



## **EAST AFRICAN COMMUNITY**

### **EAST AFRICAN LEGISLATIVE ASSEMBLY**

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

#### **72<sup>ND</sup> SITTING - FIRST ASSEMBLY: FOURTH MEETING – FIFTH SESSION**

**Tuesday, 3 October 2006**

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

#### **PRAYER**

*[The Speaker, Hon. Abdulrahman Kinana, in the Chair]*

*The Assembly was called to Order.*

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#### **MOTION**

Report of the Legal, Rules and Privileges Committee on the Review of the Treaty for the Establishment of the East African Community

**Chairperson, Committee on Legal, Rules and Privileges Committee (Mr. Med Kaggwa (Uganda)):** Mr. Speaker, I beg to move\_

**THAT,** This Assembly pursuant to the provisions of Article 49(2) of the Treaty and Rule 79(1) (h) of the Rules of this House do consider and take note of the Report of the Legal, Rules and Privileges Committee on the

Review of the Treaty for the East African Community

**Mr Jared Kangwana (Kenya):** Seconded

**Mr. Kaggwa:** Mr. Speaker, sir, the Treaty for the Establishment of the East African Community has been in operation for seven years now. In this period, it has been realised that the Treaty does not meet all the basic requirements as an international instrument. While debating the Motion to commend the East African Community Summit of Heads of State for their commitment in pursuing the integration process, the House noted the urgent need to review the Treaty with a view to making it more facilitative as a

basic legal instrument of the Community. To this end, the Standing Committee on Legal Rules and Privileges considered the matter and undertook region-wide consultations with a wide range of stakeholders from the judiciary, the academia, the legal and constitutional experts, government and civil society institutions to solicit ideas so as to make recommendations on specific issues with regard to the operationalisation of the Treaty.

Mr. Speaker, sir, the region-wide consultations focused on the following areas: The Treaty framework, the status of the Treaty in national and international law, the status of protocols, the institutional framework of the East African Community Treaty, the organs of the Community, separation of powers and accountability mechanisms of key organs of the Community, financing and sustainability of the Community, and popular representation in the Community.

Mr. Speaker, sir, this report is a compilation of the views obtained from all the three Partner States, together with input made by Members of the Committee during a follow-up meeting to discuss the three reports received from consultations held in the Partner States from 6<sup>th</sup> to 9<sup>th</sup> April 2005 in Nairobi. The report ends with a detailed action plan which emphasizes that a review of the Treaty is an on-going process and will be realised when the Committee will present to the House concrete proposals to guide the review.

Mr. Speaker, it is my intention to just go to the recommendations since the main points are here in the report, which I presume Members have read.

Mr Speaker, following careful consideration of the views obtained the Committee on Legal, Rules and Privileges recommends as follows, that:

1. Chapters 6 and 7 of the Treaty should be re-cast to clearly spell out the structures of the Community and reflect the traditional structures of governance namely: the executive, the judiciary and the legislature in conformity with the doctrine of separation of powers. This calls for doing away with the current arrangement where co-ordination and sectoral committees have been legislated into the Treaty.

2. Article 134(1) be amended to provide for auditing of all the organs and institutions of the Community established under Article 9 of the Treaty.

3. Article 132 (4) be amended to provide for the funding of the Community through taxation instead of the current arrangement of equal contributions by the Partner States.

4. Article 151(4) be amended to provide for legislation through Acts of Parliament as opposed to the conclusion of protocols by the Partner States to run the affairs of the Community.

5. To enhance the operations of the East African Court of Justice, Articles 23-27 of the Treaty should be re-cast to provide for:-

(i) The expansion of the East African Court of Justice both in original and appellate jurisdiction;

(ii) The establishment of a regional judicial service commission; prescribe its composition, functions, tenure of

office as well as terms and conditions of service of the Judges of the East African Court of Justice.

The functions of the Commission would be to propose names to the Summit of persons qualified to be appointed to serve in the East African Court of Justice. The Summit would submit the names of those nominated to the Speaker for consideration by the relevant Committee of the House and for approval by the entire Assembly.

(iii) Article 48 of the Treaty should be amended to provide for:-

- (a) direct elections of the Assembly. Presently, Members of the East African Legislative Assembly are elected by their respective national assemblies due to logistical and financial inadequacies. These are not likely to be surmounted in the near future;
- (b) expansion of the membership of the Assembly: The Committee proposes that in line with the views of the peoples of East Africa, membership of the Assembly should be increased to fifteen members per country as originally proposed, and in order to have continuity and institutional memory;
- (c) provision of a regional electoral commission. We hope that by 2016 we should hopefully have solved the financial and logistical inadequacies to enable the people of East Africa elect their representatives by universal adult suffrage;

(iv) Article 50 should be amended to provide for the establishment of an Electoral Commission for purposes of conducting the said elections. The Article should also provide for the tenure of office, terms and conditions of service, and the Commission should commence its operations in the year 2011.

(v) Article 51 should be amended by inserting a new clause to provide for the life of the East African Legislative Assembly;

(vi) Article 63(4) should be amended to provide for Bills to automatically become law after a specified period if the Assembly feels that any withholding of assent by one Head of State negates the spirit of integration.

