



**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

COMMITTEE ON LEGAL, RULES AND PRIVILEGES

**REPORT OF THE COMMITTEE ON THE CONSIDERATION OF THE EAST
AFRICAN COMMUNITY OATHS BILL, 2017**

15 MARCH 2018

**Clerk's Chambers
EALA Headquarters, 3rd Floor
EAC Headquarters
Arusha - TANZANIA**

March 2018

1. INTRODUCTION

The East African Community Oaths Bill, 2017 was introduced into the Assembly by the Chairperson of Council of Ministers and read for the First Time on 8th February, 2018 in Kampala, Uganda. In accordance with the Rule 66 (4) of the Rules of Procedure of the Assembly the Bill was referred to the Committee on Legal, Rules and Privileges for consideration.

The object of this Bill is to provide for the taking and administering of oaths in relation to specific persons appointed to serve in the Organs or Institutions of the Community or required to take oath before giving evidence in the African Court of Justice.

According to the Oxford English Dictionary (OED), an oath is a solemn or formal appeal to God (or to a deity or something held in reverence or regard), in witness of the truth of a statement, or the binding character of a promise or undertaking. Witnesses must provide truthful testimony, and those holding certain offices must perform their official functions with a view toward upholding the truth: jurors must decide the facts and render verdicts, and judges must apply the law to particular circumstances, guided by what is true.

On the other hand, affirmation is the act of confirming something to be true, or is a written or oral statement that confirms something is true. It is a solemn declaration, but not under oath: permitted to one who has conscientious objections to taking oaths. According to Wikipedia, an affirmation is a solemn declaration allowed to those who conscientiously object to taking an oath.

An affirmation has exactly the same legal effect as an oath but is usually taken to avoid the religious implications of an oath; it is thus legally binding but not considered a religious oath. Some religious minorities hold beliefs that allow them to make legally binding promises but forbid them to swear an oath before a deity.

2. THE CONTENT OF THE BILL

The East African Community Oaths Bill, 2017 (the Bill) provides for an obligation on persons in the employment or service of the Community and those appearing before judicial or quasi-judicial organs or institutions of the Community to take or make oath before discharging their specific duties.

The Bill is composed of eight Clauses and three Schedules as follows:

- i. Clause 1 is for a short title of the Bill;
- ii. Clause 2 provides interpretation of key words or terms;
- iii. Clause 3 provides a legal obligation to take oath for persons elected or appointed in the service of the Community;
- iv. Clause 4 provides for un-necessary repetition of taking oaths;
- v. Clause 5 provides for omission to take oath;
- vi. Clause 6 provides for the form and manner in which oaths are taken;
- vii. Clause 7 is for affirmation;
- viii. Clause 8 empowers the Council to make regulations;
- ix. The First Schedule provides a manner of taking and administering oaths;
- x. The Second Schedule provides for oaths to be taken; and
- xi. The Third Schedule provides for affirmation to be taken.

3. METHODOLOGY

The Committee conducted three meetings in Arusha to consider the East African Community Oaths Bill. All the Meetings were held during the Third Meeting of the First Session of Fourth Assembly scheduled for 4th – 23rd March 2018. In consideration of the Bill, the Committee reviewed literature regarding the subject matter of the Bill, reviewed existing legislation and held interactive meeting with Mr. Denis Kibirige, the Principle Legislative Draftsman of the Community. The Committee invited all Organs and Institutions of the Community to make comments on the Bill. The Committee received

and considered written comments from the East African Court of Justice and the Inter-University Council for East Africa.

4. OBSERVATIONS OF THE COMMITTEE

The Committee made the following observations:

- i. This Bill is important to the Community because it legislates for the oaths or affirmation to be taken by people employed by or provides service to the Community, as well as to individuals giving evidence before the East African Court of Justice; the Committees of the East African Legislative Assembly and Quasi-Judicial Bodies of the Community;
- ii. That Paragraph 1 of Article 72 of the Treaty requires all staff of the Community to pay allegiance to the Community and provides that "in the performance of their functions, that staff of the Community shall not seek or receive instruction from any Partner State or from any other authority external to the Community.
- iii. Article 42 (2) of the Treaty provide for the oath to be administered to judges and registrars of the East African Court of Justice. Likewise, the East African Legislative Assembly (Powers and Privileges) Act, 2003 provides for the oaths for the Speaker and Members of the Assembly while the Administration of the East African Legislative Assembly Act, 2011 provides for the oaths to be administered to the Clerk and other staff of the Assembly. Moreover, Regulation 29 of the East African Community Staff Rules and Regulation provides for the oath of allegiance and oath of secrecy to be administered to the staff of the Community, however, this oath is not anchored on any principle legislation of the Community;
- iv. The Bill does not include oaths for the following:
 - a. The Counsel to the Community;
 - b. The Director General in charge of Customs and Trade; and
 - c. Individuals giving evidence before the East African Legislative Assembly or at its Committee.

