



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly 110TH SITTING – THIRD ASSEMBLY: SECOND MEETING – FOURTH SESSION

Thursday, 8 October 2015

*The East African Legislative Assembly met at 2.30 p.m. in the Mini Chamber, County Hall,
Parliament of Kenya, Nairobi.*

PRAYER

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

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

The Speaker: Good afternoon, honourable members. Honourable members, I have just one item to communicate to this House. One of our Partner States and specifically a sister institution, the Parliament of Uganda, in the recent past has suffered losses of its members.

While we were on recess, the government, Parliament and people of Uganda lost the Minister of Internal Affairs, hon. Gen. Aronda. The unkind of death did not stop there. This week, the government and Parliament of Uganda again lost a second minister, hon. Dr James Mutende.

On your behalf, I have expressed our sympathy and condolences to the government, people and Parliament of Uganda. Hon. Dr Mutende happened to be the husband to one of our former colleagues, hon. Lydia Wanyoto. I would like to thank the honourable members and

staff who have contributed to be extended to the family of hon. Lydia Wanyoto.

In the same vein, I have also written a condolence message on your behalf to the Parliament of Uganda and the family of the deceased. I kindly request that we rise up and observe one minute of silence.

(The honourable Members stood and observed a moment of silence.)

BILL'S SECOND READING

The East African Community Electronic Transactions Bill, 2014

*(Debate interrupted on Wednesday, 7
October 2015, resumed)*

The Speaker: Honourable Members, last evening when we adjourned, the Communications, Trade and Investment Committee under the able leadership of

hon. Mukasa Mbidde met with the Chair, Council of Ministers and they have done justice to the Bill. I now would like to invite the Chair of CTI in a way of refreshing the minds of this House because as you remember, we had adjourned when debate had already ensued.

Therefore, we will proceed with the debate on the report of the committee but to create a good platform from where the debate shall continue from, I would like to use my discretion to invite the Chair to refresh the minds of the members of this House so that debate can proceed.

The Chairperson, Committee on Communications, Trade and Investment (Mr Fred Mukasa Mbidde) (Uganda): Thank you very much, Mr Speaker. Honourable members of this Assembly, the Speaker has guided the House that this is continued debate with a view to having the second reading of this Bill concluded and ultimately have the Bill passed into an Act.

The adjournment was in accordance to the Rules of Procedure to today. Mr Speaker, we are happy to report that following your directives, we have made all the necessary agreements with the stakeholders. A new schedule has equally been produced which has amalgamated all that we received which were the pending matters, the subject of which the adjournment was so sought by the Council of Ministers, including a consideration of a small write up by the Legal sub-committee of the Monetary Affairs Committee and we have equally added the same.

Mr Speaker, however, most of the comments from the stakeholders had been overtaken by events as the comments were targeting the original old Bill. We had already, pursuant to the tours that we had taken through all the Partner States, addressed much of the concerns.

However Mr Speaker, the concerns that had been raised that were new have also been incorporated into the substantial Schedule that is before this House as an annexure to the report that is already before this House.

Mr Speaker, the matters that were raised included whether the Bill has the effect of regional application, which has already been addressed.

The other issue was that the Bill was benchmarked on one of the Partner States laws and we have addressed this.

Mr Speaker, the Bill does not seek to provide for astronomy. We are providing or what actually exists with the Partner States but giving it a regional legal architecture and that is what we have addressed and we have agreed with much of the stakeholders that had raised the law.

The cyber law framework and the clauses on consumer protection and the application of bot open and closed systems and the new definitions as had been proposed have all been incorporated.

Therefore, honourable members, to refresh your minds on the report, much of the importance will go to the recommendations because the report is with us. As a committee, we strongly subscribe to the recommendations that accompany the report, which include, among others, the one on page 7 that, *“The committee urges the Assembly to pass the Electronic Transactions Bill so that the region can have a legal instrument regulating the electronic transactions.”*

Mr Speaker, it is noted that traders and businesspersons in the region are going on with their trade. In fact, much of this trade is guided by electronic transactions. The problem is that we have no regional legal framework to balance the same and this is what creates the urgency for purposes of passing this Bill.

The other recommendation is we urge the Council of Ministers to fast track regulations that are needed for the implementation of the EAC Electronic Transactions Bill. This is buttressed in clause 50 to the substantive bill, and we hope the Council of Ministers will take it upon themselves immediately to execute the draft regulations so that we can have this law implemented.

As recommendation number three, we also urge the Partner States to embrace the Electronic Transactions Bill and harmonise their laws to the regional law to create a proper environment or all possible users and beneficiaries of ICT in the region and beyond.

Mr Speaker, we are mindful that there is Supra national legislation, which envisages that Partner State laws would harmonise all legislations in the area so legislated upon by this Assembly for purposes of creating harmony and proper regional application of all electronic services and transactions within the EAC Business Community.

Mr Speaker, the final recommendation is that as the committee, we urge the Assembly to consider and adopt the amendments proposed herein which are attached to the schedule so that we can have this Bill passed into an Act of the Assembly today and we shall hope that pursuit of the same shall be done by the Council of Ministers for purposes of its immediate assent for its usage to be realised as conclusively as possible.

Mr Speaker that is the simple recap of the report as it stands and the status of our intended enactment. I pray that this Assembly goes ahead to do the needful. I thank you very much.

The Speaker: Thank you so much, hon. Mukasa Fred, the Chairperson, CTI for bringing the House in tandem with where we are now.

Honourable members, debate continues. It is therefore open on the report of the committee, which I am sure you have copies circulated to all of you.

I would also like to use my discretion to reopen chance to those who had earlier on debated if they have something to say on this Bill to say so because as the Chair has refreshed our memory, the stakeholders' interests were considered. Thank you.

Hon. Dr Ndahiro, you are the mover. We are still requesting- You will definitely have your moment to debate the Bill. If there is no debate that means that, the House is in total agreement with the report. I will invite Dr Ndahiro, the mover of the Bill to make some statements and then move to the Chair to extend his appreciation to the House and we will then proceed to the next stage.

Dr. James Ndahiro (Rwanda): Mr Speaker and honourable members, I would like to begin by thanking all the stakeholders we have met during our tour.

Mr Speaker, the stakeholders were friendly, knowledgeable and supportive. All those we met indicated that the Bill was timely and they indicated that the Bill could solve some of the challenges they were meeting particularly those from the Private Sector who want to invest their resources across the border.

Mr Speaker, the other issues that were raised during our tour and all those issues were important and they actually helped us to strengthen and improve our Bill.

As you are all aware, the Community has worked on the Cyber law framework, which was used to improve the Bill. The Cyber law framework has five elements. The first element of Cyber law is electronic transaction, which is the Bill before you today.

Another element of Cyber law framework is a consumer protection, which is in your amendment today. The third is about data protection, which is in your amendment today. The fourth is about electronic signature, both digital and other forms of electronic signatures. They are part of the amendments today.

That is why I am saying that the inputs we receive from the stakeholders were necessary and essential to make the Bill the way it is today.

Mr Speaker, we also received inputs from organisations that are involved in this area on a daily basis; an organisation of operators of technology and ICT, the regulators under the organisation, which actually has membership to the Community, that is the East African Communication Organisation. That organisation is made up of all the CEOs you know, all the companies you know e.g. MTN, Safaricom, LEO. Etc. It is made up of all ICT agencies and regulators.

I would like to thank and recognise their input. That is an indication that this Bill was important to the Community. They took time off, sat and gave us good input. Honourable members, please join me in thanking those organisations - (*Applause*).

We have also received input from the Kenya Law Society and in the same vein, I would ask you to join me in thanking, particularly, the association of lawyers who sat because in their minds, they knew that this Bill is important and it affects everybody. Actually, it does not affect people in technology alone but people in agriculture, in fisheries, in industry, mention it. Everybody is affected by technology today.

It is on that basis that lawyers across sat down, looked through the document and gave us inputs, which have been used to improve the Bill.

We have received input, as indicated in the report, from the Monetary Affairs Committee. Unfortunately, because they were the last, they were not aware of inputs from other stakeholders but I would like to thank them in particular because all the issues they had raised were important and have been addressed.

Mr Speaker, the Bill has benefitted from other stakeholders who are in charge of legal reforms in our Partner States. They are aware of the stages that those particular Partner States are in, and how far they have gone in either implementation or inducting of similar Bill in their Partner States.

We have indicated to you each Partner State in the East African Community, what they have put together, what they are using and the need to harmonise, the need to have the same standard, to harmonise regulations such that even people beyond the Community; outsiders could come and invest in one Common Market.

We are doing this because it is the aspiration of our people and our leaders that we land a single market in East Africa. Therefore, it is important to have same standards. We should not frustrate our investors who would invest in Partner State (a) and if he wants to cross to Partner State (b), he has other legal challenges. We want to harmonise so that we speak the true language of integration.

Mr Speaker, the Bill also has looked at cross border issues such as trade, electronic transactions because the electronics we use today have no sense of geography. They are not aware that the boundary of Rwanda is this and the boundary of Uganda is this. Unconsciously, there are people from the private sector who have gone ahead, without the legal framework and they are testing this Community.

You have seen those who hold Airtel sim-cards. You know that Airtel has already

entered into Monetary Union. They are implementing the Monetary Union, which we have not signed because they will not ask you for dollars or for the exchange rate. They just do it. You buy your sim-card in Rwanda and you are in Kenya, they know what to do and they will know what to charge. Therefore, they already know the value of your currency to this one and they know how to handle it. They do not write to you, it is all done electronically.

Therefore, it is important to provide a legal framework to allow the good initiatives that are in line with our integration projects to go ahead.

Thank you, Mr Speaker and honourable members. I need all of you to support the amendments in the Schedule. Thank you.

The Speaker: Thank you so much, hon. Dr Ndahiro who is also the mover of the Bill for the good journey into the Bill. I now invite the Chair of the committee to wrap up before I put the question.

Mr Mukasa Mbidde: Thank you very much, Mr Speaker. At the end of the day, I will ask the House to support the report that this Bill is read for the second reading. However, I must thank those who contributed to the debate of this report. Of course, the opportunity for doing which I did not get since debate was adjourned. I take recognition of the contributions of the following...at the end of the day, we shall seek that the report be adopted with the amendments that were also cited by those that contributed.

The following need to be thanked that contributed in Kampala: hon. Nancy, hon. Peter Mathuki, hon. Frederic, hon. Sebalu, hon. Shy-Rose, hon. Zein, hon. Susan Nakawuki, hon. Patricia, hon. Ngoga, hon. Ndahiro, hon. Sarah, hon. Ogle, hon. Leonce, hon. Valerie and the honourable minister.

