



EAST AFRICAN COMMUNITY

In The EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

49TH SITTING – SECOND ASSEMBLY: FOURTH MEETING – SECOND SESSION

Tuesday, 24 February 2009

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

PRAYER

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

(The Assembly was called to order)

PAPERS

The following paper was laid on the Table:-

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

The Report of the Committee on Agriculture, Tourism and Natural Resources on the East African Community Tourism and Wildlife Management Bill, 2008

BILLS Second Reading

The Acts of the East African Community Act (Amendment) Bill, 2008

(Debate interrupted on Thursday, 19 February 2009, resumed)

The Speaker: Hon. Akhaabi, if you could come up here please!

Mr Gervase Akhaabi (Kenya): Mr Speaker, for the reasons that have been explained regarding the realignment of our laws to the new realities of the new membership of Rwanda and Burundi, I fully support this motion. I also wish to record my support for the large portion of the Report by the Committee, except for a small matter on which I wish to recommend that the definition of “Session” be reconsidered.

My understanding of this Bill is that the Mover of the motion for the Bill intends to align the definition and meaning of “session” at this Assembly with that at the national assemblies. In the national assemblies, a session is not the equivalent of a term. The problem that we have in our regime and framework is that the Treaty for the Establishment of the East African Community does not give the term of the Assembly; it gives the term of a Member of the Assembly, and I believe that this is a matter for the amendment of the Treaty. This is contained in Article 51 of the Treaty, which states: “*Subject to this Article, an elected member of the Assembly shall hold office for five years and be eligible for re-election for a further term of five years.*” So, the term that is given is personal to the Member and the term of the Assembly is not defined.

In the Partner States, the term of the national assembly is clearly defined, either five years or whatever period, beginning from the time when it is first sworn in to the time when it is dissolved or on the expiry of five years or that kind of time. The other difference between our Assembly and the national assemblies, which we must jealously guard and protect, is that this Assembly, unlike the national assemblies, has the full control of its calendar. If you look at the provisions of Article 45 - and again this is important for us to note and be selfish in guarding it - *(Laughter)* -

Mr Kategaya: You should be objective.

Mr Akhaabi: Mr Speaker, guard it.

The meetings of the Assembly shall be held at such times...so it is the Assembly itself to determine when it should meet. In the national assemblies, at least in Kenya which I represent in this Assembly, the national assembly’s life can be strangled. It can be truncated at any time by an executive feared. The national assembly calendar in Kenya can be truncated by prorogation if, for example, there is a sensitive matter before the House. Here we do not have that kind of thing, and it is important to notice this difference. Every Assembly that I know in East Africa wants to have full control of its calendar. This being the case, we ought to realise the differences.

The definition from Westminster tradition is that a session begins when the national assembly or a parliament first sits until it is prorogued. Prorogation is again royally feared tradition. It is a royal act by Her Majesty the Queen or His Majesty the King of England who decides when Parliament should sit and when it should not sit. The queen or royalty would then prorogue Parliament at will. Parliament here cannot be prorogued at will. It decides when it sits and when it does not sit. So, a session would

move from the point when it first meets to the point when it is prorogued or when it is dissolved.

Again, under the Treaty for the Establishment of the East African Community, there is no express provision for dissolution of this Assembly. The only place where we find a provision for dissolution of the Assembly is in Rule 86 of the Rules of this Assembly, which states, “*At the expiry of the term of the Assembly*” -and I believe that the framers of these rules must have also been a little misguided on this because there is no term of the Assembly- “*The Heads of State or government of the Partner States shall issue a proclamation dissolving the Assembly*”. So, it is only in the Rules that there is reference to the dissolution of the Assembly, although there is no term of the Assembly. I believe it is necessary to define the term “session” as currently defined under the provisions of the Act of the Assembly that we are proposing to amend. A session would be equivalent to the life of the Assembly.

I see hon. Kategaya shaking his head, but actually that is the position - but it cannot be. A Session cannot be the same thing as the Assembly – (Interjection).

Mr Kategaya: No, the term.

