



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

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

165TH SITTING - THIRD ASSEMBLY: FIFTH MEETING – FIFTH SESSION

Wednesday, 8 March 2017

The East African Legislative Assembly met at 2:32 p.m. in the Rwanda Chamber of Deputies, Parliament of Rwanda in Kigali.

PRAYER

(The Speaker, Mr. Daniel Fred Kidega, in the Chair)

(The Assembly was called to order.)

COMMUNICATION FROM THE CHAIR

The Speaker: Good afternoon, honourable members. I would like to extend my appreciation to you for your engagement last evening with the private sector under the auspices of the East African Business Council, and for the issues that were raised.

Honourable members, I would like to take this opportunity to congratulate the women of this Assembly, the women of East Africa, the women of Africa and the women of the world on this day when we celebrate their achievements and take stock of what the world has offered or what they have offered to the world under the theme, “Be bold for change”.

As an Assembly, we have deliberately chosen this day to offer our best gift to the women and the people of East Africa by

passing the Gender Development Bill today on this day.

We are also aware that women in East Africa, Africa and the world still suffer a lot of violence and other injustices. I kindly request that we rise and pay tribute to women who have died, or those who are still suffering from all forms of injustices, which are being meted on them, and for those who are still committed to the struggle. May we rise?

(The members rose in their places and observed a moment of silence.)

The Speaker: May they find safe passage to eternity. Thank you.

PAPERS

The following Paper was laid on the Table:

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(by Mr. Bernard Mulengani on behalf of the Chairperson, Committee of Communication, Trade and Investment)

The Report of the Committee on Communications, Trade and Investment on the Status of the Railways Infrastructure Development in the East African Partner States.

BILLS

FIRST READING

The East African Community Protection of People with Albinism Bill, 2017

Ms Shy-Rose Bhanji (Tanzania): Thank you, Mr Speaker. I beg to move that *the East African Community Protection of People with Albinism Bill, 2017* be read for the first time.

The Speaker: Thank you. Seconders? Hon. Nancy, hon. Zein hon. Rwigema, hon. Kessy, hon. Dr Ndahiro, hon. Valerie, hon. Dr Martin and all the members standing.

THE EAST AFRICAN COMMUNITY PROTECTION OF PEOPLE WITH ALBINISM BILL, 2017 READ FOR THE FIRST TIME

The Speaker: I refer the Bill to the Committee on General Purpose.

BILLS

COMMITTEE STAGE

The East African Community Gender Equality and Development Bill, 2016

(The Chairperson, Mr Dan Kidega, in the Chair)

(Business interrupted on Tuesday, 7 March 2017, resumed)

The Chairperson: Honourable members, you remember during the debate of the committee report, members raised a number of issues. It is at this stage that we

now effect the actual amendments to the various clauses of the parent Bill.

Clause 1

The Chairperson: Honourable Members, I propose the question that Clause 1 be part of the Bill.

I now put the question that clause 1 be part of the Bill.

(Question put and agreed to.)

Clause 2

The Chairperson: Honourable Members, I propose the question that Clause 2 be part of the Bill.

The Chairperson, Committee on General Purpose (Dr Odette Nyiramilimo) (Rwanda): Thank you, Chair. We have amendments on Clause 2.

Interpretation is amended by deleting the definition for “*sexual and reproductive rights*”. The justification is that – *(Interruption)* -

The Chairperson: Honourable chair, move and let it be seconded.

Dr Nyiramilimo: I was explaining the reason why – *(Interruption)* -

The Chairperson: Yes, after secondment. Seconders? Hon. Dr Ndahiro, hon. Zein. Chairperson, proceed.

Dr Nyiramilimo: Thank you very much. I propose that the definition for sexual and reproductive rights be deleted.

We also propose that deletion of the words “*female genital sexual organs*”.

The justification is that this is already described in the paragraph above.

The Chairperson: Honourable Members, the proposal is that Clause 2 be amended as moved by the Chair.

I now put the question that Clause 2 be amended as moved by the Chair.

(Question put and agreed to.)

Dr Nyiramilimo: Still on Clause 2, we propose that we add a definition of “*affirmative action*” to mean, “*Any measures designed to overcome or ameliorate an inequity or systemic denial or infringement of a right or fundamental freedom*”.

The justification is for clarity.

The Chairperson: Secunder? Hon. Valerie, hon. Frederic.

Honourable Members the proposal is that Clause 2 be amended as moved by the Chair.

I now put the question that Clause 2 be amended as moved by the Chair.

(Question put and agreed to.)

Dr Nyiramilimo: I am still on the same Clause 2. In 2(d), we to propose to define “Council” to mean “the Council of Ministers of the Community established by Article 9 of the Treaty”. That is the definition that we were supposed to add.

If I could continue with (e) - that one is obvious, the Council. Thank you Chair.

By redefining “marginalised groups” to mean “a group of people who, because of laws or practices, are disadvantaged by discrimination on grounds of race, religion, and ethnicity”. That is for clarity. I beg to move.

The Chairperson: Seconders? Hon. Dr Ndahiro, hon. Valerie.

Honourable members, the proposal is that the Clause be amended s moved by the Chair.

Ms Patricia Hajabakiga (Rwanda): I think by defining and including just race, religion and ethnicity...they should have

said “and any other” because there are more than just these three in the people who can be discriminated. It is not limited to just those three.

Dr James Ndahiro (Rwanda): Thank you, Chairman. We limited the definition because of some problems that we are going through. We did not want to leave the definition to any other inclusion or interpretation. This definition is limited to this Bill and not for any other usage.

Therefore, we thought that by limiting it, we are doing justice to the people we want to serve but not opening the Pandora box. Thank you, Mr Chairman.

The Chairperson: Thank you. Hon. Patricia, do you get the argument that the committee was alive to the fact that there are others, but that they wanted to limit it to these two?

Ms Byamukama: Mr Chairman, I think hon. Patricia has a point because if you remember clearly, when we were considering the *Disaster Risk Reduction and Management Bill* in Dar es Salaam, we had a long argument about the definition of “marginalised groups”. Therefore, for consistency, I think that it may be best that we adhere to what we have already adopted as marginalised groups. Otherwise, we are going to have different definitions of the same terms, which may cause lack of clarity.

The Chairperson: Thank you. Honourable Chair, would you concede to the proposal by the honourable?

Dr Nyiramilimo: Thank you, Mr Chairperson. I think this is taken care of when we talk of practices. It is because of rules and practices, so in practices, those people are catered for. I think when we limit it as it is, it is clearer because there are some people who can consider themselves excluded while they are not.

For example, when we talk of people with disabilities, there is somebody who will lack one tooth and who will consider him or herself as a person with disability. Therefore, we did not want to open it too wide. So, I would propose that we leave it as the committee has proposed.

Ms Hajabakiga: Mr Speaker, practices are disadvantaged on the grounds of race, religion, and ethnicity and so on. What about children, women? Let me give you an example of Rwanda. During the period of the genocide against the Tutsi, women were attacked as a tool to make sure that they destabilise the Tutsi women. Simply because they are women and they are Tutsi, they were attacked more than anybody else was.

The Chairperson: Your argument is got. I do not want you to belabour so much – *(Interruption)* -

Ms Hajabakiga: My proposal is that we should have standing definition for the generalised group. We need to adopt those ones, which are already standard and are international because this one is not complete.

The Chairperson: Thank you. Honourable Members, I do not want to raise debate on this matter. Hon. Patricia is bringing an amendment to the amendment moved by the Chair that the definition of “marginalised groups” it should mean “*a group of people who, because of law or practices, are disadvantaged by discrimination on grounds of race, religion, ethnicity “and any other”*”. That is her addition.

You have heard the pros and cons. In the interest of time – *(Interjection)* -

Mr Ogle: Mr Chairperson, the tragedy of opening up the meaning of “marginalised group” is that there is some danger ahead. The guys who always purport and want to invoke the name of marginalisation are the LGBT group - the gays, homosexuals and

all these fellows. Therefore, there is some danger ahead. Let us limit that definition of the “marginalised groups” to the context that the Committee agreed on. If you opened it up, it would include every other person, and that is very dangerous. This is what we have been against, and this is what informed our sometimes very rigid position on this Bill. So, let us not open it up. Thank you.

The Chairperson: Hon. Ogle is just re-enforcing the argument against the amendment that if we open debate, we may open doors for the LGBT and any other groups.

We are at a point of voting on the proposal by hon. Patricia. May those in favour to include “and any other” as proposed by hon. Patricia say “Aye” and those against say “Nay”.

(Question put and negated.)

The Chairperson: I now put the question on the amendment by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question on Clause 2 as amended to be part of the Bill.

(Question put and agreed to.)

Clause 2, as amended, agreed to.

Clause 3

The Chairman: Honourable Members, the proposal is that Clause 3 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. We propose an amendment on Clause 3(1) by inserting “race, ethnicity, religion” between the words “gender” and “or nationality”. That is to focus the law on a wider range of grounds of discrimination. Thank you, Chair.

The Chairman: Seconder? Hon. Pareno, hon. Nancy.

Honourable Members, the proposal is that Clause 3(1) be amended as proposed by the Chair.

Mr Taslima: Mr Chair, I am looking at 3(5)

The Chairman: The Chair is amending 3(3).

Mr Taslima: I am looking at the way 3(5) has been written on page 10.

The Chairman: Can I get you clearly, hon. Taslima, on what you are raising?

Mr Taslima: Mr Chairperson, I take it that we are on Clause 3(3), which has been said by the Chair because I had gone to (5).

The Chairman: Hon. Taslima, just hold on a bit. Are you rising on the amendment moved by the Chair or do you have your own amendment on that clause?

Mr Taslima: This is a new amendment.

The Chairman: Then you wait and we dispose of the Chair's amendment then you come in.

Honourable Members, if you have amendments, to make it easy for the Chair presiding and the Chair of the Committee to follow, please write it in advance and send it to the Mover and to the Chair as well.

The proposal is that Clause 3(1) be amended as moved by the Chair.

I now put the question that Clause 3(1) be amended as moved by the Chair.

(Question put and agreed to.)

Dr Nyiramilimo: Mr Chairman, I propose that Clause 3(2) is amended by inserting the word "equity" immediately after "equality" to ensure fairness and equity as a general principle in the Bill. Thank you.

The Chairman: Secunder? Hon. Mulengani, hon. Pareno, hon. Dr Ndahiro.

Honourable Members, the proposal is that Clause 3(2) be amendment as moved by the Chair.

I now put the question that Clause 3(2) be amendment as moved by the Chair.

(Question put and agreed to.)

Dr Nyiramilimo: Still on Clause 3, 3(3)(a) is also amended by inserting the word "equity" immediately after "equality" for the same reason. Thank you.

The Chairman: Secunder? Hon. Mulengani, hon. Pareno.

Honourable Members, the proposal is that Clause 3(3) (a) be amendment as moved by the Chair.

I now put the question that Clause 3(3) (a) be amendment as moved by the Chair.

(Question put and agreed to.)

The Chairman: Hon. Taslima, you had an amendment on Clause 3. Can you proceed now?

Mr Taslima: Thank you, Mr Chairman. I was looking at 3(5), which says, "The Partner States shall share the information, which the Partner States deem necessary – *(Interruption)* -

The Chairman: Hon. Taslima, have you managed to write it down to give it to the Chair for following?

Mr Taslima: In that case, I will write it down. Thank you.

The Chairman: Present it verbally because we have to proceed. Continue; we cannot wait.

Mr Taslima: I have a reason to stop at this point, Mr Chairman. I will see how to go about it with the Chair.

The Chairman: Honourable Member, procedurally, unless you are going to move that we stand over it, I think you can go

ahead and state your amendment and then you will write it later. We can understand that.

Mr Taslima: Mr Chair, in that case, I will do it this way. “*The Partner States shall share the information, which the Partner States deem...*” I will just remove the words “Partner States” and replace with “they”.

The Chairman: It is a drafting issue.

Mr Taslima: Yes.

The Chairman: Secunder? Hon. Dora and hon. Sarah. Honourable Chair, have you understood the amendment?

Dr Nyiramilimo: It is a drafting issue.

The Chairman: Thank you. I put the question that Clause 3(3) be amended as proposed by hon. Taslima.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 3 as amended to be part of the Bill.

(Question put and agreed to.)

Clause 3, as amended, agreed to.

Clause 4

The Chairman: Honourable Members, the proposal is that Clause 4 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. For consistency, Clause 4(1) is amended by inserting the word “equity” immediately after the word “equality”. Thank you.

The Chairman: Secunder? Hon. Pareno, hon. Mulengani.

Honourable Members, the proposal is that Clause 4(1) be amended as moved by the Chair.

I now put the question that Clause 4(1) be amended as moved by the Chairperson of the Committee.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 4 as amended be part of the Bill.

(Question put and agreed to.)

Clause 4, as amended, agreed to.

Clause 5

The Chairman: Honourable Members, the proposal is that Clause 5 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. I would like to propose the amendment by the Committee. Clause 5(2) (c) is amended by deleting “50 to 50 per cent”. That is for harmony with Partner State constitutions.

The Chairman: Seconders? Hon. Pareno, hon. Dr Ndahiro, hon. Sarah, hon. Valerie.

Honourable Members, the proposal is that Clause 5(2) (c) be amended as moved by the Chair.

I now put the question that Clause 5(2) (c) be amended as moved by the Chair.

(Question put and agreed to.)

Mr Ogle: Procedure. Mr Chairman, I thought that it is procedural in the case of a Bill going through Committee Stage that the mover of the Bill is also asked to consent or otherwise because we can move and take a vote.

