they will have a contract with Tanzania, another contract with Uganda, Rwanda, Burundi and even Congo but all their objectives are the same.

In fact, whenever, I look at the DRC, I really get ashamed as an African. A country so rich but yet people are miserable! Maybe here we are slightly better off, but the difference is the same because as somebody was saying, even he who supervises that actually takes 45 percent. Who guarantees that actually they take 45 percent and not more than that? Who is keeping the books? Who is supervising? How do we know what is already on the planes? And this is the same thing I saw on the CNN programme about Congo. These poor Africans get the thing, they carry it for about 50 miles where the plane is waiting to be flown out of

Congo. (*Laughter*) Even here I do not want to be an alarmist. And I said I am not interfering in the internal affairs of Tanzania, but I am speaking as a Pan-Africanist, of how we should wake up to the question of how to use our resources for our people. And the question of integration comes in easy.

We should confront these companies as a group. We must have power to bargain - (*Applause*) - if we do not have power to bargain, they will just ignore us. You will make noise here in Tanzania and they just go to Uganda and do the same thing. You make noise in Uganda and they come to Tanzania. So, let us approach these companies as a group and we bargain and say; “yes, we have minerals here, but these are the conditions. We want the industries here; we want the training of our skilled manpower here, and not these *bapakasi*; we want skilled manpower of chemical engineers, mineral engineers - somebody said that we were not given time to make sure we train our people so that we are in charge of our operations.

Nobody is against this foreign investment, but it should be foreign investment for the benefit of our people. (*Applause*) Our young people have no jobs, but if these mines were properly organised, we would have no problem with employment opportunities in this region. I thank this committee; please go to Uganda, go to Kenya, and bring out these problems - (*Applause*) - then we can confront them as a group. This is the idea of integration. Once we talk as a group, I am sure these companies will listen, but now they come and say, “Oh Nangale, you are a good man,” and they take him to Johannesburg for a weekend. The next time they say, “You Kategaya, you are better off than Nangale”...that is how they play around with us. I think if we worked as a group and said here are minerals -because we have the minerals; at least now in Uganda, we have oil. (*Applause*) If you had oil plus gold and these other minerals and you told them this is what we want: training of our people; processing the whole thing here; not taking anything out which is unprocessed; take the finished products – right! Now, who knows whether they really take 55 per cent? I would like to know; perhaps the MPs could tell us: are we sure we know this is 55 percent?

Lastly, hon. Safina has said that even this 90 percent of what - on the raw materials or processed materials or a combination of both? Nobody knows 90 percent of what? Is it the gold plus the soil and everything or on the processed stuff?

With these remarks, as I said, I hope Tanzania does not take offence over my remarks. I am speaking as a Pan-Africanist and not as a Ugandan minister. (*Applause*)

**The Speaker:** Hon. Members, people from this side can talk without the microphone but hon. Leonce, you can proceed.

**Mr Leonce Ndarubagiye (Burundi):** Thank you very much, Mr Speaker, for giving me the opportunity. I have very few remarks because what was important has already been said by my predecessors. I am a member of the Agriculture, Tourism and Natural Resources Committee, and I support fully the report and the Motion. I just want to make a few remarks about what we saw.

Mr Speaker, I want to add to what hon. Nangale has said, that we are members of the East African Legislative Assembly, but a Member of Parliament from Kenya, hon. John Mututho, was also with us. When we went to Buliankulu, the Canadian General Manager was not there. We had to look for him and insist that he had to be there, otherwise, we were going to make a report. Finally they brought him, and he was a very intelligent man who knew how to manipulate words.

I wish to insist on what hon. Lotodo has said about our governments having shares in the mining industries. If you have shares, you also have access to information that you would otherwise have no access to. We also need to have performing laboratories to make sure that we monitor what they say and the figures they give.

When the hon. Minister was asking what the 90 per cent was for, I think you can only find that out after getting laboratories. You will find out that in all the contracts for mines for whatever extracted materials, they will always insist that the World Trade Organisation or the International Court of Justice is represented, in their respective countries, and not in our countries. There is a saying in Kiswahili that if a lamb goes to a court of justice with competitors, there will never be justice. If our countries go to courts of justice with those companies over the way they exploit our mines, our countries will always be defeated in those courts of justice of these countries. I think it should be mentioned in the agreement that the court of justice shall be in the local countries.

When we inquired about what hon. Kategaya mentioned about training of local staff, the Canadian General Manager told us that the Tanzanians who trained in mining had left Tanzania and gone to work in other mining companies in Australia, Canada and elsewhere. But they are Tanzanians, and I am sure they would be very happy to work at home, if they were motivated. If it is true that they left, there must be some reason for leaving Tanzania to go to Australia. That was the reason they gave us to justify why they do not train any more local people.

We must see how Africa is exploited or exploiting its wealth. Wherever you go in Africa, there is petrol, gold and diamonds, and you find that the mining companies are very rich while the people are very poor. There must be something that we can do about this. It is really a tragedy, and it is abnormal. In a country like Gabon or Chad today, the populations cannot improve their conditions of living yet they are exploiting a lot of petrol every year. I presume that soon Uganda and Burundi will be exploiting oil and we hope that the time will be paying very fast.

