

3.0 An Overview of the East African Legislative Assembly

3.1 Reports of Committees

This session to which the Chairpersons of EALA Committees made presentations, was Chaired by Hon. Sabiyumva Evariste, MP, the Head of Burundi Delegation.

3.1.1 *Communication, Trade and Investment Committee (CTI)*

The Chairperson of the Committee, Hon. Catherine Kimura presented the activities of the Committee on CTI. The CTI Committee is established under Rule 78 (2) (c) of the Rules of Procedure and derives its mandate under Rule 79 and Annex 5 (C) of the Rules of Procedure. Since the inauguration of the Second Assembly on 5th June 2007, the Committee has produced several reports and undertaken various oversight activities:

a.) Achievements

- Report of the Committee on Communications, Trade and Investments on the Lake Victoria Transport Bill, 2007;
- Report on the East African Community Customs Management (Amendment) Bill, 2007
- Report of the EALA Public Hearing Workshops on the East African Community Common Market, February 2009
- Report on the EAC Customs Management (Amendment) Bill, 2008
- Report on the EAC Civil Aviation Safety and Security Oversight (CASSOA) Bill, 2008
- Report on the East African Joint Trade Negotiations Bill, 2007

The Committee undertook the following oversight activities:

- Boarder Post Visits to assess the implementation of the Customs Management Act in Burundi – Tanzania (Manyovu); Tanzania (Kigoma)

Burundi – Rwanda (Kanyaru); Rwanda – Tanzania (Rusumo); Rwanda – Uganda (Gatuna/Katuna); Uganda – Tanzania (Mutukula); Uganda – Kenya (Busia and Malaba); Kenya – Tanzania (Namanga and Holoholo); Dar-Es-Salaam Port.

- Seminar on Economic Partnership Agreement (EPA) in Nairobi, Kenya.

b.) Challenges

- Inadequate resources to carry out Committee activities.
- Need for Capacity building of Committee Members in order to discharge their mandate more effectively.
- Strengthen closer coordination between EALA, Secretariat, Council of Ministers and other organs. Inadequate resources to carry out all Committee activities.
- Lack of sufficient information about the EAC integration benefits and its activities by East African citizens.
- Relationships between EALA and National Assemblies continue to be strengthened. Rules of procedure in NAs to be aligned to reflect enhanced functional relationships.
- Need for continued sensitization of the East African populace about the regional integration project.

3.1.2 Committee on Accounts

The Chairperson of the Committee on Accounts, Hon Christopher Nakuleu, reported on the activities of the Committee. The Accounts Committee is established under Rule 78 (2) (a) of the Rules of Procedure and derives its mandate under Rule 79 and Annex 5 (A) of the Rules of Procedure. The Committee has produced several reports and undertaken various oversight activities:

a) Achievements:

The Committee:

- carried out a post audit review of the accounts of some Organs and Institutions of the EAC, for the years 2007 and 2008 and presented reports to the Assembly with recommendations.
- carried out a special review on the functioning of Mount Elgon Ecosystems Conservation Project (MERECP) and other Projects supported by the EAC development partners in 2008 and presented reports with recommendations.
- held an Induction Workshop on Auditing and Accounting Skills from 19th – 22nd March 2009, Nairobi, Kenya. A report with recommendations was presented to the House during its sitting in Dar-Es-Salaam in August, 2009.
- held a meeting with Auditors General of Partner States in Kigali in August, 2008 and made several recommendations
- recommended the establishment of sub-accounting status for EALA and EACJ.

b) Challenges

Due to financial constraints, the Committee was not able to carry out the following:

- Onsite Visits to: LVBC, RV Jumuiya, MERECEP among others.
- Liaising with the Public Accounts Committees of Partner States.
- Hold several meetings.

3.1.3 Committee on Legal, Rules and Privileges

The Chairperson of the Legal, Rules and Privileges Committee, Hon. Abdullah Mwinyi reported on the activities of the Committee. The Legal, Rules and Privileges Committee is established under Rule 78 (2) (b) of the Rules of Procedure and derives its mandate under Rule 79 and Annex 5 (B) of the Rules of Procedure. The Committee has produced several reports and undertaken various oversight activities:

a.) Achievements

The Committee considered the following Bills and made reports to the Assembly on some of them:

- The East African Community Elections Bill, 2008;
- The East African Community Emblems (Amendment) Bill, 2008;
- The East African Community Service Commission Bill, 2008;
- The Administration of the Assembly Bill 2009, moved by a Member of the Committee.