The Chairman: Thank you, hon. Ogle. I have seen the mover of the Bill working together with the Chairperson. Chairperson, please continue consulting with the mover but we will refer to that. Thank you, hon. Ogle.

Mr. Zein: For the record, could she say so, because what we are looking at is non-verbal communication. Could she verbalise and say that she consents to those that have been done so far?

The Chairman: Honourable mover.

Ms Abisai: Thank you, Mr Chairman. I consent and concede to all that has been moved for amendment so far.

The Chairman: Thank you so much.

Dr Nyiramilimo: Thank you, Chairman. For Clause 5(3) we propose an amendment by adding sub clause (c) as follows: “prioritise mobilisation of resources and budgetary allocations”. That is to achieve gender equalisation activities as contemplated under this Act. Thank you.

The Chairman: Seconders? Hon. Pareno, hon. Sarah.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 5(3) be amended as proposed by the Chair.

I now put the question that Clause 5(3) be amended as proposed by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 5 as amended be part of the Bill.

(Question put and agreed to.)

Clause 5, as amended, agreed to.

Clause 6

The Chairman: Honourable Members, the proposal is that Clause 6 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. Clause 6(1) is amended by replacing “woman and man” with “male and female” to include boys and girls, males and females of all ages.

The Chairman: Seconders? Hon. Valerie, hon. Kalinda.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 6(1) is amended as

proposed by the Chairperson of the Committee.

I now put the question that Clause 6(1) be amended as proposed by the Chairperson of the Committee.

(Question put and agreed to.)

Dr Nyiramilimo: Thank you, Chairman. Still on 6(3) (a), we propose the amendment by inserting the word “forced” before “widow inheritance”. The practice is, in some instances, culturally allowed so we would like to add, “forced”.

The Chairman: Secunder? Hon. Dr Ndahiro, hon. Valerie.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 6(3) (a) be amended as proposed by the Chairperson of the Committee.

I now put the question that Clause 6(3) (a) be amended as proposed by the Chairperson of the Committee.

(Question put and agreed to.)

Mr Ogle: Mr Chair, I would like to propose further amendment to Clause 6.

The Chairman: Okay, let us first dispose of the Chair’s amendment and then we will

Dr Nyiramilimo: Still on Clause 6, Mr Chairman, we propose to delete sub clause (4) because the Partner States have ratified the Protocol, and some with reservations on certain articles. This needs to be respected. Thank you, Chair.

The Chairman: Seconders? Hon. Valerie, hon. Kalinda, hon. Dr Ndahiro.

Ms Abisai: I concede.

The Chairman: Honourable Members, I put the question that Clause 6(4) be amended as proposed by the Chairperson.

(Question put and agreed to.)

Dr Nyiramilimo: Mr Chairman, 6(5) (e) is amended by deleting the word “eradicating” and substituting it with “ending”. That is for clarity. Thank you.

The Chairman: Seconders? Hon. Tiperu, hon. Dr Ndahiro, hon. Valerie.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that 6(5) (e) be amended as proposed by the Chair.

I now put the question that 6(5) (e) be amended as proposed by the Chair.

(Question put and agreed to.)

Mr Abubakar Ogle (Kenya): Mr Chairman, I would like to move an amendment to Clause 6(3) (a), which says, “*prohibit all forms of sexual and gender based violence, including harmful traditional practices*” - That particular part of “*harmful, traditional practices*”. This is criminalising African traditions. I just want it to remain as “harmful practices” without necessarily referring to African traditions. Therefore, I propose that the “tradition” in that sentence be deleted accordingly. Thank you.

The Chairman: Secunder? Hon. Dr Ndahiro, hon. Ngoga and all the members standing.

The honourable Member has moved that we delete the word “traditional” because he says there are other practices, which are not traditional but are harmful. So, we are only now justifying traditional ones.

His argument is that it should be all and not only the traditional ones. Chair?

Dr Nyiramilimo: Mr Chairman, we take the amendment by hon. Ogle to say “*including harmful practices such as...*” Therefore, we delete “traditional”.

Ms Abisai: I concede.

The Chairman: I put the question on the amendment moved by hon. Ogle.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 6 as amended to be part of the Bill.

(Question put and agreed to.)

Clause 6, as amended, agreed to

Clause 7

The Chairman: Honourable Members, the proposal is that Clause 7 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. The committee proposes an amendment by deleting the word “advertising” not to infringe on the rights of electronic and print media.

The Chairman: Seconders? Hon. Dr Ndahiro and hon. Pareno.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 7 be amended as proposed by the Chair.

I now put the question that Clause 7 be amended as proposed by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 7 as amended to be part of the Bill.

(Question put and agreed to.)

Clause 7, as amended, agreed to

Clause 8

The Chairman: Honourable Members, the proposal is that Clause 8 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. Clause 8(a) is amended by deleting the words “free to” and replacing the word “pupil” with “teacher”. This is for clarity.

The Chairman: Seconders? Hon. Mulengani, hon. Pareno.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 8 be amended as proposed by the Chair.

I now put the question that Clause 8 be amended as proposed by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 8 as amended be part of the Bill.

(Question put and agreed to.)

Clause 8, as amended, agreed to.

Clause 9

The Chairman: Honourable Members, the proposal is that Clause 9 be part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. Clause 9(2) (f) is amended by deleting “*in conformity with World Health Organisation recommendations on access to health facilities within a radius of 10 kilometres*”. That is for consistency and clarity. Thank you.

The Chairman: Seconders? Hon. Dr Ndahiro and hon. Mulengani.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 9(2) (f) be amended as moved by the Chair of the Committee.

I now put the question that Clause 9(2) (f) be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

Dr Nyiramilimo: Thank you, Chairman. I propose that Clause 9(2) (g) be amended by deleting and replacing paragraph (g) with the following: “*provide equitable access to training opportunities for health personnel*

including community health workers”. This is for use of current terminology. Thank you.

The Chairman: Seconders? Seconded by hon. Pareno, hon. Sarah and all the members standing.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 9(2) (g) be amended as moved by the Chair of the Committee.

I now put the question that Clause 9(2) (g) be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

Dr Nyiramilimo: Mr Chairman, Clause 9(2) (i) is amended by replacing the words “*elderly women and men*” with “*older members of society*”, and by inserting the word “*health*” before the word “*needs*”. That is to ensure use of proper and current terminologies for clarity. Thank you.

The Chairman: Seconders? Hon. Nakawuki, hon. Sarah and all the members standing.

Ms Abisai: I concede.

The Chairman: The proposal is that Clause 9(2) (i) be amended as moved by the Chair of the Committee.

I now put the question that Clause 9(2) (i) be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

Dr Nyiramilimo: Mr Chairman, still on clause 9(2)(3), we bring an amendment as follows: “*The Partner States shall adopt a common regional policy to domesticate international and regional instruments and shall take into account the particular vulnerability of women and men, girls and boys regarding their rights to health*”. That is for clarity.

The Chairman: Seconders? Hon. Dr Ndahiro, hon. Valerie.

Ms Abisai: Before I concede, it is 9(3), and not 9(2) (3). I concede.

The Chairman: Yes, 9(3). Correction taken. Thank you, mover.

Honourable Members, the proposal is that Clause 9(3) be amended as moved by the Chair of the Committee.

I now put the question that Clause 9(3) be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 9 as amended be part of the Bill.

(Question put and agreed to.)

Clause 9, as amended, agreed to.

Clause 10

The Chairman: Honourable Members, the proposal is that Clause 10 stand part of the Bill.

I now put the question that Clause 10 stand part of the Bill.

(Question put and agreed to.)

Clause 11

The Chairman: Honourable Members, the proposal is that Clause 11 stand part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. Clause 11(1) (d) is amended by replacing the words “equitably addressed” with the words “ensure equity”. That is to respect the affirmative action principle.

The Chairman: Seconders? Hon. Dr Ndahiro, hon. Valerie, hon. Parenno.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 11(1) (d) be amended as moved by the Chair of the Committee.

I now put the question that Clause 11(1) (d) be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 11 as amended be part of the Bill.

(Question put and agreed to.)

Clause 11, as amended, agreed to.

Clause 12

The Chairman: Honourable Members, the proposal is that clause 12 stand part of the Bill.

I now put the question that clause 12 stand part of the Bill.

(Question put and agreed to.)

Clause 13

The Chairman: Honourable Members, the proposal is that Clause 13 do stand part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. The Committee proposes that Clause 13 be amended by deleting paragraphs (a) and (b). This is to avoid contradictions with Partner State laws on land issues. Thank you.

The Chairman: Seconders? Hon. Patricia, hon. Kalinda, hon. Mulengani and all the members standing.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that that Clause 13 be amended as moved by the Chair.

I now put the question that Clause 13 be amended as moved by the Chair of the Committee.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 13 as amended be part of the Bill.

(Question put and agreed to.)

Clause 13, as amended, agreed to.

Mr Ogle: I have an amendment on Clause 13.

The Chairman: Hon. Ogle, it has already passed.

Clause 14

The Chairman: Honourable Members, the proposal is that Clause 14 stand part of the Bill.

I now put the question that Clause 14 do stand part of the Bill.

(Question put and agreed to.)

Clause 15

The Chairman: Honourable Members, the proposal is that Clause 15 stand part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. We propose that Clause 15(2) (c) be amended by replacing the word “equal” with the word “fair”. That is to respect the affirmative action principle.

The Chairman: Seconders? Hon. Pareno, hon. Dr Ndahiro.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 15(2) (c) be amended as proposed by the Chairperson of the Committee.

I now put the question that Clause 15(2) (c) be amended as proposed by the Chairperson of the Committee.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 15 as amended be part of the Bill.

Clause 15, as amended, agreed to.

Clause 16

The Chairman: Honourable Members, the proposal is that Clause 16 do stand part of the Bill.

I now put the question that Clause 16 do stand part of the Bill.

(Question put and agreed to.)

Clause 17

The Chairman: Honourable Members, the proposal is that Clause 17 do stand part of the Bill.

Dr Nyiramilimo: Thank you, Chairman. Clause 17(2) (e) is amended by replacing the words “adult persons” with “older persons”. That is the current terminology. Thank you.

The Chairman: Seconders? Hon. Dr Ndahiro, hon. Pareno, hon. Valerie.

Ms Abisai: I concede.

The Chairman: Honourable Members, the proposal is that Clause 17(2) (e) be amended as moved by the Chairperson.

(Question proposed)

(Dr Nyiramilimo stood up in her place)

The Chairman: Honourable, are you still on 17? I think you have a new clause. We have finished, and before we move to the Title, – *(Interjection)*. Is this on Clause 17? Okay. Let us first put the question on this amendment then you will bring that new insertion on 17.

Honourable Members, I put the question that Clause 17(2) (e) be amended as moved by the Chairperson.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 17 as amended be part of the Bill.

(Question put and agreed to.)

Clause 17, as amended, agreed to

The Chairman: Honourable Chair, the new clause will be read for the first time, for the second time and then you will bring it. Let us go on and you come in at the end. Okay?

Clause 18

The Chairman: Honourable Members, the proposal is that Clause 18 do stand part of the Bill.

I now put the question that Clause 18 do stand part of the Bill.

(Question put and agreed to.)

Clause 19

The Chairman: Honourable Members, the proposal is that Clause 19 do stand part of the Bill.

Ms Byamukama: Mr Chairman, following the debate yesterday, I had an amendment on the issue of implementation, and I would like to read it and maybe – *(Interruption)* -

The Chairman: Proceed.

Ms Byamukama: I have forwarded it to the Clerk's office. It reads, "*Council shall undertake to adopt all necessary measures, and in particular, provide annual reports, budgetary and other resources for the full and effective implementation of this Act*".

The Chairman: Seconders? Hon. Nancy, hon. Sarah, hon. Nakawuki, hon. Taslima, hon. Rwigema, hon. Okumu and all the members standing.

Hon. Dora, you may justify.

Ms Byamukama: This is really to strengthen the implementation of this Act, and in particular, to ensure that the Assembly is able, for example, to receive an annual report on what has been done in respect to this particular Act, as well as on provision of resources, especially the budgetary resources.

The Chairman: Thank you, hon. Dora.

Dr Nyiramilimo: We accept the amendment from hon. Dora.

Ms Abisai: I accept the amendment.

Mr Ogle: Mr Chairman, while I understand the spirit of hon. Dora's amendment, my worry is that the Treaty provides very clearly, for what the Council ought to be doing, particularly in relation to presenting annual reports. This is a Treaty matter. It is not even a matter of an Act here. However, they have not done so. I am referring to the case of regional security and peace. That is a Treaty matter, and the Council has not done it. Therefore, it would be expecting too much from them.

Actually if we incorporated something in this Act to expect them to provide annual reports on gender, development and equity, they should first be doing what the Treaty asked them to do before they can even be asked to do this.

The Chairman: Yes, that is part of the debate on the amendment.

Honourable Members, I now put the question on the amendment moved by hon. Dora Byamukama on Clause 19.

(Question put and agreed to.)

The Chairman: I now put the question that Clause 19 as amended be part of the Bill.

(Question put and agreed to.)

Clause 19, as amended, agreed to.

Clause 20

The Chairman: Honourable Members, the proposal is that Clause 20 do stand part of the Bill.

I now put the question that Clause 20 do stand part of the Bill.

(Question put and agreed to.)

The Chairman: Chairperson, now we are coming to your new clauses. Please be specific on where you are inserting them. They will have to be read for the first time.

Dr Nyiramilimo: Thank you, Chairman. The new clause that we would wish to bring for the amendment of this Bill is that we insert, *“This Act does not affect the application of Islamic law in matters relating to personal status, marriage, divorce and inheritance in accordance with Partner States law”*.

