

**PARLIAMENT
OF KENYA
LIBRARY** REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

SELECT COMMITTEES ON REGIONAL INTEGRATION

**REPORT ON THE CONSIDERATION OF THE PROTOCOL TO OPERATIONALIZE
THE EXTENDED JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE**

**DIRECTORATE OF COMMITTEE SERVICES,
CLERKS CHAMBERS,
PARLIAMENT BUILDINGS
NAIROBI**

NOVEMBER, 2016

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD	- 4 -
EXECUTIVE SUMMARY	- 5 -
1. MANDATE OF THE COMMITTEE	- 6 -
1.1 COMMITTEE MEMBERSHIP	- 7 -
1.2 COMMITTEE SECRETARIAT	- 8 -
1.3 RECOMMENDATION.....	- 9 -
2 BACKGROUND INFORMATION.....	- 10 -
2.1 Historical Perspective of EACJ.....	- 10 -
2.2 Objects and Subject matter of the Protocol	- 10 -
2.3 Constitutional Implications	- 10 -
2.4 Impact of the Protocol on National Interests.....	- 11 -
2.5 Obligations imposed on Kenya by the Protocol.....	- 11 -
2.6 Requirements for implementation of the Protocol	- 11 -
2.7 Ministerial responsibility.....	- 11 -
2.8 Implications on matters relating to counties.....	- 12 -
2.9 Financial Implications	- 12 -
2.10 Summary of the Provisions of the Protocol.....	- 12 -
3. COMMITTEE OBSERVATIONS.....	- 14 -
3.1 Objects and Subject matter of the Protocol	- 14 -
3.2 Constitutional Implication.....	- 14 -
3.3 Impact of the Protocol on National Interests.....	- 14 -
3.4 Obligations imposed on Kenya by the Protocol	- 15 -
3.5 Requirements for implementation of the Protocol	- 15 -
3.6 Ministerial responsibility.....	- 15 -
3.7 Implications on matters relating to counties.....	- 15 -
3.8 Public participation.....	- 15 -
3.9 Provision for Reservation.....	- 15 -
3.10 Financial Implications	- 16 -
3.11 Compliance with the Procedure for approval as stipulated under the Treaty Making and Ratification Act, 2012	- 16 -
4. RECOMMENDATION.....	- 17 -

ABBREVIATIONS

EAC - East African Community

EACJ - East African Court of Justice

CHAIRPERSON'S FOREWORD

Through a memorandum to the Speaker of the National Assembly on May 2016, and Pursuant to Article 27(2) of the Treaty, the Cabinet Secretary for the Ministry of Foreign Affairs and International Trade informed the National Assembly of the adoption of the East African Community (EAC) Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice (EACJ), by Partner States of the East African Community, that the Cabinet in its Second Cabinet Meeting held on 18th February, 2016 approved the ratification of the Protocol and therefore seeks the approval of the National Assembly for Kenya to ratify the Protocol.

Upon receipt of the Communication, the Speaker referred the matter to the Select Committee on Regional Integration for consideration pursuant to Standing Order 212.

In processing the Protocol, the Committee was briefed by the Legal Department on the contents of the Protocol before compiling this report.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions during the consideration of the Protocol.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who dedicated their time to participate in the preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Select Committee on Regional Integration to table its Report in the House on the consideration of the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice.

Hon. Florence Kajuju, MP

EXECUTIVE SUMMARY

This report contains the Select Committee's findings during the consideration of the East African Community (EAC) Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice (EACJ). The Cabinet Secretary for the Ministry of Foreign Affairs and International Trade through her memorandum dated 3rd May, 2016 requested the National Assembly to approve the ratification of the Protocol.

The Committee noted that the State Department of East African Affairs convened a forum at the Laico Regency on April 28, 2014 where the public was invited to share views on the Protocol.

On compliance of the ratification process with the Treaty Making and Ratification Act, the Committee noted that due process had been followed. The Committee further noted that the Protocol does not anticipate any amendments to the Constitution of Kenya and is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, territorial integrity, political independence, good neighbourliness and non-interference in the internal affairs of each Partner State.

The Committee noted that The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to the enhancement of trade and to develop mechanisms which are aimed at:

- Coordinating and cooperating with other EAC partners States in matters related to trade and investments;
- Preventing, containing and peacefully resolving conflicts and disputes among EAC Partner States arising from trade and investments;
- Observing and encouraging the implementation of the EAC Customs Union, the Protocol on the Establishment of the EAC Monetary Unions; and
- Enhance capacity of the EAC with respect to trade and investment.

On the signing of the Protocol, the Committee noted that the Protocol was adopted and signed by the EAC Heads of State on 25th April, 2015 in Nairobi, Kenya.