Mr Akhaabi: The term of the Assembly –

The Speaker: Hon. Akhaabi and hon. Kategaya, we are not in a town hall meeting debating. You are in the Assembly. (Applause)

Mr Akhaabi: Thank you, Mr Speaker. The definition of “session” in our Rules is picked from the definition of “session” under the Act that we propose to amend, and “session” is defined as: “*Sittings of the House commencing from when it first meets after its prorogation or dissolution and terminating when the Assembly is prorogued or dissolved without having been prorogued.*”

What this means is that in our case, our first session would have started when we were sworn-in in this Chamber or downstairs on the 4th of June 2007 and it would go on until this Assembly is prorogued. Now, this Assembly cannot be prorogued until this Assembly is dissolved. This Assembly cannot be dissolved under the Treaty except under our Rules, and our Rules say that it is when the term of the Assembly ends, which I take to mean when my five years in this Assembly expire. So, a session would run from that day in June 2007 until my five years in the Assembly end, and that is ridiculous. We must give the term “Session” a reasonable meaning that is in conformity with the practice in the region, which is basically one year or such period that is less than a year.

Mr Speaker, I support the motion, subject to those amendments which I will be moving to the Bill. Thank you. (Applause)

Mr Daniel Wandera Ogalo (Uganda): Thank you, Mr Speaker, for giving me the opportunity to contribute to this motion. I am a member of the Committee, and I support the report of the Committee, except for one small area which has been ably pointed out by hon. Akhaabi very eloquently.

Perhaps I could give some background to explain why there appears to be some confusion in the definition of “session”, “meeting”, “dissolution”, and “proroguing”.

When the first Assembly first met in 2001, I had the honour and the privilege to serve on the Legal Committee. At the time, there was a big complaint that Members were generally just sitting here, and there was no work they were doing. So, under the leadership of the hon. Jared Kangwana, who was the Chairman of the Legal Committee, we made a decision that members of the Committee should come up with Private Members Bills so as to get work to Plenary for the enactment of relevant laws.

I know for a fact that, for example, hon. Marando, who was representing Tanzania, was assigned to come up with the Interpretation of the Assembly Bill, which he did. I was assigned to come up with the Privileges and Immunities Bill, which I did, but they were represented to the House by Jared Kangwana. I know for a fact that the Acts of the Community Bill, which is now being debated here, was devolved by hon. Med Kaggwa, with Obel, a Legal Draftsman from Uganda helping us in drafting.

In the process of drafting these laws, we were working with documents which were already there. We had already adopted the Rules of the House, which had a definition for “session” as it stands today. Accordingly, when we came to consider the Med Kaggwa proposal, we lifted the interpretation which was in the Rules and placed it in the Act, word for word. These rules came first; they came far earlier than the Act. Now later on, it has come to transpire that we had made some errors, which I think hon. Gervase Akhaabi has ably pointed out. We made an assumption that there was a term fixed in the Treaty, which is not true, and that was an error. We provided for proroguing, which was also another error. It is therefore important that this time round when we are considering this Bill, which has also been brought as a Private Members’ Bill, we clear this up so that we are left in no doubt on what we want to mean.

From what hon. Akhaabi has read, obviously we would be at variance in terms of definition of a session as we know it because it would mean that a session for us would be actually the whole term. Now that is at variance. It is necessary for us to have meanings which, as we know them, are available even in our Partner States: A “sitting” like we are having now; a “Meeting” which is continuous sittings and a Session, which is a series of meetings. And we should not confuse these with the term of a Parliament.

Surely, the definition we provided when we made these Rules in 2002 that: “A *“Session” means the sittings of the House commencing when it first meets after its prorogation or dissolution and terminating when the Assembly is in prorogation or dissolved without having been prorogued*” is not clear, and it will be very difficult to follow what we actually meant in this. The only reason I can give for this is that when we came for the first Assembly, we found the Draft Rules. We did not draft these Rules word by word; we found that some people had drafted them for us. So, we were asked to adopt them, we adopted them even before we were sworn-in. That is the fact. So, these things of proroguing and dissolving, we found them here and adopted them. Unfortunately, when we came to now make amendments to these Rules, we did not go deep enough to bring out these errors, and now this Bill is an opportunity to clear those errors.

For us to continue with this definition as it stands in the Act and also in the Rules is to continue in a mistake when we are aware it is a mistake. If there is a mistake and we are not aware of it, we can continue with it, but when a mistake is pointed out, it is only fair that we stand up and correct it. Therefore, I support the motion. I support the adoption of the report of the committee subject to the amendments which will be brought by hon. Akhaabi, and I recommend for Members to accept those amendments. *(Applause)*

Ms Nusura Tiperu (Uganda): Thank you very much, Mr Speaker. I would like to thank you for giving me the opportunity, but I also take this opportunity, like my colleagues did last week, to officially congratulate sister Hafsa upon being appointed a minister to the Community from Burundi. We are very happy as women of East Africa - *(Applause)* - and as women in this Parliament. We hope that President Nkurunziza gets our thanks; maybe when we visit Burundi we will do that directly. As you can see, Mr Speaker, the sitting arrangement is very good, with hon. Mukaruliza at the beginning, followed by hon. Kategaya...there seems to be a very good spirit - *(Applause)* - and I am sure hon. Kamala from Tanzania is already enjoying the presence of hon. Hafsa, and that she has made that Bench more palatable than it was before. *(Laughter)*

As hon. Kabourou told us last week that we should wish ourselves a happy new year, in the same spirit, I wish our Speaker and all my colleagues a happy year and pray that we have good health this year.