That was decided by the Committee to avoid contradiction with Partner State laws and constitutions. We would wish that this clause be inserted as – *(Interruption)* -

The Chairman: Honourable, let us read it for the First Time for it to be in the Bill.

(Application of the Act read for the First Time)

SECOND READING OF THE APPLICATION OF THE ACT

The Chairman: Honourable Members, the proposal is that the amendment as moved by the Chair be read for the Second Time.

Seconders? Hon. Dr Martin and hon. Taslima have seconded.

(Question put and agreed to)

(Application of the Act read for the Second Time)

The Chairman: Honourable Members, we have just agreed to the Second Reading of the amendment.

(Question proposed)

The Chairman: Honourable Members, this is when you can debate the proposed amendment. Debate is open.

Dr Martin Nduwimana (Burundi): Thank you, Chair. I am proposing a small amendment regarding the word “law”. I would like to propose that it be in plural - “laws” and not “law”. This is because it seems that it is one law for all the Partner States whereas I understand that it is a different law in every Partner State. Therefore, I propose to add an “s” on “law”.

The Chairman: Honourable Members, can I get somebody to second it because it is a proposed amendment? Hon. Dora, hon. Nakawuki, and hon. Straton have seconded.

Hon. Dr Marin Nduwimana is bringing his English expertise and drafting skill to – *(Interruption)* -

Dr Nduwimana: I made progress in English.

The Chairman: To add the letter “s”. I now put the question.

(Question put and agreed to.)

The Chairman: Any more amendments?

Mr Issa Twaha Taslima (Tanzania): Thank you, Mr Chairman. Although it was read quickly, there is something that I think was missing, which is “property alienation” where we talk about inheritance, marriage and so on. I would propose that we add “property alienation”.

The Chairman: Where do we add it?

Mr Taslima: We add it after the last comma. What I mean – *(Interruption)* -

The Chairman: Before you justify, who is seconding this amendment? First put your amendment clearly and then when it is seconded, it can be debated. If it is not seconded then it will be lost.

Mr Taslima: I am much obliged.

Mr Chair, what I mean is that when we say the property is being alienated, it means the process of passing the ownership from one person to another. That is alienation. We can talk of land alienation and other property alienation. In Islamic – (Interruption) -

The Chairman: That is justification. Can we get seconders?

Hon. Dora has seconded. You can go ahead and justify.

Mr Taslima: Thank you, Mr Chairman. What I would like to explain is that, yes, there are these blocks of practises, like when we are talking of a person taking the property of the deceased, and when we are talking of marriage and things like that. There are instances where in Islamic law or jurisprudence, you will find that some property has to pass from one person to another, and if that person gets that one, any other person is kept outside of that property.

Further, the property we are talking about at times does not fall under inheritance in the marriage system or in other groupings that have been read out.

Therefore, I think it is better that we include property alienation so that we complete the circle of the passing of property from one person to another according to Islamic jurisprudence.

The Chairman: Thank you. Let us give hon. Dora who was the seconder.

Ms Byamukama: Mr Chairman, I think we would like to have a good law, and I am standing up in this spirit. I would like to second what hon. Taslima is saying and base it on, for example, the Uganda Constitution.

When you look at the Uganda Constitution, you will find that under Article 129(1) (d), it says,

“The judicial power of Uganda shall be exercised by the courts of

judicature, which shall consist of such subordinate courts as Parliament may, by law, establish, including the Khadi’s courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.”

What I am trying to say here is that as he was submitting, he referred to Islamic Law, because there is no such thing as Muslim law. I think it is Islamic Law. That is what it is known as, and from there, either we adopt it and we include all these other areas, or we just say, “in accordance with Islamic Law” and we stop there.

Otherwise, we may actually add and leave out some aspects, which we may not have intended to. I just wanted to improve that, and maybe hon. Taslima is saying it in that faith. That is why I wanted to say that I think it is better that we change it accordingly.

Mr Abubakar Ogle (Kenya): Chair, I consider it some kind of an ambush, but I would have quoted for him the relevant verse of the Koran and this is on *Suratu Nisa*. It is far from the truth. What hon. Twaha Taslima is submitting is far from the truth, with all due respect.

The Quranic interpretation of inheritance is about property, it is not in a vacuum. So, when you try to make some further clarification on something, you tend to mislead. I will go by what hon. Dora was saying that we would rather put it in accordance with Islamic Law period. When you try to make toothcomb interpretations of this, you tend to mislead and miss out completely on what the Quranic verse intended to do in particular in relation to divorce, marriage and inheritance. You have to be very careful as you are treading on very dangerous ground.

The Chairman: Hon. Twaha Taslima, are you in agreement with the modification by your seconder?

Mr Taslima: Mr Chairman, the question is very straightforward but I would like to say a bit about what hon. Ogle – *(Interruption)*

-

The Chairman: Just help the Chair. Are you in agreement?

Mr Taslima: Once I agree, then I cannot say anything else, and that is why I would like to shed some light on what my friend hon. Ogle has said.

Hon. Ogle has confined himself to those areas that have been mentioned by the Committee Chair, and that is why he thinks that there is nothing else. Hon. Dora has stated other things like guardianship. Guardianship is not in those areas that have been mentioned as proposed.

Having said that, Mr Chair, I agree and concede to what hon. Dora has said and, therefore, I am in agreement.

Mr Abubakar Zein Abubakar (Kenya): Chair, first of all I would like to persuade hon. Ogle that when hon. Taslima talked about property alienation, I think he based his argument on application of Islamic Law, particularly in Zanzibar and parts of mainland Tanzania. He may have justification because they draw distinctions in various jurisdictions as to what is provided for here means.

For instance, if a person who has no inheritor passes on, how do you alienate that land to benefit the community? In Tanzania, it is done differently from Kenya. In Kenya, in relation to that, it falls under either of those categories, including personal status. Personal status in Kenya also includes guardianship, the worthiness of a person and the dignity inherent in the person.

Therefore, I will support what hon. Taslima is saying and then submit that in the construction of hon. Taslima, it covers what hon. Dora is saying. If you just add a

comma in what hon. Taslima is saying, it covers everything that we have discussed.

The Chairman: Honourable Members, hon. Taslima will write his amendment as submitted, but he has conceded to what hon. Dora has submitted. The mover has conceded to what hon. Dora has given.

Mr Zein: For clarity, could I understand what exactly hon. Dora is adding to hon. Taslima, because, for example, the status of a Khadi Court varies – *(Interruption)* -

The Chairman: Hon. Taslima, can you please give it in writing, because it is – *(Interruption)* -

Mr Zein: I would like to know, before I comment, exactly what the addition that hon. Dora has given to hon. Taslima is. *(Interjection)*

The Chairman: Hon. Dora, you may proceed, but Honourable Members, the practice is that you write. It is very difficult for the chair presiding and the chair of the committee to maintain it graphically in their minds without anything written.

Mr Taslima: Mr Chair, you remember that this was an amendment that was done right here.

The Chairman: Yes, but our Rules are very clear. I am just trying to bend it to fit our proceeding but not to break it to say that it must be written. By our Rules, it should be submitted at least a day before, but we are saying, please write it as you move so that it is easy to follow and to keep on record. Hon. Dora, please clarify.

Ms Byamukama: Mr Chairman, let me be very explicit. Hon. Taslima had not seen - for example, when you look at Clause 17 – Clause 17 has aspects of guardians, widows, widowers...Look more carefully and you will see it on page 30.

What I wanted to move, and which you had already agreed to, is that we just say that

this Act does not affect the application of Islamic Law and we leave it at that.

Let me tell you why. If you go to the nitty gritty, if you go to guardianship, land, inheritance, there may be some areas that you may miss out. Therefore, I thought that might be a cure whereby we would leave Islamic Law to be applied according to Islamic Law, and then this Act is applied as any other statutory law. That is the background that I am coming from, and I think that would be more concise.

Mr Taslima: Mr Chairman, I have agreed to what she has said as before. It is exactly what covers all the other words that have been proposed.

The Chairman: Honourable Members, you are debating the amendment. Hon. Zein, what you can do is to debate for or against, or seek clarity for the amendment as moved by hon. Taslima, which is in consonance with what hon. Dora has said. Unless you have a contrary view, then you amend that one.

Mr Zein: Mr Chairman, you debate what you understand, so understanding is the first step in the debate process.

My understanding is that this Act does not affect the application of Islamic law in accordance with Partner State laws. That is how you want to create reading, hon. Dora. I want to read the whole of it so that I can get, in my mind, what it exactly means.

The Chairman: Can I help you by asking hon. Dora to read it for you exactly?

Ms Byamukama: It does no harm. *“This Act does not affect the application of Islamic law in Partner States.”* That is if you so wish. I hope that will cure – *(Interruption)-*

Mr Zein: You see, now I can debate it. I think it is important to understand that not all Partner States have Islamic law. Therefore, the way it was coached was

deliberately in the fashion that it says, *“This Act does not affect the application of Islamic law in matters relating to personal status, marriage, divorce and inheritance in accordance with Partner States law.”*

If I heard hon. Taslima well, he was adding to it. I feel that if you delete what we carefully crafted, we may have problems of giving an impression that all Partner States have Islamic Law, and we may take away from some Partner States.

This is very specific. When you talk about, for example, the status of a widow or widower, that is part of what is called personal status. When you talk about guardianship, it is about personal status under Islamic law - *(Interruption)-*

Mr Taslima: Mr Chairman, can hon. Zein clarify which Partner State does not have Islamic Law?

Mr Zein: Rwanda and Burundi. Please, we debated this for four weeks. Now if you want to open up a Pandora’s Box so that we can debate for another one or two months, I am ready for it. I will even move a motion that we suspend the debate on this law so that we can have time to explain to each other what each and every word means. *(Interjection)*

Mr Chairman, when somebody stands, I always sit.

The Chairman: Hon. Chris, what are you rising on because hon. Zein is holding the floor?

Mr Chris Opoka Okumu (Uganda): I am rising on a point of information to hon. Zein. His interpretation that if we say “in Partner States” it will be interpreted that all Partner States have Islamic Law is not so in the interpretation of law.

Mr Zein: I do not know where to start with hon. Opoka, because when I start on him, I think we can spend the rest of the day, and

this time if you stand, I will not sit unless the chairperson recognises you.

Bottom line, I do not want to be distracted with red herrings – *(Interruption)* -

The Chairman: Hon. Zein, our Rules provide that when you are holding the floor, you debate. When a Member rises and catches the eye of the Speaker, it will depend on which point the Member is rising. If he is on a point of information, you have leeway to say yes or no. If it is procedural or order, that docket does not belong to you. It is just mandatory.

Therefore, on points of information, you can deny. Proceed.

Mr Zein: Mr Chairman, for the record, I am now opposed to the amendment by – I would not have had a problem with the addition of hon. Taslima, but since he withdrew the addition and conceded to hon. Dora to delete, I am vehemently opposed to deletion – *(Interruption)*-

Ms Byamukama: Mr Chairman, much as the Committee may have debated this particular Bill for six months or a year, I think it is only fair that Members are also given time and space to be able to express themselves.

What hon. Taslima was saying was to add some aspects, which he thought should be included. When I looked at the Bill, I found that there is also an issue, for example, of guardianship.

When I looked at the law of Uganda, I found that we are supposed to have khadi's courts. If we say that this Act does not affect the application of Islamic law in the Partner States, this will be *mutatis mutandis*. It will apply where such a law exists. If it does not, that is not an issue.

Actually, my interjection was to say that there is no such thing as Muslim law. That was my interjection. I wanted to say Islamic law. If you want to elaborate it or enumerate

it, it is all right. Just to say that there is a thing called Islamic law and then to relate it to the Partner States - if they do not have it, it will not apply. If they have it, it will apply.

If it is my intervention, which is holding back everything, I would like to withdraw it, but let me put it on record very clearly that my humble intervention was the issue of Islamic Law, and if you pick out some and leave certain areas, you may find it does not cover everything. That is why I left it as broad as that.

However, if my name is an issue then let the process go forward.

The Chairman: Hon. Dora, you have risen on a procedural point – *(Interruption)* -

Ms Byamukama: I am not withdrawing it. I am just clarifying that I wanted to clarify the issue of Islamic Law applicable in the Partner States, and I have read it.

The Chairman: Hon. Dora, you actually rose on a procedural point to say that even if the Committee had belaboured to debate this matter, the report is now the property of the House, and every member has a right of debate on it. The position of the Committee does not commit the House until the House takes a vote. That is why the motion moved by hon. Taslima and seconded by hon. Dora is now the property of the House because it is properly moved and seconded. We are now having debate on the matter. After we have debated, I will ask the Chair and the mover to respond and then put a question to it. If the honourable Member's motion takes the day, it will have done so. If it is lost, it will have been lost. That is how we are proceeding.

Hon. Zein on the debate, as you summarise.

Mr Zein: Thank you, sir. There are two separate issues that are at play. If you want to belabour points of procedure, it is not procedural. Let us go step by step.

Hon. Taslima stands up and gives –
(*Interjection*) -

Ms Byamukama: Mr Chairman, is it in order for us to deliberate on this particular issue on which you have already ruled? Is it in order?

The Chairman: I have guided as presiding chair at this Committee Stage based on the Rules of the House. Hon. Zein can proceed with his debate.

Mr Zein: Thank you, sir. I do not think that standing on order will stop me from delivering what I want to say.

The Chairman: Proceed with your debate, hon. Zein.

Mr Zein: Thank you, sir. I will not be intimidated. I will just explain, and if the idea is to stop me from thinking and explaining what I want to explain, I do not want to hurt anybody's feelings –
(*Interruption*) -

The Chairman: Hon. Zein, let me help you here.