(vii) Acts of the Assembly should not be allowed to lapse because of the failure of the Summit to assent to them. In line with the supremacy of Parliament over legislation, the East African Legislative Assembly should, by a two-thirds majority, be able to override the objections of the Summit.

The procedure to be followed should be for the Speaker to lay on the Table the Bill referred back to the Assembly by the Summit for consideration, and if the Assembly discusses and approves it by two-thirds majority, such Bill shall automatically become law.

(viii) Article 146 (1) should be amended to reduce the period of defaulting before suspension from 18 to 12 months. The amendment should provide for the Assembly to recommend such suspension.

(ix) All the provisions relating to decision making by consensus should be deleted and should be replaced by majority decisions.

(x) Since the Summit has put in motion an on-going process to fast-track the integration of the East African Community, the result of which is to come up with a type of a federal East Africa, there is need to:

- (a) set up a constitutional commission to draft a federal constitution under Article 5(2) of the Treaty;
- (b) set up a constituent Assembly to debate and enact a federal constitution;
- (c) such a constitution should be forwarded to a referendum for East Africans to debate and approve, and;
- (d) Mr Speaker, we also recently noted that in order for the faster development of the three Partner States, the issue of land should also be considered in looking at the review of the Treaty.

Mr. Speaker, by way of conclusion, we noted that political will is vital for there to be sound political and social and economic integration. In this regard, good governance is vital for the federation to fully take off. Most importantly, regional integration should immediately be put on the agenda to be debated and discussed by all bodies.

Following the dissolution of the former East African Community, there is major apprehension and distrust among the

people. Therefore, any attempts at integration needs to address prevailing fears and suspicion and seek the support of the masses. The Summit should actively learn from the lessons of the defunct East African Community. Positive aspects of the defunct Community are useful and should be used as a guiding factor where weaknesses should be identified and avoided. Emphasis must be put in reviving or establishing structures/institutions that will create a critical mass of East Africans who think East African and identify themselves as such. These institutions should have a stake in furthering a regional concept of East Africa, like the former East African universities, and make effort to revive solidarity in areas besides the political and economic.

Mr. Speaker, the basic message obtained from the consultations can be summarised as follows, that:

- There is need to revisit the regional vision of the East African Community in light of the actual experience and developments in integration. Accordingly, key chapters of the Treaty have to be revised.
- Regional integration will be useful and sustainable if supported by the masses. There is therefore need for a referendum on the East African Community. Also, the Treaty needs to be widely disseminated and popularised.
- There must be a system of checks and balances to ensure accountability of all organs of the

- Community to the people of East Africa.
- Actualising the federation demands preparing the necessary ground work at national levels and building stable institutions regionally to cater for East Africans.
  - Country level co-ordination between ministries and the East African Community, the executive and the East African Legislative Assembly is crucial in facilitating the workings of the East African Legislative Assembly and the East African Court of Justice.
  - There is need to address in an open manner the challenges facing the federation, including the high level of mistrust about the regional federation in view of the experience of the former East African Community. Additionally, uneven levels of progress in Partner States makes the masses anxious about the possible impact integration will have on the local economies. There is therefore a need to instil a sense of confidence and assurance politically among leaders and among the population.
  - Partner States still need to sort out the internal inconsistencies in political and legal frameworks before embarking on the regional.
  - Partner States are yet to determine the ultimate form of
- the East African Community federation. It is imperative that federation be informed by actual living examples or case studies and not just theories. The union of Tanganyika and Zanzibar could provide the basis for exploring options on the form of the federation.
- It is important to learn from past failings and from other experiences of economic and political integration in order not to repeat past mistakes.
  - There are a number of opportunities the process can be built upon to realise the federation envisaged.
  - It is clear that the process of regional integration will be gradual and will need to be monitored periodically. The process can be adjusted in response to the developments.
- Mr. Speaker, sir, I want to end by expressing our gratitude to members of the Committee who included hon. Jared Kangwana, hon. Sheila Kawamara Mishambi, hon. Wilbert Kaahwa, hon. Prof. Margaret Kamar, hon. Mabere Marando, hon. Mahfoudha Alley Hamid, hon. Daniel Wandera Ogalo, hon. Maxwell Shamala and hon. Dr. Norman Sigalla.
- I also want to extend our gratitude to all those people who helped us financially, FES (Friederich Ebert Stiftung) in particular, for having enabled us to have the meeting in Nairobi.
- With that, I beg to move – *(Applause)*.

**Mr. Jared Kangwana (Kenya):** Mr. Speaker, sir, I would like to second the Motion, and in seconding it, I have a few remarks also to make.

First of all, I would like to concur with all the sentiments and the recommendations that have been expressed by our Chairman, hon. Kaahwa – (*Interjections*) -

**Hon. Members:** Kaggwa!

**Mr. Kangwana:** I am sure the *Hansard* will get the correct spelling, Mr. Speaker, sir. I have practised those two names for the last four and half years, but from the reaction of Members, it looks like I have not succeeded – (*Laughter*).

Secondly, Mr Speaker, sir, allow me to point out that we as an Assembly are still concerned - gravely concerned - about the place of protocols *vis-à-vis* Bills in this House. I would like to underline what the hon. Chairperson said in his report.