- v. There is no cross reference to the other existing legislation that provide for the oaths to persons employed or in the service of the Community;
- vi. The word affirmation needs to be defined in the Bill;
- vii. The procedure of taking oath for Members of the EALA as provided for by Section 13 of the East African Legislative Assembly (Powers and Privileges) Act, 2003, differs from the practice of taking oaths in the Assembly as provided for by Sub-Rules (2) and (3) of Rule 5 of the Rules of Procedure of the Assembly, 2015 Edition;
- viii. There is two different scenario of taking oath for New Members of the EALA:
 - a. Members taking oath or affirmation at the inauguration of a New House where the oath/affirmation is administered by the Clerk of the Assembly; and
 - b. Members who joins the Assembly at any other time apart from the inauguration of the New House where the oath/affirmation is administered to by the Rt. Hon. Speaker of the Assembly.
- ix. The Bill requires all Members of staff of the Community to take oath/affirmation before the Secretary General or his/her appointed representative. However, the Committee noted that the Community have other semi-autonomous organs and institutions of the Community, hence staff of those institutions should be taking oath/affirmation before the executive heads of those organs/institutions;
- x. There is a need to have a separate cluster to specifically cater for the oaths of Heads of Institutions and their deputies; and
- xi. The Bill provides that the Judge of the East African Court of Justice should be responsible for administering oath/affirmation to the Deputy Secretary General, however, the Committee is of the opinion that administration of oaths/affirmation to the Secretary General or Deputy Secretary General should be the responsibility of the Registrar.

The Committee proposes to amend the Bill taking into account the observations that the Committee has made on the Bill. The proposed amendment by the Committee are attached to this report.

5. RECOMMENDATIONS

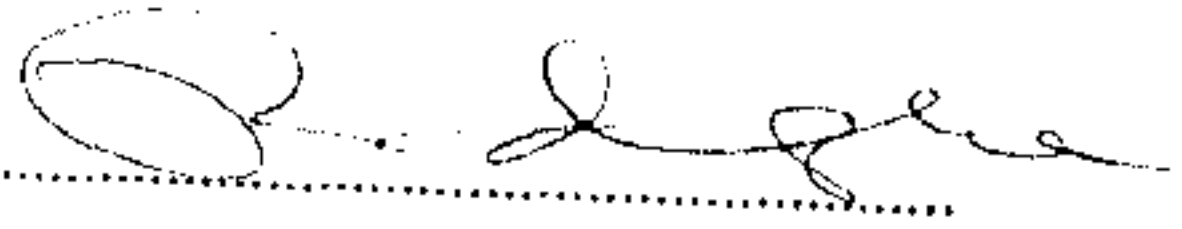
The Committee recommends to the Assembly to:

- i. Adopt this report of the Committee together with the attached schedule of amendments; and
- ii. Pass the East African Community Oaths Bill, 2017.

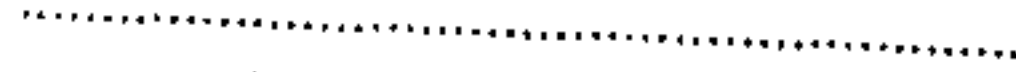


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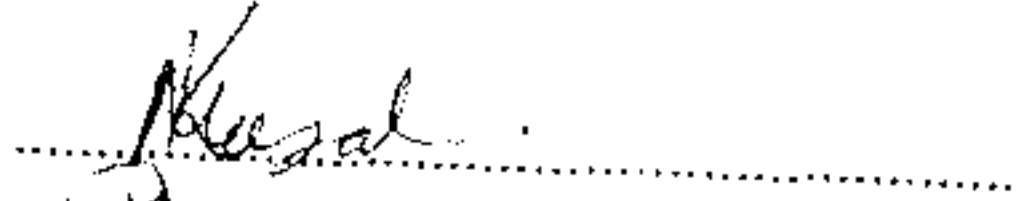
1. Hon. Amb. Fatuma Ndingiza



