



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

Official Report of the Proceedings of the East African Legislative Assembly

58TH SITTING - SECOND ASSEMBLY: SIXTH MEETING – SECOND SESSION

Wednesday, 20 May 2009

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

PRAYER

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

The Assembly was called to order.

PAPER

The following Paper was laid on the Table:-

by the Chairperson of the Select Committee (Mr. Clarkson Otieno Karan)

The Report of the Select Committee to investigate the circumstances under which the Fourth Meeting of the Second Session of the Second Assembly was suspended; and the trend of the financial remittances from partner states to the EAC for the Financial Year 2007/2008 and 2008/2009.

MOTION

FOR THE PRESENTATION AND ADOPTION OF THE REPORT OF THE SELECT COMMITTEE

The Chairperson, Select Committee (Mr. Clarkson Karan) (Kenya): Mr. Speaker, I beg to move_

THAT the Report of the Select Committee to investigate the circumstances under which the Fourth Meeting of the Second Session of the Second Assembly was suspended; and the trend of the financial remittances from partner states to the EAC for the Financial Year 2007/2008 and 2008/2009, be adopted.

Dr Aman Kabourou (Tanzania): Seconded.

(Question Proposed)

Mr. Karan: Mr. Speaker, before I go to the Report, allow me to take this opportunity to thank the Government of Burundi and the National Assembly of Burundi for according us an opportunity to meet in this Chamber. *(Applause)*

Allow me to also extend my gratitude to the Summit for extending the term of the current Chairperson of the Summit for a further three months. I am concerned with that because when we met in Kigali, I made a request that if it were not in contravention of the Treaty, the tenure of the current Chairperson of the Summit should be extended for another one year. I am happy that the Summit recognized this prayer and extended the term of the current Chairperson for another three months. *(Applause)*

Mr. Speaker, the report before this House is a report by a select committee of this House. When the Committee was put in place, I pledged, on behalf of the members of the Committee and the entire House that the Select Committee would do its job without any malice, and look into the issues which were presented before it with an intention of making recommendations that would enable the EAC to look into itself. I want to assure this House that even before I read the report, this report has no malice in it, and you will confirm it after I have read it.

Mr. Speaker, the report is in different parts, but allow me first to say that I wish to thank the members of this committee, which I happened to chair. The Members are hon. Dan Wandera Ogalo, hon. Jacqueline Muhongayire, hon. Dr Sabine Ntakarutimana and hon. Aman Kabourou. *(Applause)*

I want to confirm to this House that this was a committed team of members. The team travelled without any sleep because the work required us to move to all the Partner States. I remember at one stage when we left Kigali for Burundi and a number of us thought that we were going to lose our lives because of turbulence. After we reached Burundi, some of us reaffirmed that they were ready to die for the cause of the people of East Africa. *(Laughter)*

Let me now go to the report. This is a report of the Select Committee established by the House on 18 February 2009, to investigate the circumstances under which the Fourth Meeting of the Second Session of the Second Assembly was suspended. The basis for the

appointment of the Select Committee is provided in Article 49(2) (e) and under rules 77 and 80(1) of the Assembly Rules of Procedure. The Committee was given a specific mandate through terms of reference adopted by the House.

The Committee carried out its assignment in accordance with Rule 79(1) (h), and was expected to present its report during the Fifth Meeting of the Assembly in Nairobi, however, the Committee was not able to do so because of failure to meet some key witnesses, notably the Secretary-General, who was busy with other assignments. The Committee, therefore, felt that it would not be fair to give a report without interaction with the Secretary-General of the Community as the principal executive officer. We requested the office of the Speaker for more time, and it was granted. We have now finalized the job, the report of which I am now going to deliver:

Background

Article 9 of the Treaty for the Establishment of the East African Community (the Treaty) establishes organs of the Community, one of which is the East African Legislative Assembly. The Article in Clause 3 empowers the organs of the Community to perform functions, and act within the limits of the powers conferred upon them by or under the Treaty.