The reason why we made this Treaty is to make sure that when we get something from our soil, we exploit it rationally for the benefit of our people. Tomorrow if there is petrol in Burundi and Uganda; it will be for the benefit of the people in our region. (*Applause*) Thank you very much, I support the motion.

**Dr Didas Masaburi (Tanzania):** Thank you, Mr Speaker, for giving me this opportunity to contribute. I want to comment on the Buranguru case in Kahama. I know that there are about three problems which exist in the mining industry in Tanzania, taking the sample of sites which were visited, and I would like, right now, to propose that these should be part of the report to be adopted by this House.

The first problem which I can see is on the non-payment of corporate tax, and it is said that this is because the companies have been making losses since 1999. This might be because there is a decrease in the sense or increase in the operating costs; the feasibility study was not properly done, or there is lack of accountability and transparency. We should urge the national Assemblies of the Partner States to look into it deeply and check why there are losses. While the feasibility study indicated that the volume of extraction would be a certain amount, before the feasibility study was passed they could not be allowed to invest. Now we want to check whether there is a strategy of these people who have invested in the industry to try to cheat. We should know the volume of money lost which we envisaged, and the current

rate of production so that we can establish whether the loss is true or not. That is one of the proposals.

The second problem is at the negotiations stage. I can certainly conclude that faulty negotiations lead to poor contracts. If the negotiations were conducted appropriately, taking into account what the communities want, what the country wants and what should be avoided, then the contract should have been good, and, therefore, we would achieve what we wanted.

My recommendation is that there should be in place negotiation teams which must be approved by the national Assemblies before they go to the negotiations. And those negotiators should have adequate qualifications and experience in negotiations and in the area of the respective industry, and they should also include, if possible, the local people who know what is there. And those teams should first prepare a negotiation plan which must also be approved by the national Assemblies in the respective countries. Those plans must have the maximum and minimum objectives and parameters, which they can negotiate within.

We should not leave the negotiations and decisions to committees. Also, we should not leave negotiators without parameters which will give them the limits of their powers to negotiate, so that when those limits are passed, then the negotiations should fail, and then they refer back to the parliaments of those countries to ensure that the parameters are within the interest of the respective countries. I am saying so because parliamentarians are the representatives of the communities, and they know the requirements of their areas. I would not recommend for the negotiations to be left entirely to the technocrats, because this can give them an opportunity for corruption.

The third problem is on the poor contracts. It is normal practice that when we are preparing these contract documents, we trust the lawyers. I am not saying the lawyers are not the right people to draft the contracts, but given the fact that these contracts should safeguard the interests of the local people, the people who are supposed to actually develop the contents of the contracts should come from the local communities, and the content of the contracts must establish what the country wants to achieve, and they should clearly indicate what we want to avoid. Lastly, they should indicate what should happen if things go wrong; there should be clear termination clauses which can allow the communities to terminate those contracts if those people contravene what was agreed upon. Thank you, Mr Speaker. *(Applause)*

**The Minister for East African Cooperation, Tanzania (Dr Diodorus Buberwa Kamala):**

Thank you, Mr Speaker. Let me say from the outset that if I had received this paper before coming to this Chamber, my debate would be more valuable than it is going to be, because I have just come across this presentation in this room. But for record purposes, I thank you for giving me this opportunity to debate this report.

Every Partner State has its own way of doing things, and there are issues which are for the East African Community, which this Assembly has a mandate to debate, and there are issues which are for the Partner States. I think that should be clear. Hon. Kategaya put it very well that he was speaking as a Pan-Africanist and not as a minister because he knew what would happen if he spoke as a minister. I do appreciate that he has spoken as an African.

**The Speaker:** Hon. Minister, hon. Kategaya is a Member of this Assembly and he is protected under the powers of privileges of this Assembly. So he can talk and say anything he wants in this Assembly as Kategaya.

**Dr Kamala:** As Kategaya, that is good - (*Laughter*) - I have no problem with that. Let me say that Tanzania has a long experience of attracting foreign investors in the mining and other sectors. Let me report to this House that today, it has been declared that Tanzania, in all the African countries, is the fifth in terms of attracting foreign direct investments, of course being the first in East Africa. We have maintained that for a long time, but that has not happened without a price to pay. In the 1970s and 80s, we had a policy of attracting investors in the mining sector but I can tell you that nobody turned up, so we stayed with our minerals everywhere. Poverty continued to exist and resources continued to be dormant. We had decided that these minerals would stay forever; one day probably Tanzanians would be able to exploit them - but when?