Those who contributed to the motion seeking to adjourn debate are not here because that list was not what I asked for. I did not personally move the motion for the adjournment of such debate so I have not included you here merely because your contributions were targeted to the extension of the debate than adopting the report. Nevertheless, I am now thanking you because you have attended in order to vote for the adoption of this report.

Mr Speaker, I thank the indulgence of your office, which has been tireless to the effect that we can have this report adopted and the Bill passed as we possibly are going to do.

I also recognise the effort of members of my committee. We have had extended meetings for purposes that this report is concluded as is required.

Let me also take off this time to thank the Chair, Council for his tireless involvement in seeing that this report is actually adopted in a framework that we have so presented. The mover of the Bill, I do not know how to thank you. I think this House will do so by having the Bill passed into an Act of this Assembly.

Finally, I am sure the East Africans will be extremely happy if we pass this Bill today. As the mover of the Bill has also said, the transactions are already on going. In fact, they are only waiting for us by the corner to arrive where they are so that we can move together.

They say that when water rises up to your ankles, that is the time for you to act than when it has risen up to your neck. Therefore, I think this is now the time for us to act to regulate the electronic transactions in the East African business community so that we can be able to have a Community that progresses along both business and legal lines for purposes of control of the same.

With those few remarks, I beg that this Assembly adopts the report of this committee for passing this into a substantive Bill, the Electronic Transactions Act, 2015. I beg to move - *(Applause)*.

The Speaker: Thank you so much, hon. Mukasa Mbidde, the Chairperson, CTI. Honourable members, the motion before the House is that the East African Community Electronic Transactions Bill, 2014 be read for the second time.

I now put the question that the East African Community Electronic Transactions Bill, 2014 be read for a second time.

(Question put and agreed to.)

BILLS COMMITTEE STAGE

The East African Community Electronic
Transactions Bill, 2014

Clause 1

The Chairman: Honourable members, you are fully aware that it is at this stage that amendments to the clauses are brought forward. I know we have a schedule of amendments by the committee but this is open to the entire House. The proposal is that clause 1 be part of the Bill. I now put the question.

(Question put and agreed to.)

Clause 2

The Chairman: Honourable members, the proposal is that clause 2 be part of the bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that clause 2 is amended as reflected in the schedule on page 8 by inserting – I do not know whether I should read. It is reflected on page 8.

The Chairman: Chair, since Members have these schedules with them, it will take a lot of time and I am sure Members are reading through. Just mention the amendment and I will confer with the mover.

Mr Mukasa Mbidde: Much obliged, Mr Chairman. It is proposed that clause 2 is amended to reflect the provisions in the schedule on pages 8, 9, 10, 11 up to (d).

The justification is that this follows the new definitions that have been provided for more clarity in the law with the view to avoiding likely ambiguity. I beg to move.

The Chairman: Thank you, chairperson.

Dr. Ndahiro: I agree with the amendment, Mr Chairman.

The Chairman: Thank you so much, hon. Dr Ndahiro. Honourable members, I now put the question that clause 2, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 3

The Chairman: Honourable members, the proposal is that clause 3 be part of the Bill. I now put the question that clause 3 be part of the Bill.

(Question put and agreed to.)

Clause 4

The Chairman: Honourable members, the proposal on the floor is that clause 4 be part of the Bill. Chairperson.

Mr Mukasa Mbidde: Mr Chairman, the committee proposes it that clause 4 be amended by replacing paragraphs (g), (j) and (i) with the following new paragraphs:

- (g) Encourage investment and innovation in Information and Communication Technologies to promote electronic transactions.
- (j) Promote public confidence in the integrity and reliability of electronic records, electronic signatures and electronic transactions.
- (i) Foster economic and social prosperity in the Community through the Information and Communication Technology sector.

Mr. Chairman, the justification is that the same is only intended for purposes of clarity. I beg to move.

Dr Ndahiro: Mr. Chairman, I agree with the amendment.

The Chairman: Thank you so much. I now put the question on the amendment as moved by the Chair –

Mr. Opoka Okumu: The clause is not 4(i) but 4(l).

The Chairman: It is 4(l). I now put the question on the amendment as proposed by the Chair on clause 4.

(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 5

The Chairman: Honourable members, the proposal is that clause 5 be part of the Bill. I now put the question.

(Question put and agreed to.)

Clause 6

The Chairman: Honourable members, the proposal is that clause 6 be part of the Bill.

Mr. Taslima: Thank you, Mr Chairman. I am looking at clause 6, which talks of where a law requires a signature or provides for consequences. I think it would make for better meaning and reading if it was, “Any law other than a law” – I am taking of “any law” so that we embrace all other laws that can be relevant to what is in this clause.

Dr Ndahiro: Thank you, Mr Chairman. The honourable member is raising an issue, which we discussed with other stakeholders, but the agreement was that there are some laws, which do not take this direction. For example, a will or laws regulating wills and other things. Therefore, we agreed that a law is much better than any law because any law will bring those other laws that are not in line with electronic transactions. Thank you, Mr Chairman.

Mr. Taslima: Honourable Chair, when you say “any law” if it ended that way, it would mean exactly what the mover is saying but when you go on qualifying it by saying, “where any law requires a signature” then you are talking of a law which requires a signature and not any other law. So by saying “any” it does not necessarily mean that you are talking of “any” meaning that you are including each and every law.

The Chairman: Thank you, hon. Taslima. Let me open debate on this amendment as proposed by hon. Taslima. Debate is open because the mover and the person who has moved the amendment do not agree.

Mr. Ogle: Mr Chair, with respect to hon. Taslima who is seeking to amend from “a law” to “any law”, I think we need not go to some hair splitting exercise. As far as I am concerned, “a law” and “any law” are just about the same thing. We are not really adding any value to – *(Interruption)*

Ms Byamukama: Mr Chairman, the drafting that uses “any” has been

abandoned because the recent drafting says...we used to say, "Any person who does a, b, c, d commits a crime". The new drafting is "a person who does a, b, c, d commits a crime." Therefore, this is a new form of drafting which I would like to urge my colleague, hon. Taslima to take into account. It is more specific and I think hon. Ndahiro was very clear. Thank you.

The Chairman: Thank you. Hon. Ogle, had you finished?

Mr Ogle: What I saying is that there was not much distinction between "a law" and "any law". I did not even have any idea that "any" was abandoned and that the new format is about "a" but the point is ethnically there is no value that the application or the usage of "any" was going to add into this particular provision of the law. Thank you.

Mr. Taslima: Honourable Chair, I would like to concede.

The Chairman: Thank you so much. You know this Electronic Transactions Bill – The world has moved from many places - from analogue to digital, and thank you for moving as well. Hon. Chris, do you have another amendment on clause 6?

Mr. Opoka Okumu: On the same clause 6, it says where a law requires a signature – The second part of it - I really do not understand why it is there.

The Chairman: Honourable member let me guide the House a bit. We are at the stage of going on the Bill clause by clause. If you want to bring an amendment, write it, bring it to the table of the Chair and then move it formally, it is seconded and then we debate it. That is our Rules of Procedure, hon. Chris.

Mr Opoka Okumu: Mr Speaker, I am very much obliged but I wanted to seek your indulgence on this that it is unnecessary if

we are simply saying that where a law requires a signature, the requirement is fulfilled if the electronic signature is used.

The Chairman: Just hold on a bit, we are trying to put the Ac into a user-friendly mode. Hon. Chris would like to be clear on how we are proceeding and that if you want us to stand over the clause, that is another way of going about it but as of now, there is no amendment you have moved. Some of the things that are likely to come should have come in the debate. So, again, I would like to caution the House that we should not introduce debate at this stage. We can only debate amendments, which are formally moved. Unfortunately, we are a rule-based House. Thank you so much. I think hon. Chris is in tandem with the House.

I now put the question that clause 6 be part of the Bill.

(Question put and agreed to.)

Clause 7

The Chairman: Honourable members, the proposal is that clause 7 be part of the Bill. I now put the question.

(Question put and agreed to.)

Clause 8

The Chairman: Honourable members, the proposal is that clause 8 be part of the Bill. I now put the question.

(Question put and agreed to.)

Clause 9

The Chairman: Honourable members, the proposal is that – *(Interjection)* - Hon. Susan, is it on clause 9?

Ms Nakawuki: I thank you so much, Mr Chairman. I would like to propose an amendment under Clause 9. Actually, I

want to add a sub clause to be sub Clause 5 regarding protection of the right to privacy.

The Chairman: Honourable, have you helped the Chair to draft it? Please pass it forward. Proceed, hon. Susan.

Ms Nakawuki: As I said, much as we are giving powers to Partner States under this clause to have access to all kinds of information from users, it is important that we add that sub clause to protect the citizens from abuse by Partner States after they have obtained this information because you understand very well that there can be territorial surveillance whereby some agencies would take on this information, not for any purpose it is intended but maybe for other personal or private interests.

Mr Chairman, allow me to say –
(*Interruption*) -

The Chairman: Hon. Susan, first move the amendment then we second it then we go into the justification. I have it now with me, would you like to read it for the Members to hear and then we – (*Interruption*) -

Ms Nakawuki: Thank you. I would like to add sub clause 5, “For avoidance of doubt, the provisions in this sections shall not allow use of private information or commercial information for any purpose other than the purpose for which the parties agreed when they were sharing the information. Partner States shall be under obligation to protect citizens from abuse of their rights such as the right to privacy, intellectual property rights and other rights that relate to sharing of the information.”

The Chairman: It is seconded. Now you can go ahead and justify your amendment then we shall open it up for debate. Was it seconded? Hon. Ogle has volunteered a late secondment so hon. Nakawuki, proceed.

Ms Nakawuki: Thank you very much, Mr Chairman. I am doing this for reasons that all our Partner States constitutions are very keen on the right to privacy. All constitutions have a provision relating to the right to privacy and as you are aware, in different international conventions for example the ICCPR and the International Trade Agreements, including the constitutions of our Partner States that I have talked about, since they all provide for the protection of these rights like the right to privacy and intellectual property rights, it is very important that is included in this Bill to safeguard against any kind of abuse. I thank you.

The Chairman: Thank you. I will give a chance to hon. Ogle, the seconder to –
(*Interruption*) -

Mr Ogle: Mr Chair, we do not need to belabour the very valid arguments and reasons that were advanced by hon. Susan on this matter. Matters of privacy need to be protected by any law because as an innocent businessman wanting to do some transactions somewhere across borders, I could just be providing some information but at some point, some Partner States could be using that information which I provided for the purpose of merely enhancing some business transaction for other purposes. Therefore, I think that person requires that privacy that information provided purposes be used or diverted for any other purpose other than for what it was intended. So I wholeheartedly agree with the amendment.

Ms Byamukama: Mr Chairman, I would like to get some clarification from the mover. As I seek for clarification, I am reminded of a saying that we do not have to fear anything but we just need to understand. So, I am seeking to understand. First and foremost, the right to privacy is not absolute. So although all our constitutions have the right to privacy, it is not absolute and if you look at most of the

constitutions, you will find that in cases of security matters, this right of privacy is waived.