Article 49 provides the following:

1. *The Assembly shall be the legislative organ of the Community.*
2. *The Assembly:*
 - a) *Shall liaise with the National Assemblies of the partner states on matters relating to the Community;*
 - b) *Shall debate and approve the budget of the Community;*
 - c) *Shall consider annual reports on the activities of the Community, annual audit reports of the Audit Commission and any other reports referred to it by the Council;*
 - d) *Shall discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty;*
 - e) *May, for purposes of carrying out its functions, establish any committee or committees for such purposes as it deems necessary;*
 - f) *Shall recommend to the Council the appointment of the Clerk and other officers of the Assembly; and*
 - g) *Shall make its rules of procedure and those of its committees.*
3. *The Assembly may perform any other functions as are conferred upon it by this Treaty."*

Article 55 of the Treaty provides that:

1. *The meetings of the Assembly shall be held at such times and places as the Assembly may appoint.*

2. *Subject to the provisions of paragraph 1 of this Article, the Assembly shall meet at least once in every year at Arusha in the United Republic of Tanzania and at a time to be determined by the Assembly.”*

The above provision is further reinforced by rules 11, 60 and 81 of the Rules of Procedure of the Assembly, which empower the Speaker and the House Business Committee to draw up the calendar for each year. This calendar, which is released at the end of a session, establishes the general outline of the activities the Assembly will carry out the following financial year. The same rules also empower the Assembly, as the only body, to revise its programme. In order to ensure that the Assembly carries out its activities effectively, there is embedded in the Treaty the doctrine of separation of powers. This doctrine is meant to ensure effective management of the affairs of the Community. It is further fortified by Articles 14(3) and 16 of the Treaty, which read as follows respectively:

Article 14(3) “For purposes of paragraph 1 of this Article, the Council shall:

- (c) Subject to this Treaty, give directions to the Partner States and to all other organs and institutions of the Community other than the Summit, Court and the Assembly;”*

Article 16: “Subject to the provisions of this Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Partner States, on all organs and institutions of the Community other than the Summit, the Court and the Assembly within their jurisdictions, and on those to whom they may under this Treaty be addressed.”

These provisions point to the doctrine of separation of powers between the Council, the Assembly and the East African Court of Justice.

The House Business Committee, on behalf of the Assembly, did appoint the period between 8th and 28th February, 2009 as the time when the Fourth Meeting of the Second Session of the Second Assembly would take place in Arusha. The date and venue of the meeting was communicated to the Members by the Clerk of the Assembly through a formal notice on 15 December 2008. However, on 6 February 2009, the Clerk issued a notice of cancellation of the said meeting and duly informed the Members that they would be informed of a new date for convening the meeting. On 9 February 2009 the Clerk issued another notice requesting the Members to report on 10 February 2009 for the Fourth Meeting of the Assembly.

It is against this background that the Assembly made a decision to investigate the events leading to the suspension of the Fourth Meeting of the Assembly since it contravened the Treaty. The Assembly debated and approved a motion by hon. Clarkson Otieno Karan to set up a select committee to investigate the circumstances under which the Fourth

Meeting of the Second Session of the Second East African Legislative Assembly was suspended.

Five Members were appointed to the Select Committee namely:

1. Hon. Clarkson Otieno Karan , the Chairperson;
2. Hon. Dan Wandera Ogallo;
3. Hon. Jacqueline Muhongayire;
4. Hon. Dr. Sabine Ntakarutimana; and
5. Hon. Dr. Aman Walid Kabourou.

The terms of reference as established by the House were the following:

1. Investigate the causes and consequences of the initial cancellation of the fourth meeting of the Assembly (EALA);
2. Ascertain from the EAC Secretariat the schedule of remittances to the EAC since July 2007 to date and compare these to the releases by partner states;
3. Establish the status of contributions from partner states;
4. Establish why different figures in remittances are being quoted for both Rwanda and Burundi and what effect this will have on the operations of the community;
5. Analyze the levels of adherence to the summit directive on the payments for Burundi;
6. Establish the causes for delayed remittances from the partner states and the status of implementation of the Council directive to ensure remittances are done by 31st of December every year;
7. Ascertain the coping measures the EAC has adopted to undertake its activities including but not limited to the utilization of the gratuity fund, the float fund, loans, partnership fund and their current status;
8. Analyse the prioritization of remittances to the Community and the transfer of funds to the Organs of the Community;
9. Make recommendations to the House on each of the above issues and any other matters incidental thereto.