In the year 1990, under the second phase of government, President Mwinyi came up with new initiatives of liberalising the economy, including the mining industry. That is why President Mwinyi is popularly known in Tanzania as “*Mzee Ruksa*”. One of his sons is in this Chamber – that is a good thing - and I think it is because of “*ruksa*” that we have his son now in the EALA. But it was not easy to attract investors. (*Laughter*)

In this world, capital always moves from one place to another, and there are many people trying to attract this capital. So, you cannot just stay there and expect this capital to flow towards your country. It does not work like that. You need strong strategies for attracting investors, and when you are putting down strategies, sometimes you might have to give a lot of incentives, like we did and eventually we were able to attract so many investors that Tanzania is now one of the countries known for its rich minerals. Before that, nobody knew about Tanzania and its minerals.

Now, the fourth President, Jakaya Mrisho Kikwete, in his first address to the Parliament, promised that he would review all mining contracts so that any loopholes can be worked upon. Where are the loopholes? But immediately he said so, all over the world investors started to panic; they thought that Tanzania was probably going to nationalise the mining industry. We are not nationalising; we are going to talk in a friendly manner and see where we can adjust.

These friendly talks started with different mining companies and we have been able to reach at a stage where some of the loopholes have been adjusted. For example, most of the companies which had established that they might not be paying corporate tax over a long period of time have now agreed that they will start paying corporate tax in the near future but through friendly negotiations because in this world, contracts always have two parts and you cannot simply break them because you are in government or power. You cannot just decide to frustrate a contract because without good reasons, there is a price to pay since contracts are internationally protected.

We have managed to talk very friendly and we have established that some of the companies will start paying corporate tax in the near future. Other companies may not pay tomorrow or the day after but through negotiations, they will start to pay. But what I am insisting on here is that this must be through friendly negotiations because these are contracts.

I would not like to talk about the issue of contracts, whether secretive or open, because every Partner State has its own way of doing things. Even for the ratification of protocols, I am told that in some of our Partner States the Cabinet can ratify a protocol but in Tanzania, the Cabinet does not ratify protocols; you must go to the Parliament.

I cannot say, if a certain country uses the Executive to ratify protocols, that it is a bad procedure. And I cannot also say, because in Tanzania we use the Parliament, that it is a better way. Every Partner State has a different environment and different reasons as to why they do 1, 2, or 3. Similarly, when it comes to contracts, every Partner State has their mandate to negotiate contracts, approve them, and that is an issue that I would also not like to talk more about. I leave that to the Partner State level.

Capacity building is very important, as the report says. Seeing somebody with a plane leaving a certain airstrip with gold...I think that whatever they take is not Tanzanian; that is not true. In Tanzania we have put down a very good mechanism at the mining level and at the level of exit. We know everything which is processed everyday. We know how much gold has been produced because there are fulltime experts employed by the government working at the processing points, and these experts are very knowledgeable about issues of the mining industry. They are very well trained. Now, the issue is whether these people are trustworthy or not. And that is a different thing, because you may even employ 20 people and ask them to stay at a site and ensure that whatever is produced is reported and they do not do a good job. But as far as we are concerned, we have a very good mechanism in place. So, if you see a plane leaving a certain airstrip, it is not true that they are just taking gold as if there is no government in Tanzania. That is not the case. I can assure you, we know what is going out and we know what is produced at every point in time. I wanted to state that categorically. *(Applause)*

In terms of the contracts, I have said that we are monitoring, but there is this issue of shares. Let me talk about it. In Tanzania, we used to have shares in Mwadui Diamond Mine, but there are no shares without obligations. If you want to have a share, it goes with some obligations. You cannot have shares for purposes of only receiving profits. What happened at Mwaduyi? With our shares and because of obligations, our partner has been investing while the government has not been investing anything. At the end of the day, they said "my partner, the government, you cannot simply have shares; you need to invest and in Tanzania."

This issue of nationalisation...we tried that one; we tried to nationalise everything. We thought the government could do better but what happened, all parastatal companies, all industries which were working, instead of them contributing to the government, the government started contributing to such companies. Then we said that was a bad policy and we changed it. That is why some people still think Tanzania is socialist, but we are not. We are now following macro-based economy. I do not want to say that we are capitalist because you do not become a capitalist by saying, "I am a capitalist". *(Laughter)* If you are poor, you remain poor even if you pronounce yourself as capitalist. But we are following a market-led policy. So, in Mwaduyi, we used to have shares and we still have shares, but there are obligations.

Mr Speaker, for the information of this House, we made a tour of Botswana, and in Botswana they have advanced very well. Sometimes they negotiate with investors and say ok, we have minerals and these minerals will be part of our shares. It is a good thing to think about such, but in order to do that you need to have an investor who is ready to accept such terms as well. You need to have already marketed yourself all over the world so that people can see your seriousness and consistency.

Tanzania has been very keen, and we are moving towards that, but we cannot immediately stop the current contracts and say, "Just pack your things and go" because we have discovered the new method! These investors, after all, are all the same. Just ask yourself, in

this world British Petroleum (BP) is the leading investor in fuel, but as you are aware this company is a British petroleum company. Even if it were not British, given the globalisation and the issue of selling the shares all over the world, there are few serious investors in the mining industries. There are not as many people as we think.