We were promised that there was - I think a write-up coming from a meeting which was held in Entebbe, which would clarify the Secretariat's position and the Council of Ministers' position concerning protocols. And it was our understanding that protocols were going to be restricted to very specific matters. We do not know what those matters are up to now, and I pray that before the next Members who will be coming to this House meet, that will have been clarified.

Mr. Speaker, sir, we have made a lot of noise in the last four and a half years concerning the performance of our

ministers, and I would like to say that it has not been in vain.

In the first instance, we would like to thank our Heads of State for appointing ministers specifically for East African matters, and they have started meeting. Mr Speaker, apart from criticising their performance, we would also like to encourage them to meet more often and, as we have said here in the past, provide leadership.

Mr. Speaker, sir, before and after the Kenyan tour this year, the Kenyan Chapter of the Members of this Assembly undertook visits to all the ministries in the Republic of Kenya, and, Mr Speaker, sir, I would like to say that looking at the provisions of the Treaty, the ministries have performed extremely well in the sense that they have worked with their sister ministries in Tanzania and in Uganda.

So, in matters relating to co-operation in - I will just go through the list of items listed in the Treaty: trade liberalisation and development; investment and industrial development; quality assurance, metrology and testing; monetary and financial issues; co-operation in infrastructure and services; co-operation in the development of human resources, science and technology; free movement of persons, labour services, right of establishment and residence; agriculture and food security; environment and natural resources management; tourism and wild life management; health, social, cultural and other activities; enhancing the role of women in socio-economic development; political matters; legal and judicial affairs and, the private sector, Mr Speaker, sir, there has been a lot of

consultation and co-operation amongst the Partner States, and we would like to encourage the ministries to continue doing that because it is by interacting with one another that we get to know each other better.

The one area, Mr Speaker, sir, that I came across where there has not been sufficient -I was going to say "insufficient co-operation" but in fact there is no cooperation at all - relates to the public service commissions of the three Partner States. They have not met to start developing a framework for hiring, managing and firing public officials, or civil servants, as they are sometimes known.

Even the ministries for lands and settlements in the three Partner States where there seems to be great divergence, have actually met and started working. They have now identified the international boundaries, for example, of the three Partner States, but, Mr Speaker, sir, it is not the case with the public service commissions. And I find it very strange that they have not done so because even the ministries of Defence and the departments of Defence have actually developed a lot of things which are for the benefit of East Africans.

I would have thought personally that defence and security are the most sensitive matters, but if these ministries have been meeting, I see no reason why public service commissions should not start developing a framework for getting together and discussing matters as we go forward, matters that relate to public servants.

Mr. Speaker, sir, just two very short other comments which I wish to make in support of this Motion, which is for noting; it is not for adoption as I see from the Order Paper. There are a number of contentious or radical or controversial proposals that have been made over which I believe there will be differing opinions. I think it is a healthy thing that those who feel one way or the other about any of the issues should bring up their own ideas on how best we can improve the Treaty, because if they bring up those ideas it can only enrich the proposals that we are making so that when amendments are finally made, we can have a document that will stand the test of time.

Mr. Speaker, sir, I am still concerned that up to now, as the current crop of Members of this House are about to come to the end of their terms, that we do not have the East African Community Strategic Plan in place. I do not know where it is, but I think it is one of those things that perhaps when we do amend the Treaty we should find a place for in the Treaty so that it is entrenched in the Treaty. Once it is entrenched in the Treaty, Mr Speaker, sir, it will be difficult for anyone not to bring a Strategic Plan in existence at the right time. As it is now, we do not know when it is going to come.

We have already overshot the next five years by one year in terms of that Strategic Plan, so it should be coming, I hope, soon. I do not know, perhaps the Minister will tell us, but I hope it will come soon.

The other thing which I would like to mention is that I would very much like to see a provision in the Treaty, when it

is amended, that provides for an oversight role of this Assembly over institutions of the Community that at the moment are not subject to parliamentary authority. Of course we do have two of them at the moment, the East African Development Bank and the Inter-University Council of East Africa. Both of them are doing a sterling job, and you know that like all public institutions, they should be open to scrutiny so that it stands them in good stead because it strengthens them once they know where their weaknesses are. They can only discover where their weaknesses are if they are open to scrutiny from an Assembly like this one.

Mr Speaker, sir, with those few remarks, I would like to, once again, say that I second the Motion.

**Mrs. Sarah Nanziri Bagalaaliwo (Uganda):** Thank you Mr. Speaker, sir. I believe I would have failed in my duty if I did not stand up to support yet another commendable work of this House. I wish to congratulate the Chairman of the Committee and all the Committee Members for having at last come out with a proposal for the amendment of the Treaty. I do recall that in my maiden address to this Assembly, I did call out for a review of the Treaty. Therefore, I am happy to see it coming, although at the very end, but it will remain in the records of the *Hansard* that an effort was made by this House to call out for this change.

Mr. Speaker, sir, I would like to put some emphasis on the institutional framework of the East African Community. This is a problem we belaboured at our very first meeting at Lake Manyara when we wondered

whether some of the structures that had been created were transitional in nature or they were going to be permanent features of the East African Community. As we are speaking now from experience, this particular field has been cause for a lot of conflict: It has created power struggles, it has crippled work, and also, it has questioned achievements. I would like, therefore, to appeal to the Members who will be coming in, when they will be reviewing the Treaty, to look at the effects of the structure that we have on the practical workings and the relationships between the different organs of the East African Community.