I know she was a Member of Parliament of Uganda where there was even a law, which was made whereby even when it comes to telephone conversations, they can be utilised when it comes to issues of security matters. So, I would like that to be taken into account.

Second is the fact that some of our Partner States have access to information Acts because the aspect of access to information is also in some instances considered as a right. This is very cardinal in that in some instances even where you have classified information where for example it touches on security matters, on issues of arms and other issues, you will find that there are regulations on for example how the Audit Commission can access such information.

So, when it comes to the issue of privacy, I think we need to look at it broadly in terms of the fact that one, it is not absolute and two, even when it is supposed to be classified, in those instances there are regulations on how information can be accessed and how it can be used.

So, I would like to hear more on what has made her come up with this in light of what I have said on those two aspects. I thank you.

The Chairman: Hon. Dora has sought clarification so hon. Nakawuki can – (*Interjection*) -

Ms Nakawuki: Thank you very much, Mr Chairman and thank you, hon. Dora. It is indeed true that the right of privacy is not absolute and that is why I am saying that even when we are giving Partner States the powers to go through all sorts of information or to seize all sorts of information. It should as well not be a blanket provision.

Mr Chairman, there should always be checks and balances. We all know for example when it comes to mobile phones, you may find that a spouse wants to find out what their partner goes with their phone. They go to a telephone company – not that this person is a security threat. They just go to a phone company, pay some money through the back door and the next day, your spouse has your entire list of who you called, for how long and even text messages. Today you can get all text messages.

There are even scenarios where husbands receive copies of *WhatsApp* messages before they are sent to the rightful recipient. That is abuse in itself. We could even have people in security circles doing these very things, not because you are a security threat or there is any other reason but for personal gain.

Therefore, this is something I am worried about and that we should check. Much as we are trying to counter terrorism and other vices, we should also keep the Partner States in check so that they do not use it the wrong way.

The Chairman: Thank you so much, hon. Susan. I invite hon. Dr Ndahiro to say something, as the mover.

Dr Ndahiro: Thank you, Mr Chairman. I have difficulties in agreeing with this amendment unless the lawyers in this House advise me. I appreciate the concerns of hon. Nakawuki, I understand she is a human rights lawyer and I can really understand her feelings.

However, I would like to persuade hon. Nakawuki that one; there are enough regulations and Acts out there protecting an individual in Partner States. This is a business environment and actually, part of the aims of this Bill is even to share information because sometimes

information is a product. Information is something that we rely on to make decisions. Now once you start bringing in some human rights concerns, we might dilute the business orientation that we are focusing on.

Two, we have enough protection under this Bill. There is a clause on data protection and probably if we reach there and she still feels that her concerns are not addressed, she can introduce a new clause later but she can give a chance to Members to go through all the clauses, which protect individual data. Thank you, Mr Chairman.

The Chairman: Thank you so much. I can see hon. Mukasa Mbidde rising up.

Mr Mukasa Mbidde: Mr Chairman, maybe what I would think is my honourable sister needs to look at Article 6 (d) which is an Article for the Treaty for the establishment of the East African Community. It makes provision for the application of the rights under the African Charter on Human and Peoples' Rights.

The right under Article 9 of the African Charter on Human and Peoples' Rights is specific on the right to access to information. If we are to legislate under this line, we may again have a problem of having to infringe the Treaty and the rights that are recognised under the Treaty.

The right of access to information has been obtained from far and all litigants, including my sister know that access to information is a hard right that has been obtained from very far. That is why hon. Dora is laughing. So, we cannot take it back from where it has reached. We had authorities in many of the Partner States where except where Parliament has given you an express right, you cannot use their Hansard, which have since been overtaken by events. So, this right cannot be legislated against, as we would be descending into very troubled waters.

Mr Mwinyi: Thank you very much, Mr Chairman. I am in an uncomfortable situation. My understanding of my sister's proposed amendments is it is not to prohibit information but it is prohibit usage of that information. It is the improper usage. The issue is not information. Improper usage for reasons other than what they were intended and that is the crux of the matter. Information is available; information should be free under this Act within the Partner States, but it should be used for what it was intended.

Hon. Nakawuki amply displayed misuse of particular information, and that should be protected. I do not see that being inconsistent with the Treaty or inconsistent with any Act. It is the issue of misuse of that information for personal gain, for corrupt purposes, for commercial purposes, for manipulation or blackmail- All that can be used. It may sound like a normal business transaction but in the wrong hands and with a different motive, that information can be abused – (*Interruption*)

Ms Byamukama: Thank you, hon. Mwinyi for giving way. I am trying to understand your line of argument. If it is on the issue of misuse then that issue would be brought to court or brought into contention whereby you would have to prove first the act and then that there was the *mens rea* which would maybe make it criminal in that aspect. So how now do you put that in the law? I just need to understand and appreciate that.

Dr Ndahiro: Mr Chairman, I just want to learn from the lawyers in the House. My understanding of a record or information – If I may cite an example. If I receive for example an air ticket from Kenya Airways and I later on realise that I was over charged, can't I produce it to court as evidence? Will I be told that it was not intended to go to court but it was intended to be used on Kenya Airways? Thank you.

Mr Mwinyi: I think we are on the same space exactly. Your intervention and hon. Dora's intervention is absolutely what we are trying to say. Normal commercial transactions- A banking transaction between my business partner and myself is not necessarily public information. It is information that can be produced in public when it is necessary but it is a private transaction. Somebody can abuse that. You can protect it unless there is a court order requiring revelation. We can put this to vote but what I am saying is that I do not see any harm as that provision will not preclude – (*Interjection*). There is no contradiction anywhere. That provision will not stop these transactions or these details from being revealed but it will stop them from being abused for reasons, which they were not intended to - (*Interruption*).

Ms Byamukama: Thank you very much for giving way. I think it is not a matter of putting this issue to court. I think it is a matter of understanding the kind of law we want to put in place so I would feel uncomfortable if we just voted for the sake of it. If you look ahead because now you are making us go ahead, on page 14 of the committee report, you will find under XXX; data protection.

Mr Chairman., if you will allow me, I will read it. “The minister responsible for Information and Communication Technology shall develop a legal framework on data protection to cover data retention, security, access, management and sharing.” I think that maybe if eventually the Assembly adopts this, it will take into account the concerns raised by hon. Nakawuki and those that you are trying to espouse. I thought it is important that we all agree and not so much vote for or against because we want a good law. I thank you.

Mr Mwinyi: Mr Chairman, I still do not see any conflict between what my colleagues have been espousing ad the clause that has

been put forward by hon. Nakawuki. I still think it is consistent, it just adds the extra protection to preclude any member from abusing that information in a manner in which it was not meant to be used. I beg to move.

The Chairman: Let me give hon. Kiangoi a chance to speak then I will give hon. Nakawuki a chance to summarise and maybe if she would concede or whatever the case may be.

Mr Kiangoi: Thank you, Mr Speaker. I was just a bit worried when I heard that we need to put this question to a vote. This is a very crucial law and there are internationally accepted standards. For example, there is the 1996 UN adopted standards for this kind of law and particularly I am rising because in Partner States like Kenya, the Constitution allows access to information. Suppose we put it to a vote and then it contradicts the Partner States law? It may then not operate. So maybe this is an issue where we may need to convince each other rather than putting it to a vote. Thank you.

The Chairman: Hon. Kiangoi and honourable members who are worried about a vote, we are still proceeding with the debate but our Rules of Procedure allow for debate to ensue and when consensus is reached we will move. But, when consensus is not reached, ultimately that is where we will go. So we are still allowing for further discussion and that is why I have invited hon. Nakawuki the mover, in light of the fact that there is a new insertion by the committee on data protection under what hon. Dora has read, she can still take the floor.

Ms Nakawuki: Thank you, Mr Speaker. First of all, I would like to allay the fears of my honourable colleagues. Like hon. Mwinyi said, this amendment is not intended to deter access to information by

Partner States but as I put it right from the start, it is intended to prevent abuse.

Mr Speaker, we are coming up with a regional law, which is supposed to be supreme to the other laws in the Partner States. Yes, the report has this but that the Minister responsible for Information Technology shall develop a legal framework on data protection but that is at Partner State level. What are we doing? *(Interruption)*

The Chairman: Hon. Susan, maybe you will help us and address yourself to the concern of hon. Kiangoi which says the constitution of one of the Partner States which in terms of our laws here, we cannot amend the constitutions of our Partner States using our – I would like you to address yourself to that – *(Interruption)* -

Mr Mathuki: Thank you very much, hon. Nakawuki for the opportunity to give information. In line with what hon. Kiangoi raised in relation to the Constitution of Kenya, I also want to remind ourselves that in the same constitution, Article 2(6) says, “Any law, Treaty that is ratified by Kenya becomes part and parcel of the law.” Therefore, I do not think that there will be a contradiction because it is very clear in the same constitution and, therefore, I think it is important that my honourable sister gets that in relation to what hon. Kiangoi was saying. Thank you.

Ms Nakawuki: Thank you, Mr Chairman and thank you, hon. Mathuki for that information. I am sure it will be very helpful to my honourable colleague. I have personally read that provision of the Constitution of Kenya and that very constitution provides for the right to privacy so this provision will not be inconsistent with any Partner State law. All I am trying to do is to come up with a solid piece of legislation. When I am aggrieved, I should not start debating whether I should go criminal or civil. Since we are providing

for a law that is supposed to cure, or be all-encompassing, what is the harm of putting some checks in that law and say that the law should not be abused?

I want to be able to go to court, challenging an act of any individual in any Partner State referring to a given provision of the law not looking for where to pick it, not chasing after the minister for information in a Partner State who might not have acted. That is why even when the mover started, he said this law is intended to harmonise.

We appreciate the fact that our Partner States have a law on electronic transactions but our laws are not necessarily the same so we are supposed to harmonise so that East Africans can be protected. So, I do not see any reason as to why we should leave this as a matter “to whom it may concern”. I thank you.

The Chairman: Thank you so much, hon. Nakawuki. Hon. Mwinyi seemed to have some information, not a debate because you have already had your chance on this matter. Honourable members – *(Interruption)* -

Mr Mulengani: Thank you, Mr Chairman and colleagues. I would like to say that we should not subject this clause to a vote, and I request the House to move that we stand over this clause so that we do enough consultations and we get an amicable position. We may seek the advice of the Counsel to the Community so that we can progress in harmony. This is what I am seeking, Mr Chairman.

Mr Mukasa Mbidde: Mr Chairman, I was also seeking to give additional information to hon. Mulengani that we need to look at clauses 29, 30 and 31 for purposes of supporting the proposal that we stand over this until we are done. This is because I find that the protection sought by the intended amendment is existent for purposes of signatures, and such viable information as

required other than legislating on the right to information, which would be, in my opinion, infringing on the Treaty.