1. MANDATE OF THE COMMITTEE

The Select Committee on Regional Integration is established under Standing Order No. 212 and is mandated to:-

- a. Enhance the role and involvement of the House in intensification and development of the integration process in the East African Community and the greater African region;
- b. Examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
- c. Examine the Bills introduced in the East African Legislative Assembly and Acts of the East African Community;
- d. Examine the records of all the relevant debates and resolutions of the meetings of the Pan African Parliament, the African, Caribbean and Pacific-European Union Joint Parliamentary Assembly and other regional integration bodies;
- e. Inquire into and examine any other matter relating to regional integration generally requiring action by the House

1.1 COMMITTEE MEMBERSHIP

Chairperson	The Hon. Florence Kajuju, MP
Vice Chairperson	The Hon. Christopher Nakuleu, MP
Members	The Hon. David OumaOchieng, MP The Hon. BadyTwalibBady, MP The Hon. Robert Mbui, MP The Hon. Anyanga Andrew Toboso, MP The Hon. Florence MwikaliMutua, MP The Hon. Ogendo Rose Nyamunga, MP The Hon. AloisLentoimaga, MP The Hon. Anthony Kimaru, MP The Hon. David Kariithi, MP The Hon. WanjikuMuhia, MP The Hon. Ali Wario, MP The Hon. Eric Keter, MP The Hon. Mary Seneta, MP The Hon. Gideon Konchella, MP The Hon. Dido Ali Rasso, MP The Hon. Ann Nyokabi, MP The Hon. Emmanuel Wangwe, MP The Hon. Peter Shehe, MP The Hon. Alex Mwiru, MP The Hon. Mark Lomunokol, MP The Hon. Sarah Korere, MP The Hon. Iringo Cyprian Kubai, MP The Hon. Timothy Bosire, MP The Hon. Joseph Kahangara, MP The Hon. Andrew Mwadime, MP The Hon. Alfred Agoi, MP The Hon. Willy Baraka Mtengo, MP

1.2 COMMITTEE SECRETARIAT

First Clerk Assistant Evans Oanda

Third Clerk Assistant Nicodemus Maluki

Third Clerk Assistant Fredrick Otieno

Legal Counsel II Brigita Mati

Research Officer III Sharon

Rotino

1.3 RECOMMENDATION

The Committee recommends that the National Assembly approves the ratification of the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice pursuant to Section 8 of the Treaty making and Ratification Act of 2012.

2 BACKGROUND INFORMATION

2.1 Historical Perspective of EACJ

Article 27(2) of the Treaty Establishing the EAC requires Partner States to recognize that the East African Court of Justice (EACJ) shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council. Further, under the Article, Partner States agreed to conclude a Protocol to operationalize the extended jurisdiction of the Court.

Recognizing the critical role of the EACJ in regional integration, following the establishment of the EAC Customs union, EAC Common Market and the EAC Monetary Union, the 15th Ordinary Summit of the Heads of State, on November 30, 2013, approved the recommendation of the EAC Council of ministers to extend the jurisdiction of the EACJ to cover trade and investment, arising out of the implementation of the Protocol on the Establishment of the EAC Common Market and disputes arising out of the implementation of the protocol on the EAC Monetary Union.

2.2 Objects and Subject matter of the Protocol

The main objective of the Protocol is to extend the jurisdiction of the EACJ to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the disputes arising out of the implementation of the EAC Monetary Union.

The protocol obligates Partner States to inter alia, undertake to:

- i. Prevent, contain and peacefully resolve conflicts and disputes among Partner States arising from trade and investment matters;
- ii. Observe and encourage the implementation of the Protocol on the Establishment of the EAC Customs union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.

2.3 Constitutional Implications

The Protocol does not anticipate any amendments to the Constitution of Kenya and is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, territorial integrity, political independence, good neighbourliness and non-interference in the internal affairs of each Partner State.

2.4 Impact of the Protocol on National Interests

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to the enhancement of trade and to develop mechanisms which are aimed at:

- i. Coordinating and cooperating with other EAC partners States in matters related to trade and investments;
- ii. Preventing, containing and peacefully resolving conflicts and disputes among EAC Partner States arising from trade and investments;
- iii. Observing and encouraging the implementation of the EAC Customs Union, the Protocol on the Establishment of the EAC Monetary Unions; and
- iv. Enhance capacity of the EAC with respect to trade and investment

2.5 Obligations imposed on Kenya by the Protocol

Article 151(4) of the Treaty provides that Protocols form an integral part of the Treaty, which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the EAC Act No. 2 of 2000. The obligations imposed by the Protocol are therefore linked to those of the EAC as established by the Treaty.

2.6 Requirements for implementation of the Protocol

At the national level, the existing government agencies mandated to handle specific thematic areas of the Protocol shall oversee its implementation, under the auspices of the State Department of the East African Affairs.

Policy and Legislative Considerations

- i. Harmonization of policies and strategies on trade and investment
- ii. Harmonization of approximation of laws and regulations for effective coordination of cooperation in the sector.

2.7 Ministerial responsibility

The responsibility of the implementation of the Protocol shall be vested in the Cabinet Secretary in charge of East African Affairs.

2.8 Implications on matters relating to counties

The scope of the Protocol relates to function that fall under the purview of the National Government, which shall, whenever necessary, coordinate with the county governments.

2.9 Financial Implications

It is envisaged that the implementation of the Protocol will have financial implications and it is expected that the State Department of the East African Affairs will sensitize the respective Government agencies on their roles on the implementation of the Protocol as well as the financial implications.