Mr. Speaker, sir, this House has had various visits in the region, and throughout the visits we have noted the enthusiasm that the people have about reviving the East African Community and the East African Court of Justice. This has been the voice of the people, if we say that the new Community must be people centred. It is the voice of the private sector which has cried out to have some appellate court the jurisdiction of which covers the whole region so that they can be subjected to one clear system.

Allow me also, Mr Speaker, to touch on the issue of the veto powers of any member of the Summit. Realising that we are going to have several other states joining the East African Community, I think it is high time that the veto provision of any Head of State was removed so that we work by majority.

Another issue that has come up has been in respect of our oversight role, and I am glad that hon. Kangwana has highlighted the need to provide for accountability in all areas and institutions that fall under



the East African Community. I think this also will be augmenting the checks and balances that we have in the system of our operations.

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

**Mrs. Rose Waruhiu (Kenya):** Thank you Mr. Speaker, I would like to take the Floor to support the Motion which is to note the result of the work done by the Committee on Legal, Rules and Privileges, and also to congratulate the Chairman and the Members of that Committee, firstly because of this report, which, as my colleague has said, has achieved one of the goals or dealt with one of the gaps that we identified right from the beginning.

Mr. Speaker, I would also like to record the appreciation of this House for the work done by this Committee, not just in preparing this report but in providing business for this House. It was a very happy happening that we had among our colleagues a complement of lawyers, and most of them served on this Committee, and the history or the record of the work done by this pioneer Assembly will always recognise the work they did in drafting the Bills that this House has passed during its life – (*Applause*).

I want to make maybe two or three comments; the first one of course is my favourite subject, which is the issue of separation of powers.

This House went through a very great test, as Members will recall, in the first challenge that faced this House in regard to its autonomy as an institution, and in regard to the security or the terms of work for its officers. The House then had

to set up a select committee, and although the report of that select committee bears a title which only refers to the resignation of the then Clerk of the Assembly, the House delved in great detail into the need to build in the concept of separation of powers. And I note that this is one of the recommendations that this Committee has pointed out in the revision of the Treaty. As I speak, Mr Speaker, I am still not clear whether the rules that govern staff terms and conditions of service are clear in terms of safeguarding the autonomy of the Assembly and the autonomy of the East African Court of Justice.

Mr. Speaker, when this House started its work, we recognised that the House was one of the last organs to come into place, and I would like to congratulate my colleagues for the work done in creating what I then called “space”. The House had to come in and create its own space to work on legislation. Increasingly also, we hoped that the House would get the opportunity, through better funding, to carry out its oversight function.

Every year as we debated the annual reports, we had to just rely on documents that had been written, and our contribution had to be restricted to just commenting on something written. The House has never had the benefit of an organised system through the Community itself to familiarise itself with the programmes that are contained in the annual reports. So we hope this will also improve in future.

Mr. Speaker, my third comment is about a constitution for the East African Community federation. Members come from countries which are familiar with

the struggles to create a constitution. I do hope that the Community's Draft Constitution will have better processes than, for instance, what my own country Kenya has had to go through. The way to deal with it is to start it early.

Mr Speaker, I am reminded of our visit to the former President of Tanzania, hon. Benjamin Mkapa. He may have said it in a light-hearted way, but we spoke to him about points to the wealth of six statesmen and women who are in this region who appreciate what we are trying to do. And those are the kinds of brains or persons that we should keep close and maybe look up occasionally so that they can discuss their vision of the kind of future they want for this region rather than waiting until the end to bring people together in a rushed manner.

The indications we have had, both from our former presidents and our current presidents is that the work of the federation is going to be fast-tracked, and it is my opinion that the Secretariat could benefit by getting working teams together, if only to go through the thought processes and ideas of what are going to be pillars in this constitution.

The issue of the constitution is very important vis-à-vis the report we have in front of us because we still have to see the relationship between the Treaty for the Establishment of the East African Community and the constitution.

Mr. Speaker, the report of this House that was submitted to the Wako Committee went to great lengths to indicate the pillars for a federation and pinpointed the areas where we needed to move fast and where we needed to get agreement. We do not have to get

agreement on every aspect of our lives to become a federation. What we need to get agreement on is what will be the span of authority -or the scope- that will be surrendered at the federal level and what will remain at the level of national governments. This kind of discussion, I feel, Mr Speaker, can commence, relying, as I have said, on the large reservoir knowledge and experience of those past presidents, the current presidents and other East Africans who have been associated with the Community and have yet time to play this role.

Mr. Speaker, I will join my colleagues - without being repetitive about the East African Community Strategic Plan - primarily for the reason that I come from a country which for many years worked through development plans, an approach which I think is workable in any institution - to again pick the theme for the five years, because five years is a very short period.

Our own difficulty with the strategic plan came from it having too many goals set for a period of five years. And having gone through the previous strategic plan and observed the failure to meet the deadlines, we were of the opinion that the strategic plan...if for instance now we want to work on the common market and the federation, then the strategic plan should have activities that point to the priorities. But instead the strategic plan reads just like a review of the annual reports.