The Chairman: Honourable members, let me refresh your minds on the amendment as moved by hon. Susan as we may consider standing over this clause with the hope that maybe other amendments that are coming may cure this. If they do not then we will bring it back for consideration.

Hon. Susan has moved to amend clause 9 to insert sub clause 5 to read, “For avoidance of doubt, the provisions in this section shall not allow use of private information or commercial information for any purpose other than the purpose for which the parties agreed to when they were sharing the information. Partner States shall be under obligation to protect citizens from abuse of their rights such as the right to privacy, intellectual property rights and other rights that relate to sharing of information.”

This is what she has moved and honourable members, I think we should stand over this clause. I think it is an agreeable situation – *(Interruption)* -

Mr Mathuki: Mr Chairman, the justification that was given by hon. Mulengani was for the Counsel to the Community, possibly to shed light, and the Counsel to the Community is in the House. He could possibly come in and see whether there is any contradiction, and if that is not the case...Since the Counsel to the Community is in the House, if there is anything that could be of conflict, he may wish to assist us so that we are clear as we proceed, because even if we were to stand over the provision, it would still require some deeper understanding.

Mr Opoka Okumu: Is it in order for hon. Peter Mathuki to raise an issue over which the Speaker has already ruled that the matter was going to be stood over?

The Chairman: Thank you so much. The Speaker was just about to rule but thank you for aiding the Speaker’s position. Hon. Mulengani – *(Interruption)* -

Mr Mulengani: Mr Chairman, I rise up to make clear what I requested. I said that there is need for us to consult further with the CTC and we cannot do that here because we shall again engage into a dialogue with the CTC. It can be dealt with in detail when we stand over this particular clause and as you guided, Mr Chairman, you never know as we proceed with details of the Bill, we may find other relevant clauses that may help us cure the challenge we are getting with this particular clause 9.

The Chairman: Thank you so much. The mover of the amendment is not complaining, she is patient to wait for us to progress through the Bill. Her amendment is not lost; we are just holding on to it to see because there are other amendments by the committee; new insertions of clauses that may deal with that. We will come back to that so let us proceed.

Mr Ogle: Mr Chairman, before we move further, let it be clear that the clause which the House was referred to earlier by hon. Dora on page 14, which she said was looking ahead, is not in terms of context and provision, similar to what hon. Nakawuki is proposing. They are two different issues curing two different challenges so we should not be under the illusion that what she is proposing has been cured by ;looking at this Bill on page 14.

The Chairman: Hon. Ogle, there is no ruling to that effect. We have only said that as we progress through the Bill, other things could have cured that concern and if it does not cure, we will come back to clause 9, without diluting the substance of her motion.

However, I also request hon. Nakawuki to multiply her motion to the concerned

members to read through so that as we progress, we will come back to that clause. You can send it for typing.

Honourable members, I now put the question that clause 9 be stood over, pending further procedures.

(Question put and agreed to.)

Clause 10

The Chairman: Honourable members, the proposal is that clause 10 be part of the Bill. I now put the question that clause 10 be part of the Bill.

(Question put and agreed to.)

Clause 11

The Chairman: Honourable members, the proposal is that clause 11 be part of the Bill. I now put the question that clause 11 be part of the Bill.

(Question put and agreed to.)

Clause 12

The Chairman: Honourable members, the proposal is that clause 12 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee, particularly under clause 12(4) that the clause be amended by inserting immediately after the words “provided by the sender” the words “provided that such transformation does not affect the integrity of the document.” The justification is to provide for the requirement of the authorised service provider to maintain the integrity of the message it has been authorised to send on behalf of the sender.

Dr Ndahiro: I agree with the amendment, Mr Chairman.

The Chairman: I now put the question on the amendment as moved by the Chair of the committee.

(Question put and agreed to.)

The Chairman: I now put the question to clause 12, as amended by the Chair of the committee.

(Question put and agreed to.)

Clause 13

The Chairman: Honourable members, the proposal is that clause 13 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that the clause be amended by inserting after the word “reviewed” the words “by that party”. The justification is so that review of contractual terms is not limited to a contracting party’s representative.

Mr Opoka Okumu: Thank you, Mr Chairman. I think I sent my concern about the amendment. As proposed, it does not make a lot of sense when you read the amendment in clause 13(3). I think there is a word missing because when you read, “A party interacting with an electronic agent to for a contract is not bound by the terms of the contract unless the terms are capable of being reviewed by that party, by a person representing that person party” - Do you see where the problem is?

I think the word “or” is missing after what is being added “by that party or by a person representing that party”. That is when it can make sense. Thank you.

The Chairman: Thank you so much, hon. Chris.

Mr Mukasa Mbidde: Mr Chairman, I am failing to understand the submission by my honourable colleague because the inclusion of “by that party” is seeking first of all to protect the rights of the contracting parties. After a comma, by including “any other third party” it also provides for the rights of a delegated right by the contracting parties. I do not find a problem with that.

The Chairman: Can you read the entire (3) as your amendment intends to be?

Mr Mukasa Mbidde: Mr Chairman, this is how we intend that it reads: “A party interacting with an electronic agent to form a contract is not bound by the terms of the contract unless the terms are capable of being reviewed by that party, a person representing that party before the formation of the contract.” That is how it reads, Mr Chairman.

The Chairman: Hon. Chris, does it make you comfortable now?

Mr. Opoka Okumu: Mr Chairman, the Chair of the committee has read a comma where none has existed in the amendment he is proposing. “Reviewed, by that party” then “by a person”. You have read a comma where there is none.

What I would suggest is that it should read, “... reviewed by that party or by a person representing that party.”

The Chairman: Before the Chair comes up, hon. Chris Opoka may need to help us. There is an amendment on the floor, and procedurally you can move to cause more amendments to the amendment to make it clearer. Can you please help the Chair by writing down what exactly you are not agreeing with in the amendment to be moved as an amendment to the amendment by the Chair then we will dispose of your amendment first before we go to the main amendment.

Mr. Opoka Okumu: Mr Chairman, I propose that that particular amendment be stood over so that I can draft it here.

The Chairman: Honourable members, I think we are in tandem. We do not have to get so technical on drafting matters where we can put the word “or”. The main substance as moved by the Chair – Hon. Chris is not in disagreement with it. Is that

comfortable? It has been picked and will be dealt with by the drafters to put the record right as we seem to agree.

I now put the question on the amendment as moved by the Chair. Maybe I need to make this clear. Hon. Chris Opoka’ submission has been understood by the Chair and has been taken as a drafting matter. The Chair will incorporate that in conjunction with the draftsman of this House. So, the major item which I am putting the question on is the amendment moved by the Chair. I put the question to the amendment moved by the Chair.

(Question put and agreed to.)

Clause 13, as amended, agreed to.

Clause 14

The Chairman: Honourable members, the proposal is that clause 14 be part of the Bill. I now put the question that clause 14 be part of the Bill.

Mr Mulengani: Mr Chairman, I noticed that we had an amendment on clause 13(4) and the Chair ought to have risen up and – *(Interruption)* -

The Chairman: Yes.

Mr Mukasa Mbidde: Mr Chairman, I am much obliged. It was particularly obliterated on my own copy but I can now see it.

The Chairman: Honourable members, without going into many technicalities, let us use the leverage you have given me as the honourable Chair to allow to correct this mistake.

Mr Mukasa Mbidde: Much obliged, Mr Chair and the House. The committee intends to move an amendment on clause 13(4) that the clause be amended by deleting the word “natural” wherever it

appears in the sub clause. The justification is to accommodate contracting by non-natural persons since non-natural persons shall also initiate electronic transactions. I beg to move.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: I now put the question on the amendment of the – First of all before I do that, honourable members, I would like to put this clearly that the Chair has decided to use the leverage of allowing a reversal on this mistake to correct it because we had skipped an amendment. I am conscious of the difficulties in terms of procedural aspects but we are at a Committee Stage so let us accommodate it.

I now put the question on the amendment as moved by the Chair.

(Question put and agreed to.)

The Chairman: As I told you, I evoked some bit of powers, which you have given me to go back to 13. Can I now put the question on 13, as amended, to be part of the Bill? I put the question.

(Question put and agreed to.)

The Chairman: Before we move to clause 14, I would like to appeal to the Chair to help the bigger Chair to – Thank you.

Clause 14

The Chairman: Honourable members, I propose that clause 14 be part of the Bill. I now put the question that clause 14 be part of the Bill.

(Question put and agreed to.)

Clause 15

The Chairman: Honourable members, I propose that clause 15 be part of the Bill. I now put the question that clause 15 be part of the Bill.

(Question put and agreed to.)

Clause 16

The Chairman: Honourable members, the proposal is that clause 16 be part of the Bill. I now put the question that clause 16 be part of the Bill.

(Question put and agreed to.)

Clause 17

The Chairman: Honourable members, the proposal is that clause 17 be part of the Bill. I now put the question that clause 17 be part of the Bill.

(Question put and agreed to.)

Clause 18

The Chairman: Honourable members, the proposal is that clause 18 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, the committee intends to amend clause 18 by replacing it with the following new clause: “An expression of interest may be in the form of a data message and shall be an electronic signature as long as it is possible to infer the interest of the person from the data message.”

The justification is for the best industrial practice.

Dr Ndahiro: Agreed, Mr Chairman.

The Chairman: I now put the question that clause 18 be deleted and insert a new (18) as moved by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question on the new clause 18 to be part of the Bill.

(Question put and agreed to.)

Clause 19

The Chairman: Honourable members, the proposal is that clause 19 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that clause 19 (2) (b) is replaced with the following new provision to read: “The data message received by the addressee resulted from the action of a person duly authorised by the originator to gain access to a method used by the originator to identify electronic records as records of the originator.”

The justification is for purposes of clarity.

Dr Ndahiro: I agree, Mr Chairman.

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

(Question put and agreed to.)

The Chairman: I now put the question that clause 19 be part of the Bill.

(Question put and agreed to.)

Clause 20

The Chairman: Honourable members, the proposal is that clause 20 be part of the Bill. I now put the question that clause 20 be part of the Bill.

(Question put and agreed to.)

Clause 21

The Chairman: Honourable members, the proposal is that clause 21 be part of the Bill. I now put the question that clause 21 be part of the Bill.

(Question put and agreed to.)

Clause 22

The Chairman: Honourable members, the proposal is that clause 22 be part of the Bill. I now put the question that clause 22 be part of the Bill.

(Question put and agreed to.)

Clause 23

The Chairman: Honourable members, the proposal is that clause 23 be part of the Bill. I now put the question that clause 23 be part of the Bill.

(Question put and agreed to.)