Honourable Members, this is Parliament, and we are at the stage of the Committee of the whole House, dealing with the Bill at Committee Stage, clause by clause. Any Member has a right to move an amendment at this stage. The amendment must be duly seconded, and after it is seconded, it is properly in the House at this stage. You debate it, you persuade members to support your amendment, and then it will be put to a vote.

If you have been persuasive enough within the context of the Rules of Procedure and you win, it becomes part of the Bill at this stage. If you lose it, it will be lost. That is how we are proceeding.

Hon. Zein, proceed with your debate. There is no intimidation because nobody can stop you from thinking or debating. Please go ahead.

Mr Zein: The point I am making, Mr Chairman, is that when there is an amendment to add to words, it is not the same as deleting a whole sentence. They are mutually exclusive.

My two cents - and I do not want to make an issue out of this - is this that if you are seeking to be inclusive, you could even say, "*This Act does not affect the application of Islamic Law, including in matters relating to personal status*". This means "including" does not exclude others.

I feel strongly that if you delete all those other words, which have been put there, it limits the domain of where you can apply Islamic Law. In a nutshell, that is my submission.

The Chairman: Thank you.

Mr Martin Ngoga (Rwanda): Thank you, Chair. I think the latest proposal from hon. Zein can help because what we are trying to avoid, and what hon. Dora was trying to avoid, is to create a situation where we open up beyond what is intended.

There are people who feel very strongly about not mentioning specific areas. In drafting, it is normal that some examples are given in a provision, and when they are given, when we say "such as", it means whoever will be interpreting the law will know the context that the given examples wanted to capture, and the interpretation can be extended, but not going beyond the scope of the intended context. Therefore, I think that can help us out of the situation.

Ms Susan Nakawuki (Uganda): Thank you, Mr Chairman. I would want to support what hon. Dora raised. In the legislative drafting that I did, this issue of mentioning examples actually limits the scope of what you want to cover. If we are just to go by the words "Islamic law", it will entail everything under the Islamic law, including what you want to mention and what you want to leave out. We do not want to come at a later stage and say, this was covered

and this was not. Islamic law is more comprehensive, in a way.

We are also trying - I want to avoid a scenario where we are going to legislate and then we send these laws to the Partner States to be assented to and they cannot assent to them. So, let us give a chance to the Partner States that cater for Islamic Law and those that do not by using something that is encompassing the broad spectrum. I thank you. It is my request that we go with what hon. Dora has proposed.

Ms Nusura Tiperu (Uganda): Thank you very much. I would also support what hon. Dora has said, especially coming from Uganda. I would be very happy if you said, “not affecting the application of Islamic law.” In other words, if there are countries that have not yet put Islamic law in place, the law does not bar them from going ahead to put it, and the Muslim community would not feel that a law has been made, and they have been totally excluded. However, in the case of Uganda where you talk about the khadi’s courts, they are not yet applicable. The law caters for them but they are not applicable. So, everybody follows what is available. Until such a time when the khadi’s courts are applicable, as a Muslim woman, I will have to decide whether to go to the general or to go where my faith is, and I know that I can be treated fairly based on Islamic Law. Thank you.

Mr Ogle: With lots of respect, Mr Chair, what hon. Dora is doing could possibly be in good faith, but let us be very clear about this. Any deletion of the words “Inheritance”, “marriage” and “divorce” are not Islamic. That is what the Islamic Law is supposed to be treating. Therefore, removing those three words is nothing short of mischief. It does not talk about the Islamic Law – *(Interjection)* -

The Chairman: Will you take clarification from hon. Mulengani?

Mr Bernard Mulengani (Uganda): Thank you, Chair. I am not an authority in Islamic Law but the clarification I want to seek is as to whether Islamic Law does not mention issues regarding personal status, marriage, divorce and inheritance. If it mentions them, then it would be repeating what is contained in Islamic Law. Therefore, I would seek the indulgence of our colleague to accept the amendment by hon. Dora, if it is mentioned. However, let him give me the clarification.

The Chairman: What hon. Mulengani is asking is this. Does Islamic Law entail those enumerated words? *(Hon. Zein rose in his place)*

Hon. Zein, you rise either on clarification or on a certain particular point. We are regulated by how things are done here. The holder of the floor is hon. Ogle. Hon. Mulengani rose on a point of clarification, so are you rising on another point of clarification. *(Interjection)* Yes, that is the way it is supposed to be. Please proceed to raise your clarification.

Mr Zein: The clarification I wanted to give is that not every aspect of Islamic Law is practised in Kenya. When we say Islamic Law, it covers every aspect of life. What we were limiting in Kenya - and it is limited in that sense only - covers what you may call family law, personal status in those inheriting, marriage and divorce.

If you open it up and say Islamic Law, I will be happy because it will now talk about matters relating to crime, theft and all those matters. That is the clarification that I am putting – *(Interruption)* -

The Chairman: Honourable, if they say Islamic Law in this particular Act, it will be Islamic Law in the context of this law. Anything beyond it – *(Interruption)* -

Mr Ogle: Mr Chair, let us be very clear and let us put this argument in the context of this proposed Bill. This Bill is talking about gender equality, gender equity, sharing of

property and others. This is where application of those particular words on personal status, on marriage, on divorce and on inheritance will be Islamic in nature.

What we are talking about here in gender - there is a proposal that this should be done this way. That is why leaving it in the very broad and general sense of Islamic law does not actually cover Muslim interests here. It must be specifically in the context of that inheritance and personal status. It must be there; there are no two ways about it. If that does not happen, this Bill does not exempt Muslims, and we are opposed it. We will restart this debate all over again. Thank you.

Mr Abdullah Mwinyi (Tanzania): Thank you very much, hon. Chair. I just want to go back and give a little bit more context. All the Partner States are secular states in East Africa. There is no Partner State that professes to be governing all aspects of life in relation to any faith. We are all secular states.

The origin of Islamic law emanates from the colonial times when the British ruled India. In order to rule any area effectively where there are different faiths, they came up with a piece of legislation that dealt with specific areas and gave leeway to different faiths, thus the origin of Indian law of succession, which is in all the Partner States. I am not sure about Rwanda and Burundi, but I can say it is in Uganda, in Kenya and in Tanzania in that, the only aspect that Islamic law applies is those areas that are specifically mentioned and nothing else - personal law, inheritance, marriage. Therefore, if you are talking about a document that deals with rights, then it touches upon that specific legislation that is within the Partner States.

My advice would be to keep that phraseology as it is. It is not new. If you look at the Indian law of succession in Tanzania, you will find it there. You will find it in Kenya and in Uganda. It stipulates

only for personal issues, and that is it. By taking that away, we may risk changing the context of this exception. Therefore, hon. Chair, I beg to submit.

The Counsel to the Community (Dr Anthony Kafumbe) (Ex-Officio): Thank you, Chairman. I believe that the starting point is to look at how this issue came into the gist in the first place. When you trace it back to the Constitution of Kenya, Article 24(4), they are very specific. They exempt the application of general laws in areas of marriage, divorce and inheritance.

In coming up with this law, I propose that you confine yourself to those areas, which the Kenyans had found objectionable instead of opening it up. The only thing that I notice is that in the Kenyan law, they talk of Muslim law, but I think the proper word to use is Islamic law because that is broader. With that understanding, I believe you can capture that and make progress. I thank you.

Ms Byamukama: When you look at Clause 17(2) (d), it says “...*automatically becomes the guardian and custodian of the children upon the death of the other spouse.*”

When you bring in issues of guardianship, and looking at the Constitution of Uganda, which read before, Article 129(1) says, “*Subordinate courts, including khadi’s courts for marriage, divorce, inheritance of property and guardianship*”.

Now when you look at this, it does not include the word guardianship. So, whereas the Constitution of Kenya has these, the one of Uganda includes the word guardianship, which is included in this very Bill, which we are dealing with.

Therefore, either we look at it in that broad manner and maybe look at the constitutions or we add all those words. However, the safer way is that if we say under Islamic law under the Act then it will be on those issues, which have been stated in the Act.

I do not want to draw on this because you cannot take one particular country's constitution and make it East Africa's law. Uganda has an aspect of khadi's courts, whether they are operational or not, but it is already a part of the constitution.

This is where I was coming from. I said, look, in order for us not to leave out any - because we have not read all the constitutions, if you say "under this Act, areas where you can apply Islamic law", that way you will have captured even those areas, which may have, maybe inadvertently, been left out, like the issue of guardianship. That is where I was coming from.

Mr Mulengani: Mr Speaker, drawing from what hon. Dora has said, I would propose that we add the word "guardianship" to this list to make progress. Would that would suffice?

Mr Ogle: Mr Chair – (*Interruption*) -

The Chairman: Hon. Ogle, you have not yet caught my eye. There was a specific procedural issue raised by hon. Mulengani to hon. Dora.

Ms Byamukama: I concede on that because I wanted two things: the issue of Islamic law to be clear, and if they want to have that, it is okay. Let it be.

Mr Ngoga: Thank you, Chair. After the clarification by hon. Mulengani and the concession by hon. Dora, I have a problem. The issue here is the way these matters are captured in national legislations. There are countries in the Community who are yet to apply Islamic law but who may do that in future. If we attempt to do it in a way that closes or does not anticipate what may happen in future, it can cause a problem.

I have a suggestion that I believe can provide a compromise. What if we said, "This Act does not affect the application of Islamic law as provided for in national legislations", because in Kenya we have it

the way it is provided, and we have the way it is provided in Uganda. We could add the phrase "as provided for in national legislations", which will compel the interpretation to be done in the way it is understood in a particular Partner State.

The Chairman: Have you heard the amendment moved by hon. Ngoga to the amendment of hon. Taslima? Now I am going to stick to the rules of our House. Is there anybody seconding the amendment of hon. Ngoga to the amendment of hon. Taslima?

Mwinyi, hon. Susan and all the members standing have seconded the amendment.

Honourable Members, let us dispose of the amendment of hon. Ngoga to the amendment of hon. Taslima first. I now put the question on hon. Ngoga's amendment to the amendment of hon. Taslima. (*Interruption*)

Dr James Ndahiro (Rwanda): Before I support that, Mr Chairman, I wanted clarity here. Does it mean that under this law, all provisions of this law will follow Islamic law in Partner States, or were we dealing with one clause for specific areas that probably are in the national constitutions, and we did not want to contradict the national constitutions? We meant only the area of inheritance, but this Bill has other clauses in different areas such as child marriage, education and others.

Does it then mean that when it comes to application of this law in the Partner States, one could choose to use Islamic law to deal with child marriage? Thank you.

Ms Patricia Hajabakiga (Rwanda): Thank you, Mr Chairman for catching your eye this time around because the amendment of hon. Ngoga is what I wanted to move earlier on. As much as we may try, there are certain other areas, which we may not be able to remember, which may arise in future but which are within Islamic law.

Therefore, the best way is just to capture national legislations, whatever it provides in the law. If it says inheritance for Muslims is like this, it will be captured. If they say Muslim girls are allowed to go to school covering their heads, it is fine. But where it does not have anything, that country would follow its national legislation. Thank you, Mr Chairman.

The Chairman: In other words, you are debating in favour of hon. Ngoga's amendment. Honourable chair, do you support hon. Ngoga's amendment?

Dr Nyiramilimo: Mr Chairman, I do not support it.

The Chairman: Honourable Members, to bring everybody on board, we have an amendment moved by hon. Taslima, and there is an amendment to hon. Taslima's amendment by hon. Ngoga. That is what we are disposing of and then we will dispose of the main amendment by hon. Taslima. Honourable chair?

Dr Nyiramilimo: Thank you, Mr Chairman. I would like to tell you the background of this amendment that we brought today. Why did we need to add this clause? It is because while discussing this Bill, we met with a group of the Muslim faith in Nairobi and in Tanzania, and we discussed with members of that religion who explained clearly to us on what the practices and the Islamic laws in the different countries allow, for example, for a woman to inherit from her husband and family. We felt that this regional law would have a problem being applied.

When we said that this is on application, where this Act does not affect the application of Islamic law, it will be only on the specified areas of marriage because that is where we found problems, in personal – *(Interruption)* -

The Chairman: Honourable Chair, are you debating hon. Taslima's amendment? Hon. Taslima's motion has been modified by

hon. Ngoga to say "as per the national legislation". That is what we are pronouncing ourselves on.

Dr Nyiramilimo: Yes, but I have not supported hon. Taslima's proposal.

The Chairman: That is okay. We are coming to Taslima's.

Dr Nyiramilimo: I think all the committee members who talked – because we discussed this – *(Interruption)* -

The Chairman: Honourable Chair, first listen. We are chronologically disposing of amendments as introduced. We dispose of hon. Ngoga's, and then we come to hon. Taslima's again. Are we together?

Dr Ndahiro: Mr Chairman, I asked for clarification and I have not been answered. We are legislating for the whole region, and there are specific articles that relate to other matters. We brought in this particular article to deal with only that particular area of inheritance, but the law goes beyond that.

My clarification was this. If we just limit it to Partner States or to Islamic law as suggested, does it mean that other provisions of this law will follow Islamic law in the Partner States, for example, in the case of early child marriages and other areas? I just wanted that clarification.

The Chairman: Dr Ndahiro, your clarification was cured by hon. Ngoga's amendment to say 'as may be applicable to national legislation', if I got it right.

Ms Abisai: Mr Chairman, I beg the indulgence of the Members. I want to say that when we are talking about this law from a gender perspective, we always have to be specific on matters that the law wants to address.

If you have read any protocol, or any international convention, they make specific mention of what you want to deal with. I want to tell you that when we

decided to come up with this, we did not look at a particular Partner State law. If you look at provisions, even in the protocols, they are specific on these matters.