And because we are all aware that we have the capacity within this region to think through these documents, we wish for the Secretariat to pick this up as a priority so that the governments that are

financing the Community; our friends – we call them development partners – can also see that we do have our goals clear, that we do have our plans clear and that we have identified the activities around which we want to work.

Finally, Mr Speaker, I want to take this opportunity to make my own personal statement to congratulate my colleagues, as I have said, for all the work they have done in the last five years, and also to say that this has been a wonderful experience of working across cultures, across nations and – (*Interjection*) – I am very clear; it has been a job of working across nations, across cultures, across professions, and although 27 may look like a small group, but I think because of the diversity and the experiences, the contributions could not have been any better. I know most of us will live to remember this first Assembly.

Not only did we make friends, but also we did a commendable job. And when you do good work in public life, I think you all know you do not expect to be rewarded or to be thanked. We assume we all came here through our own personal commitment and willingness to serve, but I wanted to be on record for saying that we go away feeling that we have done our part.

I thank you very much, Mr Speaker – (*Applause*).

**Ms. Lydia Wanyoto-Mutende (Uganda):** Thank you Mr. Speaker for the opportunity to contribute to this Motion, and also to congratulate the Committee that has worked on the proposed areas for review of the Treaty.

Mr. Speaker, in supporting the Motion I would like to start by making an appeal towards the proposals for the next budget that we should not wait for FES (Friederich Ebert Stiftung) or AWEPA (Association of European Parliamentarians for Africa) to help us move to the next proposals of the review of the Treaty.

Mr Speaker, if there is an activity that needs urgent attention in our next budget to be supported by our Partner States, it should be the review of the Treaty, and I hope that somebody who drives the budgetary proposals of our Community will either listen to this request and appeal or read the *Hansard* so that when we are looking at the Budget, the review of the Treaty is one of the urgent areas in the next financial year.

Mr Speaker, I am talking like this because we should not wait for the Treaty to take another five or ten years to be reviewed when we are looking forward to a federal constitution and we are looking at fast-tracking the political federation. We need working documents to guide us, and the Treaty is an important document; it is our bible. It guides us on how we should run issues in the Community. So, I hope that when we are looking at the next Budget it will be a priority activity for us as Members of this Assembly.

Mr. Speaker, on the same matter, if we cannot review the whole Treaty, I hope that we will be able to look at the different approaches of how we would like to address issues of the Treaty. Either we look at a major review or pick out urgent clauses or articles that have been hindering our progress, but we must ensure that a conclusive job, within

one or two years, is done to help the different organs to do their work.

Mr. Speaker, about four and a half years ago when we were commenting about the Treaty, my own view was that the Treaty was a wonderful document, and having read it I thought it had a good spirit to grow a Community. And in the discussions I have had with colleagues, I have always told them that the Treaty is like a wedding certificate.

Mr Speaker, I come from a Christian background, and when you get married in the church, there is a very small document you get as evidence of commitment to your marriage. It is about two paragraphs, and it sounds vague if you read it without clear interpretation; even the language is not detailed. But we do a lot of things in our marriages, so we nurture the marriage using the document. And sometimes we forget it because we do a lot of things without referring to it. When you see couples moving with that document it means that they have problems in their marriage. They are either photocopying it to go to court to seek for a divorce or they are trying to claim one or two issues in their marriage – (*Laughter*). Many good marriages do not know where their marriage certificates are because things are working.

Mr Speaker, I have learnt in the last four or five years that we had a problem in this Community because everybody was quoting the Treaty. It meant that we had not utilised the Treaty; we were using it against different organs and against one another, and we had not utilised the positive spirit in the document to nurture the Community. To me that was the bottom line. But now that we have

agreed to review the Treaty, we should move very fast; nothing should bog us down so that we can do whatever is possible to ensure that we pave the way for the bigger federal constitution that we all look forward to. Otherwise, if you asked me, I would never use the excuse of a bad Treaty to provide an enabling environment for anybody to enjoy working for the Community and to make a contribution to this Community. That is how life is, but nevertheless, we need to look at the Treaty and put in place whatever is required to make everybody comfortable and find space, like one of our colleagues stated in his contribution.

Mr. Speaker, I would also like to say that this legislative assembly to me is a very important building bloc in the governance and the political agenda of the East African Community. So I am very eager to see those articles that protect and mandate clearly the different organs of the Community, especially the East African Legislative Assembly which I am a part of, so that our assembly is a political organ of the Community so that it is not only heard from a distance, but it is visible, it is felt, it is owned and the East African people are proud of it because this is the organ that carries the voice of the people.

Mr. Speaker, I hope that when the appropriate time comes we shall have an opportunity to make our contributions so that the different organs of the Community are empowered enough to do their parts so that there is a difference between looking at a non-governmental organisation that has the name of the East African Community and an association of private sector business people, the political organ of the Community, the executive organ of the

Community and the one that is judicial in nature.

So, Mr Speaker, with those few remarks, I would like to support the Motion and thank my colleagues who have brought this report, and make the passionate appeal I begun with that let us fund this activity because we need support to go through it and see what will work and what will not work so that within one or two years, it is cleaned up, it is working and we move forward to have the full integration process move forward.