In addition, the Committee:

- submitted to the Assembly amendments on the Treaty, which were later presented to the Council of Ministers.
- was finalizing a report on amendments to the Rules of Procedure of the Assembly.
- held a workshop on Mechanisms for Improving Democracy and Parliamentary Governance, and presented recommendations to the Assembly.
- held meetings with the Council of Ministers on Visas, Work Permits and Yellow Fever Vaccination requirements by the United Republic of Tanzania for EALA and EAC staff.
- met with the Council of Ministers on the issue of the Headquarters Agreement. The Council promised that the agreement would be concluded.

b) Challenges

Due to inadequate funding, the Committee was not able to carry out the following:

- Study Tours;

- Liaising with Legal Committees of National Parliaments of Partner States.

3.1.4 *Committee on Agriculture, Tourism and Natural Resources*

The Chairperson of the Committee, Hon. Dr. George Nangale reported that the Committee executed its mandate through motions to the House, considerations of Bills, organization of seminars and workshops, oversight through visits to EAC Partner States, projects and programmes, public hearings, participation to national, regional and international conferences and forums, and made the following:

a) Achievements

- A Motion urging the EAC Partner States to develop an Integrated Policy and on Energy Security;
- A Motion urging EAC Partner States to embrace the African Position during the UN Conference of Parties on Climate Change (COP15) in Copenhagen, 2009;
- A Motion seeking leave of the House to introduce a Private Member's Bill on EAC Tourism and Wildlife Management, 2008;
- A Motion seeking leave of the House to introduce a Private Member's Bill on Trans-boundary Ecosystems Management, 2008.

The Committee considered the following Bills:

- The Lake Victoria Commission Bill, 2007;
- EAC Tourism and Wildlife Management Bill, 2008

The Committee undertook the following activities:

- three workshops which brought together Members of the Committee and Members from National Assemblies of the Partner States serving in Agriculture and Natural Resources Committees two of which were on Food Security in the Region. In another workshop the Inter

Parliamentarians' Relations Liaison Committee on Extractive Industries (IPRLC) was established.

- tours to Tanzanian Extractive Industries in October 2008 and to the Uganda Petroleum Industries in June 2009. The objectives of the tours were to assess how the Partner States were working towards becoming Members of Extractive Industries Transparency Initiative (EITI).
- On spot assessment to the Lake Victoria Basin Commission in Kisumu, in October 2009, for the Members to familiarize themselves with the activities and programmes of the LVBC and her collaborating partners.
- participated in various international conferences including the East African Petroleum Conference in Mombasa in March 2009; the International Conference on Water Bodies (Water Week) in Stockholm, in August 2009; and the UN Conference on Climate Change (COP15) in Copenhagen, in December 2009.

b) Challenges

- Lack of resources.
- The stalemate on the Lake Victoria Commission Bill, 2007, and the EAC Tourism and Wildlife Management Bill, 2008.

3.1.5 Committee on Regional Affairs and Conflicts Resolution

On behalf of the Chairperson, Hon. Dr. Aman Kabourou, a Member of the Committee reported on its activities. The Committee on Regional Affairs and Conflict Resolution is established under Rule 78 (2) (f) of the Rules of Procedure and derives its mandate under Rule 79 and Annex 5 (E) of the Rules of Procedure. The Committee in the last two and a half years had accomplished several activities:

a) Achievements

- Report on the EALA/ Regional Affairs Committee delegation visit to Rwanda and Burundi, August 26 to September 2, 2007
- Report on the Conference on the Causes of Conflict in the East African Region, held in Bujumbura, Burundi, November 10 – 11, 2008
- Participated in the Conference on the Regional Mechanisms of Conflict Resolution and Peace Building, Kibuye, Rwanda, from November 16 – 19, 2008
- Report on the visit to ECOWAS in Abuja, Nigeria, May 11 – 14, 2009
- Participated in the development of an EAC Standard Election Observation Manual, Nairobi, Kenya, September 20 – 23, 2009;
- Participated in the Peace and Security Conference held in Munyonyo Resort, Kampala, Uganda, November 5 – 7, 2009 to commemorate EAC 10 Years Anniversary.