On a special note, I would like to officially welcome my brother, Issa Ngendaku... who was not feeling well the last time we were in Rwanda during the “*Umuganda*” - *(Applause)*- in Miyobe.

The Speaker: Hon. Tiperu, we do not have brothers and sisters in this House. We have hon. Members. *(Laughter)*

Ms Tiperu: Thank you for that correction, hon. Speaker. I am very happy that hon. Issa Ngendaku – *(Laughter)* - is around. I am really impressed because I have been with him in our committee and today he is in the Plenary. We pray that all of us remain in good health.

I would like to welcome Members back from Uganda, and I hope that while in Uganda you enjoyed your stay. I also want to thank all the Members who went around for the consultations on the Common Market, and in a special way I would like to thank hon. Patricia Hajabakiga, who was the head of our delegation to Rwanda. We had a good time in Rwanda, including attending the Rwandese National Dialogue, which is a forum where all the leaders of Rwanda, including those in the Diaspora, exchange views on how to govern their country.

During the same conference, we met a number of people who actually proposed that that forum could be emulated if the Council of Ministers would consider the Community having a regional dialogue where East Africans inter-face with their leaders in the region to discuss where they would love the East African Community to be. I hope the Council of ministers will look at the issue of having a regional dialogue

because we have a lot of expertise in the Diaspora. And if all these synergies are brought together, I am sure we will have a lot of achievements.

I was intrigued to stand and support the motion because of the manner in which the Counsel to the Community spoke last week. I have been in this Parliament, not for a very long time but since I came here, I have never seen the Counsel to the Community in a more jovial mood than he was in last week - *(Applause)* - using very heavy words. I wondered whether there was nothing more that could have made him so happy, but only to realise that actually the Counsel to the Community this week is celebrating his 14th wedding anniversary and all that is impacting on the way he is working. *(Laughter)* More so, his son Kajwenge is now eleven years and so as a father, he is in good spirits. I think that is going to help us very much, especially in the way he will be advising the Community. I am sure we are going to come up with many more issues on his Table – *(Interjection)*.

Mr Sebalu: Given the preamble to the debate - *(Laughter)* -

The Speaker: Hon. Tiperu, you can go ahead.

Ms Tiperu: Thank you for saving me from hon. Sebalu. I was intrigued, like I told you, because of the manner in which the Counsel to the Community made his presentation, and I am glad he did that way.

I also want to thank hon. Lydia Wanyoto for having thought about this motion. *(Applause)* I am very happy, and it is on that basis that I vehemently support the motion. I support this motion because it takes care of the enlargement of the Community. Secondly, it is in line with the remarks of the Chairman of the Summit while we were in Kigali when he called upon Parliaments to consider amending Acts that did not take care of Rwanda and Burundi. In that spirit, we are in the same line.

I am also supporting this motion because it shows some areas which could have been neglected. It also shows some inconsistencies in the Treaty, a case in point being Article 62(3) which indicates that the Bills will be enacted by the East African Community and yet the power of enacting Bills is vested in the Legislature. Following that, I hope the High Level Task Force that you constituted, Mr Speaker, will consider presenting the committee's view, on changing this part of the Treaty, to the Council of Ministers.

I am happy that the Council of Ministers is here to hear the recommendations of the East African Legislative Assembly on the amendment of the Treaty, and I hope the Council of Ministers will give us some time this week.

Mr Speaker, with those few remarks, I beg to stop here and thank the Chairman of the Committee for a very good job done. His report was precise, clear and I never found any difficulty in reading it. If I go on too much, they will say “*mwana wa Africa*” - *(Laughter)*. *Asanteni Sana*.

Ms Dora Kanabahita Byamukama (Uganda): Mr Speaker, I will go straight to the point. I support the motion. I thank hon. Lydia Wanyoto for moving this Private

Member's Bill, which has enabled us to consider Section 7 of the Acts of the East African Community Act.