I thank you, hon. Speaker – *(Applause)*.

**Ms. Kate Kamba (Tanzania):** Mr. Speaker, sir, I thank you for giving me this opportunity to share a word or two with my colleagues who have just been on the Floor. I would like to commend the good work done by the Legal Committee under the able leadership of the hon. Med Kagawa.

The previous speakers have clearly commended the lawyers in this House; we were actually blessed to have one-third of us as lawyers. And if we have to commend and give credit to this Assembly, we have got to give credit to these lawyers. They did a wonderful job – *(Applause)*.

Mr. Speaker, I commend this work because we have had a lot of problems in the interpretation of the Treaty. Of course it is a manmade document; it was not an instruction from God. It is only the Bible and the Quran which are the words of God, therefore this document was not expected to be perfect. So we commend the Legal Committee for reviewing it and for coming up with recommendations.

I believe that these recommendations are not exhaustive and we can build on them with a view to perfecting them to make them reader friendly for even the common man. If you look at the Treaty itself, I think it was drafted basically by lawyers, and it is very unfortunate that when you read documents prepared by lawyers they are not interpreted straight; you will need to have a background of law to really understand them. That is why we constantly argue here. Sometimes we argue over things which we really need not to argue about, but because they have been prepared in a language which is not very friendly to us who are not lawyers, so we argue. So, I would really like us, when we review this document, to make it reader friendly so that anybody reading it will really be interested in it in the first place.

Mr Speaker, I also hope that we are going to have more copies in Kiswahili so that more East Africans can access this document – *(Applause)*. It should be in the Kiswahili which is readable. You know, even in Kiswahili we have a very difficult version of Kiswahili. If you give it to BAKITA (*Baraza La Kiswahili La Taifa*) they will put words which you have never come across.

So, we want a readable document which anybody who comes across it will really make use of because the East African Community is people centred; it is not for the “learned” people only; it is for everybody, including those who have not gone to school and those who have only gone to primary school. So Kiswahili, for the majority of East Africans, is the language.

So, I plead with the East African Community - fortunately we have the

Secretary General here today - to have a document which is going to be reader friendly to East Africans. We cannot continue to always apologise that we are not lawyers. We should be clear with this document.

I was reading a Bible, and this Bible was very difficult! When you read it, you have to have a dictionary next to you. But you can have other Bibles, simply written and the message goes straight. If I read a Kiswahili Bible, I am at home; if I read a Kiyao Bible, I am even closer to God – (*Interjections*). So, this is actually what it should be.

**A hon. Members:** What is Kiyao?

**Ms. Kamba:** Kiyao is my vernacular.

Hon. Speaker, one aspect that touches everything is funding. Funding of the Community should be looked into. Equal contributions are not the solution. Giving amounts...that each country should contribute \$2000 does not speak much. The recommendations that have been given here should be looked into and taken very seriously.

In the year, 1919 when they starting levying a tax for the East African Community, they were more advanced than we are now. So, we should go back and see how we can do it better: Should it be by percentage or should it be by levying a tax on the Customs collections. We should levy something which is agreeable to all countries. When small nations like...I do not want to mention them, but when you ask small nations to give \$5000, definitely they will not afford it, but if you asked them to give us a percentage of whatever GDP (Gross Domestic Product) they have, they are

going to be agreeable. So I think we should be friendly; we should harmonise this. For a very long time we have been recommending to the Council to look into this and then advise the Summit to do the needful before things get out of hand.

Mr. Speaker, I stood here to commend the “learned brothers”, they call themselves; the lawyers. These people have done a great job, but actually we had a combination of all: economists, lawyers, professors, business people, Generals in the Army, teachers and so on, and they all complemented each other. It has indeed been a very big family. We have enjoyed our stay here in this Assembly.

I remember when Rose had her son’s wedding, we all went to her village and we were all there dancing, and you would not be able to differentiate between Lydia, Sarah, myself, Abdi, Mwatela, and Mbeo. We were there, you know, and it was like a family affair. And we really did enjoy ourselves. And when my son was getting married, the same thing happened. Everybody came: there was Lydia, there was Sarah, there was Rose, there was Mwatela, there was Abdi, and everybody could see the East Africaness; people were coming closer. And this is what it should be! (*Interjection and Laughter*) Even when we lost hon. Wapakhabulo, all of us went to the late Wapa’s house and we stayed there.

So, I am saying we are a small family, and this is how East Africa should be. It is not about the Treaty; it is about – (*Interjection*) - and that is what hon. Wanyoto was saying; it not about the marriage certificate, it is about the

marriage itself. It is about how we relate, and I do agree with her...you know, she speaks a lot of these big things and you would think she is 50 years old – (*Laughter*). I think her marriage is less than 20 years old and yet she can remind us that this document is nothing but it is the marriage relationship that matters. How do we relate to each other? Do we love each other?

I am sure that in this Assembly, as human beings, in one way or another we might have quarrelled or differed in terms of presentation, but that never stopped us from loving each other – (*Applause*). For those who are going to come back and for those who are not going to come back, let us remain together in union as East Africans. Wherever you will be, we should always regard each other sisters and brothers.

With these few remarks, I support the Motion – (*Applause*).