2. Hon. Fatuma Ibrahim Ali



3. Hon. Kennedy Kalonzo Musyoka



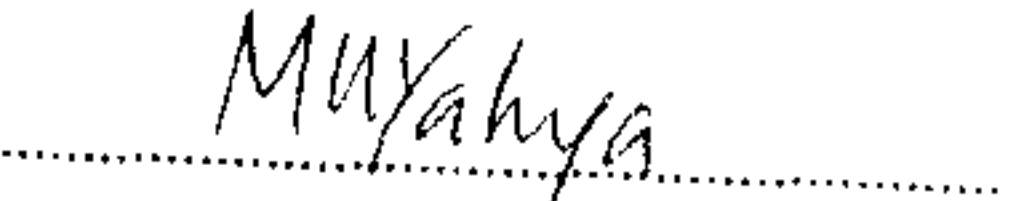
4. Hon. Wanjiku Muhia



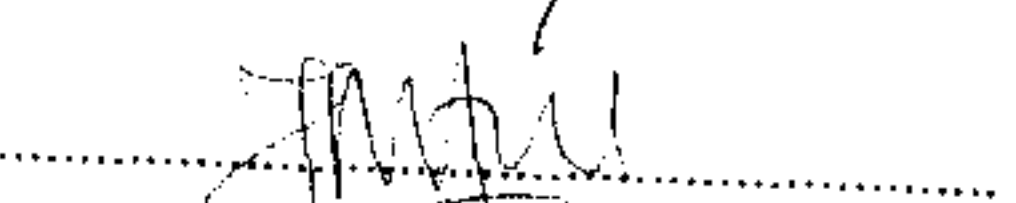
5. Hon. Happiness Elias Lugiko



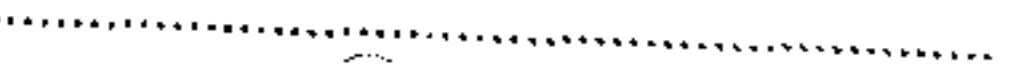
6. Hon. Maryam Ussi Yahya



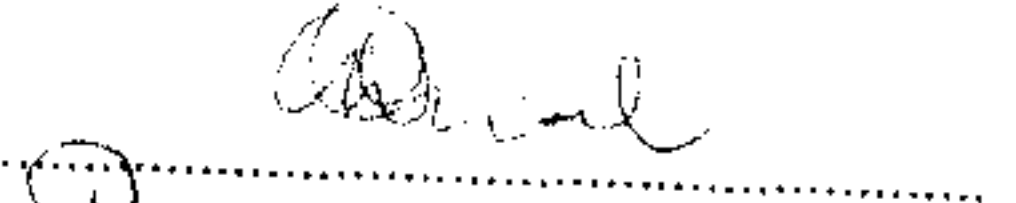
7. Hon. Josephine Sebastian Lemoyan



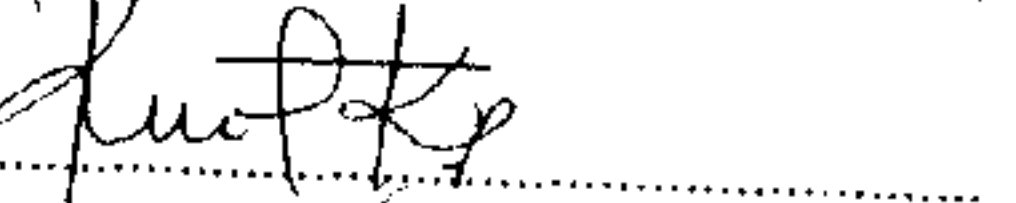
8. Hon. Dr. Leonardo Itto Anne



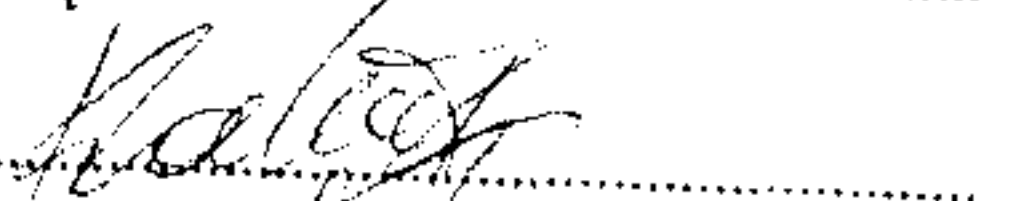
9. Hon. Gai Deng



