

26 MAY 2015

MINISTRY OF LABOUR AND EAST AFRICAN AFFAIRS

**MEMORANDUM ON THE RATIFICATION OF THE EAST AFRICAN
COMMUNITY PROTOCOL ON INFORMATION AND COMMUNICATION
TECHNOLOGY NETWORKS**

1.0 OBJECTIVE OF THE MEMORANDUM

The objective of the memorandum is to inform the National Assembly about the East African Community (EAC) Protocol on Information and Communication Technology Networks and to request the consider the protocol the protocol as is provided in part III section 8 of the Treaty Making and Ratification Act No. 45 of 2012.

2.0 BACKGROUND OF THE SUBJECT MATTER

Cooperation among EAC Partner States in the Communications sector is guided by Articles 98 and 99 of the Treaty for the Establishment of the East African Community. Under the provisions of the Treaty, Partner States undertake to cooperate in the establishment and operation of communications infrastructure and the development and deployment of ICT applications and services.

In order to achieve this, the EAC Secretariat initiated a study on the East African Community Broadband ICT Infrastructure Network (EAC-BIN). Among others, the report of the study recommended that Partner States conclude a protocol on ICT networks in order to facilitate the successful operation and cross-border interconnection of broadband ICT networks.

This recommendation was adopted by the 22nd Meeting of the EAC Council of Ministers, held in November 2010. Following the Council's adoption, the relevant Sectoral Council on Transport, Communications, and Meteorology (TCM), at its 8th Meeting, directed that a Draft EAC

Protocol for ICT Networks be developed. In line with the directive, the Draft Protocol was developed by experts from all the Partner States.

The Draft Protocol was thereafter considered by the 3rd Extra-Ordinary Meeting of the Sectoral Council on TCM, held from 21st – 24th February 2012. It was further considered and adopted by the 25th Meeting of the EAC Council of Ministers, held from 27th – 31st August 2012.

After finalization, it was approved for signature by the 14th Summit of EAC Heads of State on 30th November 2012. During the 10th Meeting of the Sectoral Council on Transport, Communications, and Meteorology (TCM), the approved Protocol was signed by the Cabinet Secretary and the Partner States Ministers on 23rd August 2013.

The Cabinet approved the Protocol on 20th November 2014 and directed the Cabinet Secretary Responsible for East African Affairs and the Cabinet Secretary Responsible for ICT to take necessary Actions. The Ministry conducted a retreat to sensitize the relevant committees for Members of the National Assembly on 29th and 30th May 2015. It is with this background that the protocol is forwarded to the national Assembly for the finalization of the ratification process.

3.0 OBJECTIVE OF THE PROTOCOL

The main object of the Protocol is to promote the availability, affordability and quality of information and communications technology services within the Community. Its scope extends to governing Partner States cooperation in the management and application of ICT networks.

For purposes of achieving the objective, the Protocol obligates Partner States to;

- a) Promote cross-border interconnection and interoperability of networks;
- b) Facilitate the sharing of ICT infrastructure;

- c) Harmonise ICT programmes and policies;
 - d) Facilitate open access to information and communications technology networks; and
 - e) Promote the deployment of ICT applications and services in the Government's and businesses of the Partner States including e-government, e-commerce, geospatial information systems and broadcasting.
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In order to implement the Protocol, the Republic of Kenya will be expected to cooperate with the other EAC Partner States in promoting cross-border interconnection and interoperability of networks and sharing of ICT infrastructure. The Partner States will also be required to harmonise their ICT policies and undertake training to improve the technical skills of relevant human resource personnel.

The Protocol is consistent with the Constitution and is not contrary with any constitutional values and objectives. Its ratification will not necessitate any amendment(s) to the Constitution. The Republic of Kenya has no reservation.

4.0 ANALYSIS OF THE PROBLEM

Over the years, Information and Communication Technologies have opened up new windows of opportunity for East African countries as tools that can accelerate their economic growth and development. However, the lack of a framework for interconnecting regional ICT Infrastructure Networks presents a challenge in the development of the ICT sector leading to high tariffs and poor rural communications whereby the digital divide between the rural and urban populations still exists.

This inadequacy can be attributed to the lack of a comprehensive regional policy on cross boarder interconnection, tariffs and a seamless regional network to support high speed, quality, reliable and affordable electronic communications in the Partner States and thus a major obstacle to economic and social development.