**Prof. Margaret Kamar (Kenya):**

Thank you Mr. Speaker, for allowing me this opportunity to support the Motion. I happen to be a Member of this Committee, although I have been told that I am not “learned” – (*Laughter*) - but I also want to sincerely appreciate the membership of the learned in that in that Committee because we were nicely accommodated, and at the end of it we felt like we had understood their language.

Mr. Speaker, sir, in supporting this Motion, I want to say that there are a number of things that I have personally appreciated. I was in the team that went to Uganda and I want to applaud the enthusiasm of the teams that we met in Uganda. In fact, when we met the Chief

Justice - and I happened to have gone with the Chairperson of this Committee, the Chief Justice came out with quite a number of judges, which spoke a lot for us, that there are a lot of people in East Africa who are anxious to see this Community grow. That was before he spoke, but when he spoke, he also gave us a number of ideas, some of which have been put here. As Members have said, it is my hope that the next Legal Committee in the Second Assembly will be able to carry forward quite a number of these issues.

There was one issue in particular that the Chief Justice raised on where the beginning of the review of the Treaty should be, which I would like to comment on. We summarised it in item 6.1.2 in the report on page 15, that we must engage the highest ranks in government. That came out from the Chief Justice in Uganda that if we have to touch this document - because it is already a document that is binding three states - we must actually touch those levels.

Mr. Speaker, our Committee had the intention of reaching there. We looked at the past reports before we went for these consultations. We had built up the sessions towards even meeting the Summit on some of the issues in this Treaty. I think it is very urgent that we actually start looking at that. In fact, in our Committee, two weeks ago we had told ourselves we should behave as though we are not leaving this Assembly and carry on with the agenda and handover something that the others will carry on with because we felt that it was very important that we addressed the issue of the review of the Treaty.

One of the driving forces behind our urgency was the fact that we are opening up the Community; we have Rwanda and Burundi coming in, and you really do not want them to come in when we are still using a document that is not workable. So, it is my hope that the next Assembly will address this as a matter of urgency and actually start from where we stopped, and in particular, narrow down the scope and now go towards meeting these high-ranking members of society.

In fact one of the things that we picked in the delegation that was in Uganda was the fact that we need to be very specific with the different stakeholders so that the Attorneys General address what touches them, the Chief Justices touch on what touches them and they also feel the urgency of this. So, I think it is good to hit the iron when it is still hot.

The other thing that I observed, Mr Speaker, was what has been summarised as creating a critical mass of East Africans who are East African. In our observations in several of the meetings that we had with the civil society groups and the various institutions, including universities, it appeared to us that people remembered the old Community more than the four years that we have been here. And what they remember about the old Community are the institutions that had been put in place.

They still remembered that there was an institution called Mweka, they still remembered that Utalii College in Kenya belonged to the Community, and they seemed to be interested in associating themselves with something that makes them East African. And we noticed that maybe within our four

years, apart from the fact that the Treaty has changed direction, there seems to be a need to have institutions or structures that enable the population in East Africa to put themselves in a specific place within the East African Community.

I know, Mr Speaker, that there was this Bill that was meant to make East Africa negotiate as a bloc, which has not been put into practice although the Heads of State directed as such in 2002. It is a very unfortunate thing, and I think it is the only regrettable thing that we are leaving after our five years here. We raised it the last time when the minister mentioned to us that they were exhibiting in the tourism stands together that, that was not what negotiation is all about, but that it is East Africa being recognised as East Africa by the international community. If you are exhibiting and they are not recognising you as one but are still giving you a Kenyan desk, a Ugandan desk, and a Tanzanian desk, it does not make us one.

So, these are the sorts of things that seem to have come out, and that is why we felt that we need to have a way in which we can build a critical mass of East Africans that think East African. It is my suggestion, Mr Speaker, that that Bill should be brought back by the Council of Ministers and actually be passed here so that we can negotiate as East Africa so that when you say I am an East African, there is something that identifies you. Otherwise, currently we are not identifiable as East Africans. And that is what some of the members that we visited mentioned.

Mr. Speaker, those are my two main issues. The way forward is what I think is very critical, that we need to re-



address the issues that were raised by the various people and go back and pick more issues with the top level government officials.

Finally, Mr Speaker, I also want to say that as the foundation Assembly, I think we have done our job. We have founded, we have set structures, we have set a mood, and I personally appreciate everybody who has been in this House because I think we have learnt a lot from one another.

We have corrected one another, we have pushed one another, we have pushed Bills together, and we are plus 26 more friends leaving this place – (*Applause*). In view of all the debates that we raised and despite the talk that we were not doing much, Mr Speaker this is evidence that we have done a lot in this Assembly. So, it is my belief that the foundation Assembly has founded the place. It is my hope and prayer that the next Assembly will not only move things forward, but move in an accelerated manner so that whatever we were not able to realise shall be realised.

With those remarks, Mr Speaker, I support the Motion – (*Applause*).

**The Chairperson, Legal, Rules and Privileges Committee (Mr Kaggwa):**

Thank you Mr. Speaker, I want to first of all recognise and acknowledge the contributions made by hon. Kangwana, hon. Sarah Bagalaaliwo, hon. Rose Waruhiu, hon. Lydia Wanyoto Mutende, hon. Kate Kamba, and Prof. Kamar.