Methodology

The method of work adopted by the Committee was:

1. Receiving evidence;
2. Examination of documents; and
3. Study of documents relevant to the terms of reference set by the Committee.

Acknowledgements

The Committee wishes to thank hon. Monique Mukaruliza, Chairperson of the Council of Ministers; hon. Eriya Kategaya; hon. Dr Diodorus Kamala and hon. Hafsa Mossi – the Members of the Council of Ministers; the Secretary General; the Deputy Secretaries-General for Finance and Administration, and for Projects and Programmes; Director of Finance; Principal Internal Auditor; Senior Budget Officer; Ministers of Finance of the Partner States, the President of Senate and Speaker of Burundi National Assembly, Chairpersons and Members of Budget/Finance Committee of respective Partner States,

Members of EALA, Speaker of EALA, Minister of Justice and Attorney General of Rwanda, Clerk of EALA and the Counsel to the Community, for the invaluable information and evidence availed to it.

The Committee experienced that in some Partner States, it is very easy to access the ministers. For that I would want to sincerely thank the Government of Burundi and their ministers for the manner in which they welcomed the Committee, and for the ease they had in availing information. I similarly wish to thank Rwanda, because the ministers were also readily available. *(Applause)*

In Uganda, I want to thank the new Minister for Finance, who attached a lot of importance to the Select Committee and got an opportunity to interact with the Select Committee despite her busy schedule. *(Applause)*

The Committee also wishes to extend its thanks to hon. Peter Munya, Assistant Minister for EAC Affairs, Kenya, who was able to appear before the Committee in Bujumbura at the request of the Speaker. *(Applause)*

The Committee also wishes to extend its gratitude to AWEPA for facilitating its work. In relation to this, the Committee observed that the Community must move with speed to ensure that Committee work of the Assembly is financed by funds of the Community. We all know that donors will require information on issues, which they have put their funds into. I want to ask this Assembly that if the condition was that they had to see the report of the Select Committee first simply because they provided money, would this Assembly be an honourable Assembly? So, I would like to request the Council of Ministers, the administration of the Community, under the Secretary-General, to ensure that the work of the committees of the Assembly must be given due importance because it is to enhance the activities of the Assembly and not for any other reason. We must move away from bringing donors into our bedrooms. *(Applause)*

Observations

Causes and Consequences of the Suspension of the Fourth Meeting of the Assembly:

The Clerk of the Assembly did requisition for funds on 7 January 2009 to enable the Assembly embark on its activities, but received no communication until 6 February 2009, when he was informed that there were no funds. The decision by the Secretary-General was based on a fact that by Friday 6 February 2009, Partner States had not remitted the funds he was expecting to use for the meeting of the Assembly. The Deputy Secretary-General, Finance and Administration, with full knowledge of the Secretary-General, wrote the letter, which in effect led to the suspension of the meeting of the Assembly. However, a few days prior to the suspension, the Chairperson of the Council of Ministers, the hon. Speaker and the Secretary-General had held a meeting in which they discussed the programme for the Fourth Meeting of the Assembly. The Secretary-General did not raise the issue of there being no funds for the Fourth Meeting of the Assembly.

When the Assembly was re-summoned on the 9th of February 2009, the Secretary-General transferred US \$200,000 from the General Reserve Account to the Account of the Assembly to enable the Fourth Meeting of the Assembly take place as previously scheduled. It is only the activities of the Assembly which were suspended while other organs continued to function normally.

The Committee observes that the duty to call off a meeting of the Assembly is a power vested in the Speaker and any other person or organ purporting to do so would be in breach of the Treaty. The Committee noted the views of some of the Members of the Assembly that the financial crisis did not exist and that it was merely a game of superiority complex aimed at showing that the Assembly could be controlled through administrative decisions.

Neither the Council of Ministers nor any Member of the Council in their individual capacities was consulted prior to the suspension of the activities of the Assembly. The ministers are not even aware of the source of funding, which enabled the Assembly to subsequently sit.