2.10 Summary of the Provisions of the Protocol

Preamble- pursuant to Article 27(2) of the Treaty, Partner States recognise that the Court shall have other original, appellate, human rights and other jurisdiction as determined by the Council and have resulted to conclude with a protocol to operationalize the extended jurisdiction of the Court. The jurisdiction is to cover matters generally related to trade and investment.

Article 1- provides for the interpretation of terms as used in the protocol.

Article 2- provides for the object of the protocol which is to extend the jurisdiction of the Court to cover matters relating to trade and investments in relation to the implementation of the following protocols;

- (a) Establishment of the East African Community Customs Union;
- (b) Establishment of the East African Common Market; and
- (c) Establishment of the east African Community Monetary Union.

Article 3- provides for the jurisdiction of the Court over-

- (a) disputes on trade and investment arising from the implementation of the following protocols-
 - (i) Establishment of the East African Community Customs Union; and
 - (ii) Establishment of the East African Common Market;
- (b) disputes arising out of the implementation of the protocol on the Establishment of the East African Community Monetary Union.

The jurisdiction extended to the Court shall not prevent other bodies, conferred such jurisdiction by the Treaty or any other relevant law, from exercising such jurisdiction.

Article 4- provides for Partner States to amend the protocol in accordance with Article 150 of the Treaty.

Article 5- provides for entry into force. In this case, protocol shall enter into force once all partner states ratify it and deposit the instruments with the Secretary General.

Article 6-provides for depository and registration. In this case, the Secretary General is tasked with transmitting certified copies to all the Partner States and registering the protocol with the African Union and any other organisation the Council determines.

3. COMMITTEE OBSERVATIONS

Having considered the Protocol, the Committee made the following observations:-

3.1 Objects and Subject matter of the Protocol

The main objective of the Protocol is to extend the jurisdiction of the EACJ to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the disputes arising out of the implementation of the EAC Monetary Union.

The protocol obligates Partner States to inter alia, undertake to:

- i. Prevent, contain and peacefully resolve conflicts and disputes among Partner States arising from trade and investment matters;
- ii. Observe and encourage the implementation of the Protocol on the Establishment of the EAC Customs union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.

3.2 Constitutional Implication

The Protocol does not anticipate any amendments to the Constitution of Kenya and is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, territorial integrity, political independence, good neighbourliness and non-interference in the internal affairs of each Partner State.

3.3 Impact of the Protocol on National Interests

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to the enhancement of trade and to develop mechanisms which are aimed at:

- i. Coordinating and cooperating with other EAC partners States in matters related to trade and investments;
- ii. Preventing, containing and peacefully resolving conflicts and disputes among EAC Partner States arising from trade and investments;
- iii. Observing and encouraging the implementation of the EAC Customs Union, the Protocol on the Establishment of the EAC Monetary Unions; and
- iv. Enhance capacity of the EAC with respect to trade and investment.

3.4 Obligations imposed on Kenya by the Protocol

Article 151(4) of the Treaty provides that Protocols form an integral part of the Treaty, which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the EAC Act No. 2 of 2000. The obligations imposed by the Protocol are therefore linked to those of the EAC as established by the Treaty.

3.5 Requirements for implementation of the Protocol

At the national level, the existing government agencies mandated to handle specific thematic areas of the Protocol shall oversee its implementation, under the auspices of the State Department of the East African Affairs.

Policy and Legislative Considerations

- i. Harmonization of policies and strategies on trade and investment
- ii. Harmonization of approximation of laws and regulations for effective coordination of cooperation in the sector.

3.6 Ministerial responsibility

The responsibility of the implementation of the Protocol shall be vested in the Cabinet Secretary in charge of East African Affairs.

3.7 Implications on matters relating to counties

The scope of the Protocol relates to function that fall under the purview of the National Government, which shall, whenever necessary, coordinate with the county governments.

3.8 Public participation

The State Department of East African Affairs convened a forum at the Laico Regency on April 28, 2014 where the public was invited to share views on the Protocol.

3.9 Provision for Reservation

The Protocol has no provision for reservations.

3.10 Financial Implications

It is envisaged that the implementation of the Protocol will have financial implications and it is expected that the State Department of the East African Affairs will sensitize the respective Government agencies on their roles on the implementation of the Protocol as well as the financial implications.

3.11 Compliance with the Procedure for approval as stipulated under the Treaty Making and Ratification Act, 2012

The East African Community Protocol to operationalize the extended jurisdiction of the East African Court of Justice is in compliance with section 8 of the Act as it is accompanied by a cabinet Memorandum.

4. RECOMMENDATION

The Committee recommends that the National Assembly approves the ratification of the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice pursuant to Section 8 of the Treaty making and Ratification Act of 2012.

Signed  Date 30th Nov. 2016.