Mr Speaker, when I noticed that many ladies were contributing, it reminded me of one thing. In our Committee we have had the hon. Prof. Kamar and the hon.

Mahfoudha, and we always told them: “Do not mind, you are assessors.” But I think with these contributions today, I will leave satisfied that they really graduated into proper assessors in the legal world – (*Laughter*) - because this has been exhibited by the contributions they have made today. I really thank you very much for having understood our language.

Mr. Speaker, sir...I know hon. Abdi will soon look at me, but I want to note one or two things from what has been said.

The veto power of the Summit is something that needs to be considered very seriously. Hon. Rose raised the issue of the draft constitution, that it should follow all the processes if it has to be owned by the peoples of East Africa. I think that was a very important point.

Hon. Lydia raised the point of having to budget for this process. I have time and again said in this House that my fears were - and they still remain - that the East African Community may become another non-governmental organisation because it is funded by non-governmental organisations. I do not think the Partner States should stand by to have their baby nurtured by a neighbour.

The other point that we need also to consider seriously was stated by hon. Kate Kamba that the recommendations made by the Committee are not exhaustive. Indeed they are not. As we continue to read the Treaty, even those who will come will read it and find other areas. Just yesterday when we were in a seminar, I think the people of the Capital Markets mentioned Articles 85 and 86.

They had concerns, and it brings me to the point hon. Prof. Kamar has raised, that we need to look at each area and also give the stakeholders enough time to look at their respective areas so as to see how best it can move the process on the current agenda of fast-tracking the political federation.

Lastly, Prof. Kamar raised a point that we should have structures that make people feel East African. In my view, as long as power is not at Arusha, people will still believe the Community is in the respective Partner States.

With those remarks, Mr Speaker, sir, I want to once again thank all my colleagues in the Committee, those who left and those who joined us, and indeed everybody. I also want to thank our Clerk, Mr. Paul Masami – (*Applause*) – fortunately I cannot say that he got the wrath of the Committee because he himself is a lawyer and he knows how the lawyers can talk. So, we want to express our gratitude to him.

And, like my colleagues who have spoken today and the days before in this session, I want to say that it has been good knowing everybody here, and we have worked in a harmonious manner. In diplomatic language it is normally “a constructive manner”, and then you know it was free and frank. It has been a constructive interaction for the last four and half years, and indeed we can no longer be strangers in Kenya, Uganda or Tanzania. You know that wherever you go in these Partner States, there will be somebody you know and you really know as a friend.

I cannot end this without expressing my gratitude to you, hon. Speaker, for not

only conducting this House in a mature and able manner, but also for having brought prestige to this founding Assembly – (*Applause*). Mr Speaker, you cannot say it yourself, but I want to tell you, without fear of contradiction, that we have had a good time with you – (*Applause*). These Members here have had a lot of respect for you, and they feel you have steered this Assembly very well – (*Applause*).

With those remarks, I beg to move.

*(Question on the Motion put and agreed to)*

**The Speaker:** Before I adjourn this House, I have two announcements to make. First, you all know that President Kibaki, Chairman of the Summit of the East African Community, has extended an invitation to us, and he is going to host a farewell dinner at State House in Nairobi on Friday evening. Arrangements have been made for departure by the office of the Clerk and there will a bus available. An announcement will be made as to the time of departure – (*Interruptions*). Only when we get out of this NGO culture can we – (*Laughter*) - but let me say the following: Whenever we visit Kenya, normally the Kenyan Chapter hires aircrafts for us. I hope in this case the Kenyan Chapter will bring in an aircraft to take us to Nairobi.

Secondly, I would want the hon. Members to register with hon. Mwatela, the Chairperson of the Kenyan Chapter who is facilitating accommodation in Nairobi. Please, get in touch with him and tell him when you will need accommodation, for how long and the category of the accommodation that you

want – (*Uproarious Laughter*). That was an announcement given to me by hon. Mwatela. So, I am only transmitting it.

Announcement number two: The Secretary General has happily informed me that the gratuity cheques will be available tomorrow morning at 11.00 a.m. in this Chamber.

To conclude, I would like to take this opportunity to thank all of you for your co-operation and for the support, and also for the respect you have extended to this seat which I have occupied for the last five years – (*Applause*). I am confident that together we have laid a solid foundation for the East African Legislative Assembly. We have made tremendous achievements, and we are leaving a landmark, not only in the East African Community but in East Africa – (*Applause*). I ask you to be proud of your achievements as you leave this Assembly. As we conclude this Session, my thoughts reflect the first day we met when you elected me to become the Speaker, and I once again thank you for the trust and for the confidence.

I congratulate those who have been re-elected to come back to the House, and in this case I want to point out and congratulate hon. Lydia Wanyoto Mutende, hon. Maj. Gen. Mugisha Muntu and hon. Daniel Ogalo – (*Applause*). Elections normally are difficult to predict. Some of us are going for re-election, I pray for their success and victory - (*Applause*) - and for those who are retiring without being tired, I believe they will remain steadfast and committed and support the process of integration wherever they may be.

## ADJOURNMENT

**The Speaker:** I now adjourn this House to an unknown date.

*(The Assembly rose at 4.20 p.m. and adjourned sine die.)*