What I would like to urge the House, kindly, because this is something that I am talking about from a point of information, and I have done my homework on this, is that you cannot leave it that this Act does not affect the application of Islamic law, and then say ‘as provided for in the Partner States’. You have to make specific mention. Even those issues that you are talking about such as guardianship and personal status are broad. When you talk about personal status, it is very broad.

I do not mind if you say you want to include, like what hon. Dora said, that ‘the Act does not affect the application of Islamic law in matters relating to personal status, marriage, divorce, inheritance, guardianship as provided for in Partner States law’.

If we do that, I think we will have captured it. I thank you.

The Chairman: Honourable Members, hon. Nancy has married the amendment of hon. Ngoga and added what hon. Dora has brought on board. So we are moving to a convergence point, and I think the best thing is to procedurally dispose of that and adopt what the mover has proposed because it takes care of hon. Dora’s concern, it takes care of what hon. Ngoga has raised, if I have followed it correctly, and also specifically addresses the specific areas raised by hon. Mwinyi, hon. Zein and hon. Ogle.

Ms Judith Pareno (Kenya): Mr Chairman, I do not even know where to start because having listened to all the deliberations, personally I am now convinced that we are safer with the provision as it was right from the beginning. This is because when you say “in accordance with Partner State laws” it is the same as what hon. Ngoga is saying.

So, I do not see why we are going back to remodel what we had already submitted. To me, whether you put it the way hon. Ngoga has said it, if you retain what we still have and add what she said, as the last sentence says, “in accordance with Partner State laws” and then we say the same thing in a different way...to me, whichever is okay.

The Chairman: Thank you so much.

Mr Mulengani: I want to add further clarification to what hon. Pareno has said. When you read the proposal by hon. Martin Ngoga, if we stopped at ‘national laws’ we will subject the entire Bill to the Islamic laws in the national laws yet there are things, as hon. Ndahiro is raising, that are not necessarily to be referred to Islamic law. Therefore, it is better that we leave it as it is. *Asante sana.*

The Chairman: Honourable Members, we are not going to debate until the cows come home. We have our rules of procedure. I put the question to the amendment moved by hon. Ngoga.

(Question put and negatived.)

The Chairman: I now put the question on the amendment moved by hon. Taslima. Honourable Members, remember where we came from to reach where we are. I am disposing it off one by one. You just do not rule on a motion, which is substantively on the floor.

I put the question on the amendment moved by hon. Taslima.

(Question put and negatived.)

The Chairman: I put the question on the proposed amendment for a new insertion as moved by the Chairperson. However, before I put the question, can I ask the mover whether she is in support of the amendment and the new insertion by the Chair of the Committee?

Ms Abisai: I concede.

The Chairman: Thank you. I now put the question on the new clause introduced by the Chair of the Committee.

(Question put and agreed to.)

Memorandum

The Chairman: Honourable members, the proposal is that the memorandum do stand part of the Bill.

I now put the question that the memorandum be part of the Bill.

(Question put and agreed to.)

The Title

The Chairman: Honourable Members, the proposal is that the Title do stand part of the Bill.

Dr Nyiramilimo: Thank you, Mr Chairman. The Title is amended by inserting the word 'equity' immediately after the word 'equality'. That is to ensure fairness and equity on gender and development.

The Chairman: Honourable Chair, you have not helped the Chair presiding. This amendment from the Committee is not with me.

Dr Nyiramilimo: It is there. It is the first on the schedule of amendments.

The Chairman: Okay. proceed.

Dr Nyiramilimo: Mr Chairman, I move the amendment to insert the word 'equity' immediately after the word 'equality'. The justification is to ensure fairness and equity on gender and development. Thank you, Chair.

The Chairman: Secunder? Hon. Susan, hon. Pareno, hon. Mulengani have seconded.

Ms Abisai: I concede.

The Chairman: I now put the question on the amendment – (Interjection). Are you debating the amendment? Okay.

Mr Taslima: Thank you, Mr Chairman. I move to try to put my fears on what the concession would be if we continue having the word 'development'.

The Chairman: We are not yet there, hon. Taslima. The honourable chairperson has moved to amend the Title to include 'equity' after 'equality'. Let us dispose of this amendment and then we can move to the next one, which is dealing with the word 'development'.

Mr Opoka Okumu: Thank you, Mr Chairman. If you put the word 'equity' immediately after 'equality', how does it read? I think there should be a conjunction there, or we add a comma. Thank you.

The Chairman: Yes, the chair said comma, then insertion. Are you okay with that? It will be a comma then the insertion of the word.

Mr Opoka Okumu: I am okay with that.

Ms Byamukama: It says, "Equity is the quality of being fair and impartial" - equity of treatment'. This word 'equity' is a little bit alien to the Treaty. Where is it provided for in the Treaty? When you look at Article 6(d), it is talking about issues of equal opportunities, that is the nearest, and gender equality. Are we trying to amend the Treaty by bringing into a law a word called 'equity', which is not provided for in the Treaty? If I get clarification, I have no problem.

The Chairman: I may need help on this from both hon. Dora, and maybe the Counsel to the Community. Are all the words used in the Bill supposed to be in the Treaty, or is it only when there is contradiction of its meaning to the meaning in the Treaty? Counsel to the Community, can I get your advice on this?

The Counsel to the Community (Dr Anthony Kafumbe): Honourable Chairperson, not all the words used in Bills are in the Treaty.

The Chairman: Does the word ‘equity’ contradict any provision of the Treaty or the spirit of the Treaty?

Dr Kafumbe: Actually, the Treaty talks of equitable distribution of benefits – *(Interjection)* -

Mr Ogle: Not only the principle, Mr Chairman. Article 6 of the Treaty – *(interruption)* -

The Chairman: Hon. Ogle, we have Rules of Procedure. You catch the eye of the Speaker first before you start speaking. Hon. Zein?

Mr Zein: Thank you, Mr Chairman. There was a great debate leading up to the adoption of the Maputo Protocol, which many people have referred to here. During that debate, that protocol almost collapsed because there was disagreement between African nations insisting on the word ‘equality’ alone. It was the Maghreb nations of Tunisia, Algeria, Egypt, and Libya, including Nigeria, who insisted and said that we must have equity because we also have large Muslim populations.

Therefore, if you go to the Maputo Protocol, for those who have read it and understood it, you will see that the word ‘equity’ is there, and if they knew the background of why this word is there, they would know why the Committee is insisting to balance and be in harmony with the Maputo Protocol. I submit.

Mr Ogle: Mr Chairman, over and above the principle of equity, which is enshrined in the Treaty from page one to the end, Article 6 (c) of the Treaty is talking about ‘equitable’. That is not referring to equality. It says “Equitable distribution of benefits.” If hon. Dora wanted the word ‘equity’ captured in the Treaty, she would have not

looked for anything beyond that. So, it is captured there accordingly. Equitable distribution of benefits is not talking about equality but equity in that sense. Therefore, it is covered.

Ms Byamukama: It says you first seek to understand and then you are understood, so when I am asking, I am asking for a reason. At one time sometime, someone will read the *Hansard*, or the court will be interpreting this law and it will be in this context. When someone puts a question across, do not think it is against what you are moving.

I have said before that when you look at the word ‘equity’ you will find the following words: “quality of being fair and impartial”, “fair-mindedness”, “justice”, “equitableness”, “fair play”. Who would not love that in the law? Therefore, I have no problem whatsoever as long as we understand what we are putting in the law.

The Chairman: Thank you. Honourable mover, do you agree with that?

Ms Abisai: I concede.

The Chairman: Hon. Taslima, I have not lost sight of your – Let me first dispose of the chair and then we can go to your proposal next.

I now propose the question on the proposed amendment moved by the chair on the title to add ‘equity’ after a comma.

(Question proposed)

The Chairman: Before I put the question on the title – *(Interjection)* – Yes, hon. Taslima.

Mr Taslima: Thank you, Mr Chairman. The word ‘development’ apart from the memorandum, elsewhere in the clause – *(Interruption)* -

The Chairman: Hon. Taslima, you are justifying what you have not moved.

Mr Taslima: I am sorry. Let me put it this way. I move to propose that the word ‘development’ in the Title, be removed.

The Chairman: Seconders? Hon. Opoka and hon. Dora have seconded. Hon. Taslima, proceed and justify your amendment to delete ‘development’ from the Title.

Mr Taslima: Thank you, Mr Chairman. This word ‘development’ and the way it is put here can create confusion for a person who is looking at the heading as to the content of the Bill itself.

There are several ways of looking at the word ‘development’ in the Title, and they are as follows. When we say “East African Community gender equality, equity and development”, one can think that equality and equity are grouped together, and that they are looked upon against the thing called development. That is one way of looking at it – (*Interruption*) -

Dr Ndahiro: Thank you, Mr Chairman. I wanted to refer hon. Taslima to read the general objectives below. He will find consistency because the whole spirit of this Bill is on society. Now if you consider the objectives – unless we change the objectives. Thank you, Mr Chairman.

Ms Abisai: I just wanted to inform hon. Taslima that even if you read the title of chapter 22 in the Treaty, Article 121 talks about the role of women in socio-economic development.

I would also like to let him know that this was largely developed from the already existing EAC Gender and Development Framework, and in the Bill we have Article 11, which talks of economic empowerment and development. Article 14 talks of trade, and it mentions issues of development. I thank you.

The Chairman: Hon. Taslima, proceed and conclude.

Mr Taslima: I thank you, Mr Chairman. Actually, what hon. Ndahiro was saying is what I was going to say next. The only thing is that he came in before I could do so.

What the mover has said about Article 11 – this article is a bit large. Can she state the particular...because I had looked at it and I did not see anything of that kind.

Ms Abisai: He asked me to clarify, but I was also telling him that most of this has also been carried from the EAC Gender Equality and Development Framework. We have an EAC framework on gender and, actually, this was not thought of from the head. It was picked from there, and the Sectoral Council already accepts it.

Ms Byamukama: Mr Chairman, I think that we are again seeking to understand. When you look at the essence of this Bill, it is gender equity and equality. So, the heart of the matter is really on Article 6(d) of the Treaty.

When you look at Article 121, which is being referred to, this is enhancing the role of women in socio-economic development. Therefore, this is a different context altogether. It is socio-economic development.

Now when you have this word in the heading, it does not flow, because the East African Community Gender Equity, Equality and Development...When you put the words ‘and development’, ‘development’ in its own right – (*Interruption*) -

The Chairman: Hon. Dora, you may have to add after ‘equality’, a comma, and then ‘equity’. That is where we are standing as of now.

Ms Byamukama: I agree. “East African Community Gender Equality, Equity and Development.” When you say ‘and development’ it seems like the word ‘development’ is a standalone. It is as if it

is not related to gender equality nor is it related to the issue of equity.

When you look at the definition of the word ‘development’, it has several synonyms, including evolution, growth, maturing, expansion, enlargement, spread, progress, blossoming, blooming. How does this word ‘development’ now come in this context, because development can be of any kind? This is the challenge I have. Maybe if I could get clarity on this, I think we would be in a better place.

Otherwise, personally I would be happy just to call it the “East African Community Gender Equity and Equality Bill”.

The Chairman: Thank you so much, hon. Dora. Honourable Members, you have heard the case for and against – (*Interjection*) -

Mr Opoka Okumu: I think the summary of what I wanted to say has been said in the last statement of hon. Dora. When we look at development with equity and equality, they are not related. Development can be in any area. I think the title of the Bill would be better captured if you said “gender equality and equity Bill”.

The Chairman: Nothing to do with gender development? The chairperson and the mover will have the last say.

Dr Ndahiro: Thank you, Chair. I think the problem here is that we are assessing the word ‘development’ as an adjective. We should take it as the philosophy behind integration. All the documents we have used – look at the Sectoral Council report on this matter as referred to by the mover; look at the Treaty language and other documents. When we were crafting the objectives of this Bill...That is why I wanted Members to re-look at the objectives as indicated in the Bill. They all refer to development, not as an adjective, but as the destiny of this Community. Thank you.

Mr Ogle: I followed the argument of hon. Dora in relation to the actual meaning of ‘development’. She has rightly put it that this is a process of growing, of spreading, of expanding, and that is what we intend to do on the gender aspect of this in terms of ownership, participation in this, and that you need to spread out in terms of education. We need to build it up. That is the dictionary definition of ‘development’. It is a process.

Therefore, I think it does not do much harm to have the word ‘development’ in relation. It is just further explaining ‘equality’ and ‘equity’. We need to spread out, to grow, to expand. We need to do these things in these many facets. I do not think it does much harm, and I think hon. Dora will understand.

Dr Perpetua Nderakindo Kessy (Tanzania): Thank you, Mr Chairman. If we look into the objectives of the Act, it says that the principle objective of this Act is to advance gender equality. Maybe that is where we can put ‘and equity’ in the Partner States in economic, political, social and So, here we are considering gender equality and equity in those areas. Most likely, that is what they mean. So, we should change the title to that effect, of what is considered in the objectives.

As hon. Opoka was saying, here we are saying gender equality, equity and development to mean that those are three areas rather than the two areas of equality and equity in the area of development as the objective.

Dr Nyiramilimo: Thank you, Mr Chairman. The Committee was of the view that maintaining ‘development’ would show clearly that we intend to enforce equality and equity in the bigger picture of development. That is why we felt that maintaining the title as the *East African Community Gender Equality, Equity and Development Bill, 2016* would be more

inclusive and comprehensive. Thank you, Mr Chairman.

Ms Abisai: My position is as the Chair has stated.

The Chairman: Honourable Members, I put the question on the – *(Interjection)* - Hon. Taslima on your amendment as you moved on the title.