I would like to recap some of the words which have been said by hon. Wandera Ogalo, who was a Member of the first Assembly. He said that there could have been a mistake in defining the word "Session". When you consider the kind of issues that have been raised in respect to only one section of an Act of the East African Community, you will realise that we may have many more mistakes somewhere in the other Acts of the Community, and, therefore, I would like to pose a question as to what the implications of such mistakes are to us as users of these laws.

Having said that, I would like to propose that this Assembly provides time so that the Committee on Legal, Rules and Privileges takes time to audit all the Acts of the Community to ensure that they are aligned with the Treaty because, as you have already noted, just from one section 7, you have about five points which have been raised clearly showing that there could be other mistakes elsewhere.

On another note, I would like to allude to legislative practice in respect to drafting. And this is in respect to, for example, what we call the three Cs. The first "C" is "consistency", and it is very obvious that when you say three months in the Treaty, it does not mean 90 days. The second "C" is "certainty" and, again, referring to three months is not 90 days. And then the third "C" is "clarity", and the issue of lack of clarity was ably brought out by hon. Akhaabi. Therefore, with this in mind, it is very clear that there is a duty upon us to take this task that we have before us of legislating to ensure that all the laws that we have do conform to the Treaty.

I would also like to allude to the issue of what is known as consequential amendment. Now that we have the Treaty about to be amended, I presume that there will be other areas which will obviously require consequential amendment and, therefore, the question that I would like to pose to us is as to whether we shall be bringing in Bills one by one rather than looking at all the Acts in a wholesome manner. We need to seriously consider what we need to do as the Assembly, especially as regards these two areas because this is only part of the laws. It is only on one section, and yet it has so many aspects that need to be addressed.

I would also like to point out a very important aspect, which could have gone without our noticing it, and this is the issue of interpretation of words in law and in usage. For example, when you look at the word "may" - if I say I may do this, it is up to me; it is discretionary, but if the law says we "shall" do it, then it is mandatory. These are obvious when it comes to legislative drafting, and so if the Treaty is saying "may" and the law is saying "shall", this becomes an area which we need to give due attention.

I would not like to go on and on, but my plea to the Assembly and to the members of the Council of Ministers who are here is that we should be given time to ensure that all the Acts of the Community are in harmony with the Treaty, in view of the amendments, and that all the consequential amendments will also be taken into account when it comes to interpretation as well as amendment of the Acts of the Community.

I fully support what has been said before me, and do kindly ask that this request which I have made be put into consideration. I thank you and I beg to support. (*Applause*)

The Speaker: Hon. Members, I now call upon hon. Lydia Wanyoto to reply.

Ms Lydia Wanyoto (Uganda): Thank you very much, Mr Speaker and honourable colleagues for all your contributions to this Motion. My response and comments have been eased by those who have spoken before me. I just want to reiterate a few things and then we will be able to proceed as expected.

I would like to recognise the contribution of the Committee on Legal, Rules and Privileges led by hon. Abdullah Mwinyi. We appreciate the report they brought to this House in regard to this Bill. If nobody claps, I will clap for you. (*Applause*) Secondly, several issues have been raised in respect to the report and the recommendations in the report. In my own comments, I will be able to have a voice on each one of them.

I would also like to recognise the contribution of hon. Wilbert Kaahwa, the Counsel to the Community. In his contribution, he raised two important issues, namely that: all the laws of the Community are anchored in two laws. The first one is the Interpretation Act and the other is the law that I have now brought for amendment to this House. I share the same spirit with him in terms of amending these laws so that they are aligned to other pieces of legislation that we would be bringing to the House.

I would also like to recognise hon. Valerie Nyirahabineza's contribution. She raised a very fundamental issue that was not in the report of the Committee. She did recognise the fact that she is a member of this committee. Hon. Nyirahabineza's comment was in regard to Article 63(2), which talks about a Bill that has not received assent within three months from the date on which it is passed by the Assembly, and then it is referred back to the Assembly for reconsideration. The critical issue for her is the three months within which the assent has to be received. The Article does not talk about the administrative time required in the Office of the Clerk; in the Office of the Speaker and also in the Secretariat. As you may be aware, several days are required to ensure that copies of a Bill are made, and other matters of that nature are worked on. I hope that this Bill has come at an opportune time for amendment as we also amend the Treaty for the Establishment of the East African Community.