Membership of the East African Legislative Assembly is a political career and perception by the public that it is not a reliable institution will discourage East Africans who would otherwise offer themselves to serve. Secondly, Members of Parliament who come to EALA are required to resign other public offices, and if EALA is not a secure working place, very few people will express willingness to work as members of the Assembly and the integration process will be undermined.

The unfortunate decision to suspend the sitting of the House on the ground that no money was available was captured by the press in all the five Partner States. This has had grave consequences on the public perception of the viability of the Community. The suspension casts doubt on whether EALA is a fully-fledged organ, and whether it has authority to manage its own affairs. When the sitting was suspended, a lot of information was released to the press leading to wrong conclusions that the EAC has no money. People's confidence in the EAC integration process is shaken.

The absence of the executive staff from the station in Arusha contributes to mal-administration, and the particular absence of the Secretary-General in Arusha contributed to the unfortunate decision to suspend the Fourth Meeting of the Assembly. The Committee observes that in a period of one year from March last year, the Secretary-General has been out of station (Arusha) for one hundred and seventy seven (177) days excluding the return travel days, which are fifty (50) in number. This totals to 227 days, which is out of a possible 250 working days. In such a situation, it may be difficult to be on top of things, especially in administration.

The interpretation of the Treaty as to when the Republics of Rwanda and Burundi joined the Community led to the development of two different scenarios as to how much was due from each of those countries. The lack of an authoritative decision on this matter in time led to delays in remittances.

Lastly, because the Partner State budgets for the Community are in the local currencies at the prevailing exchange rates, there is need to release the funds immediately to avoid fluctuations, which cause fewer funds to be received in Arusha.

Status of Contributions from Partner States

The Partner States have different methods by which they remit funds to the East African Community. Whereas Burundi, Rwanda and Tanzania remit funds directly to the Secretariat through the ministries responsible for East Africa, Kenya does so directly to the respective organs of the Community. Uganda on the other hand combines the two methods in that the Parliament of Uganda remits funds directly to the East African Legislative Assembly and the Ministry of EAC releases the rest to the Secretariat.

As of February 2009, the information on the status of contributions, given by the Secretariat is as follows on the status of contributions:

1. Republic of Kenya: US \$2,449,716; outstanding amount is US \$3,155,017.
2. United Republic of Tanzania: US \$3,749,608; outstanding amount is US \$1,855,125.
3. Republic of Uganda: US \$3,932,971; outstanding amount is US \$1,671,762.
4. Republic of Rwanda the outstanding amount is US \$5,605,135.
5. Republic of Burundi: US \$392,408; the outstanding amount is US \$607,592.

On the other hand, Kenya states that the outstanding is US \$1,594,815; Tanzania puts the outstanding amount at US \$1,003,229.49; Uganda states the outstanding as zero; Rwanda puts outstanding at zero; and Burundi puts it at US \$607,592.

The Committee observes that it is possible that some Partner States may have remitted more funds after the 28 February 2009. It was unable to get specific information as of 28 February 2009, from those Partner States.

There has been confusion emanating from the fact that there are two different scenarios on how much Rwanda and Burundi owe the Community. This lack of clarity on the part of the Secretariat has led to a situation where the Community has been viewed as not being decisive on this matter. The matter is so confusing that on the recommendation of the Council of Ministers, the Secretary-General has referred it for interpretation to the Sectoral Council on Legal and Judicial Affairs, despite the fact that the Counsel to the Community had already given interpretation on the matter.

The Republic of Burundi was required to remit US \$1,000,000 for the Financial Year 2007/2008 which it fulfilled, and is on course of completing this financial year's outstanding balance. At the time the Select Committee was in Burundi in March 2009, the Republic of Burundi was due to pay in April 2009 the sum of US \$607,000, which is the total outstanding balance.

The argument that non-payment for the Republic of Burundi by the Republics of Uganda, Kenya and Tanzania was because of uncertainty of the date of accession, is a lame excuse because each Partner State could still have remitted funds according to its understanding of the date of accession.