The issue of jobs is good, but the royalties are peanuts. That is why we have decided to negotiate for early payment of the corporate tax. Tanzania is number one in attracting investors. We know what is taken. The government is not sleeping. I am just a Minister for the East African Community. I am not a Minister – *(Interruption)* -

**Ms Dora Byamukama:** Mr Speaker, I am rising on a point of procedure. I have listened very carefully and I have hesitantly interrupted the presentation by the hon. Minister in view of what he said in his introductory remarks to the effect that if he had gotten the report, he would have replied in a better manner.

I would like to ask: wouldn't it be procedurally better for him to put his contribution in respect to the report in writing so that the Committee can take it into account? It is a very important committee, because it is an inter-parliamentary liaison committee which is not only going to stop in Tanzania but it is going to visit all Partner States such that at the end of the day, we expect to have a rounded report talking about all these issues in all the Partner States.

When we keep on referring to the Partner States, it also restricts us because, for example, when you look at the Treaty on the objectives of the Community, Article 5(3)(c) says that the Community shall ensure the promotion of sustainable utilisation of natural resources of the Partner States, and the taking of measures that would effectively protect the natural environment of the Partner States. When you go further to Article 111, it talks about our mandate to consider issues to do with mining and to ensure that our mining policies and laws are harmonised. When you also read Article 49(d) of the Treaty, we have the mandate to discuss all matters pertaining to the Community. So, in light of all these, I feel a little bit inhibited – *(Interruption)* -

**The Speaker:** Honourable Member, are you debating?

**Ms Byamukama:** I am asking on a point of procedure. Wouldn't it be better if you got a substantive report rather than getting this kind of reaction?

**The Speaker:** I think, Honourable Minister, you can continue, and you can write to the Committee as well.

**Dr Kamala:** As I said when I started, I just received this report in this Chamber. I am in government but I am just a Minister for East Africa, and I deal with coordination only. There is a minister in Tanzania who deals with issues of mining and other things. If I had received this report earlier, I would have come up with a better response, but now I am just using my experience as a Member of Parliament and as a minister, but not as a minister for mining and other things. So, let me conclude by saying that these issues of mining are still handled at the level of the Partner States, and that is a fact. I did not mean that this House cannot comment on anything; you can always comment, but this issue of mining is yet to be the issue of East Africa. And if you look at the article of the Treaty that the honourable Byamukama was referring to concerning natural resources and other things, that is why now we are still negotiating for the Protocol on Natural Resources and other things, which is going to be concluded in the near future. When it is concluded, we shall be having other issues – *(Interruption)* -

**Mr Lotodo:** On a point of information, Mr Speaker, I do not know if the honourable minister is aware that we have a Protocol which is already signed on environment and natural resources. It is there.

**Dr Kamala:** Yes it is there, but it is not yet certified – (*Laughter*)- and these issues of ratification according to the Vienna Convention - (*Interruption*) -

**The Speaker:** Hon. Minister, what have you done as a coordinating Minister to make sure the Protocol is ratified; you said you are the coordinating minister?

**Dr Kamala:** I can do it in Tanzania but not in the other Partner States because I have no mandate in other Partner States. So, let me say this that, according to the Vienna Convention, Partner States can sign everything and they can as well ratify with reservations on everything. And if somebody ratifies with reservations on everything, taking the USSR style, then everything does not work. That is why in East Africa we have been trying to go by consensus so that when we sign, we are sure that everybody will ratify. We are working towards that.

Let me conclude: the Tanzania Government is very keen on monitoring the mining industry, and we invite our fellow Partner States to learn good and bad things from us. That is good advice, because if you learn bad things, you avoid making mistakes. In the learning process we realised that somewhere we had made a mistake, which we are now correcting. So, if you can now learn from us, you can avoid making the same mistakes. But the mining industry is a challenging one, and there are so many mistakes and statements you can always hear on the streets and wherever, but things are more difficult when it comes to practicing and attracting investments. (*Applause*)

**The Chairperson of Committee on Agriculture, Tourism and Natural Resources (Mr George Nangale):** Thank you, Mr Speaker. I commend Members who had the opportunity to contribute on the Floor of the House and to put across their views, which will enrich the report. (*Applause*) We will endeavour to pursue a transparent and environmentally friendly industry, ensuring that stakeholders, including the local communities who live within and around the mining areas, benefit from these God-given resources. I would like to mention the names of the honourable members: hon. Safina .K. Tsungu; Dr. Bilal Gharib Said; Dr. Odette Nyiramilimo; hon. Augustine Lotodo; hon. Eriya Kategaya; hon. Leonce Ndarubagiye; Dr. Didas Masaburi; hon. Kamala Diodorus Buberwa – (*Applause*).

Hon Speaker, the inputs included the need to point to the bi-products as important resources. As you were made aware, the gold and diamonds come along with other bi-products such as magnesium, copper, silver, etcetera, which are not taken into account when we are refining these products. There is therefore a need to prepare our citizens in the technical know-how, and this is very important. We need to prepare our citizens in the skilled areas.