I hope that the Counsel to the Community, the Council of Ministers and the Office of the Clerk will bring in the issue of enough time for administrative input for the Bills before they go for assent because in the Treaty, there is no provision for those days and therefore we may have a problem when the 90 days we are talking about or the three months are eaten into by the administrative work when they are preparing the Bills for assent. We may get into a problem when people have to run within a month or two weeks to the five capitals to get the Bills assented to. I hope that my colleagues who are working on the actual amendments will be able to work, but also those that are trying to help us to work for us, who are the firsthand consumers, also handle the issue of Article 63(2) as brought to this House by hon. Nyirahabineza. I thank her for that input. (*Applause*)

I would also like to thank and appreciate the contribution of hon. Gervase Akhaabi, who is a member of the Committee. He has made my work easier because I agree with him on the definition of the word "session" as I have proposed in my Bill. I would also like to recognise and appreciate the contribution of hon. Daniel Wandera Ogalo,

for giving the history of why we want these terms defined, and also for supporting what hon. Akhaabi had said.

I would also like to appreciate hon. Nusura Tiperu's contribution to this Bill. I do not have much to add, it was a detailed contribution for everybody to hear and understand. (*Laughter*)

Hon. Dora Byamukama has put on the Floor of the House questions. I do not expect answers this afternoon myself but these are answers that we need to look for as an Assembly. Now that we have the Council of Ministers here, my own understanding is that the Counsel to the Community circulated a list of pieces of legislation that we have been able to pass. This Assembly was inaugurated in November 2001, and in that list, there are not many laws.

We should be able to develop our own legislative agenda, either at committee level or with the Council of Ministers, and see how we can align them to the changes of the amended Treaty when it comes, but also to the new developments in the Community. We have that responsibility as individual Members of this House, but also as committees of this House. That is why we are here, and I hope that all of us can get back to our mails and revisit that list as individual Members, as committees and as an Assembly.

We should be proactive, and I want to repeat this: we should be proactive. We have experience as an Assembly - if you want your welfare to be increased, or to be limited, they will ask you how many Bills you passed in the first Assembly. I have had that experience as a leader of a team that went to negotiate the second Assembly terms of welfare.

One member of the Council of Ministers, who is present here, looked me in the face and said: "You want your salaries to be increased; you want better welfare as Members of EALA in the Second Assembly; how many Bills did you pass in the first Assembly?" I looked him in the face as well and asked him, "How many Bills as Council did you bring to the Assembly for legislation; it is a core role of the Council to bring Bills to the House!" But to avoid such back and forth questions, the onus is on the House to be proactive; to bring up any process that will unblock any delays in passing the Bills. The third Assembly may suffer the same fate of few Bills determining their welfare and emoluments. Until we are able to do that ourselves, we are still under the hands of difficult structures that evaluate us according to how many Bills the Assembly has been able to pass in a given time. I think that is unfair because that is not our core work; but that is the reality on the ground.

I would also like to thank everybody, as I conclude my remarks, for rising to the duty and obligation of this House so that we are able to align Acts such as this particular one in terms of the new developments in the Community and in the history of the integration process. As you talk about the amendments, we are having Rwanda and Burundi with us today and, therefore, Article 49(1) of the Treaty cannot go without implementation. We need to work on it and make sure that all Bills that are brought to the House smoothly go through the process and they become pieces of legislation so that the question of "how many Bills did you pass" does not arise in the Third Assembly.

I would like, once again, to thank my colleagues as mentioned on the list, those who have contributed and also beg that we move and make sure that these amendments are passed as we proceed to legislate for the East Africans. I thank you and I beg to move.
(Applause)

(Question on the Motion put and agreed to.)

THE ASSEMBLY IN COMMITTEE OF THE WHOLE HOUSE

(The Chairman, presiding)

BILLS **Committee Stage**

The Acts of the East African Community Act (Amendment) Bill, 2008

Clause 1, agreed to.

Clause 2

(Mr Akhaabi rose in his place)

The Chairman: I have a proposal from the Committee on Legal, Rules, and Privileges, which is in writing as well. There is one which the Committee Chairperson has brought. Do you have another one?

Mr Akhaabi: Yes.

The Chairman: I guess it is the same. Let the Committee move and then you can move yours, if it is not similar.

The Chairperson, Committee on Legal Rules and Privileges (Mr Abdullah Mwinyi): Mr Chairman, I would like to move an amendment that the interpretation of the word “Session” should read: “*a series of meetings of the Assembly running from the first sitting of the year and ending on the same date of the following year.*” I beg to move.

Mr Akhaabi: Mr Chairman, I agree with the proposed amendment by the Committee substantially, except for a small amendment to say that “A “*session*” means a series of sittings of the Assembly commencing when the Assembly first meets in any year and terminating or ending on the same date the following year.” Thank you, Mr Chairman.

The Chairman: If you could assist us with that in writing, because that is not what you gave us here.