Implementation of the Summit Directive on Payments for Burundi

On 26 June 2008, the Summit of the EAC Heads of State accepted the request of Burundi to pay US \$1,000,000 as budget contribution for the two financial years of 2007/2008 and 2008/2009. The Partner States undertook to pay in equal share the shortfall in the contribution arising from Burundi's request. It was, therefore, expected that the four Partner States would soon thereafter remit the amounts due from them. However, for the Financial Year 2007/2008, the Council resolved to apportion the difference based on actual expenditure, thereby contravening the Summit Directive. This was occasioned by the mis-advice of the Finance and Administration (F&A) Committee of the Partner States to the Council of Ministers, and which has led to continued embarrassment of the Republic of Burundi.

The remittances, which were apportioned, are no longer debts of the Republic of Burundi but of the other four Partner States of the EAC. It is, therefore, erroneous for the books of accounts at the EAC headquarters to wrongly classify Burundi as being indebted to the Community in respect of those debts. The four Partner States, as at the time of the suspension of the Assembly, had failed to meet their obligations because it is alleged that auditors have yet to determine exactly how much is required to be paid by each Partner State out of the work plan of the Financial Year 2007/2008. Only then would the Community apportion payment by each Partner State. Mr Speaker, in one of our interviews with the Secretary-General, it was being said that Burundi has now over-contributed to the East African Community.

Causes of Delayed Remittances

At the 15th Extra-ordinary meeting of the Council of Ministers held in June 2007, the Council of Ministers took note of the status of Partner State contributions to the Community and urged the Partner States to effect their contributions during the first half of the financial year. In respect of Rwanda and Burundi, a decision was reached for them to remit quarterly until such a time when they would harmonize their respective financial years to that of the EAC. None of the original EAC Partner States had complied with the decision of the Council to remit funds due to the Community by 31st December. On the other hand, the Republics of Rwanda and Burundi continued to comply with quarterly remittances. At the time the committee was in Rwanda and Burundi in March, both countries had made their remittances on time and there was no money outstanding for the quarter. The outstanding funds were due in April.

Cash flow problems in Partner States, negligence in respect of some officers in Kenya and failure to have enforcement mechanisms in Partner States to ensure remittance are given as the reason for delayed remittances.

Project Financing, Loans, Float Funds, Partnership Fund and Gratuity Fund

The East African Community operates thirty seven (37) accounts, most of which are project accounts. Donors insist as a condition on the opening of separate accounts in respect of projects they fund. This is possible because the Council of Ministers did in 2001 give a blanket approval to the Secretariat to open accounts. The number of accounts had risen to over one hundred and twenty (120) but with the introduction of the Partnership Fund, many of the accounts were consolidated. There is no requirement for the Secretariat to seek approval for opening of project accounts. It is only in respect of funds from the Partner States that approval is required.

There is an account specifically for gratuity in which is deposited money for payment to officers of the Community at the end of their service. The money on this account, therefore, belongs to individual members of staff and the Assembly. The Secretariat merely holds this money in trust. Unfortunately, the account has in the past been accessed on the authority of the Secretary-General in consultation with his deputies. An example of when money was drawn from this account to finance the activities of the Community is the sitting of the Assembly in Kigali, Rwanda in September 2008.

Gratuity earns interest. However, when it is paid out to members and staff at the end of their service, the interest is retained by the Secretariat. It is claimed this is so because until end of service, the money remains the property of the Community. This, therefore, means that interest is being earned by the Community and not the owner of the gratuity.

There was also what was known as the “Float Fund” which was a means by which late remittances from the Partner States after the end of a financial year were kept by the Community. This fund was abolished by the Council of Ministers, but another called the “General Reserve Account” was immediately opened. It is operated in more or less the same manner as the float fund was. As at the time of suspension of the Assembly’s sitting in February, the General Reserve Account had a balance of US \$2,000,000; US \$1,500,000 of which was in a fixed deposit while US \$500,000 was on a current account. It was out of this current account that US \$200,000 was transferred to enable the Fourth Meeting of the Assembly to take place.