(HON. FLORENCE KAJUJU, MP)

CHAIRPERSON, SELECT COMMITTEE ON REGIONAL INTEGRATION

MINUTES OF THE 31ST SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 24TH NOVEMBER, 2016 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12:00 NOON

Present:

1. Hon. Florence Kajuju, MP - **Chairperson**
2. Hon. Christopher Nakuleu, MP - **Vice-Chairperson**
3. Hon. Robert Mbui, MP
4. Hon. Dido Ali Rasso, MP
5. Hon. Andrew Toboso, MP
6. Hon. Wanjiku Muhia, MP
7. Hon. David Karithi, MP
8. Hon. Andrew Mwadime, MP
9. Hon. Mark Lomunokol, MP
10. Hon. Gideon Konchella, MP
11. Hon. Mary Seneta, MP
12. Hon. Alois Lentoimaga, MP
13. Hon. Sarah Korere, MP
14. Hon. Alfred Agoi, MP
15. Hon. Willy Baraka Mtengo, MP

Absent With Apology

1. Hon. Timothy Bosire, MP
2. Hon. Ogendo Rose Nyamunga, MP
3. Hon. Badi Twalib Badi, MP
4. Hon. Emmanuel Wangwe, MP
5. Hon. Annah Nyokabi, MP
6. Hon. David Ouma Ochieng', MP
7. Hon. Ali Wario, MP
8. Hon. Joseph Kahangara, MP
9. Hon. Anthony Kimaru, MP
10. Hon. Alex Mwiru, MP
11. Hon. Peter Shehe, MP
12. Hon. Eric Keter, MP
13. Hon. Zuleikha Juma Hassan, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mr. Fredrick Otieno - Third Clerk Assistant
2. Ms. Sharon Rotino - Research Officer

MIN.NO. CRI/119/2016 PRELIMINARIES

The Chairperson called the meeting to order at 12:30pm and said a word of prayer.

MIN.NO.CRI/120/2016: CONSIDERATION AND ADOPTION OF THE REPORTS ON EAC PROTOCOLS AND AGREEMENT ON NILE BASIN COOPERATIVE FRAMEWORK

Having gone through the reports, the Committee adopted the reports as follows:

a) The Report on the Ratification of EAC Protocol on Privileges and Immunities

Having considered the report, the Committee unanimously adopted the report after being proposed by Hon. Anyanga Andrew Toboso, MP and Seconded by Hon. Willy Baraka Mtengo, MP

b) The Report on the ratification of the EAC Protocol to operationalize the extended Jurisdiction of East African Court of Justice

The Committee considered and unanimously adopted the report after being proposed by Hon. Robert Mbui, MP and seconded by Hon. Mary Seneta, MP

c) The Report on the ratification of the Agreement on the Nile Basin Cooperative Framework

The Committee considered and unanimously adopted the report after being proposed by Hon. Gideon Konchela, MP and Seconded by Hon. Alois Lentoimaga, MP

MIN.NO.CRI/121/2016: ANY OTHER BUSINESS

Under this agenda, the Chairperson informed the Committee that the State Department for East African Community has planned for a joint retreat with EALA Kenya Chapter in Mombasa between 1st and 4th December, 2016. The secretariat was asked to circulate the information to Members for confirmations.

MIN.NO.CRI/122/2016: ADJOURNMENT

The meeting was adjourned at half past one o'clock.

SIGNED..........DATE 29th Nov. 2016.....

CHAIRPERSON

MINUTES OF THE 25TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 2ND AUGUST, 2016 IN BOARD ROOM, 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 12:00 NOON

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Dido Ali Rasso, MP
3. Hon. Wanjiku Muhia, MP
4. Hon. Timothy Bosire, MP
5. Hon. David Karithi, MP
6. Hon. Robert Mbui, MP
7. Hon. Mary Seneta, MP
8. Hon. Eric Keter, MP
9. Hon. Badi Twalib Badi, MP
10. Hon. Sarah Korere, MP
11. Hon. Andrew Mwadime, MP
12. Hon. Alfred Agoi, MP
13. Hon. Willy Baraka Mtengo, MP

Absent With Apology

1. Hon. Christopher Nakuleu, MP - Vice-Chairperson
2. Hon. Alois Lentoimaga, MP
3. Hon. Ogendo Rose Nyamunga, MP
4. Hon. Kubai Iringo, MP
5. Hon. Emmanuel Wangwe, MP
6. Hon. Andrew Toboso, MP
7. Hon. Ali Wario, MP
8. Hon. Annah Nyokabi, MP
9. Hon. Gideon Konchella, MP
10. Hon. David Ouma Ochieng', MP
11. Hon. Joseph Kahangara, MP
12. Hon. Anthony Kimaru, MP
13. Hon. Alex Mwiru, MP
14. Hon. Florence Mutua, MP
15. Hon. Peter Shehe, MP
16. Hon. Mark Lomunokol, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mr. Fredrick Otieno - Third Clerk Assistant
2. Ms. Brigita Mati - Legal Counsel
3. Ms. Sharon Cherono - Research Officer

MIN.NO. CRI/096/2016 PRELIMINARIES

The Chairperson called the meeting to order at 12:10 pm and said a word of prayer.