Mr Mwinyi: I concede to the amendment.

The Chairman: Honourable Members, what it says here is that, “*a Session means a series of sittings of the Assembly commencing when the Assembly first meets in any year and terminating on the same date in the following year.*”

Mr Kaahwa: Mr Chairman, I think the amendment meets the explanation of the definition of “Session” as given, and I find that amended definition fits in the context of where we are pending the amendment of Article 51 to provide for prorogation and dissolution of the Assembly.

Mr Wandera Ogalo: Mr Chairman, I am still on clarification. Did you read “sittings” or “meetings”?

The Chairman: “*Session*” means a series of sittings of the Assembly...”

Mr Wandera Ogalo: Meetings.

Mr Akhaabi: Since we have defined both “meetings” and “sittings” in the Rules and in the Act, I think I would concede to having “meetings” instead of “sittings”. So it becomes “a series of meetings”.

The Chairman: If you look at the Rules, they say that “*Meeting*” means any sitting or sittings of the Assembly commencing when the Assembly first meets after being summoned at any time and ending when the Assembly adjourns.” I think that covers it.

Ms Wanyoto-Mutende: Mr Chairman, I support the amendment as proposed.

The Chairman: I put the question to the amendment.

(Question put and agreed to.)

Clause 2, as amended, agreed to.

Clause 3

Mr. Mwinyi: Mr Chairman, I beg to move that Clause 3 be amended by retaining the proposed amendment in the Bill and amending the principal Act in sub-section (1) of Section 7 by substituting the word “*shall*” with the word “*may*” appearing in the first line, and replacing the expression “*within 90 days after a Bill has been passed and presented to him or her*” with the expression “*within three months from the date on which a Bill was passed by the Assembly.*”

The Chairman: Does anyone want to say something on the amendment?

Ms Wanyoto-Mutende: Mr Chairman, I support the amendment.

The Chairman: I put the question to the amendment.

(Question put and agreed to.)

Clause 3, as amended, agreed to.

Clause 4, agreed to.

Clause 5, agreed to.

Mr Mulengani: Mr Chairman, with due respect, I would not have liked to interrupt the Session but we do not have some of these clauses you are reading.

The Chairman: Hon. Mulengani, this Bill was distributed last week. Maybe you were in Nairobi.

Mr Mulengani: Mr Chairman, I have the Bill but it does not contain the proposed amendments.

The Chairman: I think you have the old Bill. There is a new one.

The Title

The Chairman: I now put the question to the Title.

(Question put and agreed to.)

The Title, agreed to.

MOTION FOR THE HOUSE TO RESUME

Ms Lydia Wanyoto (Uganda): Mr Chairman, I beg to move that the House do resume and the Committee of the Whole House reports thereto.

Mr Kategaya: Seconded.

(Question put and agreed to.)

(The House resumed, the Speaker presiding.)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

Ms Lydia Wanyoto-Mutende (Uganda): Mr Speaker, I beg to report that the Committee of the Whole House has considered the Acts of the Community Act (Amendment) Bill, 2009 and passed it with amendments.

MOTION FOR THE ADOPTION OF THE REPORT

Ms Lydia Wanyoto-Mutende (Uganda): Mr Speaker, I beg to move that the report of the Committee of the Whole House be adopted.

Ms Dora Byamukama: Seconded.

The Speaker: I put the question that the report be adopted.

(Question put and agreed to.)

(Report adopted.)

BILLS

Third 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 for the Third Time and do pass.

Mr Gervase Akhaabi: Seconded.

(Question put and agreed to.)

A Bill for an Act of the East African Community Entitled, "*The Acts Of The East African Community Act (Amendment) Bill, 2009*"

BILLS ***Second Reading***

The East African Community Tourism and Wildlife Management Bill, 2008

Ms Safina Tsungu Kwekwe (Kenya): Mr Speaker, I beg to move that the *East African Community Tourism and Wildlife Management Bill, 2008* be read the Second Time.

Dr George Nangale (Tanzania): Seconded.

Ms Kwekwe: Mr Speaker, the object of this Bill is to establish a cooperation framework in the development, promotion and management of the tourism and wildlife resources in the region through the operationalisation of Articles 112, 114, 115 and 116 of the Treaty.

Article 112(1) (e) of the Treaty reads: "*Integrate environmental management and conservation measures in all developmental activities such as trade, transport, agriculture, industrial development, mining and tourism in the Community.*"

Article 114(1) (c) states: "*Partner states shall adopt common regulations for the protection of shared aquatic and terrestrial resources.*"

Articles 115 and 116 similarly provide for that cooperation framework.