The Committee observes that although the Secretariat did invest US \$1,500,000 in fixed deposits; there is no investment policy developed by the Council of Ministers. Neither has the Council authorized any investment.

The Partnership Fund is a mechanism through which donors pool their resources together to finance activities of the Community. It is managed through a steering committee comprising the Secretary-General, the Permanent Secretaries from the Partner States and the ambassadors of the participating countries. Funds are disbursed from this fund to meet activities of the Community as determined by the steering committee.

Prior to September 2008, the Community was using a pre-auditing system. Since September, however, it has adopted a post audit system. To implement it, manuals are being developed and are yet to be adopted by the Council of Ministers. The internal auditors now only examine financial statements and not accounts. It is seriously understaffed and, therefore, unable to cope with the wide range of activities.

The committee notes that the Secretary-General did grant the Assembly and the Court a sub-accounting status. This enables the organs more autonomy in the management of their finances. However, there has not been established a reporting mechanism between the sub-accountants and the accounting officer.

Prioritization of Remittances to the Community

When funds are received from Partner States, cheques are written in favour of the respective accounts of the EACJ and EALA transferring funds, and the balance remains with the Secretariat. The transfers are based on the percentages reflected in budget allocations. Prioritization of money received from Partner States is undertaken by the EAC Secretariat.

In order to address the obvious imbalances in allocations, it is necessary to address the problem at source, which is Partner States' failure to allow the Secretary-General the free hand envisaged by Article 132 of the Treaty.

Other Financing Options for the EAC

The method of funding the budget of the Community through equal contributions is not rational. It has led to incremental budgeting as opposed to activity based budgeting.

The budgeting process of the Community is flawed as it does not include the Partner States at the inception of the budget process. Instead, the Partner States merely inform the Community on what they will contribute and allocations are done within those figures.

The Council placed a 10 percent annual increment on the budget. This is a decision made in 2005. The East African Community cannot, therefore, budget according to its development strategy because of this decision of the Council.

At the inception of the Community, the Community's budget was funded mainly by the Partner States and donors contributed only 20 percent of the budget. However, this percentage has grown and by the last financial year, it had increased to 48 percent. Donor funds account for 82 percent of the funding for EAC projects, and they specify areas of their interest. Currently, the donor funds are put into areas of their interest such as trade, statistics, EPAs negotiations and the Common Market. Accordingly, the staffs of the Community carry out those projects and are more of donor than Community employees. As a result, members of staff of the Community spend more time out of station as evidenced by the travel itineraries of the top officials. The Secretariat has persistently

urged the Partner States to take up some of the critical areas being funded by donors but to no avail.

The Partner States are guided by their country vision statements and use these as the basis upon which they act and budget for their activities. Integration matters should be harmonized and explicitly stated in the respective visions if more focus and attention is to be given to the EAC.

Mr Speaker, when we had opportunity to see some of the vision plans of our Partner States, there is no express mention of how our Partner States are moving towards integration. They acknowledge they support it, but since this is the document they have when they are budgeting for activities in those Partner States, they have not given this matter serious attention.

Findings

1. Interpretation of Article 71 of the Treaty is at the centre of the suspension of the Assembly's activities. The interpretation given to the term "Principal Executive Officer" in Article 71 waters down the doctrine of separation of powers. Reading that Article together with Article 4 of the Treaty has led to an erroneous interpretation that the Secretary-General is the supreme authority of the Community. This therefore puts the Secretary-General in a position where the person holding that office can suspend activities of the Assembly. That interpretation is wrong because Article 67(3)(a), read together with Article 71 of the Treaty clearly shows that the Secretary-General is a civil servant who facilitates the work of the Community.
2. Notwithstanding the interpretation placed on the term "Principal Executive Officer", the Secretary-General breached Article 55 of the Treaty, which provides for the Assembly to set its own agenda. It was in contravention of the well settled principle of the doctrine of separation of powers. This principle is entrenched in governance structures in all the EAC Partner States, and it is, therefore, surprising that it would be overlooked by the Secretary-General. The doctrine of separation of powers is enshrined in Article 71(1)(k), which prohibits the Secretary-General from setting the agenda for the meetings of the Court and the Assembly, as well as in Articles 14 and 16 of the Treaty.
3. Had the Council of Ministers been consulted by the Secretary-General, the letter suspending the sitting of the House would not have been written.
4. The business of the Assembly was handled in a lukewarm manner by the Secretary-General who, in a meeting with the Chairperson of the Council of Ministers and the hon. Speaker a few days prior to issuing the letter, did not bring it to the attention of the Minister and the hon. Speaker that there were no funds for the Fourth Meeting of the Assembly.