b) Challenges

Financial constraints acted as a stumbling block for the Committee to conduct the following activities:

- A tour to interact with parties under dispute on the Migingo Island crisis to comprehend the nature of the conflict and come up with tangible recommendations for a peaceful settlement on the issue
- A study of conflict prone areas and/or hotspots within the region

3.1.6 Committee on General Purpose

On behalf of the Chairperson, Member of the Committee, Hon. Bernard Mulengani reported on its activities. The Chairperson of the Committee presented the activities of the Committee on General Purpose. The General Purpose Committee is established under Rule 78 (2) (g) of the Rules of Procedure and derives its mandate under Rule 79 and Annex 5 (F) of the Rules of Procedure. Since the inauguration of the Second Assembly on 5th June 2007, the Committee has produced several reports and undertaken various oversight activities:

a) Achievements

- Reports on the EAC Annual Reports for the periods 2005/6; 2006/7; 2007/8; and 2008/9
- Reports on the EAC Annual Reports for the financial years ended 30th June 2006; 2007; and 2008
- Reports on the EAC Budgets for the Financial Years 2006/2007; 2007/2008 2008/2009; and 2009/2010
- Report of a Workshop on Gender Mainstreaming, May 2009
- Report on the EAC Annual Report Format, August 2009
- Participated in a Regional Conference on Consolidating Political will for Child well-being, December 2009
- Participated in a Workshop on Legislative Drafting in the Health Sector, February, 2010
- Participated in a Consultative Workshop on a Regional HIV/AIDS Draft Bill, February, 2010

A Review of Comprehensive Reproductive Health Strategy for the region, based on a Partner States tour by the Inter- Parliamentary Forum on Health, Population and Development carried out in November 2009.

Challenges

- Insufficient time for Committee Activities
- Insufficient financial resources to allow a wider scope of geographical coverage in the region

4.0 Substantive Presentations

This session was chaired by the Head of Tanzania Delegation, Hon. Beatrice Matumbo Shellukindo, MP. There was a change of programme, which was necessitated by the unavailability of the EAC Deputy Secretaries General who had other important EAC duties to attend to at that same time. The plenary resolved to move the presentations scheduled for the second day to the first day.

4.1 A Critical Overview of the EAC Common Market Protocol: the Necessity, the Benefits, the Implementation Modalities and the Critical Determinants for Making the EAC Common Market Achieve its Objectives

The presentation was made by Mr. Dan Ameyo, Consultant to the Secretariat during the negotiations and drafting of the Protocol. He highlighted the following:

4.1.1 Background

Article 5 of the Treaty Establishing the East African Community (the Treaty), envisaged the East African Community (the Community) to be both an economical and political union.

The Treaty sets out in *Article 5*, the objectives of the community to include the widening and deepening of co-operation of Partner States in political, economic, social etc for their mutual benefit.

By these two Treaty provisions, the roadmap and destiny of the EAC integration was defined unequivocally, that the process will move from a customs union to a common market, as transitional stages, to a Monetary Union and political federation as the ultimate.

To achieve this, the Community was required to establish a Customs Union first, and then develop a common market through a standardized system of laws, which apply in all Partner States, that guarantee the freedom of movement of; People, Goods, Services, and Capital and, the attendant rights of Establishment and Residence.

4.1.2 The necessity of the EAC Common Market

The fundamental reason for economic integration, and indeed the purpose of a common/single market, is to;

- Encourage economic activity and maximize efficiency by, enabling the factors of production to freely flow to operations of normal market forces, and
- Ensuring that there are no distortions in the common/single market operations.

These fundamental reasons, informed the objectives of the EAC's common market as set out in Article 4 of the Protocol.

The principles behind creation of the EAC common market are based on the fact that:

- An integrated regional grouping has a greater capacity for growth and development than a collection of neighbouring, countries whose economies are relatively closed;
- Despite the comparative advantage some partner states may have, some of their primary sectors suffer worsening terms of trade, unstable exchange rates and highly uneven land distribution and incomes unmitigated by first stage processing;
- The internal market being created by the Protocol is meant to provide the strategic platform for competitive industrialization and the emergence of a service sector. The Protocol, therefore, presents a greater opportunity to create a large and competitive internal market.
- The industrialization and the tertiary sector envisaged under the Protocol are likely to be the guaranteed means of generating the qualified, well paid employment EAC needs to support indigenous growth led by effective demand. It will, at the same time, assist in solving the myriad social problems currently hampering development.