Clause 24

The Chairman: Honourable members, the proposal is that clause 24 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that this clause of the Bill be deleted. The justification is that the committee thought we could not give private persons powers by agreement to amend or invalidate a statute. I beg to move.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, the proposal by the Chair is that clause 24 be deleted. I now put the question on the amendment moved by the Chair.

(Question put and agreed to.)

Clause 25

The Chairman: Honourable members, the proposal is that clause 25 be part of the Bill. I now put the question that clause 25 be part of the Bill.

(Question put and agreed to.)

Clause 26

The Chairman: Honourable members, the proposal is that clause 26 be part of the Bill. I now put the question that clause 26 be part of the Bill.

(Question put and agreed to.)

Clause 27

The Chairman: Honourable members, the Chair speaking is noticing that very few Members in the House are voting. Honourable members, the proposal is that

clause 27 be part of the Bill. I now put the question that clause 27 be part of the Bill.

(Question put and agreed to.)

Clause 28

The Chairman: Honourable members, the proposal is that clause 28 be part of the Bill. I now put the question that clause 28 be part of the Bill.

(Question put and agreed to.)

Clause 29

The Chairman: Honourable members, the proposal is that clause 29 be part of the Bill. I now put the question that clause 29 be part of the Bill.

(Question put and agreed to.)

Clause 30

The Chairman: Honourable members, the proposal is that clause 30 be part of the Bill. I now put the question that clause 30 be part of the Bill.

(Question put and agreed to.)

Clause 31

The Chairman: Honourable members, the proposal is that clause 31 be part of the Bill. I now put the question that clause 31 be part of the Bill.

(Question put and agreed to.)

Clause 32

The Chairman: Honourable members, the proposal is that clause 32 be part of the Bill. I now put the question that clause 32 be part of the Bill.

(Question put and agreed to.)

Clause 33

The Chairman: Honourable members, the proposal is that clause 33 be part of the Bill. I now put the question that clause 33 be part of the Bill.

(Question put and agreed to.)

Clause 34

The Chairman: Honourable members, the proposal is that clause 34 be part of the Bill. I now put the question that clause 34 be part of the Bill.

(Question put and agreed to.)

Clause 35

The Chairman: Honourable members, the proposal is that clause 35 be part of the Bill. I now put the question that clause 35 be part of the Bill.

(Question put and agreed to.)

Clause 36

The Chairman: Honourable members, the proposal is that clause 36 be part of the Bill. I now put the question that clause 36 be part of the Bill.

(Question put and agreed to.)

Clause 37

The Chairman: Honourable members, the proposal is that clause 37 be part of the Bill. I now put the question that clause 37 be part of the Bill.

(Question put and agreed to.)

Clause 38

The Chairman: Honourable members, the proposal is that clause 38 be part of the Bill. I now put the question that clause 38 be part of the Bill.

(Question put and agreed to.)

Clause 39

The Chairman: Honourable members, I propose that clause 39 be part of the Bill. I now put the question that clause 39 be part of the Bill.

(Question put and agreed to.)

Clause 40

The Chairman: Honourable members, the proposal is that clause 40 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, we may be guided on procedure. There is Part 6, which is the Title. I think it is considered as deleted. It does not form part of any clause but – *(Interruption)* -

The Chairman: It will be consequential based on the main amendments.

Mr Mukasa Mbidde: Much obliged.

The Chairman: So there is no substantive amendment on clause 40 so I put – *(Interruption)* -

Mr Mukasa Mbidde: On 40, the committee is of the view that 40, particularly 1(c) is replaced with the following: “(c) The website address and email address of the person”. Mr Chairman, it is intended for clarity.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, I now put the question on the amendment moved by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question on clause 40, as amended, to be part of the Bill.

(Question put and agreed to.)

Clause 41

The Chairman: Honourable members, the proposal is that clause 41 be part of the Bill. I now put the question that clause 41 be part of the Bill.

(Question put and agreed to.)

Clause 42

The Chairman: Honourable members, the proposal is that clause 42 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is intended by the committee that this clause be amended by inserting the following new sub clause as (2): “A person who sends an unsolicited commercial communication to a consumer under sub section (1) shall do so at no cost to the consumer.”

Mr Chairman, this is intended to avoid costs incurred on unsolicited messages.

Ms Nakawuki: Thank you, Mr Chairman. I would also like to propose another small amendment. When you look at clause 42, it only talks about unsolicited commercial communication – *(Interruption)* -

The Chairman: Hon. Nakawuki, is it on the amendment moved by the Chair?

Ms Nakawuki: That is a different one.

The Chairman: Okay, let us first dispose of the Chair’s amendment then before I put the question I will invite you.

So, I put the question on the amendment moved by the Chair.

(Question put and agreed to.)

Ms Nakawuki: Thank you, Mr Chairman. I just wanted to add a small amendment under 42(1) where the provision talks only about unsolicited commercial communication but there is also non-commercial communication. I beg that we say “and non-commercial” because it could be, for example, obscene messages or pictures. They are non-commercial but they are a nuisance as well.

The Chairman: Hon. Susan is helping the Chair by writing her amendment but in essence, what she is saying is instead of specifying “commercial”, she wants to include non-commercial.

Has anybody seconded the amendment moved by hon. Susan? Hon. Leonce has seconded. Can you justify your amendment as you send it to me as well? Hon. Susan, before I subject your amendment to a vote or to further debate, you may be aware that Part 6 is consumer protection. Proceed, with that guidance.

Ms Nakawuki: Thank you, Mr Chairman. What I was saying is that since this provision is concerned with unsolicited commercial communication, there is also unsolicited non-commercial information. For example when they send you pornography, it is not commercial but it is inconveniencing. So how do we cater for the non-commercial or those other messages that we are bombarded with and that irritate?

So, I am saying that instead of just saying “commercial”, we say “both commercial and non-commercial”.

The Chairman: Honourable, you will have a right to respond. Let the seconder first defend his secondment.

Mr Ndarubagiye: Thank you very much, Mr Chairman. It is not only that it is very inconvenient to receive messages that you cannot delete but also sometimes, it costs you money; they charge you. That is inadmissible. Thank you.

Dr Ndahiro: Thank you, Mr Chairman. I need to be helped here. Is the honourable member suggesting that non-commercial communications should also receive no penalty or that they should be free of cost?

The Chairman: Hon. Susan, hon. Dr Ndahiro, the mover of the Bill is seeking clarification from you. Did you get him, or would you like him to repeat? Please proceed, hon. Susan.

Ms Nakawuki: Thank you, Mr Chairman. The issue of cost was a different one that

was moved by the Chair, which I supported, but now I am saying that since this provision seeks to protect individuals from unsolicited information; my issue is that this unsolicited information can be both commercial and non-commercial.

For instance, if someone sends you obscene information- For example on Facebook if they hack into your account, there have been so many cases when people hack into someone’s account and then they put pornography. It is not commercial in any way but it is inconveniencing or embarrassing. That is why I am saying we insert one other word ‘unsolicited non-commercial communication’.

The Chairman: Thank you so much. I think hon. Dr Ndahiro’s clarification is in the spirit of the Bill, which is a transactions Bill. Therefore, it seems to be dealing with commercial issues. That is the spirit of his question but you are entitled to your point of argument and the amendment as moved by you.

Mr Kiangoi: Mr Chairman, you had properly guided that this is under consumer protection. If we are to go back to the definition of consumer, you will note that it means, “A natural person who enters or intends to enter into an electronic transaction with a supplier as the end user of goods or services offered by that supplier.”

I think the non-commercial transactions are outside the realm of this particular provision.

Ms Byamukama: Thank you, Mr Chairman. I just wanted to augment what has been said, and maybe remind my sister that when you consider the *ejusdem generis* rule, which means that similar things go together, you cannot introduce another completely different subject matter into a law which is about a particular thing and in

this case, as hon. Kiangoi has said, the consumer has already been defined.

Maybe in view of what she has already said before, I think we may need to look at an access to information Act or something to do with pornography or maybe utilisation of ICT- Maybe you may have time to look at it since it is actually a problem but I would like to implore her to take that into account that what she is introducing is out of the realm of what we are considering. Thank you.

The Chairman: Thank you so much. I will give hon. Susan a chance to respond but the Members are saying your concern is very valid and appropriate but in the context of this law we are dealing with, how to place it may be a challenge.

Ms Nakawuki: Thank you, Mr Chairman. I will take your advice. I concede. Thank you.

The Chairman: Thank you so much, hon. Susan. I now put the question that clause 42, as amended, be part of the Bill.

(Question put and agreed to.)

Clause 43

The Chairman: Honourable members, the proposal is that clause 43 be part of the Bill. I now put the question that clause 43 be part of the Bill.

(Question put and agreed to.)

Clause 44

The Chairman: Honourable members, the proposal is that clause 44 be part of the Bill. I now put the question that clause 44 be part of the Bill.

(Question put and agreed to.)

Clause 45

The Chairman: Honourable members, the proposal is that clause 45 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, the committee proposes to amend Clause 45 by:

- (a) Replacing the words “service provider” with the word “intermediary” and deleting the word “merely”.
- (b) Inserting immediately after the word “access” the words “hosts, transmit or stores”.

The justification, Mr Chairman, is that it is intended to comply with the applicable terminology.

The Chairman: Hon. Chris Opoka, is your amendment on the amendment on the amendment of the Chair?

Mr Opoka Okumu: Mr Chairman, I am not making any amendment. I would like to inquire from the Chair whether the proposed amendment applies to all instances where the words “service provider” appears in clause 45 and the word “access” appears in clause 45.

The Chairman: Honourable Chair, CTI, the honourable member is raising a clarification on the amendment.

Mr Mukasa Mbidde: Mr Chairman, Clause 45 un-amended reads as follows: “A service provider shall not be subject to civil or criminal liability in respect of third party material which is in the form of electronic records to which he or she merely provides access if the liability is founded on: (a) service provider” - That is where that word lies – and (b) is where we find the word “access” and “hosts, transmit, and stores”. It is (a) and (b).

It is sub clauses (a) and (b) of clause 45 that we are seeking to amend of the substantive clause 45 and wherever such words appear, I would want my honourable colleague to read them as amended.

The Chairman: Honourable members, let me allow hon. Chris to respond to the Chair's response.

Mr Opoka Okumu: Mr Chairman, if as stated by the Chair, it applies in 45(a) and (b) then it should have been indicated clearly because the word "service provider" appears in (2) as well and the word "access" appears three times in 45. The first time is in 45(1), the second one is in 45(2) (c) and the third one is in 45(3) (c).

When you add the words that are meant to appear after the word "access", in some cases it does not make a lot of sense. Thank you.