Mr Taslima: Yes, because I was on the floor and then other people came in.

The Chairman: No, you are now taking the floor to respond as the mover. Proceed.

Mr Taslima: Mr Chairman, if what the Chair has just said is what the Committee wants to put across, then what if it is stated this way: *“The East African Community Gender Equality and Equity* – and instead of the word ‘development’ there would be something like enhancement – *(Interruption)* -

The Chairman: Hon. Taslima, we are debating on your motion for an amendment, which is on the floor. You cannot introduce another one. So defend that one.

Mr Taslima: What I am saying is that when you look at the whole text, it does not mention ‘development’, so that we can see how it came in.

Mr Zein: I am now getting lost. Maybe we are tired. You asked hon. Taslima to respond to the debate, but now he is adding a new amendment to the old one.

The Chairman: That is why I have guided him that he should stick to that one.

Honourable Members, there is a motion moved by hon. Taslima to amend the Title of the Bill to remove the word ‘development’. It was duly supported and debated.

I now put the question on that motion that the word ‘development’ be deleted. *(Interjection)*

Hon. Mulengani, the procedure is that when we are at voting stage, unless you are rising on a procedural matter or mandatory points – *(Interruption)* -

Mr Mulengani: Mr Chairman, I would like you to guide us in the procedure I am raising. When you look at Clause 4 of the Bill, it talks of the principle objective of this Act, which is to advance gender equality or equity in the Partner States in economic, political, social and cultural aspects. When you are defining ‘development’ in economics, you cannot define it without making mention of these aspects.

Therefore, development is indeed mentioned. I thank you, Mr Chairman.

The Chairman: Hon. Mulengani is smartly sneaking in his justification of the word ‘development’ under a procedural point. I want to be very clear on this that it is clearly known that we are at the voting stage, and that there is no more debate on this matter. I am now putting the question again.

I put the question to the amendment as moved by hon. Taslima to omit the word ‘development’. Those in favour put up your hands.

((The Members voted by show of hands))

The Chairman: Honourable members, for are six, against is 14, abstinence is zero. Spoilt vote is one.

(Question put and negatived.)

The Chairman: I now put the question on the Title as amended to be part of the Bill.

(Question put and agreed to.)

MOTION FOR THE HOUSE TO RESUME

Ms Nancy Abisai (Kenya): Thank you, Chair. I beg to Move that the House do now resume and the Committee of the Whole House do report thereto.

The Chairman: Seconder? Hon. Susan, hon. Pareno and all the members standing have seconded.

Honourable Members, the motion is that the House do resume and the Committee of the Whole House report to it.

(Question put and agreed to.)

(The House resumed and the Speaker, in the Chair)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

Ms Nancy Abisai (Kenya): Mr Speaker, I beg to report that the Committee of the Whole House has considered the *East African Community Gender Equality and Development Bill, 2016* and passed it with amendments.

MOTION FOR THE ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

Ms Nancy Abisai (Kenya): Mr Speaker, I beg to move that the Report of the Committee of the whole House be adopted.

The Speaker: Seconder? Hon. Susan, Hon. Frederic, hon. Rwigema and all the members standing have seconded the Motion.

I now put the question that the –
(Interruption) -

Mr Ogle: Mr Speaker, I would like to move a motion to recommit Clause 13.

The Speaker: Hon. Ogle, before we move to the Third Reading, you can move for a motion to recommit and that motion will be subjected to a vote. Please proceed.

Mr Ogle: Mr Speaker, in the consideration of this particular clause, the committee chair had suggested and successfully moved an amendment – *(interruption) -*

The Speaker: Hon. Ogle has moved a motion for recommitment, and this motion

must be seconded. He will justify after being seconded.

Seconders? Hon. Mbidde and hon. Dr Ndahiro have seconded. Hon. Ogle please proceed and justify your motion.

Mr Ogle: Mr Speaker, the Committee chair had moved an amendment successfully for the deletion of Clause 13 (a) and (b). That makes it look like, “*The Partner States shall ensure that access to and use of land is governed by the national laws and policies of each Partner State and shall, in particular...*” - because provision (c) is retained. It is my understanding that only (a) and (b) have been deleted, which does not make sense if it is allowed to stay on that way.

I am proposing that it reads, “*The Partner States shall ensure that access to and use of land is governed by the national laws and policies of each Partner State*” and we end it there. Even (c) should accordingly be deleted.

The Speaker: Honourable Members, hon. Ogle is moving to recommit the House back to the Committee Stage, and that is what we are going to vote on. He will then move to amend the provision, which he wants to amend because we would have gone back to the Committee Stage. Are we together?

Hon. Members: Yes.

The Speaker: I now put the question to his motion to recommit the House back to Committee Stage.

(Question put and negatived.)

BILL'S

THIRD READING

The East African Community Gender Equality, Equity and Development Bill, 2016

MOTION

Ms Nancy Abisai (Kenya): Mr Speaker, I move that the *East African Community Gender Equality and Development Bill, 2016* be read for the Third Time and do pass.

The Speaker: Seconders? Hon. Dr Odette, hon. Yves Nsabimana and all the members standing have seconded the motion.

Honourable Members, I now propose the question that the *East African Community Gender Equality, Equity and Development Bill, 2016* be read a Third Time and do pass.

(Question proposed)

The Speaker: I now put the question that the *East African Community Gender Equality, Equity and Development Bill, 2016* be read a Third Time and do pass.

(Question put and agreed to.)

Bill read a Third Time.

A BILL FOR AN ACT ENTITLED THE EAST AFRICAN COMMUNITY GENDER EQUALITY, EQUITY AND DEVELOPMENT ACT, 2016, AN ACT OF THE COMMUNITY TO MAKE PROVISIONS FOR GENDER EQUALITY, EQUITY PROTECTION AND DEVELOPMENT AND TO PROVIDE FOR OTHER RELATED MATTERS

The Speaker: Honourable Members, on this 8th day of March, I now declare that the *East African Community Gender Equality Equity and Development Bill, 2016* has been duly passed by this Assembly. *(Applause)*

I congratulate hon. Nancy Abisai, I congratulate the chairperson and the Members of the Committee on General Purpose for a great job. I congratulate this Assembly for giving a good gift to the East Africans on the 8th of March, which is the International Women's day. Congratulations. *(Applause)*

MOTION FOR THE CONSIDERATION AND ADOPTION OF THE REPORT OF

THE COMMITTEE ON COMMUNICATION, TRADE AND INVESTMENT ON THE STATUS OF RAILWAYS INFRASTRUCTURE DEVELOPMENT IN THE EAC PARTNER STATES

The Chairperson, Committee on Communication, Trade and Investment (Mr Fred Mukasa Mbidde) (Uganda): Mr Speaker, permit me to move a motion -

THAT the Report of the Committee on Communication Trade and Investment on the status of the railways infrastructure development in the EAC Partner States be adopted.

I beg to move.

The Speaker: Seconders? Hon. Ole Nkanae, hon. Shy-Rose, hon. Yves, hon. Frederic, hon. Susan, hon. Mulengani and all the members standing have seconded the Motion.

Chairperson, proceed and present the report.

Mr Mukasa Mbidde: Much obliged, Mr Speaker.

1.0 Introduction

The Committee on Communications, Trade and Investment held an oversight activity from 12th - 15th December 2016 in Nairobi, Kenya to assess the status of implementation of the Railway infrastructure development in East African Community. As provided for under Article 91 of the Treaty for the Establishment of the East African Community, the Partner States agreed to establish and to maintain co-ordinated railway services that would efficiently connect the Partner States within the Community and, where necessary, to construct additional railway connections. It is against this background that the EALA Committee on Communications, Trade and Investment undertook the oversight activity

to assess the status of the railway infrastructure development in the region.

1.1 Objectives of the Oversight Activity

The objectives of the workshop were to:

- (a) Understand the status of the Railways Master plan in the EAC;
- (b) Understand the status of EAC Specific Partner States' Railway Infrastructure development;
- (c) Come up with recommendations.

1.2 Methodology

In carrying out this activity, the Committee employed various methods, which included the following:

- (a) Tour and on spot assessment of the Standard Gauge Railway (SGR) in Kenya;
- (b) Received presentations from the Partner States on their respective status of railway infrastructure development; and
- (c) Held Plenary sessions for brainstorming, discussions, and clarifications about the EAC Financial Sector Integration matters.

2.0 Specific Findings

2.1 EAC Secretariat

The EAC Technical Expert/Adviser on Railways made a presentation at the meeting on the EAC Railways Master Plan as follows:

In April 2004, EAC Heads of State (HOS) directed that a Railways Master Plan be developed, and the directive was based on four Key issues:

1. High transport cost adversely impacting economic growth, regional and international trade;

2. Low volumes and market share of railway mode;

3. Inadequate national and regional connectivity to support regional integration, spur trade and economic growth;

4. High renewal and maintenance cost of main roads due to overloading.

On 12 July 2007, the EAC Secretariat engaged a Consultant to undertake EAC Railway Master Plan. The Master Plan has the following essential elements, which include;

- i. examining the current state of facility, infrastructure or service;
- ii. Identifying key issues such as vision which conceptualizes a long term desired state of transport system in terms of form: Utopia, World Class, best in industry/society;
- iii. determining and quantifying the gap between current and desired;
- iv. establishing strategic objectives, goals and desired outcomes;
- v. developing substance, action plans, programs, activities required to achieve the form;
- vi. estimating resource requirement and developing financing strategy and time frame;
- vii. establishing a monitoring and evaluation framework.

2.1.1 Objectives and Scope of Railway Master Plan (RMP)

The objective of study was to develop an EAC Railway Master Plan that would improve and/or develop railway transport in order to facilitate trade, enhance economic development and regional integration.

For the master plan to be implemented a number of activities were undertaken and these include; studies on Regional and Corridor business demand, a study High Level Option Analysis of hard infrastructure, and challenges, constraints and possible solution scenarios. A technical study was also carried out on existing network; gauge conversion, SGR and electrification, environmental, economic social impacts, indicative Cost estimates of Capital investment, Governance dimension in terms of Policy, legal, regulatory and institutional framework “soft infrastructure”. The study further proposed recommendations on project packaging and financing strategy for implementing the Master Plan. This study was concluded in January 2009.

2.1.2 Key Findings of the Master Plan

- i. It was found that in 1970’s railways had 70-80% of freight market share due to poor road conditions and vibrant integrated regional railway system under East African Railways.
- ii. Kenya Railway Corporation was best performing railway with max throughput of 4.5 min tons in 1981 then market share of 40% but started a steady decline.
- iii. Low axle loads 12-18 tons which was caused by weak sub-structure and superstructure hence limited haulage capacity
- iv. Poor horizontal track alignment due to the fact that construction was done 100 years ago leading to Low train speeds;
- v. Obsolete signalling, communication and train control leading to low line capacity and system efficiency;
- vi. Old and inadequate equipment due to lack of investment resulting to low freight volumes, high down time ;
- vii. Poor infrastructure maintenance as a result of inadequate revenue, No government funding poor management and this led to low speeds, high accident rates;
- viii. Overstaffing leading to high expenditure, low productivity, high tariff, less provision for capital investment;
- ix. Run down infrastructure and poor railway services caused by No funding. Complete neglect of the railways by Governments, while concentrating on road, hence low train speed, frequent accidents, high repair costs, loss of market share, high tariff.

2.1.3 Vision for a Transformed Railway Sub-sector in East African Community

It was highlighted that the vision for transforming the railway sector in East Africa identified a number of key issues with respective strategic objectives as follows:

Key Issue 1: High cost of Transport, making products expensive and international trade uncompetitive.

The strategic objective is to reduce transport cost by improving economic efficiency.

Activities/Interventions

For this objective to be achieved, the following interventions need to be undertaken

1. Equitable allocation of public resources to competing or complementary transport modes by use of scientific or rational methods of resource allocation (economic, socio/political, environment, financial);

2. Improve quality of existing Infrastructure, Rolling Stock and management systems through downtime-Rehabilitation and maintenance;
3. Build/install modern infrastructure, systems through investing in modern technology, maintenance mechanization, cargo tracking and apply appropriate management tools.
4. Undertake Life Cycle Costing to determine the most cost effective option to finance, procure/develop, operate, maintain and dispose including externalities such as environment, climate change, health/accidents;
5. Reform transport and railway industry to create competitive business environment;
6. Establish smart corridors with quality infrastructure and logistic facilities to facilitate trade through simplification of transport procedures and reduction of border crossing/transit impediments;
7. Develop human resource capacity to enhance training of railway staff and capacity building.

Key Issue 2: Low freight volumes, reduced market share for railways, congestion and destruction of road.

The strategic objective for this issue is to increase freight volume and market share and improve Business and Financial Performance of railways.

Activities and Interventions

The following interventions need to be undertaken in order to achieve the above objective;

1. Railways undertakers and Governments should develop framework for capital investment to improve condition of

infrastructure and numbers and quality of equipment;

2. Restructure existing public railways or railway concessions within existing or amended legislative or contract agreement framework as may be necessary;
3. Upgrade existing railway mainlines into standard gauge (1435mm) on new right of way;
4. All new railway lines to be constructed in standard gauge (1435mm), with provision for future electrification when traffic level, power adequacy and reliability or environmental needs will justify.

Key Issue 3: Weak Business Regulatory Environment (BRE) in transport sector and railway subsector

The strategic objective is to develop/strengthen business regulatory, institutional and operating environment. For this objective to be achieved, the following activities need to be undertaken.