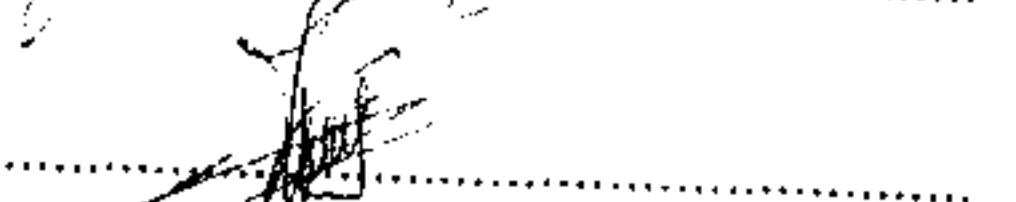
10. Hon. Kim Gai Ruot



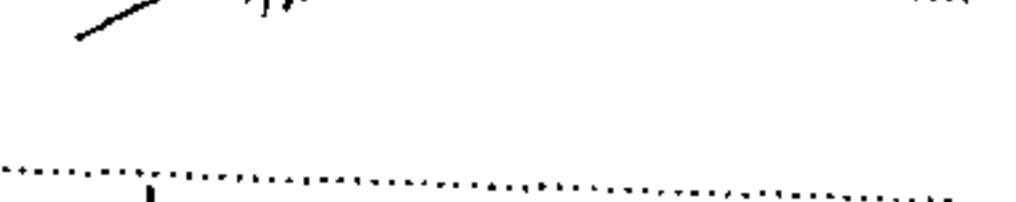
11. Hon. Dr. Francois Xavier Kalinda



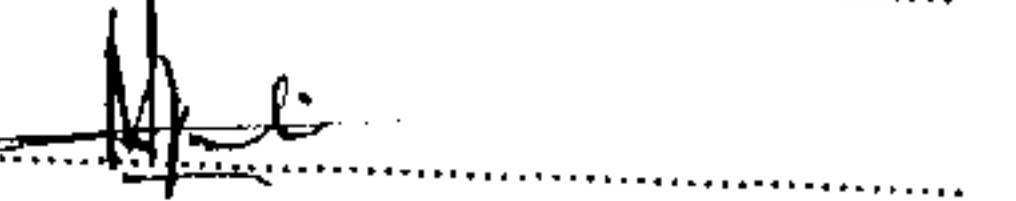
12. Hon. Francine Rutazana



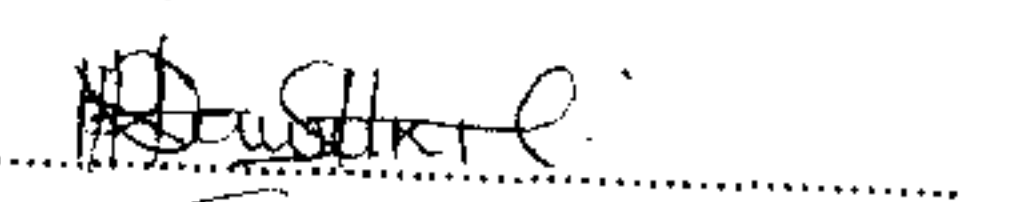
13. Hon. Mukasa Fred Mbidde



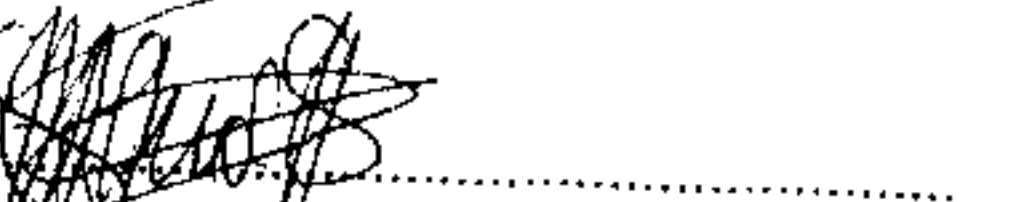
14. Hon. Mwasa Paul Musamali



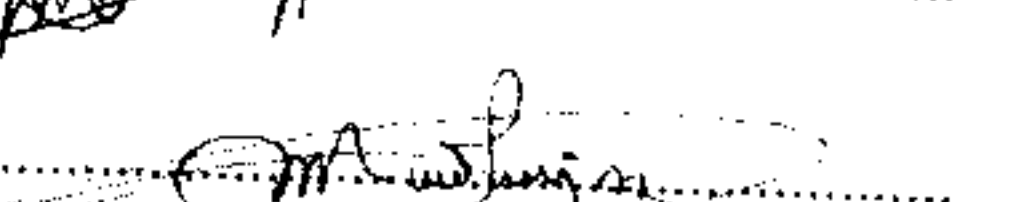
15. Hon. Susan Nakawuki Nsambu



16. Hon. Alfred Ahingejeje



17. Hon. Jean Marie Muhirwa



18. Hon. Marie Claire Burikukiye