MIN.NO.CRI/097/2016: CONSIDERATION OF THE EAST AFRICAN COMMUNITY PROTOCOL TO OPERATIONALIZE THE EXTENDED JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE

The Committee was briefed by the Legal Counsel on the protocol as follows:

Brief overview

The protocol to the East African Community to operationalize the extended jurisdiction of the East African Court of Justice was presented to the Committee on Regional Integration. The brief examines-

- (a) the provisions of the protocol; and
- (b) whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012

1. The provisions of the protocol

Preamble- pursuant to Article 27(2) of the Treaty, Partner States recognize that the Court shall have other original, appellate, human rights and other jurisdiction as determined by the Council and have resulted to conclude with a protocol to operationalize the extended jurisdiction of the Court. The jurisdiction is to cover matters generally related to trade and investment.

Article 1- provides for the interpretation of terms as used in the protocol.

Article 2- provides for the object of the protocol which is to extend the jurisdiction of the Court to cover matters relating to trade and investments in relation to the implementation of the following protocols;

- (a) Establishment of the East African Community Customs Union;
- (b) Establishment of the East African Common Market; and
- (c) Establishment of the east African Community Monetary Union.

Article 3- provides for the jurisdiction of the Court over-

- (a) disputes on trade and investment arising from the implementation of the following protocols-
 - (i) Establishment of the East African Community Customs Union; and
 - (ii) Establishment of the East African Common Market;
- (b) disputes arising out of the implementation of the protocol on the Establishment of the East African Community Monetary Union.

The jurisdiction extended to the Court shall not prevent other bodies, conferred such jurisdiction by the Treaty or any other relevant law, from exercising such jurisdiction.

Article 4- provides for Partner States to amend the protocol in accordance with Article 150 of the Treaty.

Article 5- provides for entry into force. In this case, protocol shall enter into force once all partner states ratify it and deposit the instruments with the Secretary General.

Article 6-provides for depository and registration. In this case, the Secretary General is tasked with transmitting certified copies to all the Partner States and registering the protocol with the African Union and any other organisation the Council determines.

2. Whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012

The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”). Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

The East African Community Protocol to operationalize the extended jurisdiction of the East African Court of Justice is in compliance with section 8 of the Act as it is accompanied by a cabinet Memorandum. The memorandum further complies with section 7 of the Act, which provides that where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;
- (b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;
- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;

- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

MIN.NO.CRI/098/2016: CONSIDERATION OF THE EAST AFRICAN COMMUNITY PROTOCOL ON PRIVILEGES AND IMMUNITIES

Brief overview

The protocol to the East African Community (EAC) on Privileges and Immunities was presented to the Committee on Regional Integration. The brief examines-

- (c) the provisions of the protocol; and
- (d) whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012

1. The following is a brief scrutiny of the provisions of the protocol.

Preamble provides for the aspiration of the Community in providing for the Community and persons employed in the service of the Community with immunities and privileges as are necessary for the proper discharge of functions under the Treaty.

Article 1-provides for the definitions of various terms as used in the protocol. Such as-

“persons employed in the service of the Community” means all persons engaged in rendering service to the Community including staff of the Community, members of the East African Legislative Assembly and the Judges of the East African Court of Justice; and

“premises of the Community” means the buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the Community in the Partner States.

Article 2- provides for the objective of the protocol. The objective in this case is to standardize the status, privileges and immunities given to the Partner States to the property and persons in the service of the Community.

Article 3- provides for the scope of the protocol. The protocol is to apply to all properties, funds, tax exemptions, facilities for official communication of the Community and privileges and immunities of persons employed in the service of the Community.

Article 4- provides for the immunity of property and assets of the Community. This immunity is from any legal process or trespass of any kind such as search, requisition, confiscation, expropriation and from any other form of interference by executive, administrative, judicial or legislative action except where such immunity has been expressly waived.

Article 5- provides for the funds of the Community. The funds are to be protected by the Community from attachment, theft, expropriation or any other form of interference from the executive, administrative, judicial or legislative action.

The community may also hold funds or currency of any kind and operate accounts and transfer of such sums of money in any Partner States.

Article 6- provides for tax exemptions for the Community with regard to its income, assets and other property. An tax exemption shall be for all property except for charges for public utility, all customs duties on imports and exports in respect of articles imported for official duty and those customs and duties in respect of publications by the Community for official purposes, except payments for services rendered.

Partner States shall make appropriate arrangements for the refund of any duty or tax payable in respect of property bought for official use by the Community.

Article 7- provides for facilities in respect of official communications by the Community. The Partner States are to ensure that the Community enjoys in the territory of each State treatment not less favourable than that accorded to international organisations. The Partner States are further tasked not to apply censorship to the official correspondence or communication.

Article 8- provides for the privileges and immunities for persons employed in the service of the Community with respect to immunity from civil process, matters of taxation on the salaries and emoluments, immunity from immigration restrictions, repatriation facilities, and privileges in respect to exchange control facilities.

Each person accorded these privileges and immunities are required to respect the laws and regulations of the Partner State where that person is employed and further not interfere with the internal affairs of that Partner State.

The Secretary General is tasked to notify the Partner State of the names and designation of persons employed in the service at the beginning of every year, of the appointment and termination of a person in that service and of the arrival and departure from the Partner State of a dependant.