Activities and Interventions

1. Develop transport and crosscutting policies on Public Private Partnerships; Procurement; competition by Partner States and corresponding EAC policies to deal with regional issues; significant progress achieved by most Partner States.
2. Review existing or develop new railway laws and establish/strengthen railway institutions. Only Tanzania has enacted new law (2002), while Kenya has engaged consultant to assist in process.
3. Partner States to establish appropriate independent regulatory/authorities: safety, economic, competition as provided in respective laws;

4. Establish a Railways Coordination unit/agency at EAC Secretariat to provide Partner States with technical support and coordinate activities on cross border issues and this unit will:
- a. Develop EAC Railway legislation in respect of safety, interoperability, access management and non-discriminatory pricing in order to anchor and operationalize the provisions of the Treaty on cross border issues;
 - b. Develop Regulations/ common rules/methods for EAC common railway market for safety management, licensing and authorization, qualification and certification for cross border freight and passenger services;
 - c. Develop common technical standards for railway construction and maintenance, rolling stock, train signalling, communication operations, operator competences and qualifications, traffic management systems;
 - d. Collaborate with Transport Corridor Agencies in order to improve the efficiency of transport corridors.

At Institutional level, governance is assessed based on the quality of the institutions and covers external relations with its principals, stakeholders and public and internal institutional structure, systems and processes.

The nature and quality of governance in a country can be a deal breaker and discourage not only private sector investors and investment banks but also multi and bilateral development partners.

Where infrastructure has been developed, like the Standard Gauge Railways in the EAC, their macro-economic impact can be

significantly reduced by governance failures;

Enabling business environment is at three levels that are interrelated and these include; country or national level, sector level and institutional level.

2.1.4 Challenges of weak Business Regulatory Environment (BRE) in transport sector and railway subsector

The following challenges were identified;

- i. Non-existence or fragmented and uncoordinated sector policies;
- ii. Overlaps in roles and responsibilities of public institutions or No separation between institutions responsible for policy, regulation, implementation, operation and adjudication of disputes;
- iii. Gaps in legislation or outdated sector specific statutes;
- iv. “Stranded policies” either with no clear objective or not translated into legislative, regulatory or administrative instrument hence not enforceable;
- v. Inadequate or inconsistent regulations against which to determine accountability;
- vi. Lack of or weak enforcement mechanisms.

Key Issue 4: Unserved agricultural, commercial and industrial centres; prevalent social and economic inequality.

The strategic objective is to promote inclusive growth, enhance community welfare and regional integration and increase productive base of the economy.

Activities/Interventions

1. Undertake feasibility study on 21 potential new railway links identified

and determine technical, economic and financial feasibility.

2. Improve connectivity by developing economically feasible links.
3. Prioritization of links was based on a weighted criteria covering;
 - a) Number of countries linked;
 - b) Connections to new countries;
 - c) Bankability;
 - d) Positive societal impact in terms of poverty reduction, inclusivity, equity;
 - e) Trade corridor enhancement;
 - f) Other efficiency gains.

4. The study also considered the transaction packaging in manner of institutional structure of the railway companies and found that the structure of the business has a profound impact on economic and financial viability. In this regard, separation of infrastructure maintenance from train operations enhanced the bankability of a railway development.

2.1.5 Required Steps Actions to be taken

For the EAC Railway Master Plan to be implemented, the following actions should be undertaken:

- (a) EAC Partner States need to provide strategic leadership, support and to champion;
- (b) Development/Review of national policies and laws on railway, Public Private Partnerships and competition by Partner States that have not done so. Tanzania has a new Railway law. Kenya has engaged consultant to assist in developing railway law;

(c) Development of regional policies, laws and regulations related to cross border railway operations and development of a common railway market including facilitation of stakeholder meetings and enactment of such laws and regulations to give effect and anchor the provisions of the EAC Treaty. This is a responsibility of the EAC Secretariat to support EAC common market;

(d) Competitive procurement of operators and establishment of infrastructure management agencies and regulatory institutions sector specific or multi-sectoral in the Partner States to ensure that the railway industry develops on a firm foundation in order to contribute to an efficient transport system. This is responsibility of Partner States;

(e) Follow on the establishment of railway fund to support development of railways. Kenya and Tanzania have established railway development fund. Uganda, Rwanda, and Burundi have not yet established. Partner States need to consider extending usage of funds to fund maintenance and renewal. Also follow on establish EAC infrastructure fund to support project preparation, structuring and marketing projects as regional projects;

(f) Development of centres of excellence in railway capacity building (Human Resource), ICT and technology development (e.g. spare part manufacture) ;

(g) The establishment of a Railway section/Agency based at EACS to support, monitor, and coordinate the issue of development of a common railways market and driving the development of regulations, standards, specification for regional integration and safety monitoring.

2.2 Burundi

Under the EAC Railway Master Plan, Burundi is participating in two railway Projects, namely: Dar Es Salam-Isaka-Kigali/ Keza – Gitega – Musongati, and Uvinza-Musongati

It was observed that the Feasibility Study for the Isaka-Kigali/Keza-Musonagati Railways Project was done in March 2009 including the Upgrade of the Dar es Salaam - Isaka Railway Line.

DB-International (DBI) undertook a Phase I study that included a feasibility design and capital cost estimates for the Dar es Salaam-Isaka-Kigali/Keza-Musonagati Railway line based on a standard gauge track and UIC (European) standards that focused primarily on the new line portion of the project and passenger services.

The preliminary field studies on the Dar es Salaam -Isaka line were also undertaken to determine the requirements for converting the existing meter gauge track to an AREMA-based (North American) standard gauge track and offered suggestions for reducing the estimated cost for the DB International designed a new line.

The study considered the project in the context of a broader, extensive expansion of east African railways and estimated costs at a conceptual level

1. Dar-es-Salaam-Isaka-Kigali/Keza-Gitega-Musongati Railway Project

This Project received financial assistance from the African Development Bank, and the current study (Phase II of the Dar es Salaam – Isaka – Kigali / Keza – Musongati Railway Project) was awarded to Canarail and GIBB Africa by the Rwanda Transport Development Agency (RTDA) as the representative of the three governments to commence work in February 2012.

It was further mentioned that technical guidance has been provided to the consultant by the Joint Technical Management Committee (JTMC)

comprising of technical experts from the three countries.

The current study has two main objectives, which include the identify the optimal technical design for the railway and to recommend an institutional and financial structuring for the project

Phase II study consists of traffic forecasting, operations planning and preliminary engineering design work, environmental and social impact analysis, economic and financial analyses, definition of private sector participation (PPP), and a complete institutional analysis

- i. Transaction advisory services for upgrading the Railway from Dar es salaam to Isaka and Construction of the Isaka-Kigali/Keza-Musonagati Railway (1673km) was awarded to CPCS Transcom International Ltd in association with AURECON (Global)- Africa, ITEC Engineering Ltd (Rwanda), Law Castles advocates(Tanzania) in August, 2014 ;
- ii. Another Contract for currying out Phase II of the Transaction Advisory services for Dar es Salaam-Isaka-Kigali/Keza-Musonagati Railway Project and Dar es salaam-Isaka basic design was signed in August, 2016;
- iii. Notification is being signed for allowing the consultant (CPCS, AURECON, ITEC Engineering, and Law Castles advocates) to start services.

2. Uvinza-Musongati Railway Project

For this railway project, the following were mentioned:-

- i. The Government of Burundi and Tanzania have agreed to construct a standard gauge railway line from Uvinza to Musongati;

- ii. The railway line from Musongati will ease the exportation of Nickel from Musongati via Uvinza to join the Tanzania central line to the Port of Dar es Salaam as a gateway to the foreign markets in the world;
- iii. The railway line will be mainly in Tanzania about 150Kms and Makamba region 50Kms with total distance being about 200Kms built to preferably AREMA latest standard (inter-operability) mainly for freight (mining inputs/outputs, agricultural inputs/outputs, and other freights including passenger);
- iv. The railway line will allow for the following maximum speed: 120 km/h for design train speed for passenger and /or 80 km/h for freight trains;
- v. Further to the mining inputs and outputs, the line will link and give Burundi and neighbouring DRC access to the port of Dar es Salaam and facilitate their imports and exports;
- vi. The Consultant Gauff Ingenieure has been awarded to conduct the feasibility study and preliminary design of this line;
- vii. Corridor Analysis Report is completed and presented in each Country;
- viii. Scoping Report Completed and submitted to Countries;
- ix. The traffic and market study report not yet submitted.

Burundi needs funds from the National Budget for paying the Consultants and following up the process of railway Projects. Burundi also needs capacity building for efficient technical monitoring

during studies and construction of a railway line.

2.3 Kenya

Kenya's status on railways infrastructure development was presented as follows:

Kenya is implementing the railway infrastructure as per the EAC Railway Master Plan whose objectives are:

1. Provide for efficient utilisation of EA Ports resources;
2. Contribute towards realisation of seamless rail transport facility in the region;
3. Realise efficiency and cost effectiveness in transportation;
4. Provide efficient platform for exchange of goods – particularly perishables;
5. Distribution of industries to the most effective production locations;
6. Environmental protection.

Kenya is constructing the Standard Gauge Railway (SGR) projects for Vision 2030, and these include:

1. Northern Corridor (Mombasa – Malaba SGR), which is phased as follows;
 - (a) Phase 1 = Mombasa – Nairobi
 - (b) Phase 2 = Nairobi – Malaba which is also sub phased as follows;
 - i. Phase 2A = Nairobi – Naivasha County/Suswa
 - ii. Phase 2B = Naivasha – Kisumu including developing the new high capacity Port at Kisumu
 - iii. Phase 2C = Kisumu – Malaba (development to be synchronised with Malaba – Kampala SGR section)

(c) Jomo Kenyatta International Airport
Commuter Rail Service

(d) Lake Region Commuter Rail Service

(e) Voi-Taveta branch line

There are other SGR projects that are under development in Kenya, and these are LAPSSET Railways, which include:

- i. Lamu – Isiolo
- ii. Isiolo – Nakodok (for connection to South Sudan)

iii. Isiolo – Moyale (for connection to Ethiopia)

iv. Isiolo – Nairobi

v. Lamu – Mariakani via Malindi, Kilifi and Mtwapa

Kenya Railways plans for rolling out SGR Master Plan as follows in the table below:

	Section	Stage	Commissioning
1.	Mombasa – Nairobi	Construction	01-06-16
2.	Nairobi –Naivasha	Mobilisation	31-12-19
3.	Naivasha – Kisumu – Kisumu Port – Malaba	Financing identification	30-06-20
4.	Lamu– Mombasa	Studies	30-07-19
5.	Lamu – Isiolo–Moyale	Studies	31-12-22
6.	Isiolo–Nakodok	Studies	31-12-25

NB. Completion of the Naivasha – Malaba section will be synchronised with the completion of Malaba – Kampala section.

Local content in Mombasa – Nairobi SGR projects

With regard to the use of local content, it was pegged at 40 per cent of the Civil Works Contract whereby so far Kenya Shillings 81billion is spent locally on the following:

- a) Supply of cement, sand, aggregates, transport equipment, earthmovers, hygiene and food items, general purpose steels, timber;
- b) Small contracts such as drainage works, slopes protection, labour contracts;
- c) Clearing and forwarding;
- d) Insurances;
- e) Transportation of special items from Mombasa to construction sites;
- f) Security;
- g) Electricity and water connection and supply.

2.3.1 Training and capacity building for Mombasa – Nairobi SGR operations

- a) Kenya Railway plan: SGR will be operated by well trained and qualified locals
- b) Kenya Railway intends to have trained at least 1,200 locals in the various railway operation skills by end of 2017.
- c) Skills include:
 - i. Driving of trains
 - ii. Maintenance of the track, locomotives, rolling stock, electricity and water supply; signalling and communications;
 - iii. Operation of trains and other railway functions

d) Training are undertaken locally at Railway Training Institute and also in China;

Training undertaken in Kenya;

- i. 107 students have completed classroom training and are in the field for hands-on experience; however, Chinese instructors locally supervise the training;
- ii. A second class of 115 will complete classroom training in February 2017;
- iii. At least 1,200 students to be trained by end of 2017.

Trainings in China

- i. Full scholarship being offered to Kenyan students to pursue 4 – 5 years railway related engineering degree courses in China (electrical, mechanical and civil);
- ii. 25 students are at Beijing Jiatong University completing first semester this December of the 4-years engineering courses;
- iii. 35 students are being recruited to join the University in February 2017;
- iv. Two hundred engineers to be trained graduated within the next eight (8) years.

The 13th Summit of the Northern Corridor Integrated Projects held in Kampala recognised the need to retain the engineering, procurement and construction (EPC) Contractor as the interim operator citing the following strengths:

- i. Partner states will have adequate time to train locals to take over operations after Interim Period;

- ii. EPC Contractor to manage in totality all the teething problems associated with a new project taking full advantage of the “defects liability period”;
- iii. There might be a challenge procuring and inducting a new operator causing delay to progressing the project to revenue generation stage;
- iv. Lender prefers this model to protect loans repayment period.

Kenya Railways in the process of “procuring” CRBC (the EPC Contractor) as the Operator

2.3.2 Standard Gauge Railway Operations

- i. Preferred operating model is “Management Contract” with well spelt out Key Performance Indicators (KPIs)
- ii. Although passenger services are not expected to generate much revenue (and could in fact be loss making), they are the shop-window of operations and will attract strong KPIs to guarantee quality service delivery;
- iii. There is currently debate on appropriate length of the “Interim Period” of operation by the EPC Contractor – the longer period (10 years) appears to be gaining mileage considering the length of time required for locals to acquire high technology skills; and length of time for locals to get familiar with SGR maintenance and operations facilities;
- iv. Kenya Railways will maintain the “umbilical cord” relationship with the EPC Contractor even after taking over the operations to benefit from the well-established and

research supported railway support industries and technology in China.