EAC economies need diversification of production structures i.e., competitive industrialization and a service sector, to make them more resilient to shocks from outside. The diversification of production structures will rest on two pre-conditions:

- education which is a vital ingredient in a modern knowledge-based economy, and
- a big market which is indispensable for ensuring cost-cutting economies of scale and competition to push prices down, thus stimulating internal demand and exports.

The Protocol has adequate provisions to ensure that these two pre-conditions can be met, hence a major benefit to the Community.

4.1.2.1 The Four Freedoms

The EAC common market is founded on the famous 'four freedoms'. The term *four freedoms*, in both the Treaty and in the Protocol, refer to a set of provisions in these legal instruments meant to protect the ability of goods, services, labour and capital to move freely within the common market. The Protocol creates a single economic area and establishes free competition between undertakings. It lays out the basis for approximating the conditions governing trade in products and services.

4.1.2.2 Common Policies

The development of common policies is another critical objective of the Protocol. A number of these common policies are enshrined in the Protocol such as:

- a common agriculture and food security in Article 45;
- a coordinated trade relations policy in Article 37;
- a common transport policy in Article 38; and
- a common environmental protection policy in Article 40, among others.

The development of these policies will have to be accompanied by the creation of necessary structures aimed at improving job opportunities for workers and raising their standard of living, as well as putting in place measures to facilitate the Community's economic expansion by creating new resources.

In accordance with the overall objectives and in particular, the provisions of Article 5 of the Treaty, a common market represents a major step towards significant economic integration.

4.1.3 The benefits of the common market

4.1.3.1 Economic

- The principal advantage of establishing a common market is the expected gains in economic efficiency. With unfettered mobility, labour and capital can more easily respond to economic signals within the common market, resulting in a more efficient allocation of resources,
- The elimination of the remaining trade barriers between partner states envisaged in the Protocol, aims at increasing economic prosperity and contributing to closer union among EAC citizens with the ultimate objective of creating an internal market, i.e. an area without internal frontiers in which the free movement of the factors of production is ensured,
- By embracing the four freedoms, which are key pillars of a common market, the Community, intends to bring into being a common market which will achieve the free flow of economic factors for greater prosperity, and free competition within the common market. This will ensure that the factors of production become more efficiently allocated and thereby increasing productivity.
- For business within the market and consumers, a single market is a very competitive environment, making existing monopolies more difficult. Inefficient companies will suffer loss of market share and may close down. Efficient firms will benefit from economies of scale, increased competitiveness and lower costs, as well as expect profitability to be a result,
- The competitive environment will bring to consumers quality but cheaper products, more efficient providers of products, and increased choice of products. Business in competition will innovate to create new products to benefit the consumers.

4.1.3.2 Social

- By ensuring that economically active individuals are able to circulate freely within the Community, in the same way as goods and services, there is going to be need for the enactment of flanking measures to

- ensure more uniform standards of worker protection, and the pursuit of the principle of equal pay for equal work for men and women,
- In the process of harmonizing the social policies envisaged in Article 39, the Community will need to develop necessary social policy guidelines for the changing, maintenance or creation of living conditions that are conducive to human welfare.
- The social policy objectives, enshrined in the Protocol, should be able to improve human welfare and meet the needs for education, health, housing and social security. It is expected that the Community's social policy will not be confined to the traditional areas of labour, training and health and safety policy, but should expand to include gender policy and recognize other major social groups such as the elderly, disabled, ethnic minorities etc.
- The Common Market Protocol requires that the Community develops a strategy for generating economic growth, the lifelong learning required in a knowledge economy, and the scientific breakthroughs and innovation. There should be a strategy for creating jobs and growth by boosting our knowledge, making EAC businesses more innovative and ensuring they remain competitive, investing in people and at the same time not losing sight of the fact that growth must be sustainable. Today's growth must not be at the expense of future generations. It must be based on a greener economy.