There is need for the government to acquire shares. And if you look into this, you will find experience in other countries, such as Botswana, which the Minister mentioned, where the government has some shares in the mining companies. Tanzania still has some shares in the industry. At Kahama and Buliankulu, we were told that Tanzania used to have some shares and later the government decided to withdraw its shares from the company. But the point here is that the shares should go with responsibility. The committee felt that having shares in the companies would ensure that the government has close touch with what is going on within the companies.

There was the issue of manpower allocation; ensuring that local expertise have some role to play. We were told at Kahama, for example, that the company has been trying to recruit many Tanzanians. Unfortunately, when the Tanzanians acquire the necessary skills, they also find greener pastures elsewhere, particularly in the Democratic Republic of Congo. So, that was the dilemma; they train people and then they run away. That is the issue we need to address.

There was also the issue of 90 percent upfront royalty on the value of the minerals extracted, including the by-products. But as the Minister has put it, the Tanzania Government is still working on the issue of royalties. The 3 per cent royalty on the value of the minerals seems to be very small, but different studies and consultations are still going on.

Hon. Masaburi alluded to the need to thoroughly investigate the accounts and reports of the production. We were told that the accounts of all the companies, particularly in Kahama and Geita, are still in the red; that they are still paying debts and so they cannot pay the corporate tax at the moment. But as we have recommended, we need to thoroughly investigate to see whether what we are told is the truth, and then come up with a proper report.

One of the recommendations put forward was the need to involve locals in drafting contracts. The committee was on a mission to explore and understand the management of extractive industries with a view of looking into the benefits to all stakeholders, including people living around the mining sites, and also the impact on the environment. We started with Tanzania and that is not the end; we are going to tour all the Partner States. Actually, the next leg will be in Uganda, and specifically in the areas of Hoima and Arua where the petroleum industry is beginning.

Mr Speaker, before I end, I want to recognise the input, to the work of the Committee, particularly in this area of extractive industries, of the hon. Dora Byamukama and the hon. Dan Ogalo at the programming stage. They had an important input and we appreciate their work. I beg to move that the report be adopted. (*Applause*)

**The Speaker:** I now put the question that the Report of the Committee on Agriculture, Tourism and Natural Resources on the Inter-Parliamentary Regional Liaison Committee Site Tour of the Tanzania Extractive Industries be adopted.

*(Question put and agreed to.)*

Report adopted.

## **BILLS**

### **Second Reading**

The Acts of the East African Community Act (Amendment) Bill, 2009

**Ms Lydia Wanyoto (Uganda):** Mr Speaker, I beg to move that the *Acts of the East African Community Act (Amendment) Bill, 2009* be read a Second Time.

**Mr Gervase Akhaabi (Kenya):** Seconded.

**Ms Wanyoto:** Mr Speaker, the objective of this Bill is to realign the Acts of the Community Act, and Article 63(2) of the Treaty in order to give legal framework of 90 days within which the Heads of State of the EAC shall assent to the Bills passed by this Assembly. The Bill also seeks to amend the enacting formula, taking into account the Treaty provisions of Article 62, and have a consequential amendment of Part 3 of the Second Schedule to provide for assent

by the respective Heads of State of the Partner States. It also seeks to give proper interpretation of the meaning of a “Session” in accordance with parliamentary practice and tradition.

This law was enacted when the EAC Partner States were only three, and today the number of the EAC Partner States has grown to five countries. This Assembly, therefore, is only rising to its duty and obligation to align Acts such as this particular one on these new and very positive developments in the EAC integration process.

Article 49(1) of the Treaty puts the full mandate of the legislature of EAC in this Assembly. It is therefore important that this House supports the proposed amendments to enable us to execute this mandate without the hindrances or gaps that this amendment seeks to address. I beg to move. *(Applause)*

*(Question proposed.)*

**The Chairperson, Committee on Legal, Rules and Privileges Mr Abdullah Mwinyi (Tanzania):** Mr Speaker, I wish to lay on Table, *the Report of the Legal, Rules and Privileges Committee on the Acts of the Community (Amendment) Act 2009.*

*(Mr Mwinyi laid the document on the Table)*

**Mr Mwinyi:** The *Acts of the Community Act (Amendment) Bill, 2009* is a Private Member’s Bill that was moved by hon. Lydia Wanyoto Mutende. This Bill proposes that Section 7 of the Acts of the East African Community Act, 2004 be amended so that it conforms to Article 63 of the Treaty for the Establishment of the East African Community.

Section 7 of the Act provides for assent by the Heads of State. Article 63 of the Treaty provides for assent to Bills. The Bill proposes three amendments to the Act:

1. Replacing “A Head of State” with “the Heads of State”;
2. Interpretation of the word “session”; and
3. Replacing “assent by Heads of State of Kenya, Tanzania and Uganda” with “Heads of State”.