A privilege or immunity may be waived if in the opinion of the Secretary General, the privilege or immunity would impede the course of justice and where such waiver will not prejudice the interests of the Community.

Article 9- provides for co-operation of the Community with other appropriate authorities to prevent abuses in connection with the privileges, immunities and facilities under this protocol. Further, the protocol proposes that a Partner State may request for a waiver of immunities and privileges and the Community shall examine such request promptly.

Article 10- provides for settlement of disputes under the protocol by mutual understanding and where Partner States are not able to settle such disputes, those disputes are to be referred to the East African Court of Justice.

Article 11- provides for the amendment of the protocol in accordance with Article 150 of the Treaty.

Article 12- provides for the deposit of the instruments of ratification with the Secretary General whereby the protocol shall be deemed to be in force.

Article 13- provides for depository and registration whereby all instruments of ratification shall be deposited with the Secretary General and he shall in turn register the protocol with the African union, United Nations or any other organisation the Council may determine.

2. Whether there was compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012

The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as "the Act"). Section 8 (1) provides that where the Cabinet approves

the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

The East African Community Protocol on Privileges and Immunities is in compliance with section 8 of the Act as it is accompanied by a cabinet Memorandum. The memorandum further complies with section 7 of the Act, which provides that where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;
- (b) any constitutional implications including—
 - i. any proposed amendment to the Constitution; and
 - ii. that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;
- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

MIN.NO.CRI/099/2016: MEMBERS CONCERNS/OBSERVATIONS

Having considered the presentation, the following observations were made by Members:

a) The East African Community Protocol on Privileges and Immunities

The Members were concerned whether the protocol is in keeping with the international norm and does not conflict with any other existing national laws.

It was observed that the protocol was not clear on where the aggrieved person will get remedy when there is judgment against the East African Community. It was the view of the Committee that the Protocol should not be ratified as it is until further clarifications are given.

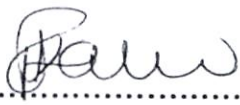
b) The East African Community Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice

It was observed that this Protocol will help reduce the discrimination cases that most business people have been experiencing in the borders, especially the track drivers whose cases are handled either in Tanzania or Uganda instead of being brought to Kenya. It will also facilitate easy trade within the region.

The Committee recommended that the Protocol is important and should be ratified when the time come.

MIN.NO.CRI/100/2016: ANY OTHER BUSINESS




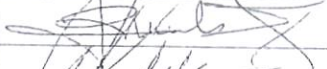
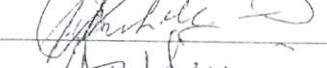

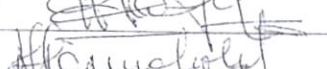
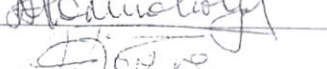

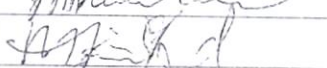
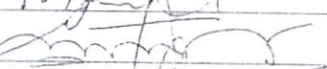

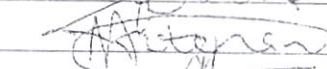
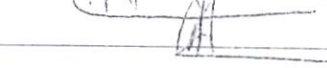

There being no other business, the Meeting was adjourned at thirty minutes past one o'clock.

SIGNED..........DATE 18/8/2016.....

CHAIRPERSON

**SELECT COMMITTEE ON REGIONAL INTEGRATION
MEMBERS ATTENDANCE REGISTER**

DATE	24/10/2016	TIME	12.00 NOON
AGENDA	CONSIDERATION AND ADOPTION OF THE REPORTS ON EAC PROTOCOLS AND AGREEMENT ON NILE BASIN COOPERATIVE FRAMEWORK.		

NAME	TITLE	SIGNATURE	
1	Hon FLORENCE KAJUJU	CHAIRPERSON	
2	Hon CHRIS NAKULEN	VICE-CHAIR	
3	Hon Wajitu Muija	MP	
4	Hon. Robert Mui	member	
5	Hon Gideon Kiondo	member	
6	Hon. Andrew Mwangi	member	
7	Hon. Willy Nteyo	Member	
8	Hon Mamo Lemuel	Member	
9	Hon Sarah Kareem	member	
10	Hon David Kanth	member	
11	Hon Alex HCO	member	
12	Hon Rida Raso	Member	
13	Hon. Anyango Adhwa	Tobacco II	
14	Hon. Mary Sireta	"	
15	Hon Alois M. Centomaga	"	
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(Memo No.....)

REPUBLIC OF KENYA



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
TRADE

MEMORANDUM TO THE SPEAKER OF THE NATIONAL
ASSEMBLY ON THE RATIFICATION OF THE EAST
AFRICAN COMMUNITY PROTOCOL TO
OPERATIONALIZE THE EXTENDED JURISDICTION OF
THE EAST AFRICAN COURT OF JUSTICE

(Submitted by the Cabinet Secretary for Foreign Affairs and
International Trade)

May 2016

1.0 OBJECTIVE OF THE MEMORANDUM

The purpose of this Memorandum is to:

- a. Inform the National Assembly of the adoption of the East African Community (EAC) Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice (EACJ), by Partner States of the East African Community;
- b. Inform the National Assembly that the Cabinet in its Second Cabinet Meeting held on 18th February, 2016 approved the ratification of the Protocol;
- c. Seek the approval of the National Assembly for Kenya to ratify the Protocol.