This Bill seeks to:

- (a) Establish a legal framework that shall, among others, promote resource based policies within the region;
- (b) Facilitate the exchange of information and expertise within the tourism and wildlife industry in the EAC region;
- (c) Recognise local communities as a primary stakeholder in tourism and wildlife management;
- (d) Institute assurances that shall guarantee the intellectual property rights related to the industry, that is, geographical indications, packaging of products of unique cultural value to East Africans;

(e) Facilitate and regulate standards and quality assurance within the industry.

It is not a matter of debate whether the tourism and wildlife industry is a major foreign exchange earner and, therefore, contributes heavily to the GDPs of East African Partner States, neither is it a subject of debate that the industry is a large employer and central to the lives of many East Africans. What is debatable is whether this industry is best suited to face the challenges of increasing marketing costs and fierce competition from other regions.

It is debatable whether actors in the industry appreciate the fragile nature of our tourism, which is natural resource-based. This is particularly so because natural resources are inherent to the lives of the majority poor, and this provides the challenge of sustainable management of the tourism and wildlife resources.

It is also debatable whether East Africa is fully exploiting its comparative advantage of an outstanding assortment of natural and cultural assets and, in this, I am talking about the flora and fauna, the hospitable climate, the scenic beauty of the region, the rich history as the cradle of mankind, amongst others. It is also debatable whether the region has what it takes to protect what it owns. Here, I am talking about protecting the intellectual property rights of the tourism products in the region.

This Bill seeks to put an end to this debate. I have outlined the reasons why we need to end this kind of debate, and this Bill provides the framework for cooperation in natural resources management, but particularly in tourism and wildlife resources through deliberate and concerted efforts so as to facilitate the actions of the respective governments, civil society organisations and private sector actors in the tourism and wildlife industry.

This framework defines parameters to share the proceeds and benefits derived from the industry; the roles of actors in the industry; create a special fund to facilitate marketing of the EAC as a single tourist destination and a single investment region, and; coordinate the cooperation areas in this very important livelihood and income generating sector for the entire region. Mr Speaker, I beg to move.

(Question proposed.)

The Chairperson, Committee on Agriculture, Tourism and Natural Resources (Dr George Nangale): Mr Speaker, I beg to present the Report of the Agriculture, Tourism and Natural Resources Committee on the East African Tourism and Wildlife Management Bill, 2008.

The East African Tourism and Wildlife Management Bill, 2008 was introduced as a Private Member's Bill and was first read by hon. Safina Kwekwe Tsungu during the Third Meeting of the Second Session of the Assembly in December, 2008 in Kampala, Uganda.

It was referred to the Committee on Agriculture, Tourism and Natural Resources for consideration and report thereof in accordance with Articles 49, 59 and 62 of the Treaty and rules 64 and 67 of the Assembly.

The Committee commenced the programme of consideration of the Bill on 11 February 2009. It endeavoured to bring a wide range of stakeholders on board, but this was affected by the initial suspension of the Fourth Meeting of the Assembly, explaining the non-attendance and few responses to the issues in the Bill. The Committee, however, had an opportunity to interact with some members of the Council of Ministers in their individual capacities over the Bill. In this meeting, the Committee was informed that there was an on-going process of finalising a Protocol for the establishment of an East African Tourism and Wildlife Coordinating Agency. Please, see the attached draft Protocol.

Notwithstanding such issues, the Committee went ahead and considered the Bill and proposed several amendments. See attached schedule of the proposed amendments.

The Committee was challenged by:

- (a) The limited time to consider this important piece of legislation;
- (b) The absence of key stakeholders;
- (c) The lack of time and funds to conduct public hearings;
- (d) The continued circumvention of the Assembly's role to enact laws in the light of detailed protocols such as the draft Protocol attached.

A candid look at the said issues indicates that the Protocols being adopted by the Council are very detailed in form of content and structure; matters which should have been left for legislation. Apparently, there exists a Protocol on Environment and Natural Resources, which covers the broad policies on tourism and wildlife management. The Protocol was signed in April 2006, and is still awaiting ratification. I would also like to reiterate to this House that the Committee did not meet the Council of Ministers. The committee, however, considered two memoranda; one from Tanzania National Parks and another from Uganda Wildlife Authority, but these are not exhaustive. We deemed it necessary that consultations be held with as many stakeholders as possible to enrich the legislation. This, in effect, requires more time for the Committee to undertake its role.