5. At the time of the suspension of the sitting, the Community was possessed of sufficient funds on the General Reserve Account to enable the Assembly conduct its business.

Mr Speaker, in our interaction with the Secretary-General, he said that they could not touch that fund simply because they would have lost interest, which was due in the next months. Partner States give their contributions for the activities of the Community, but not for investment. Any decision to give investments in terms of interest priority vis-à-vis the sitting of an organ was erroneous and misplaced.

6. It is not true, as reflected in the books of accounts of the Community, that the Republic of Burundi had made zero contribution for the Financial Year 2008/2009. The amount outstanding for the Republic of Burundi, which is due in April 2009, is the sum of US \$607,592. For the Year 2007/2008, the Republic of Burundi fulfilled her obligations.

7. The Republic of Rwanda complied with the decision of the Council of Ministers to pay in quarterly instalments, and was not therefore in arrears at the time of the suspension of the Assembly. The impression, therefore, created that the Republic of Rwanda was indebted to the Community was wrong.

8. The books of accounts in respect to remittances have not been properly kept, and the publication of two different scenarios based on when the Republics of Rwanda and Burundi are said to have joined the Community has added to the confusion.

9. The Summit directive that the four Partner States assume, in equal proportions, the contribution of Burundi was misinterpreted by the Committee of Finance and Administration from the Partner States. That mis-interpretation led to mis-advice to the Council of Ministers. The consequence of that error was to order a re-audit of the Community's accounts to determine what each Partner State should contribute, yet the amount due from Burundi to be equally shared by the Partner States was known.

10. The operation of donor accounts is dictated by a memorandum of understanding drawn between the Secretary-General and a member of the donor community wishing to finance a project. Non involvement of the Counsel to the Community and the Director of Finance in negotiations leading to the drawing of memoranda is partly responsible for the mushrooming of project accounts.

11. The setting up of a Partnership Fund as a solution to the opening up of many accounts has not solved the problem.

12. The Deputy Secretaries General are appraised, supervised and disciplined by the Secretary-General while there are no regulations by the Council of Ministers to provide for the appraisal, supervision and discipline of the Secretary-General.

13. The East African Community Development Strategy 2006–2010 recommends that the financing of the East African Community be pegged to 1.5 percent of the Partner

States' customs and revenues, and this would fully finance the budget of the Community. This recommendation is made because the present system of equal contributions has been found wanting. However, the recommendation has not been considered by the Partner States and, accordingly, the Community has not been following this proposal. The Summit had directed the Council of Ministers to consider financing the Community through a percentage of the customs revenue, but the Council in September 2008 referred the matter to the Partner States, who were required to report back in December 2008 but have up to now not given their opinion on the matter.

14. The Secretary-General, who is the principal executive officer of the Community, spends a lot of his time out of station. Over a period of one year, he has been out of station 50 times accounting for 177 days. This accounts for 227 days out of a possible 250 working days. This weakness has led to mal-administration. To compound this, there is no permanent presence of the Council of Ministers in Arusha.

15. The absence of the Council of Ministers out of Arusha directly contributed to the unfortunate decision to suspend the sittings of the House by a civil servant (the Secretary-General). The fact that under the Treaty, the Council is required to meet twice a year is evidence enough of a political vacuum in Arusha.

16. The budget process of the Community is greatly flawed in that it is non-inclusive, and civil servants from Partner States play a vital role in its formulation. The budget of the Community is expected to be prepared by the Secretary-General and determined by the Assembly on the recommendation of the Council of Ministers. This process has, however, been hijacked by the civil servants from the Partner States.