2.0 BACKGROUND

Kenya is a Partner State of the EAC, having ratified the Treaty for the Establishment of the EAC (hereinafter referred to as the Treaty). Article 27(2) of the Treaty requires Partner States to recognize that the East African Court of Justice (hereinafter referred to as the EACJ) shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council. Further, under Article 27(2), Partner States

agreed to conclude a Protocol to operationalize the extended jurisdiction of the Court.

Recognizing the critical role of the EACJ in regional integration, following the establishment of the EAC Customs Union, EAC Common Market and the EAC Monetary Union, the 15th Ordinary Summit of the Heads of State, on November 30, 2013, approved the recommendation of the EAC Council of Ministers to extend the jurisdiction of the EACJ to cover trade and investment, arising out of the implementation of the Protocol on the Establishment of the EAC Common Market, and disputes arising out of the implementation of the Protocol on the EAC Monetary Union.

The Protocol to Operationalize the Extended Jurisdiction of the EACJ was adopted and signed by the EAC Heads of State on April 25, 2015 in Nairobi, Kenya.

4.0 PROBLEM ANALYSIS

a) Objects and Subject Matter of the Protocol

The main objective of the Protocol is to extend the jurisdiction of the EACJ to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and disputes arising out of the implementation of the EAC Monetary Union.

The Protocol obligates Partner States to inter alia, undertake to:

- i. Prevent, contain and peacefully resolve conflicts and disputes among Partner States arising from trade and investment matters;
- ii. Observe and encourage the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.

b) Constitutional Implications

- i. The Protocol does not anticipate any amendments to the Constitution of Kenya.
- ii. The Protocol is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, territorial integrity, political independence, good neighbourliness and non-interference in the internal affairs of each Partner State.

c) Impact of the Protocol on National Interests

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to the enhancement of trade and to develop mechanisms which are aimed at:

- i. Coordinating and cooperating with other EAC Partner States in matters related to trade and investments;
- ii. Preventing, containing and peacefully resolving conflicts and disputes among EAC Partner States arising from trade and investments;
- iii. Observing and encouraging the implementation of the Protocol on the Establishment of EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.
- iv. Enhance capacity of the EAC with respect to trade and investment.

d) Obligations imposed on Kenya by the Protocol

Article 151(4) of the Treaty provides that Protocols form an integral part of the Treaty, which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the EAC Act No. 2 of 2000. The obligations imposed by the Protocol are therefore linked to those of the EAC as established by the Treaty.

e) Requirements for Implementation of the Protocol

At the national level, the existing Government agencies mandated to handle specific thematic areas of the Protocol shall oversee its

implementation, under the auspices of the State Department of East African Affairs.

f) Policy and Legislative Considerations

- i. Harmonization of policies and strategies on trade and investment
- ii. Harmonization of approximation of laws and regulations for effective coordination of cooperation in the sector

g) Ministerial Responsibility

The responsibility of the implementation of the Protocol shall be vested in the Cabinet Secretary in charge of East African Affairs.

h) Implications on matters relating to Counties

The scope of the Protocol relates to functions that fall under the purview of the national Government, which shall, whenever necessary, coordinate with the county Governments.

i) Public Participation

The State Department of East African Affairs convened a forum at the Laico Regency on April 28, 2014, where the public was invited to share views on the Protocol.

j) Provision for Reservation

The Protocol has no provision for reservations.

5.0 FINANCIAL IMPLICATIONS

It is envisage that the implementation of the Protocol will have financial implications and it is expected that the State Department of East African Affairs will sensitize the respective Government agencies on their roles in the implementation of the Protocol as well as the financial implications.

6.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Take note of the contents of this Memorandum;
- b) Approve the ratification of the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice.

SIGNED

DATE


.....

3/05/16
.....

AMB. (DR.) AMINA C.
MOHAMED, EGH, CBS, CAV
CABINET SECRETARY FOR
FOREIGN AFFAIRS
AND INTERNATIONAL TRADE

ANNEXES

1. Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice.
2. Cabinet Approval of the Ratification of the Protocol.

Please proceed and initiate action as directed by the Cabinet.

Yours

Sincerely,
J.K.K.

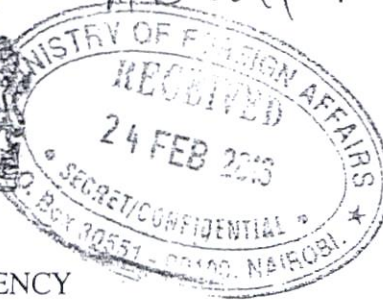
JOSEPH K. KINYUA, EGH
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Copy to:

Mrs. Phyllis Jepkosgei Kiping'or Kandie, EGH
Cabinet Secretary
Ministry of East African Community (Eac),
Labour, & Social Protection
NAIROBI

Amb. Amina C. Mohamed, EGH, CAV
Cabinet Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI.