To achieve these EAC will have to design a carefully thought-out programme of: attracting more people into employment, keeping people in work longer as life expectancy rises, improving the adaptability of workers and enterprises, providing better education and skills, and adapting social protection systems to the challenges of innovation, globalization and mobility.

This will require combining flexibility and mobility in labour markets with robust social security safety nets.

- Equal opportunities for all remain a basic tenet of this strategy. Gender, age, disability or poverty should not hold back. The Protocol has provisions for combating discrimination and for promoting social inclusion.
- The right of EAC citizens to live and work anywhere in the Community carries with it the entitlement to social benefits. By encouraging worker mobility the Protocol secures the benefits that mobility brings to the individual in terms of personal and vocational or career development as a means to match skills to demand for labour.

4.1.3.3 Research and technological development

Research and technological development is going to be an essential element in the functioning of partner states if they have to industrialize.

- The competitiveness of companies and the employment they will provide will depend, to a great extent, on research and technological development, which will also be essential for the support of the other policies, such as consumer protection or the protection of the environment.
- The EAC citizens, partner states and indeed the collective well-being of the Community citizens will depend on the quality and relevance of the research and technological development.
- As the driver for the production and exploitation of knowledge, research is going to be the linchpin in the implementation of any EAC strategy designed to make the sub-region dynamic and competitive, with a knowledge-based economy, capable of sustaining economic growth, employment and social cohesion.
- Knowledge should underpin all the components of EAC development strategy because today's economy and well-being of citizens rely on the progress of knowledge and its transformation in new products, processes and services
- Investing in knowledge will be the best way for the EAC to foster economic growth and create more and better jobs while at the same time ensuring social progress and environmental sustainability.

To strengthen its competitiveness EAC will need to invest in knowledge through research, diffusing it through education and applying it through innovation. This knowledge triangle of research, education and innovation, will function best when the accompanying Community's framework conditions reward the knowledge that is put to work to the benefit of the EAC economy and society.

4.1.4 Implementation modalities

- The process of implementing the Protocol commenced with the signing thereof on 20th November 2009. A roadmap for the post-signature activities has been or should be in the process implementation.
- There are three key implementation phases. Upon ratification and entry into force partner states will be obliged to;
 - implement provisions agreed for immediate implementation,
 - implement the provisions of the agreed Annexes,
- The Protocol envisages the making of more Regulations by the Council for the implementation of those aspects of the Protocol that are not for immediate implementation,
- Finally, implementation will require the domestication of the Protocol into the domestic laws of partner states by the enactment of necessary domestic laws in each partner state to give effect to the provisions of the Protocol.

4.1.5 Critical determinants for making the EAC Common Market achieve its objectives

Transition to a single market can, and will, have short term negative impact on some sectors of a national economy due to increased regional and international competition. Enterprises that previously enjoyed national market protection and/or subsidy will have to struggle against their more efficient peers, even for its traditional markets. Ultimately, if the enterprise fails to improve its organization and methods, it will fail. The consequence may be unemployment or migration.

4.1.5.1 Policy harmonization

- Establishing a common market requires significant policy harmonization in a number of areas. Free movement of labour, for example, will necessitate agreement on worker qualifications and certification.
- Whether by design or consequence, a common market is associated with a broad convergence of fiscal and monetary policies due to

increased economic interdependence within the region and the effect that one member country's policies can have on other member countries. This necessarily places more severe limitations on member countries' ability to pursue independent economic policies.

4.1.5.2 Investing in knowledge

There is real need for EAC partner states to realize that, to increase their collective growth and competitiveness, knowledge will be their greatest resource. The Community and its respective partner states will need to put the knowledge economy centre-stage in their financial programmes. The strategy to achieve this will need to be based on four pillars:

- Cooperation between universities , industry and research centres;
- Ideas to stimulate creativity and excellence by funding frontier research carried out by individual;
- Developing and strengthening the human potential of research through support to training; and
- Enhancing research and innovation capacity throughout the Community.

4.1.5.3 Accepting that EAC has its own power exercisable by itself

The realization by EAC partner states that the Protocol, read together with the Treaty;

- Constitutes a new legal order distinct from general international law and from the laws of the Partner states is crucial,
- The body of law emanating from the Treaty and its Protocols has direct effect in conferring rights and obligations directly on the citizens of partner states, and not only on the states and their institutions.