In order to address this challenge, there is need for the EAC Partner States to adopt a regional approach aimed at providing high speed, quality, robust and reliable ICT services. This approach will be anchored on a regional ICT framework. Further, there is need to mobilize resources to ensure the involvement of the private sector in the implementation of regional policies and programmes with a view to addressing the shortage of broadband capacity in the region.

The Ratification of the Protocol will contribute to the socio-economic development of the Partner States by facilitating the establishment of an integrated framework for the interconnection of the Regional Broadband Infrastructure Networks and harmonization of ICT policies and regulatory frameworks of the Partner States.

It is also expected that the execution of the Protocol will improve access to ICT services and bring down the cost of communications within the East African Community.

5.0 OPTIONS ON THE WAY FORWARD

To date, the Protocol has been adopted by the EAC Council of Ministers, approved by the EAC Heads of State Summit, subsequently signed by the Ministers responsible for ICT matters in the Partner States and Approved by Cabinet.

In order to allow for its entry into force, the Republic of Kenya has to ratify the EAC Protocol on Information and Communication Technology Networks alongside the other Partner States. The ratification of the Protocol would positively affect our national interests and contribute to the socio-economic development of the country.

The Protocol does not have any implications on matters relating to Counties.

6.0 FINANCIAL IMPLICATIONS

The implementation of this Protocol is not envisaged to have any additional budgetary allocation.

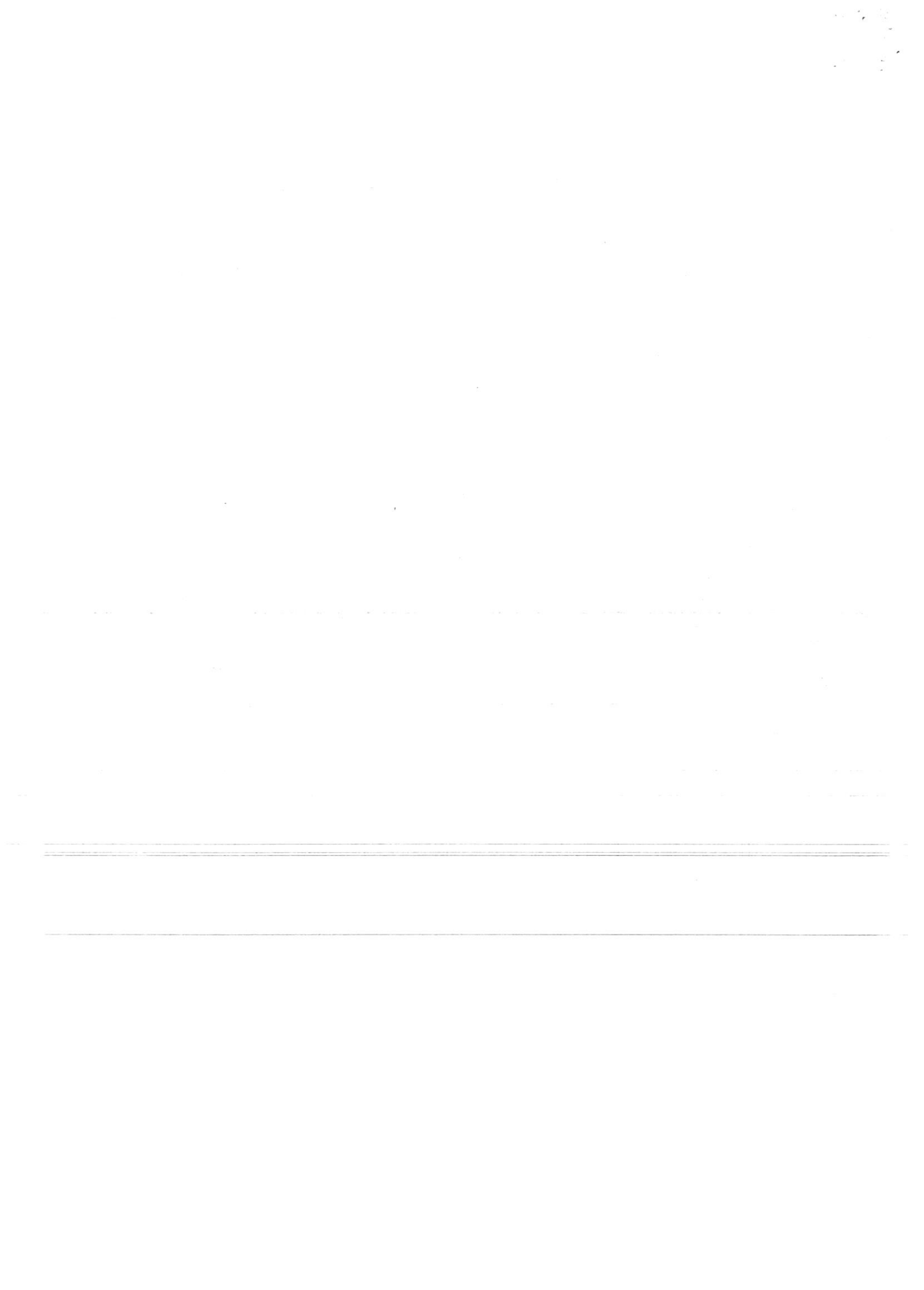
7.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to;