Prof. Githu Muigai, EGH
Attorney General
State Law Office
NAIROBI



ADM/19A

17

THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

Ref. No. **OP/CAB.58/4A**
and date

18th February, 2016 20.....

Ms. Betty Chemutai Maina,
Principal Secretary/East African Community
Ministry of East African Community (EAC),
Labour & Social Protection
NAIROBI.

Amb. Monica Kathina Juma, DPhil., CBS
Principal Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI

Mr. Njee Muturi
Solicitor General,
State Law Office,
NAIROBI

Dear *Amb. Juma,*

**RE: CABINET MEMORANDUM ON RATIFICATION OF THE EAST AFRICA
COMMUNITY PROTOCOL TO OPERATIONALIZE THE EXTENDED
JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE**

I refer to the **Second Cabinet Meeting 2016**, held on **18th February, 2016**, during which Cabinet Memorandum **CAB(15)97**, jointly submitted by the Cabinet Secretaries for: Tourism; Foreign Affairs & International Trade; and the Attorney-General; was presented and discussed.

I wish to inform you that Cabinet **noted** the contents of the Memorandum and:

- (i) **Approved** ratification of the Protocol.
- (ii) **Directed** the Cabinet Secretaries for: Tourism; Foreign Affairs & International Trade; and the Attorney-General; to take appropriate action.

SECRET

ARTICLE 4
Amendment of the Protocol

This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.

ARTICLE 5
Entry into Force

This Protocol shall enter into force upon ratification by all the Partner States and deposit of instruments of ratification with the Secretary General.

ARTICLE 6
Depositary and Registration

- 1 This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
- 2 The Secretary General shall register this Protocol with the African Union and such other organisation as the Council may determine.

DONE at Arusha, Tanzania, on the ^{20th} day of ~~FEBRUARY~~ in the year Two Thousand and Two Thousand and Fifteen.

IN FAITH WHEREOF the undersigned have appended their signatures hereto:

For the United Republic
of Tanzania

For the Republic of
Uganda

For the Republic of
Burundi

For the Republic
of Kenya

For the Republic of
Rwanda

ARTICLE 1
Definitions

In this Protocol unless the context otherwise requires

"Community" means the East African Community established by Article 2 of the Treaty;

"Council" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"Court" means the East African Court of Justice established by Article 9 of the Treaty;

"Treaty" means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto

ARTICLE 2

Objective of the Protocol

The objective of this Protocol is to extend the jurisdiction of the Court to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the East African Community Customs Union and the Protocol on the Establishment of the East African Common Market and disputes arising out of the implementation of the Protocol on the Establishment of the East African Community Monetary Union.

ARTICLE 3

Jurisdiction of the Court

1. The Court shall have jurisdiction over:
 - (a) disputes on trade and investment arising from the implementation of :
 - (i) the Protocol on the Establishment of the East African Community Customs Union; and
 - (ii) the Protocol on the Establishment of the East African Community Common Market,
 - (b) disputes arising out of the implementation of the Protocol on the Establishment of the East African Monetary Union.
2. The extension of jurisdiction under paragraph 1 shall not preclude the exercise of jurisdiction conferred upon other bodies by the Treaty or the relevant laws of the Partner States

PROTOCOL TO OPERATIONALISE THE EXTENDED JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE

PURSUANT TO THE PROVISIONS OF ARTICLE 27 (2) OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE EXTENSION OF JURISDICTION FOR THE EAST AFRICAN COURT OF JUSTICE ARE HEREBY SET FORTH:

PREAMBLE

CONSIDERING that the Treaty for the Establishment of the East African Community ("the Treaty"), established the East African Court of Justice as a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with the Treaty;

WHEREAS

- (a) under the provisions of Article 27 (2) of the Treaty, Partner States recognise that the Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council; and
- (b) within the provisions of Article 27 (2) of the Treaty, the Partner States agree to conclude a protocol to operationalise the extended jurisdiction of the Court;

AND WHEREAS the Summit of the East African Community Heads of State at its 15th Meeting held on 30th November 2013 approved the Council's recommendation to extend the jurisdiction of the East African Court of Justice to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the East African Community Customs Union and the Protocol on the Establishment of the East African Common Market and disputes arising out of the implementation of the Protocol on the Establishment of the East African Community Monetary Union;

WHEREAS the Partner States recognize the critical role of the East African Court of Justice in regional integration following the establishment of the East African Community Customs Union, East African Community Common Market and the East African Monetary Union as envisaged under Article 5(2) of the Treaty;

HAVE AGREED AS FOLLOWS:

TABLE OF CONTENTS

PREAMBLE

ARTICLE 1 Definitions

ARTICLE 2 Objective of the Protocol

ARTICLE 3 Jurisdiction of the Court

ARTICLE 4 Amendment of the Protocol

ARTICLE 5 Entry into Force

ARTICLE 6 Depository and Registration



EAST AFRICAN COMMUNITY

**PROTOCOL
TO OPERATIONALISE THE EXTENDED
JURISDICTION OF THE EAST AFRICAN COURT
OF JUSTICE**

EAC SECRETARIAT
Arusha, Tanzania