4.1.5.4 Endorsement of the Protocol as Community law

- Implementing the Protocol will involve debates, decisions, constitutional amendments and indeed ratification of the Protocol and the

enactment/taking, in partner states, of enabling legislation/measures to give the Protocol full effect within the partner states.

- In this process there is going to be the endorsement of the Protocol as Community law, as a distinct system interlocking with the laws of the partner states, but overriding them for some purposes.

4.1.5.5 Acceptance of shared sovereignty

In order to gain the benefits of a common market, partner states will have to;

- Surrender some degree of policy freedom, especially the ability to set independent economic, fiscal and trade policies. By extension, because of the increased importance of trade and other economic measures as foreign policy tools, a common market places some limitations on independent foreign policy as well.
- In the internal perspective of the Community and the relations of partner states, each state will be expected to cede some power pertaining to sovereignty, with the result that we will have an East Africa no longer of absolute sovereign states, but one interacting with and through a Community with an independent legal order of its own.

4.1.5.6 Enforcement of the non-discrimination principle

- Anti-discrimination law will have to be a central element of EAC social policy. Freedom from discrimination on grounds of nationality is a fundamental right under the Protocol, and must be seen as a basic ingredient of Community citizenship.
- Where statutory justification for indirect discrimination is allowed, this must not only be interpreted narrowly, but must also meet the objective justification and the principle of proportionality i.e. the action must be appropriate and necessary to achieve the aim pursued without more.

4.1.5.7 Acceptance of institutional and administrative reforms

- Supranational institutions will be required to regulate trade related issues and commerce within the common market to ensure uniform application of rules. Although laws and rules regulating trade and

commerce will still be administered at the national level, member states will be expected to ease individual control in these areas.

- To achieve its ultimate objective, EAC will have to operate through a hybrid system of intergovernmentalism, and supranationalism.
- In some areas, it will have to depend upon agreement between Partner States. However, it should also have supranational bodies, able to make decisions without the agreement of all national governments.

4.1.5.8 Implementation of the institutional reform agenda

- Under Article 76 (3) of the Treaty, the Council is expected to confer powers and authority on institutions of the Community, so as to administer the common market. In addition, under Article 7(1) (d) of the Treaty, the EAC integration process must take into account the principle of subsidiarity.
- Subsidiarity is a principle which directs attention to the level or levels at which certain policy objectives can best be formulated and realized. It explains the reasons for any shift of "*locus*" of decision-making from member states to the community level and the advantages which that level solutions provides. Under this principle institutions must prove that they are better placed to realize particular objectives.
- Embedded in the principle of subsidiarity, is the principle of responsibility gradualism. Partner States have to respect this and show commitment to the Treaty and Protocol principles and objectives by ceding some power to the Community Institutions. This principle together with the provisions of Article 76(3), are the legal basis for the reforms in the institutional and administrative structure of the Community.

4.1.5.9 Attracting mobile investors

- As the common (internal) market becomes progressively established and as a result of pressures of globalization, national governments become forced to conduct their policies in line with the imperatives of international competitiveness, as gauged by their attraction for mobile investors.

- As attraction for such investors becomes more compelling, freedom to enact and/ or maintain labour legislation and standards, and their capacity to achieve given social objectives, become more diminished. EAC has to rise to this reality.
- Institutional reforms and restructuring is required to ensure efficient administration of the Common Market as envisaged in Article 76 (3). The Council will be expected to establish such institutions and to confer powers, and authority on them.

4.1.5.10 Political will and the determination of the EAC citizens to succeed

The political will of the EAC leadership will be critical to the successful attainment of the objectives of the Protocol.

- This will need to be demonstrated by ensuring the timely implementation of agreed programmes, acceptance that, the Community as an international legal person, should have the necessary operational autonomy in order to discharge its challenging mandate.
- This can only be achieved by empowering the Community institutions through the necessary institutional reforms.
- The EAC citizens will need to play a crucial role in the success of the Protocol by demanding accountability from both the political leaders, government technocrats, and the EAC international civil servants.
- After all, this is meant to be a people-centered integration as envisaged in Article 7(a) of the Treaty.