The Chairman: I have understood where the problem seems to arise. In the proposed amendment, clause 6 is amended by (a), (b) and (c). If those could be (1), (2) and (3) referring to (a), (b) and (c) in the parent Bill, that would bring clarity. It is not a matter of substance, which is the problem, it is numbering and how it is read. Are we in tandem? So, I think that will be dealt with by – *(Interruption)* -

Mr Opoka Okumu: Mr Chairman, I think they affect the substance because take for example 45(2) (3). The word "access" appears as the last word in the whole of 45. Now if you add after it "host, transmits or stores" it does not make a lot of sense.

The Chairman: Honourable Chair, are you getting the argument of the honourable member?

Mr Mukasa Mbidde: Probably I may need to hear the honourable colleague properly as I do not see where – Did you say 2(3) or 2(c)?

The Chairman: Hon. Chris Opoka, do you have a drafting that you think can make sense that you can propose?

Mr Mukasa Mbidde: Mr Chairman, the proposal by the committee are about (a) and (b) only. If hon. Opoka has great distaste for these words to extend the same amendments to the others but we did not seek to amend them wherever they are found. It is only in (a) and (b).

The Chairman: Okay, say in your proposal that clause 45 is amended by (a) replacing – I think you should say 45(1) and (2). It is the numberings and the insertions that will make it streamlined. Hon. Chris, thank you for having that eagle eye but always, bring the proposals clear to read. Immediately you identify the mischief, please propose the solution to save our time. Thank you so much and I think the Chair has taken note and the drafts people will put it in perspective.

You are also saying we should delete paragraph (a) and (b) in (d). Chair, are we together?

Mr Mukasa Mbidde: Mr Chairman, that is not under 45.

The Chairman: Okay, thank you. May I now put the question that clause 45, as amended, be part of the Bill?

(Question put and agreed to.)

Clause 46

The Chairman: Honourable members, the proposal is that clause 46 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, the committee proposes it that clause 46 is amended by:

(a) Replacing "service provider" with "intermediary".

(b) Deleting paragraphs (a) and (b).

(c) Replacing the words "being informed" with "receiving and considering a valid complaint under section 47" and replacing

the word “user” with the words “complainant or the person on behalf of whom the complaint is made”.

This is intended to comply with the applicable terminology and for clarity.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, I put the question on the proposed amendment by the Chair.

(Question put and agreed to.)

The Chairman: I now put the question on 46, as amended, to be part of the Bill.

(Question put and agreed to.)

Clause 47

The Chairman: Honourable members, the proposal is that clause 47 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that clause 47, particularly (1), is amended by replacing “a data message or an activity relating to the data message” with “information” and replace “Service provider” with “intermediary”.

This is intended for clarity.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, I put the question on – Maybe you should go through all of them then – *(interruption)* -

Mr Mukasa Mbidde: Much obliged, Mr Chairman. It is also proposed by the committee that 47(1) (d) is equally amended as follows: Paragraph (d) is amended by adding “including in the case of material on a computer network or on the Internet, an electronic address or other information that uniquely identifies and locates the material” after the words “infringing the activity”.

It is equally proposed that 47(1) (e) is deleted. All these amendments are proposed for purposes of clarity.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, I put the question on the amendments as introduced by the Chair of CTI.

(Question put and agreed to.)

The Chairman: I now put the question on clause 47, as amended, to be part of the Bill.

(Question put and agreed to.)

Clause 48

The Chairman: Honourable members, the proposal is that clause 48 be part of the Bill.

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that 48(1) be amended by replacing the words “for the purposes of complying with this part”, “a service provider with an intermediary”.

It is also intended that we replace paragraph (a) with the following: “monetary data which the intermediary transmits, receives, provides access, hosts or stores or...” These are intended to achieve clarity.

It is also proposed that clause 48(2) be amended by replacing “the Council” with “a Partner State”. This is intended to achieve proper allocation of responsibility.

Dr Ndahiro: I agree, Mr Chairman.

The Chairman: Honourable members, I put the question on the amendment as moved by the Chair, CTI.

(Question put and agreed to.)

The Chairman: I now put the question on clause 48, as amended, to be part of the Bill.

(Question put and agreed to.)

Clause 49

The Chairman: Honourable members, the proposal is that clause 49 be part of the Bill. I now put the question that clause 49 be part of the Bill.

Honourable members, you have to bear with me that there is always – the rate of rising up and the rate of the Chair’s speech may not be together so we always give chances to colleagues to say something.

Mr Ogle: 49(1) “a person who contravenes section 42(1) commits an offence and is liable, on conviction, to a fine not exceeding \$ 10,000 or to imprisonment not exceeding three years.”

\$10,000 when exchanged that way makes it mandatory that any crime be paid in dollars. I thought you would have had a further qualification to say “or the equivalent in any Partner States currency”.

The Chairman: Honourable members, I would politely guide the Member that that is the currency of our operation under the Treaty. If we were in other Partner States, they would talk of currency points but that is how we also benefit in our payment mechanism.

I now put the question that clause 49 be part of the Bill.

(Question put and agreed to.)

Clause 50

The Chairman: Honourable members, the proposal is that clause 50 be part of the Bill.

Mr Taslima: Mr Chairman, I thank you very much. I am of the opinion that clause 50, which says, “The Council may, by statutory instrument, make regulations ...” I am inclined to say that the word “may” be replaced with the word “shall”. I have consulted and I have been told of the way

the Commonwealth practice is but I have a feeling that given what our Council has been doing in the past- When we leave the word “may”, the Council cannot be taken to task at any one time if it does not come up with the regulations.

When we use “shall”, much as it can be seen not to be proper or desirable in some quarters, I think in our own House, it would be better if we had the word “shall” rather than “may”.

The Chairman: It is seconded by hon. Dora. Hon. Taslima has moved an amendment and I was still waiting for the seconder. I thought hon. Dora was seconding. Hon. Taslima, your amendment is still a stand-alone amendment without – It is seconded. I think you have more or less done the justification. Do you want to add more?

Mr Taslima: If I may, Mr Chairman, I just have little to say that the word “may” in law gives leeway to anyone who is told to do something that he may or may not. There is also no yardstick on when to do it. I am saying that we could have left it the way it is if we did not have the history that we have with our Council. Because of that, in order to make them pull their socks, if we replaced the word “may” with “shall” then we will be in a better position to insert pressure on them. Thank you, Mr Chairman.

Ms Byamukama: Mr Chairman, I would like to implore my brother to take into account three points. First and foremost, a statutory instrument is subsidiary legislation and if we use the word “shall,” it will mean that it is obligatory or mandatory. How will this be interpreted? The interpretation will be such that we have made a law but we have now made it mandatory for the Council of Ministers to make regulations and yet the point that we want to make is that it should be in the Council’s wisdom to ensure that they have

statutory instruments to operationalize this very Act.

Therefore, I would like to say that, two, the Council is not a permanent feature. Let us not look at persons within the Council, let us not even look at the history because what may have happened may have happened but we do not have to sue the current Council or the persons who are in the Council or whatever mistakes they made to obliterate the fact that they can and should, in their own wisdom, make sure that we have statutory instruments.

I think the element of leaving it as “may”, is very important in that we do not obligate them because if they do not, for example it may also impinge on the fact that maybe the main law will not be able to be operationalized through a statutory instrument.

So, I would like to say that I think it is important that we use the word “may” because if we do not have a statutory instrument, even the main law may be hampered. I think with these few points, I believe that my brother will be able to appreciate that the word “may” is very important in order to ensure that we also have separation of powers and we do not use the law to obligate the Council of Ministers where we do not have to.

Ms Hajabakiga: Thank you, Mr Speaker. I actually seconded my colleague, hon. Taslima because first of all it was almost passing because there was nobody to second yet I thought it was important that this matter be explained; the difference between “shall” and “may”. If we say, “shall”, this Act will not be implemented because it will require stress that they do. Those requirements that are prescribed in this or otherwise nobody can do anything else. So, I wanted us to debate so that people can understand the difference that we will be putting a rope on our own necks that nobody can implement until they have

actually done those statutory instruments, which were being talked about. Thank you, Mr Chairman.

Mr Opoka Okumu: Thank you, Mr. Chairman. I would like to agree with hon. Patricia and hon. Taslima but for different reasons. The reason why it should be “shall” is that if we look at the matter, which the Council should do, but they do not do it – If you put “may” which is discretionary and they do not do it, you will not achieve the light of day of this Bill.

Look at the matter, which requires to be prescribed (b) administrative or procedural matters, which are necessary to give effect to this Act. This is a matter which is necessary an expedient to give effect to this Act. The Council should be put to task to make those instruments and it should be obligatory for them to make it. Thank you.

The Minister of EAC Affairs, Cabinet Secretary Ministry of E.A Affairs, Commerce and Tourism Kenya (Ms. Phyllis Kandie): Thank you, Mr. Chairman. I would like to add my voice to the proposal that “may” will be something acceptable to the Partner States because if we try to impose the laws from Arusha, it is going to be very difficult for the Member States to implement the law. Let us give Partner States room for them to domesticate it the way they see it and at the end of the day, we will still achieve what we want to achieve as EAC.

I say this because first of all before we even came up with this Bill, I think we agreed that the Partner States have already moved forward and drafted their own Bills.

Secondly, in terms of execution, if we were to – I am sure that we control the application of this Bill from Arusha, how then are we going to deal with issues like compliance? How are we really going to ensure that the Partner States comply with the law?

I think let us give room to the Partner States and agree that they have the wisdom and they have even moved forward in terms of drafting their own laws and that they will pick up from this in terms of standardisation of this law within the EAC.

I say this because right now for Kenya, we are trying to come up with rules and regulations on the retail and wholesale market. It is something that has already been drafted in Arusha so we are drawing what we can from there. Therefore, let us not be seen that we are carrying the hammer and trying to push an agenda that may not necessarily be something that will be applicable in terms of the Partner States accepting the way we are going about it. Thank you.

The Chairman: Thank you so much, honourable. I think this amendment has received enough debate and I would like to ask hon. Taslima, based on the debate, if he has anything to say before I go to the mover of the Bill. Hon. Taslima, proceed.

Mr. Taslima: Mr. Chairman, why I say this was expounded very ably by hon. Opoka. When we say, “The Council may make instruments that make regulations”, we are talking of the practicability of that law. Saying that we leave it in the wisdom of whoever in the Partner States is as if we are saying, the whole clause 50 is redundant but it is not.

Pointing out 50(c) for example, matters which are necessary and expedient to give effect. Now if those matters are not brought out to whoever is going to implement this piece of legislation then these people will not be in a better position to – *(Interruption)*

Ms Byamukama: Thank you, hon. Taslima for giving way. The points you are raising are very important. Does it then mean that if we do not have statutory instruments then the law is of no effect? I

can even foresee a situation when you do not even need the statutory instruments.