Section 7 of the Act reads as follows:

*Section 7(1):*

*A Head of State shall, within ninety days after a Bill has been passed and presented to him or her:*

- (a) Assent to the Bill presented to him or her under section 6 by signing on each copy of the Bill a statement in the form set out in Part III of the Second Schedule to this Act; or*
- (b) Return the Bill to the Assembly with a request that the Bill or a particular provision of it be reconsidered by the Assembly; or*
- (c) Notify the Speaker in writing that he or she withholds his or her assent to the Bill;*

1. *Where a Bill has been returned to the Assembly under paragraph (b) of sub-section (1), the Assembly shall reconsider it and if passed again, it shall be presented for a second time to the Heads of State for assent;*
2. *Where a Head of State withholds his or her assent to a Bill under paragraph (c) of sub-section (1), the Assembly may reconsider the Bill and if passed, the Bill shall be presented to the Heads of State for assent;*
3. *A Bill shall become an Act of the East African Community on the last date of the signature by the Heads of State of the first of the copies referred to in subsection (1).*
4. *The procedure prescribed in section 6 shall apply to the re-submission of Bills returned under sub-sections (2) and (3) of this section.*

2. Interpretation of Session: Under the Act, “*Session*” means the sittings of the House commencing when it first meets after its prorogation or dissolution and terminating when the Assembly is prorogued or dissolved without having been prorogued;

3. Replacing “*Enacted by the East African Community and assented to by the President of the United Republic of Tanzania, the President of the Republic of Kenya and the President of the Republic of Uganda*” with “*Enacted by the Community and assented to by the Heads of State*”.

This Bill was considered by the Committee on 16 February 2009 in consultation with the Secretariat.

Observations:

1. “*A Head of State shall*” in Section 7(1) of the Act should be replaced by “*The Heads of State may*” as per Article 63(1) of the Treaty.
2. Section 7 provides that assent should be within 90 days. This should be amended to “*within three months*” to conform to Article 63(2) of the Treaty.
3. Section 7 (1) provides that “*a Head of State shall within 90 days after a Bill has been passed and presented to him or her...*” This should be amended to read “*...within three months from the date on which it was passed by the Assembly*” as per Article 63(2).
4. We observe that the definition of “*Session*” in the Act refers to sittings, which are not defined in the Act or the Treaty.
5. The proposed definition of “*Session*” in the Bill refers to meetings of the House which are not defined in the Act or Treaty.
6. We note that the amendment of the Treaty in respect to Heads of State is a consequential amendment of Acts of the Community. This calls for amendment of the Interpretation Act.
7. The definition of “*Session*” in the Act is in conformity with the Rules of Procedure of the Assembly (the Rules). The Rules define Meetings.

8. The Committee noted that Article 62(3) of the Treaty reads: “...*enacted by the East African Community and assented to by the Heads of State.*”

Laws are enacted by the East African Legislative Assembly and not the East African Community, and therefore the Treaty should be amended accordingly.

The following are our recommendations:

1. The Act should provide for discretionary power for Heads of State to assent to or withhold assent to a Bill of the Assembly by substituting “shall” with “may”.
2. The Act should provide for ‘...*within three months from the date on which it was passed by the Assembly...*’ rather than “...*within 90 days after a Bill has been passed and presented to him or her...*” This again is in conformity with the Treaty.
3. The Act should provide for a definition of “Session” and “Meeting” which definitions should conform to the Rules. The definitions in the Rules conform to the Westminster tradition.
4. The definition of “Session” in the Act should be retained as it conforms to the Rules.
5. The tenets of Article 63 on Assent to Bills should be captured verbatim in Section 7:
  - (a) “The Heads of State may assent to or withhold assent to a Bill of the Assembly;
  - (b) A Bill that has not received assent as provided for in (a) within three months from the date on which it was passed by the Assembly shall be referred back to the Assembly, giving reasons, and with a request that the Bill or a particular provision thereof be reconsidered by the Assembly;
  - (c) If the Assembly discusses and approves the Bill, the Bill shall be re-submitted to the Heads of State for assent;
  - (d) If a Head of State withholds assent to a re-submitted Bill, the Bill shall lapse.”
6. The Interpretation Act in respect to Heads of State should be amended to capture amendment to the Treaty.
7. Article 62(3) of the Treaty should be amended to read as follows: “*Enacted by the East African Legislative Assembly and assented to by the Heads of State.*”

Finally, I would like to take this opportunity to convey the committee’s appreciation to the Speaker for availing us time to deliberate on this matter. Furthermore, I take this opportunity to thank hon. Lydia Wanyoto-Mutende for her initiative. I also thank the Secretary-General and his staff at the Secretariat for their valuable contribution. I further thank the CTC - *(Interruption)* -

**The Counsel to the Community (Mr Wilber Kaahwa):** On a point of information, Mr Speaker, I wish to inform my friend, the Chairperson of the Committee on Legal, Rules and Privileges that much as I appreciate the accolades he is bestowing on me within the institutional establishment of the Community, there is no such office as “CTC”. There is an office of the Counsel to the Community, for purposes of the record. I thank you. *(Laughter)*

**The Speaker:** I think you should have let him be a staff of the Secretariat.

**Mr Mwinyi:** Mr Speaker, I stand corrected. The Counsel to the Community, we thank you for your expert advice to the Committee.