Development of Phase 2A (Nairobi – Naivasha section)

The Nairobi-Naivasha section is part of the Mombasa – Kampala – Kigali – Juba SGR. This section is steeped with challenges and controversies relating to corridor identification through the city of Nairobi. This section should be fast tracked to serve proposed Industrial Parks planned for locations within Navaisha Sub County and Narok County specifically Mai Mahiu and Suswa.

Industrial Parks are strategically located within geothermal steam fields and electricity generation. Locations targeting industries requiring large quantities of cheap steam and quality electricity supply (such as leather and textiles)

Phase 2A route Description

The phase 2A route is described as follows:-

- i. Starts from the West end of the Nairobi South Hub (end point of the Mombasa – Nairobi SGR)
- ii. Turns south-westwards through the Nairobi National Park and west past Twala and Ongata Rongai towns
- iii. Crosses Magadi Road next to the Adventists University and Ngong Road at Embulbul
- iv. Descends into Rift Valley through a tunnel located North-West of Ngong Hills;
- v. Proceeds North-West to the proposed Industrial Parks at Mai Mahiu and Suswa
- vi. Crosses B3 at Duka Moja
- vii. This is the most difficult section of the Mombasa – Malaba SGR

2.3.3 Mitigations for crossing Nairobi National Park

In order for SGR not to disrupt the operations of the National Park, the following mitigations were put in place:-

- i. SGR crosses the park on a single line bridge spanning the total width of the Park (6.0 Km);
- ii. Average height of the bridge above the ground = 18 metres – starting from 8 metres at the entrance into the Northern side of the Park and 41 metres at the exit Southern end of the Park;
- iii. Bridge ensures the Park remains undivided;
- iv. Clearance under the bridge considered adequate for smooth flow of Wildlife across the bridge and tourists traffic;
- v. The bridge is similar to that applied across the Tsavo River where there is evidence wildlife have already got used to passing under the bridge;
- vi. Bridge pillar foundations dug deep into the ground to reduce ground vibration during the operations;
- vii. Noise deflectors installed on the bridge to reduce noise from passing trains;
- viii. Bridge abutments to be outside the park to prevent human trespass and wildlife escaping;
- ix. Bridge colour to be chosen for blending with the environment;
- x. Bridge pillars to be at least 32 metres apart for unrestricted movement of wildlife in the Park. Bridge will be constructed in three (3) stages ensuring adequate space for wildlife and tourists traffic.

2.3.4 Emerging issues in Standard Gauge Railway development

1. The slow pace of railway development in East Africa due to financing capacity and lack of railway support industries. The railway projects are expensive with limited financing options; case for development easier to argue when supporting local industries;
2. The new railway development will be complementary to the roads transport industry;
3. EXIM Bank of China is financing the railway projects sustainably through EPC (turn-key) contract development, however benchmarking with similar railway projects is paramount;
4. The metre gauge railway needs rehabilitation for the country to benefit from extensive penetration and network of branch lines and sidings; the existing MGR specifications restrict its freight and passenger haulage capacity;
5. The proposed Phase 2A of the SGR is not “passing through” Nairobi National Park but it is “passing over” on a viaduct designed for:
 - i. Free passage of wildlife under the viaduct,
 - ii. Minimum interference with wildlife life during construction,
 - iii. Minimum noise during trains operations, and Minimum ground vibration.

2.4 Tanzania

It was mentioned that Reli Assets Holding Company (RAHCO) and Tanzania – Zambia Railways Authority (TAZARA),

manage Railway infrastructure in Tanzania. The railway infrastructure managed by TAZARA has a total length of 1,860km, which runs from Dar es Salaam in Tanzania to Kapiri - Mposhi in Zambia, while the total railway network managed by RAHCO is 2,707km, of which 2,127km (79%) is operational, namely:

- i) Central Line from Dar-es-Salaam to Kigoma via Tabora and Kaliua of 1,252km;
- ii) Mwanza Line from Tabora to Mwanza via Isaka of 379km;
- iii) Link-Line from Muruazi Junction to Ruvu Junction of 188km;
- iv) Tanga-Korogwe Line of 98km;
- v) Mpanda Line from Kaliua to Mpanda of 210km.

The United Republic of Tanzania has given priority to the Central Railway Line Network. The entire Central Railway Network planned for development to standard gauge is 2,561Km and the government of Tanzania has given priority to the following sections:

- i. Dar es Salaam-Isaka-Mwanza (1,219Km),
- ii. Tabora-Uvinza-Kigoma (411Km),
- iii. Kaliua-Mpanda-Karema (321Km),
- iv. Isaka-Rusumo (371Km),
- v. Keza-Ruvubu (36Km); and
- vi. Uvinza-Kalelema towards Musongati (203Km).

2.4.1 Status of Railway Infrastructure

In Financial Year 2016/17, the Government of Tanzania has set aside funds to build a

Standard Gauge Central Railway line, which will be parallel to the existing meter gauge. The new line will be built into phases; phase one will be from Dar es Salaam to Mwanza (1,219km) whereby the tender documents for design and build for section one of phase I (Dar Es Salaam – Morogoro, 202km) have been opened in this December, 2016.

The second Phase will be from Isaka – Keza – Rusumo – Ruvubu; third phase is from Tabora - Kigoma whereby detail design is still ongoing and last phase from Kaliua - Mpanda-Karema and Uvinza - Musongati whereby feasibility study and preliminary design is ongoing. All studies are expected to be complete before the end of financial year 2016/17.

Criteria for projects selection

The Identification of the projects was based on the East Africa Railway Master Plan and on Article 89 of the Treaty for the establishment of East African Community, which focuses on:

- i. Harmonization of standards and regulations;
- ii. Integrate roads, railways, airports, ports, and pipelines programmes in their territories;
- iii. Grant special treatment to land-locked Partner States;
- iv. Provide security in the transport corridors for smooth movement of goods and persons.

2.4.2 Railway Projects in Tanzania

1. Northern or Tanga Development Corridor

This proposed standard gauge railway line will traverse northern Tanzania corridor from Tanga to Arusha (438km) on existing Right of Way (RoW) to replace the existing meter gauge and then extend in a green field to Musoma Port in Lake Victoria (about

670km) with spurs to Engaruka Soda Ash Mine and Minjingu Phosphate Mine, the total length is about 1,108 Km.

Detailed Design of Tanga to Arusha has been completed and feasibility study and preliminary design of Arusha to Musoma section is still ongoing and scheduled for completion in June 2017.

2. Southern or Mtwara development corridor

The Southern railways corridor is 1,000km, which will provide connectivity from Mtwara Port to Liganga Iron Ore fields located about 874km west of Mtwara Port.

In addition, the line will provide connectivity from Mtwara Port to Mchuchumacoalfields and construction will be of 120 pounds rails and concrete sleepers.

Feasibility study and preliminary design for construction of this railway line has been completed in February 2016, and it shows the project to be feasible.

2.4.3 Challenges

In the bid to implement the railways projects in Tanzania, the following challenges were identified:

- a) Huge capital needed on investment of railway infrastructure
- b) Coping with new technological advancements in the railway industry
- c) Old and aged railway infrastructure.

2.5 Uganda

With regard to status of railway development in Uganda, It was mentioned that the Government of Uganda is fast tracking the development of Standard

Gauge Railway (SGR) in order to contribute significantly to transforming the country to middle-income status. The SGR project is being implemented as a regional project with Uganda's NCIP partner states of Kenya, Rwanda and South Sudan, and 1,724 Km will be constructed countywide in phases. The SGR will be a modern, efficient, reliable and affordable railway system in Uganda

2.5.1 SGR Implementation Progress

It was mentioned that the development of the SGR will be phased starting with the Eastern Route and the construction is scheduled to commence early 2017.

Progress on Eastern Route

The engineering, procurement and construction (EPC) /Turkey contract signed with M/s China Harbour Engineering Co. Ltd. (CHEC) for development of the Eastern and Northern routes in March 2015. The Addendum to the EPC/Turnkey contract to prioritize Eastern Route ahead of the Northern Route signed whereby the feasibility study is complete and preliminary design ongoing.

The financing application was made to China EXIM bank in December 2015 and the financing negotiations are in advanced stages including land acquisition of 273.44km by 60m for development, which is substantially complete. Seismic and Mineralogy studies were completed and electricity connection plan from 132kV transmission lines to the traction substations have been prepared.

The Government of Uganda and CHEC Ltd signed an Operation and Management Memorandum of Understanding (MoU) in addition to a bilateral agreement on Operations that was signed between Uganda and Kenya.

The process of harmonizing the SGR project with other infrastructure in Uganda continues, to enhance project viability,

environmental analysis in terms of TOD (total oxygen demand) and COD (chemical oxygen demand) have been mainstreamed including Railway industrial parks, Inland Container Depots and Grain silos

It was further highlighted that the development of common policy, legal and institutional framework across four Northern Corridor Infrastructure Projects (NCIP) Partner States is ongoing and it is spearheaded by Kenya. In addition, the local content for construction inputs was mainstreamed with 40% target and the capacity development plan has already been prepared.

Progress on Other Routes

Northern Route.

This is the Tororo-Gulu-Nimule/Gulu-Pakwach-Vurra route with total route distance of 762Km, and it is part of the CHEC EPC/Turnkey contract. A bankable feasibility study by CHEC is already completed and the addendum to bankable feasibility Study for Pakwach-Vurra section is being discussed as directed by the NCIP Summit. The environmental and social impact assessment (ESIA) for this project is also completed.

Western and South Western Routes

These routes are Kampala-Kasese-Mpondwe-Hima, Bihanga-Mirama Hills and Muko with total route distance of 660Km. The MOU for EPC/Turnkey development was signed in June 2015 with CCECC of China and the Bankable Feasibility Study by CCECC was completed including the Environmental and Social Impact Assessment (ESIA).

Existing Uganda Meter Gauge Railway (MGR)

With regard to the MGR, the concession to rift valley railway (RVR) was done in 2006 for 25 years Jointly by Uganda and Kenya, and the concession involved handing over

(conceding) to RVR most Uganda Railway Corporation (URC) core assets. The whole network was concessioned but only 338km (27%) was taken over by RVR for operations at commencement

Expectations from RVR Concession

The following were expectations from the concession to RVR:

- i. Increased rail freight market share;
- ii. Attract private capital and expertise necessary to improve operational efficiency and quality of service;
- iii. Reduction in freight transport cost;
- iv. Reduction in congestion on the roads and emissions;
- v. Reduced Government financial support to railway sub-sector;
- vi. Generation of additional Government revenues through concession fees and taxes.

Performance of the concession

Despite the above expectations from the concession to RVR, unfortunately by 2010, RVR had breached most of key concessionaire obligations, and the concession was restructured in August 2010 to avert collapse. To date, the concession performance remains unsatisfactory in spite of restructuring and the Government of Uganda has already served RVR with notices of default.

Future Plans (Northern MGR line)

The following are future plans for the Northern Metre Gauge Railway line:

- i. European Union has agreed to partially fund

- upgrading/rehabilitation of northern line from Tororo to Gulu (373km);
- ii. Budget USD 30m (EU to provide USD 22.5m);
 - iii. Scope of work includes stone ballasting plus essential repairs to earthworks, bridges, culverts, and station loops;
 - iv. Construction to take two years: operations to commence in 2020;
 - v. The Feasibility study is completed; and
 - vi. Detailed design, tender documentation, cost estimation, Environmental and Social Impact Assessment, implementation plan and methodology are expected to commence soon.

3.0 General Findings and Observations

1. It was observed that there is slow pace of railway development in East Africa due to lack of financing capacity and lack of railway support industries. The railway projects are expensive with limited financing options.
2. It was observed that there is no information sharing about the Standard Gauge Railway especially on the timelines by Partner States.
3. It was clearly observed that the construction of the Standard Gauge Railway among EAC Partner States is at different levels. Whereas some Partner States are in advanced stages, others are still lagging behind.
4. It was observed that there is minimal collaboration between the regional railway projects on the Central and Northern Corridors.
5. It was observed that there are limited skills and expertise in the railway

infrastructure development in the East African Region.

6. It was highlighted that the existing metre gauge railways in Partner States are rundown and out-dated.

4.0 Recommendations

1. The Committee recommends Partner States to set aside annual budgets to fund the implementation of railway projects in the region sustainably.
2. The Committee recommends that the East African Community should create an EAC infrastructure fund.
3. Partner States should continue with rehabilitation of the existing railway networks to complement new ones.
4. The Committee recommends to the Partner States that the Railway projects on the central and northern corridors should be complementary to each other in terms sharing information, skills and expertise since they are all EAC regional projects.
5. The Committee recommends that training schools for railway technology should be established and improve on the already existing ones in the EAC to enhance the skills and expertise in the region.
6. The Committee recommends that Partner States should rehabilitate the existing metre gauge railways to enhance and improve extensive railway penetration and network.

Mr. Speaker, I beg to move.

The Speaker: Thank you so much, hon. Mukasa Mbidde.

Honourable Members, the motion before this Assembly is that the *Report of the Committee on Communications, Trade and*

Investment on the status of the Railways Infrastructure Development in East African Partner States, be adopted.

Honourable Members, I know we done a great job today, and this report is very important. It has to do with the backbone infrastructure of this region. I would like you to go with this report, read it and then tomorrow we shall debate it.

Once again, I would like to wish our sisters of this House, happy celebrations. Thank you.

ADJOURNMENT

The Speaker: The House stands adjourned to tomorrow, 2.30 p.m.

(The House rose at 5:43 p.m. and adjourned to Thursday, 9 March 2017 at 2.30 p.m.)