17. The Secretary-General is described as the principal executive officer of the Community. The Community is defined as the Partner States. The Secretary-General cannot be the chief executive officer of the Partner States, neither can he be the chief executive of the organs of the Community, which include the Summit, Council of Ministers, East African Court of Justice and the East African Legislative Assembly. Principal executive officer in this context is in respect of co-ordinating, and not controlling, the organs of the Community as alluded to by the interpretation of the Sectoral Council on Legal and Judicial Affairs.

Recommendations

1. The Council of Ministers should enforce one of the fundamental principles to be found in Article 6(d) of the Treaty, which requires the Community to adhere to the principles of democracy and good governance. Separation of powers is a well settled principle of democracy. This will also be in line with the decision of the East African Court of Justice in the case of Mwatela, Wanyoto, Sepetuu vs. the Secretary-General of the East African Community.

2. There is an urgent need to establish political presence in Arusha through a provision in the budget for the Chairperson of the Council of Ministers to attend to matters of the Community.
3. The Secretary-General should establish a practical working relationship between the organs of the Community, which should bring together the heads of the organs in periodic meetings in line with the resolutions of both the First and the Second Assembly.
4. Until the Council of Ministers develops an investment policy, the Secretary-General should immediately cease investing Community funds. Further, the Council of Ministers should put in place a legal framework for the gratuity funds.
5. There is need for the Council of Ministers to appraise itself with the problems of the Community and to address them in a timely manner.
6. The Summit directive to the Council of Ministers to consider the proposal for pegging contributions to the customs collections, which the Council referred back to the Partner States, should now be recalled from the Partner States for consideration by the Council.
7. There is need to consolidate the many accounts of the Community and to ensure that future memorandums of understanding with donors are reached with the consultation of the Director of Finance and the Counsel to the Community. The blanket decision by the Council authorizing the opening of donor accounts should be reviewed with a view to requiring approval of the Council.
8. The East African Legislative Assembly should assist the Council of Ministers to formulate debate and recommend to the Council, regulations governing the appointment, supervision and disciplining of the Secretary-General.
9. The Partner States should take back the initiative from the donors by making sufficient provision of funds for programmes and projects, which will in turn ensure that the staffs of the Community are focused on the work of the Community instead of the numerous travels, workshops and retreats presently funded by the donor community. Needless to say, the present *modus operandi* is detrimental to the Community. Moreover, none of the reports of those workshops were availed to the Committee.
10. In the meantime, in a bid to avert any delays, the Council of Ministers is urged to recommend to the Partner States that the funds to the Community be a first charge on their respective consolidated fund accounts, and should be remitted directly from the Treasury and or the central banks.
11. Although Article 134 empowers the Audit Commission to audit the accounts of the Community, the Council of Ministers can, under its wide powers stipulated in

Article 14(3)(a), appoint external auditors to audit the accounts of the Community. This recommendation is grounded in the fact that the Auditors General in the Partner States are ineffective because of their busy schedules.

12. The Secretary General should tender in an unconditional apology to the Speaker and the House in writing.
13. In future, committees, including select committees, of the Assembly should be funded by the Community.
14. The Speaker should put in place mechanisms to follow up the recommendations of the House.

Conclusion

In conclusion, the committee wishes to state that the people of East Africa have high expectations in the integration process. They have entrusted the organs of the Community with the duty of ensuring that their aspirations are realized. It is incumbent upon the political leadership and the technical arm of the Community to work together, particularly in ensuring a sustainable budget, political supervision and commitment. The Treaty provided for a system of checks and balances to ensure that we examine ourselves from time to time so that the objectives of the Community are attained. And this, Mr Speaker, we have done.

I beg to move that the report be adopted, together with appendices attached. (*Applause*)

(Question proposed.)

ADJOURNMENT

The Speaker: Hon. Members, I think this is a long report with a lot of annexes, which are part of the report which I don't think have been availed to you yet since they are still being photocopied. So, to give you time to read the report, I will now adjourn the House until tomorrow at 2.30 p.m.

(The Assembly rose at 3.30 p.m. and adjourned until Thursday, 21 May 2009 at 2.00 p.m.)