What I am trying to say is that if it was so important, if the matters, which are supposed to be in the statutory instruments were so important then they should have been part of the main. So, if in principle we have not provided for them here, I think there is very little you can do in the statutory instruments because after all, the statutory instruments have to be hinged on the principles, which are already in the law.

So I think let us not make it such that if the statutory instruments are not there, then the law cannot take effect. So, I would still like to implore you that the word “may” would make better sense in the circumstances. Let us not tie our hands. Thank you.

The Chairman: Honourable members, let us not be repetitive about this. Unless the honourable Chair is bringing a very new dimension to the debate, I welcome you, sir.

Mr Mukasa Mbidde: Mr. Chairman, you will determine whether it is a new dimension when I have given it - *(Laughter)*. When you look at the provision, the provision is general and not specific. In mannerisms of drafting, you cannot find a general provision and give specific instructions to ministers implementing what is generally being provided for. So, in my opinion, the word “may” needs to be retained.

The Chairman: Honourable members that was clarification. Please conclude so that we can move as required.

Mr. Taslima: Mr. Chairman, I would like to move in tandem with the rest, let me withdraw.

The Chairman: Thank you so much, hon. Taslima. I now put the question that clause 50 be part of the Bill.

(Question put and agreed to.)

The Chairman: Honourable members, you remember we stood over clause 9 on an amendment moved by hon. Susan. Our rules require that we first finish with the clauses as they are before we go to the new clauses. So, I presume that using our appropriate mechanisms, Members exchanged views on this clause that we stood over.

Hon. Susan moved and hon. Mulengani moved that we stand over this clause to wait for further consultations. Can I now find from the mover of the Bill whether he has any consultations or his views are still holding?

Dr Ndahiro: Thank you, Mr. Chairman. I still hold my view on this particular article because I do not think that the amendment adds a lot of value to it because protection is seen in other new clauses that are part of this Bill and we have other equally important pieces of legislation in Partner States that provide the protection she needs. Thank you, Mr Chairman.

Mr. Ogle: Mr. Chairman, I have also reflected on this thing and I have made some consultations. It is still my feeling that this particular amendment adds a lot of value. It actually enriches this Bill and I do not want us to be so rigid and try to stop any other amendment coming.

The point is that it is enriching, critical, and important and I implore my good friend and brother, Dr Ndahiro to accept this thing with a good heart. Please.

The Chairman: Hon. Susan, the mover of the amendment, I am giving you a chance to say something because we had agreed that as debate goes on, you may have abandoned your thoughts. Can you please – *(Interruption)* -

Ms. Nakawuki: Thank you, Mr Chairman. Allow me to say that I am still holding on to my proposal dearly and I am sure it does not do any harm to this Bill. As I said earlier on, this is just to handle the issue of improper usage by any stakeholder who will be involved in this process. So, Mr Chairman, let us appreciate the fact that this is a regional law. At this level, we should not even be talking about the piecemeal legislation in Partner States because we are not all at the same level. Some Partner States are ahead of others but we are trying to move as a bloc; as a single voice so why can't we just cure this once and for all in this law that we hold so dear?

I do not see that there is any problem and I would really request my honourable colleague, hon. James Ndahiro, please. Thank you.

The Chairman: Thank you. Hon. Dr Ndahiro is standing.

Dr Ndahiro: Mr. Chairman, as I said, I do not see any value of this particular amendment, I do not see also any problem if we leave it there because it is either there or there. So, I can concede, Mr. Chairman. *(Applause)*

The Chairman: Honourable members, I now put the question on the amendment moved by hon. Susan Nakawuki to include a new 9(5) on clause 9 as circulated and I read it earlier.

(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.)

The Chairman: Before we move, I think the Chair has new clauses to introduce.

Mr. Mukasa Mbidde: Mr. Chairman, the committee is proposing new clauses that

have been borne out of new interactions with stakeholders including the interactions of yesterday late night meeting with the Council of Ministers. It is proposed that the Bill is amended by inserting the following new clauses after clause 21:

Part (a) is proposed for purposes of closing the gaps apparent in the Bill.

Part (b) is proposed for purposes of providing for the relying party, and to provide for clarity and best practice.

Part (c) is proposed in order to provide for legal effects, liability and international aspects of electronic signatures.

Part (7) on international aspects is proposed for purposes of providing for international aspects, and to conform to the best practice.

Part (d) is for purposes of recognising the importance of interoperability, not just in networks but also in services and applications to facilitate competition and consumer protection.

Mr Chairman, we beg to move.

The Chairman: Thank you, honourable Chair. Our Rules of Procedure; Rule 70 provides for this and therefore, you will have to go one by one. These new provisions must come at the same stage with this Bill so you will move one by one and the Clerk will read and we go through them. You will propose them one by one and as the Clerk reads, I will propose for them to come to the second reading stage and then we debate it. Thank you.

Mr. Mukasa Mbidde: Mr. Chairman, is it the ruling that I read them verbatim one by one? Most obliged.

Mr. Chairman, under (a), the Bill is amended by inserting the following new clauses after 21. Clause XXX that is under management of critical Internet resources.

1. The Minister responsible for Information and Communications Technology in a Partner State shall designate the person to manage critical Internet resources.
2. The person designated in sub section (1) shall be responsible for keeping an up-to-date record of the allocation, assignment and utilisation of critical Internet resources pursuant to the regulations made under this Act.

It is proposed that a new clause be inserted as follows:

(1) The minister responsible for information and communications technology in a partner state shall designate the person to manage critical internet resources.

(2) The person designated in sub section 1 shall be responsible for keeping an up to date record of the allocation, assignment and utilisation of critical internet resources pursuant to the regulations made under this act.

The Chairman: I now propose that the amendment as introduced by the Chair be read for the second time. I put the question.

(Question put and agreed to.)

The Chairman: It is now at the same level and at this level, if you want to debate this amendment, you can do so. There being no debate, I now propose that this amendment be inserted into the Bill.

(Question put and agreed to.)

Mr Mukasa Mbidde: Mr Chairman, under data protection, it is proposed that the

Minister responsible for Information and Communications Technology shall develop a legal framework on data protection to cover data retention, security, access, management and sharing.

Therefore, under controller, the Minister under (1) responsible for Information and Communications Technology in a Partner State shall designate –

The Chairman: That is a new clause. Let us deal with the new second one first.

Mr Mukasa Mbidde: Much obliged.

A new clause to be inserted:

The minister responsible for information and communications technology shall develop a legal framework on data protection to cover data retention, security, access, management and sharing.

The Chairman: Honourable members, I put the question that the proposal by the Chair that the amendment be part of the Bill be read for the second time.

(Question put and agreed to.)

The Chairman: I now propose that the amendment be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, it is proposed under controller that the Minister responsible for Information and Communications Technology in a Partner State shall designate a public officer to be the controller of certification authorities for purposes of this Act and under (2), the controller shall set standards and make provision for the cross certification across Partner States. I beg to move.

Proposed new clause:

(1) The minister responsible for information and communications technology in a partner state shall designate a public officer to be the controller of certification authorities for purposes of this act.

(2) The controller shall set standards and make provision for the cross certification across partner states.

The Chairman: Honourable members, I propose that the amendment be read for the second time. I put the question.

(Question put and agreed to.)

The Chairman: Debate is open on this amendment.

Mr. Mwinyi: Mr. Chairman, I wish to seek clarification if there is indeed a Minister responsible for Information and Communications Technology in all the five Partner States. Thank you.

The Chairman: Honourable Chair CTI, can you clarify?

Mr. Mukasa Mbidde: Indeed Mr. Chairman, there is a line minister in each of the Partner States on matters to do with Information and Communication Technology without necessarily adopting a similar nomenclature of naming the minister. Thank you.

The Chairman: Any debate on this?

Mr. Ogle: I am sorry I am taking you back but the way the whole thing is worded and I am not sure that I like the justification they have given here because these are contributions from stakeholders. They are just calling it, “for closing the gaps apparent in the Bill” whatever that means. However, my beef with this is the Minister responsible for Information ... shall be managing this thing called critical Internet resources pursuant to some security,

retention, access and all these kinds of issues. We seem to be creating some kind of a super Policeman who will manage our affairs. It is very dangerous.

I really want to have some further explanation on what it means- the justifications for inserting tense new clauses in relation to the justification they are giving for closing the gaps apparent in the Bill- whatever that means. Thank you.

The Chairman: The honourable member is first of all worried about the reason given. Maybe the Chair can...

Mr. Mukasa Mbidde: Mr. Chairman, first of all, this House has already adopted an amendment under 9(5) proposed by one of our colleagues that seeks to have protection of data. Now this is to provide for a substantive law in a Partner State that is calculated to provide for, among others – And of course brought by the minister, as it is always done in Partner States.

Even without necessarily writing it here, the responsibility lies with the Information and Communications Technology Minister to develop a legal framework on data protection, to develop a legal framework to cover data retention, data security, data access, data management and sharing.

Mr. Chairman, these areas must be gaps in our law because we do not yet have the mandate to provide for the same. Tense are gaps that require sanctions, gaps that require policing, gaps that require a substantive institution that we have not created so far. This is at implementation level and that is the justification I can give so far.

Dr Ndahiro: Thank you, Mr Chairman. I think the debate here is about responsibility, and in the definitions, a minister has been defined. If in any particular Partner State, even that ICT project lies in the Presidency then the

President will be the minister. What we are trying to say is anybody in charge of that sector.

The definition defines the minister and we think that they have the responsibility in Partner States to do that. As a Community we do not have a prison, we do not have Police and as you are all aware, honourable members, the Customs Management Act- The way it is implemented is that the heads of revenue authorities were mentioned before all our Partner States had those agencies but it is working.

Therefore, I appeal to you that maybe the names and positions should not hold us back. Thank you, Mr. Chairman.

Ms Hajabakiga: Mr. Chairman, what I wanted to cure is we can simply say, “Partner States shall...” In that way, we will have cured all those issues because every Partner State knows who is actually in charge of such matters and that will have cured the problem of imagining where they call a secretary of state and in some other places they call them differently. We can just use the term ‘Partner States shall...’ and we will have cured that problem.

The Chairman: Honourable members, I think the gist of the matter is that these are just nomenclatures but the facts as stated earlier is that in every Partner State we have these dockets. The nomenclature should not drag us behind. Partner States shall treat them as it is named in a given country.

I now put the question that the new clause as moved by the Chair be part of the Bill.

(Question put and agreed to.)

The Chairman: Honourable Chair, by way of guidance, you can read the title since members have the – Sorry, the Clerk will read the title then you can go through the text. Move the text now then the Clerk will read.

Mr. Mukasa Mbidde: Mr. Chairman, the committee proposes under (b) to amend the Bill by inserting a new clause after 27 for purposes of conduct of the relying party. “A relying party shall bear the legal consequences of its failure: (a) to take reasonable steps to verify the reliability of an electronic signature or where an electronic signature is supported by a certificate, to take reasonable steps (a) to verify the validity, suspension or revocation of the certificate and (b) to observe any limitation with respect to the certificate.”