Finally, I want to thank the members of the Committee, with particular thanks to hon. Dora Byamukama, for putting in extra hours in assisting me to finalise this report. And last but not least, I thank the Clerk to our committee.

I beg to move that the Report be adopted. (*Applause*)

**The Counsel to the Community (Mr. Wilbert Kaahwa):** Mr Speaker, this being the first time I am contributing during the Fourth Meeting of the Second Session of this august House, it behoves me to first of all begin by warmly greeting you and the rest of my honourable friends. I wish you a happy and prosperous new year, and I pray to the Almighty “*Allah Subhana Wathalaah*” to continue guiding you and abundantly blessing you as you discharge your noble functions as stipulated under the Treaty.

I also feel honoured to congratulate hon. Hafsa Mossi upon assuming her rightful seat as a Member of this august House. I should also, right from the beginning, say that following the strategic retreat on inter-organ relationships, which was held recently in Kigali, my sense and commitment to cordiality, conviviality, mutual respect and purposeful exchange of information has not only been renewed, but has been reinvigorated.

The importance of this Bill derives from two basic aspects. The Acts of the Community Act within our legislative practices is a very important Act. It is one of those Acts, along with the Interpretation Act that I would in simple terms call a peremptory handmaiden of the legislative process of the East African Legislative Assembly. This Act and the Interpretations Act are pieces of important legislation which avail this august House with a bridge between enactment of Bills and translation of such Bills into actual Acts of the Community for the statute books of the EAC.

First of all, let me remind this House that I am the actual author of the Acts of the Community Act; the Act we are trying to amend. At the time I drafted it in 2003 and linked it to the Committee on Legal, Rules and Privileges to introduce to this House, I was a bit short-sighted to the fact that the Treaty, by the provisions of Article 3, would allow for the expansion of the Community and there would, therefore, be no need for the kind of process we are now undergoing. I take responsibility for that oversight.

The changes we are now bringing about on this Bill are changes which have been necessitated by what I should have foreseen on the basis of Article 3 of the Treaty; the expansion of the country membership of the Community and also the expansion in the programmes and projects of the Community. I am, therefore, very thankful to hon. Lydia Wanyoto-Mutende for her timely introduction of this Motion before the House. (*Applause*) I am also thankful to the Committee on Legal, Rules and Privileges to which I am privileged to belong, for having scrutinised this Bill and incisively coming up with a report which will guide debate and the actual enactment of the Bill. Allow me to comment on each of the proposed amendments as follows:

I would like, first of all, to appreciate the thrust of those amendments which seek to make the Acts of the Community Act well tuned and in consonance with the provisions of the Treaty. The importance of this one is that there is need to always ensure that the legislation passed by this House is in conformity with the provisions of the Community’s primary law, the *Grande*

*norm* of the Community, with the Treaty. Therefore, with regard to the proposed amendments, which are based on the reasoning that the Act should be in conformity with the Treaty, I support this motion. (*Applause*)

With regard to the amendment of Section 7 of the Act, I understand the mover of the motion and the committee to be moving from a pedestal where there is a feeling that the Act by allowing each Head of State 90 days within which to consider and assent or withhold assent to any Bill may give rise to a situation where assent takes an unnecessary long period. Let me give you an example.

There is a possibility that one Head of State may, given the guidelines each Head of State uses in assenting to Bills, take up to a maximum of 90 days. Now, if Heads of State were to take 90 days each in the unlikely event that each one of them took 90 days, then there would be a delay in assenting and, therefore, bring into force any passed Bill. The bringing of the Bill into an Act of the Community may take longer than it is intended through the legislative process.

I understand that the mover of the Motion and the Committee on Legal, Rules and Privileges is informed of this scenario and by proposing an amendment, is trying to address that kind of scenario, which is not quite desirable. However, I would like to caution the House that through this debate, we take into account the fact that Article 63 of the Treaty which requires Heads of State to assent does not require the Summit to assent. In other words, assent here provides for a situation where each Head of State does assent in accordance with the guidelines in his or her country, and not necessarily sit together. So, there are some administrative and practical problems which could be encountered with the abridging of the period to the proposed dates. I just want to bring that caution so that as we debate this enactment, we are well informed – (*Interjection*).

**Ms Byamukama:** On a point of clarification, Mr Speaker, since there may be a problem with this and yet the Treaty is very clear on it, I think we are bound by the Treaty. Therefore, what needs to happen is that Heads of State need to be notified in due time so that they conform to the Treaty requirements by assenting within three months. So, basically, as long the Treaty stands as it is, we cannot defer or allow or be seen to permit a situation whereby there is a period of assent which is more than the three months. It is a Treaty issue.

**Mr Kaahwa:** Mr Speaker, the purpose of my cautioning this august House was to ensure that as this kind of contribution comes we are sure of what we are doing.