- a) take note of the contents of this Memorandum;
- b) approve ratification of the EAC Protocol on Information and Communication Technology Networks;



PHYLLIS J. KANDIE, (MRS), EGH
CABINET SECRETARY
MINISTRY OF LABOUR AND EAST AFRICAN AFFAIRS





REPUBLIC OF KENYA

EAST AFRICAN COMMUNITY PROTOCOL ON
INFORMATION AND COMMUNICATIONS TECHNOLOGY
NETWORKS

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REPUBLIC OF KENYA

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REPUBLIC OF KENYA

PURSUANT TO THE PROVISIONS OF ARTICLES 89, 99 AND 151 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE EAST AFRICAN COMMUNITY PROTOCOL ON INFORMATION AND COMMUNICATIONS TECHNOLOGY NETWORKS ARE HEREBY SET FORTH:

Preamble

WHEREAS:

Under the provisions of Article 5 of the Treaty for the Establishment of the East African Community, the Partner States express their commitment to develop, for their mutual benefit, policies and programmes for widening and deepening cooperation among themselves in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs;

AND WHEREAS

Pursuant to the provisions of Article 89 of the Treaty, the Partner States further undertake to evolve coordinated, harmonized and complimentary transport and communications policies; and to establish, maintain, expand and upgrade communication facilities to enhance interaction between persons and businesses in the Partner States and promote the full exploitation of the market and investment opportunities created by the Community;

AND WHEREAS

By the provisions of Article 99 of the Treaty, the Partner States agree to cooperate to improve and maintain interconnectivity and modernize equipment to meet the common standards required for efficient telecommunications traffic within the Community;

AND WHEREAS

By virtue of the provisions of Article 151 of the Treaty, Partner States have agreed to conclude such Protocols as may be necessary in each area of co-operation which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration;

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EAC



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ACKNOWLEDGING that Information and Communication Technologies (ICT) have become a catalyst for economic growth and development,

COGNIZANT of the need to promote and involve the private sector in the deployment of information and communications technology capacities and technologies in the Community;

RECOGNIZING that sufficient Information and communications technology infrastructure promotes universal access and improves the quality and cost of Information and communications technology services, hence social and economic integration through enhanced interaction between persons and businesses;

RECOGNIZING FURTHER the evolving status of information and communications technology infrastructure development in EAC Partner States;

INTENDING to facilitate the establishment and management of information and communications technology networks within the Community;

HEREBY AGREE AS FOLLOWS:

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 established by Article 9 of the Treaty;

“Information and Communications Technology” means the convergence of telecommunications, broadcasting, computers, storage and audio-visual systems in order to enable users to create, access, store, transmit and manipulate information ;

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“Information and communications technology infrastructure” includes a combination of the following-

- (a) terrestrial, submarine and satellite Information and communications technology network equipment;
- (b) Information and communications technology cable installations;
- (c) masts or towers;
- (d) antenna and feeder systems;
- (e) real estate such as sites, buildings and associated site management systems; and
- (f) utilities such as power plants, air plants, distribution frames, racks, or water;

“information and communications technology Networks” means a collection of information and communications technology infrastructure, interconnected by communications channels to allow sharing of information, resources or facilities within the Partner States;

‘open access’ means competitive access to categories of information and communications technology infrastructure;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership into the Community under Article 3 of the Treaty;

“Secretariat” means the Secretariat of the Community established by Article 9 of the Treaty;

“Secretary General” means the Secretary General of the Community provided for under Article 67 of the Treaty;

“Treaty” means the Treaty for the establishment of the East African Community and the annexes and protocols thereto.