This is intended to provide for the relying party.

The Chairman: Thank you.

Mr. Mukasa Mbidde: the title of the new clause is “Conduct of the Relying Party”.

The Chairman: Honourable members, I put the question that the new clause as moved by the Chair be read for the second time.

(Question put and agreed to.)

The Chairman: At this point, if anybody has any clarification or wishes to debate the provision, he is at liberty.

Mr. Mulengani: Mr. Chairman, when they are making the final print it can be corrected. The repetitive (a) (b) creates a bit of confusion.

The Chairman: Thank you, the drafter will clean it up. I now put the question that the new clause as moved by the Chair be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, it is proposed by the committee to provide for conduct of a relying party. “A relying party shall bear the legal consequences – Mr Chairman, I beg your pardon.

For purposes of recognition of foreign certificates and electronic signatures: -

1. In determining whether or to what extent a certificate or an electronic signature is legally effective, no regard shall be had: (a) to the geographic location where the certificate is issued or the electronic signature created or used or (b) to the geographic location of the place of business of the issuer or signatory.
2. A certificate issued outside the Community shall have the same legal effect in the Community as a certificate issued in the Community if it offers an equivalent level of reliability.
3. An electronic signature created or used outside the Community shall have the same legal effect in the Community as an electronic signature created or used in the Community if it offers equivalent level of reliability.
4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of sub section (2) or (3), regard shall be had to recognised international standards and to any other relevant factors.
5. Where notwithstanding sub sections (2), (3) and (4), parties agree as between themselves to the use of certain types of electronic signatures or certificates, that agreement shall be recognised as sufficient for purposes of cross border recognition, unless that agreement would not be valid or effective under the applicable law.”

Mr Chairman, this is intended to provide for clarity and best practice.

Mr. Mukasa Mbidde: The title for the new proposed clause is “Recognition of Foreign Certificates and Electronic Signatures”.

The Chairman: Honourable members, I move that the new clause as moved by the Chair be read for the second time. I put the question.

(Question put and agreed to.)

The Chairman: it is at this stage that if any Member wants to debate this new clause, they can do so.

Honourable members, I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, the committee proposes under (c) that the Bill be amended by inserting the following new clauses after clause 30 under the title, “Legal effects of electronic signatures: -

- (1) A Partner State shall ensure that advanced electronic signatures which are based on a qualified certified certificate and which are created by a secure creation device:
 - (a) Satisfy the legal requirement of a signature in relation to data in electronic form in the same manner as a hand written signature satisfies those requirements in relation to paper based data.
 - (b) Are admissible as evidence in legal proceedings.
- (2) The Partner State shall ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on grounds that it is (a) in electronic form; (b) not

based upon a qualified certificate; (c) not based upon a qualified certificate issued by an accredited certification service provider or not created by a secure signature creation device.”

Mr Chairman, this is intended to provide for legal effects, liability and international aspects of electronic signatures. I beg to move.

Mr. Mukasa Mbidde: The title for the proposed new clause is “Legal Effects of Electronic Signatures.”

The Chairman: Honourable members, I put the question that the new clause as moved by the Chair be read for the second time.

(Question put and agreed to.)

The Chairman: It is at this point that you can debate if there is any debate.

I now put the question that the new clause as moved by the Chair be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, the committee proposes, under “International aspects”, that:

“The Partner States shall ensure that their certificates, which are issued as qualified certificates to the public by a certification service provider established in a third country are recognised as legally equivalent to certificates issued by a certification service provider established within the Community if:

- (a) The certification service provider fulfils the requirements laid down in this Act and has been accredited under an accreditation scheme established in a Partner State.

- (b) A certification service provider established in the Community which fulfils the requirements under this Act guarantees the certificate or the certificate or the certification service provider is recognised under a bi-lateral or multi-lateral agreement between the Community and third countries or international organisations.”

This is intended to provide for international aspects and to conform to best practice.

Mr. Chairman, “In order to facilitate cross border certification services with third countries and legal recognition of advanced electronic signatures originating in third countries, the Council shall, where appropriate, make proposals to achieve the implementation of standards and internal agreements applicable to certification services.” We beg to move.

Mr. Mukasa Mbidde: The title for the proposed new clause is “International Aspects.”

The Chairman: Honourable members, I propose that the new clause, as proposed by the Chair, CTI, be read for the second time. I put the question.

(Question put and agreed to.)

The Chairman: I now propose that the new clause be part of the Bill.

(Question put and agreed to.)

Mr Mukasa Mbidde: Mr Chairman, it is proposed by the committee that the Bill be amended by inserting the following new clauses before clause 38 under the title of, “Country code top level domain names. In order to enhance the security of e-government services, every public body shall utilise their respective country code

top level domain for delivery of e-government services.”

Mr. Chairman, it is intended for purposes of closing gaps apparent in the Bill. It is clustered with the localisation of public information. “Public information belonging to a Partner State shall be hosted and stored within its national boundaries.”

The Chairman: That is a different one.

Mr. Mukasa Mbidde: It is a different one but – *(Interruption)* -

The Chairman: The justification is the same, but you will come to that one later.

Mr. Mukasa Mbidde: The title for the proposed new clause is “Country Code Top Level Domain Names.”

The Chairman: Honourable members, I put the question that the new clause as read by the chair be read for the second time.

(Question put and agreed to.)

The Chairman: Debate is open. I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr Chairman, it is also proposed by the committee to provide for localisation of public information. “Public information belonging to a Partner State shall be hosted and stored within its national boundaries.” I beg to move.

Mr. Mukasa Mbidde: The Title for the proposed new clause is “Localisation of Public Information.”

The Chairman: Honourable members, I put the question that the new clause as proposed by the Chair be read for the second time.

(Question put and agreed to.)

The Chairman: Debate is open. I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr Chairman, it is proposed by the committee that the Bill be amended by inserting the following clauses after clause 43, one under the title, “Framework for identification. That Partner States shall develop a framework for identification and/or authorisation of any person who offers, on commercial basis, the sale, hire or exchange of goods or services through an electronic transaction.”

This is intended to close gaps apparent in the Bill.

Mr. Mukasa Mbidde: The Title for the proposed new clause is “Framework for Identification.”

The Chairman: Honourable members, I put the question that the clause, as read by the Chair, be read for the second time.

(Question put and agreed to.)

The Chairman: Debate is open. I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, it is proposed by the committee to provide for tracking mechanisms. “A person offering goods or services for sale, hire or exchange through an electronic transaction shall provide a tracking mechanism by which a customer can ascertain the status of delivery of goods or services.

1. The delivery of goods and services obtained through electronic transactions shall be through a duly licenced carrier, operator in the respective Partner State

except where the delivery of goods or services is done directly by the seller.”

This is intended again to close the gaps apparent in the Bill.

Mr. Mukasa Mbidde: The title for the proposed new clause is “Tracking Mechanisms.”

The Chairman: Honourable members, I propose that the new clause as read by the Chair be read for the second time. I put the question.

(Question put and agreed to.)

The Chairman: Debate is open.

Ms. Hajabakiga: Thank you, Mr. Chairman. I am a member of the committee and I agree with what is contained in this provision. The only thing is to remove (1) because you cannot have (1) when you do not have (2). It is just numbering which can be cleaned by the drafts person.

The Chairman: Thank you. Honourable members, I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

Mr. Mukasa Mbidde: Mr. Chairman, it is proposed by the committee that the Bill be amended by inserting the following new clause after clause 48 for purposes of establishment of interoperability system. “The Partner States shall develop regulations and standards on interoperability to ensure seamless communication between network services and applications.”

Mr Chairman, this is intended to recognise the importance of interoperability, not just in networks but also in services and applications to facilitate competition and consumer protection and choice. I beg to move.

Mr. Mukasa Mbidde: The title for the proposed new clause is “Establishment of Interoperability System.”

The Chairman: Honourable members, I put the question that the new clause as moved by the Chair be read for the second time.

(Question put and agreed to.)

The Chairman: Debate is open. I now put the question that the new clause be part of the Bill.

(Question put and agreed to.)

MOTION FOR THE HOUSE TO RESUME

Ms. Patricia Hajabakiga (Rwanda): I beg to move that the House do resume and the Committee of the Whole House reports thereto.

The Chairman: Honourable members, I put the question that the House do resume and the Committee of the Whole House reports thereto.

(Question put and agreed to.)

(The House resumed, the Speaker presiding_)

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

Ms. Patricia Hajabakiga (Rwanda): Thank you, Mr Speaker. I beg to report that the Committee of the Whole House has considered the East African Community Electronic Transactions Bill, 2014 and assed it with amendments. I beg to move.

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

Ms. Patricia Hajabakiga (Rwanda): Thank you, Mr Speaker. I beg to move that

the report of the Committee of the Whole House be adopted. I beg to move.

The Speaker: Honourable members, the question before the House is that the report of the Committee of the Whole House be adopted. I now put the question.

(Question put and agreed to.)

BILLS THIRD READING

The East African Community Electronic Transactions Bill, 2014

MOTION

Ms Patricia Hajabakiga (Rwanda): Thank you, Mr Speaker. I beg to move that the East African Community Electronic Transactions Bill, 2014 be read for the third time and do pass.

The Speaker: Honourable members, the motion before the House is that the East African Community Electronic Transactions Bill, 2014 be read for the third time and do pass.

I now put the question that the East African Community Electronic Transactions Bill, 2014 be read for the third time and do pass.

(Question put and agreed to.)

The East African Community Electronic Transactions Bill, 2014

(AN ACT OF THE COMMUNITY TO PROVIDE FOR THE USE, SECURITY, FACILITATION AND REGULATION OF ELECTRONIC TRANSACTIONS TO ENCOURAGE THE USE OF E-GOVERNMENT SERVICES AND PROVIDE FOR OTHER RELATED MATTERS)

The Speaker: Honourable members, I now declare that the East African Community Electronic Transactions Bill, 2014 has been duly passed by this Assembly - *(Applause)*.

I would like to take this opportunity to congratulate hon. Dr Ndahiro, the mover of this Bill.

In a very special way, I would like to extend the appreciation of the House to the leadership and the membership of the CTI Committee for the good work.

This House would also like to register its appreciation to the stakeholders who have been very instrumental in enriching this Bill. This is a very important law to the Community and we are thankful for their contribution.

I thank you so much, honourable members, I congratulate you upon a work well done.

Honourable members, having sat for this long and done great work today, allow me to adjourn this House to next week, Tuesday 2.30 p.m. I thank you and House stands adjourned.

(The House rose at 5:29 p.m. and adjourned until Tuesday, 13 October 2015 at 2.30 p.m.)