I would like to agree with most of the recommendations. I am very happy with the Committee's recommendations on item 3 and 4. Items 3 and 4, according to the Mover had proposed amendment of the definition of "Session" which is provided currently in Section 2 of the Act. Section 2 defines "Session" and also defines the related aspects of meetings and sittings of this House. I have been having sleepless nights since meeting the Committee on the 16<sup>th</sup> because we more-or-less disagreed on the need for the definition of "Session". I looked at the relevant precedents, including the constitutions of the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda for guidance on this matter. I also searched on the Internet and I was finding a bit of a problem in acceding to the proposed definition. I am, therefore, happy that the Committee is recommending that the definition be maintained, and I hope the Mover will agree with us.

Here, the committee is referring to the Westminster tradition, and for the comfort of all the Partner States, for purposes of reducing the intensity of my sleepless nights on this matter, I

had occasion to consult my other colleagues from the Partner State -I must be frank, I consulted only lawyers and not parliamentarians– and they assured me that the equivalent definition of this matter in the bi-cameral parliaments obtaining in the Republic of Rwanda and the Republic of Burundi may not be on all force with what we have, but they are along the same lines. So, I am comforted with these recommendations that the definition of “Session” be maintained as it is and there is no need to amend the Act in that regard. *(Applause)*

I must say I am comfortable with the proposed amendments of the First Schedule. The First Schedule proposes amendments of the enactment formula. That proposal is in conformity with the amendment of the Treaty, which has already come into force, whereby Article 62(3) was amended to provide for an enactment formula whose words rhyme with what appears in the proposed amendments.

I am also happy and I support the proposed amendment of Part 3 of the Second Schedule. The purpose of that amendment is to reflect the fact that the country membership of the Community has been amended and we have five Partner States. Instead of referring to Heads of State of the three traditional Partner States, it is important and imperative to include also the presidents of the Republics of Burundi and Rwanda with regard to the documents which have to be signed on assent.

With those few words, once again, let me say that the spirit I am seeing in this House and in the Community, and the spirit I am feeling, exhibit a new era of inter-organ relations. I believe that all of us will, from now henceforth, having been renewed by the Kigali Spirit, move ahead cordially and purposefully in discharging our various roles and functions. I personally will live by my oath and the provisions of Article 69 of the Treaty to the intent that I am Counsel to all the organs and institutions of the Community. I support the Motion. *(Applause)*

**Ms Valerie Nyirahabineza (Rwanda):** Thank you very much, Mr Speaker, for giving me this opportunity to say a few words with regard to this Bill. First and foremost, I would like to congratulate the hon. Hafsa Mossi for having been appointed the new Minister in charge of East African affairs from Burundi. *(Applause)*

I am a Member of the Committee on Legal, Rules and Privileges and, therefore, I strongly support the report since most of our proposals have been captured. However, there is one point I want to share with you, which in my view needs to be looked at. I do not know whether copies of *the Acts of the Community Act* have been availed to all of us today, but what I want to say is in line with the procedure following the passing of Bills.

Section 6(1) of the Act we are amending states:

*“Whenever a Bill has been passed by the Assembly, the Clerk shall, within 14 days after the Bill has been passed, cause the text of the Bill as passed to be sent to the Community Printer who shall, within 30 days, print 10 copies of the Bill on volume or on paper of enduring quality and send the copies as printed to the Clerk.”*

Section 6(2) states:

*“On receiving the copies, the Clerk shall, within 10 days:*

- (a) Cause to be made in the copies such corrections as related to misprints, typographical errors and wrong references, if any, as are necessary;*

- (b) Carefully compare the copies with the text of the Bill as passed;*
- (c) If the copies are found to be correct, sign on each copy a statement in the form set out in part (1) of the Second Schedule of this Act, and;*
- (d) Send the signed copy to the Speaker who shall immediately submit copies of the Bill to the Heads of State for assent.”*

I just want to say a few words with regards to part (c). My question is what will happen if the Clerk sees that the copies are not found to be correct, at least considering the Bill as it was passed by the Assembly? It means that the copy has to once again be sent to the Printer for some other corrections to be made and in the meantime time is flying. Therefore, in order to allow the Speaker to send those copies to the Heads of State in conformity with Article 62(2) of the Treaty, this point has to be revisited.

I had occasion to express this during our Committee meeting. The timing which is given in order to meet the requirement of the Treaty, especially with regard to assent to Bills in Article 63 needs to be revisited so as to smoothly get out of some problems that may eventually occur as the Community is enlarging. The Speaker will send those copies to different Heads of State, and as the Community is now becoming larger, it will take time. The process of reviewing the Treaty is currently still on-going and I think this point needs more attention.

With those few remarks, I support the motion. *(Applause)*

#### **ADJOURNMENT**

**The Speaker:** Honourable Members, I now adjourn the House until Tuesday at 2.30 p.m.

*(The Assembly rose at 5.10 p.m. and adjourned until Tuesday, 24 February 2009 at 2.30 p.m.)*