In light of the above, the Committee makes the following recommendations to the House:

1. That the Committee be availed additional time to consider the Bill and the proposed amendments with as many stakeholders as possible in the tourism and wildlife sector. These include the Council of Ministers, relevant committees of the national assemblies, the private sector, the civil society organisations, et cetera.
2. The Council reviews its approach to the format and structure of Protocols whose nature conflicts with the mandate of the Assembly to legislate for the Community, by development of guidelines for the preparation of the Protocols.
3. The Assembly resolves to request the Council of Ministers to seek interpretation by the East African Court of Justice on the validity of detailed Protocols such as the one on the establishment of tourism and wildlife coordinating agency as attached, which usurps the Assembly's legislative mandate under the Treaty.
4. The Council closely looks at the Bill in what it is seeking to establish.
5. This august House adopts this report.

Mr Speaker, I beg to move.

- (Interruption) -

The Speaker: Hon. Wanyoto, there is a dress code in this House, and I think you should conform to that dress code, please.

Mr Christopher Nakuleu (Kenya): Mr Speaker, I wish to thank hon. Kwekwe for bringing this Bill at a time when the entire world is experiencing an economic meltdown, which impacts negatively on the economies of various states. The economic recession experienced globally requires that each Partner State within the region adopts policies that will cushion the effect of this economic meltdown, and the EAC is not an exception.

One of the sectors of the economies of our Partner States is tourism and wildlife. It is very pertinent, therefore, for Partner States to attach great importance to this sector as one of the major anchors of economic growth for our economies.

This Bill brings in policies, one of which is to mitigate human-animal conflict. You realise that in the Republic of Kenya, very many incidents have been reported where wildlife have created destruction or even killed human beings. One of the most prominent one which is still pending in court is the killing of British photojournalist, Julie Ward, in one of Kenya's national parks. That case is still pending because Kenya did not have proper laws and policies to mitigate such a conflict.

This Bill also brings in rationalisation of modes of compensation in the incidents where there are conflicts between domestic animals and wildlife. For example, when a lion kills a cow, which is animal conflict. I am referring to a cow because I have a lot of vested interests in cows. *(Laughter)*

Another potential source of conflict is the destruction of crops by wildlife. One recent conflict was experienced in Kenya in Maua, Meru Central District where there was massive destruction of crops by elephants. Since the Ministry of Tourism and Wildlife from Kenya did not have proper policies on compensation, no compensation has been made so far. A Bill was brought to the Ninth Parliament of the Republic of Kenya, but that issue has not been resolved.

It is, therefore, very pertinent for the region to develop such laws to cushion the effect of such conflicts because they may be potential causes of poverty.

When the Compensation Bill came to the Kenya National Assembly, the Assembly had pegged compensation to about Kshs 30,000 which is about US \$400. I want to appeal that once this Bill is operationalised, there should be a commission to study the modes of compensation and make proposals for appropriate compensation. Maybe when there is conflict between an animal and a human being and the human being loses life that must attract a higher form of compensation of about Kshs 250,000. That is very pertinent because the role a human being plays in the economic development and protection of wildlife cannot be compared to that of an animal.

This Bill provides for safety, security and evacuation procedures, which most East African states do not have in place. It is, therefore, very necessary that once this Bill is in place, all Partner States must adopt these procedures because it will boost tourist

confidence. It will also avert the fears by some of the tourists from visiting the national parks and game reserves.

In the economic sense, there is a considerable functional relationship between the national income of various Partner States and the tourism and wildlife sector. *(Interruption by the ringing of a telephone in the Chamber_)*

Mr Speaker, I think somebody is trying to undermine me. *(Laughter)*

There exists a direct functional relationship between national income and the tourism and wildlife sector. This is because tourism and wildlife inject funds directly to the national income. Therefore, it has an impact on the livelihoods of the people in the Partner States. Therefore, legislations should aim at protecting tourism and wildlife and also at making sure that there exists a better relationship between animals and the people living in the areas for purposes of maintaining a balanced ecosystem. Every Partner State of the EAC must take this seriously.

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

The Speaker: Honourable Members, as you know, the Committee has asked for more time on this issue. We will therefore adjourn debate on this motion until a further date. While the committee also asked for more time, you are aware that we have very limited resources, and I think you should not think that more time means that you have the money. I think the Council can hear what I am saying. The Committee and the Chairperson should also note that the Community is experiencing financial difficulties. So you have to be more proactive and efficient and see how to make do with the little we have.

The Speaker: I now adjourn the House until tomorrow at 2.30 p.m.

(The Assembly rose at 4.30 p.m. and adjourned until Wednesday, 25 February 2009 at 2.30 p.m.)