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Article 2

Objective

The objective of this Protocol is to promote the availability, affordability, and quality of information and communications technology services within the Community.

Article 3

Scope of Cooperation

1. This Protocol shall govern the Partner States cooperation for the establishment, management and application of information and communications technology networks.
2. For the purposes of paragraph 1, the Partner States undertake to cooperate in the establishment and management of Information and communications technology networks.

Article 4

Establishment and Management of information and communications technology Networks

1. The Partner States shall cooperate in the establishment, management and sharing of information and communications technology networks in the Community.
2. For the purposes of paragraph 1, the Partner States shall –
 - (a) promote cross-border interconnection and interoperability of networks;
 - (b) facilitate the sharing of information and communications technology infrastructure;
 - (c) coordinate the sharing of spectrum and numbering; and
 - (d) facilitate open access to information and communications technology networks; and



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- (e) promote the deployment of information and communications technology applications and services in the Governments and businesses of the Partner States including e-government, e-commerce, geospatial information systems, and broadcasting.

3. In implementing this Article, the Partner States shall safeguard the safety and health of humans, animals and plants as well as the quality of the environment.

Article 5

Harmonization of information and communications technology policies, laws and regulations

1. The Partner States undertake to harmonise their information and communications technology policies, laws and programmes to facilitate the achievement of the objectives of this Protocol.
2. The Partner States undertake to provide quality education and training required for strategic leadership, management, research and development and technical skills for information and communications technology networks.

3. The Council shall issue directives for purposes of implementing this Article.

Article 6

General Undertakings

In the implementation of this Protocol, the Partner States undertake to –

- (a) promote the achievement of universal access, especially the linking of islands and land-locked states;
- (b) ensure security and quality of communications;
- (c) facilitate the attainment of public safety, trust, and security in cyberspace; and
- (d) promote partnerships between enterprises, including public private partnerships.



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Article 7

Cooperation with Regional and International organizations

The Partner States shall foster cooperation and build partnerships with other countries, and international, regional or global organizations which share the objectives of this Protocol.

Article 8

Institutional Framework

In accordance with the Treaty, the Council shall establish and confer powers and authority upon such institutions as may be necessary for the implementation of this Protocol.

Article 9

Regulations, Directives and Decisions

The Council shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of this Protocol.

Article 10

Dispute Settlement

Any dispute between the Partner States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the Treaty.

Article 11

Amendment of the Protocol

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



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Article 12

Entry into Force

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

Article 13

Depository and Ratification

- 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; and
2. The Secretary General shall register this Protocol with the African Union, the United Nations and such other organisations as the Council may determine.

IN WITNESS WHEREOF, WE, the undersigned have appended our signatures hereto

DONE AT Kigali, Rwanda this 23rd day of August in the year 2013.

For and on behalf of the Republic of Uganda For and on behalf of the Republic of Burundi For and on behalf of the Republic of Kenya For and on behalf of the Republic of Rwanda For and on behalf of the United Republic of Tanzania

Handwritten signatures and printed names of representatives from Uganda, Burundi, Kenya, Rwanda, and Tanzania, including titles like Minister, Cabinet Secretary, and Deputy Minister.



AS/03
5/15
17/14



THE PRESIDENCY
OFFICE OF THE SECRETARY TO THE PRESIDENT

Telegraphic Address
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SECRET

Ref. No. OP/CAB.55/4A
date

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Prof. Githu Muigai, EGH
Attorney General
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Mr. John Konchella
Principal Secretary/East African Affairs
Ministry of East African Affairs, Commerce and Tourism
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Dr. Ibrahim M. Mohamed
Principal Secretary/Commerce and Tourism
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Mr. Joseph Tiampati Ole Musuni
Principal Secretary
Ministry of Information, Communication and Technology
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Eng. (Dr.) Karanja Kibicho, CBS
Principal Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI

Dr. Kamau Thugge, EBS
Principal Secretary
National Treasury
NAIROBI

Dear *Joseph*

RE: CABINET MEMORANDUM ON THE RATIFICATION OF EAST AFRICAN COMMUNITY PROTOCOL ON INFORMATION AND COMMUNICATION TECHNOLOGY NETWORKS

I refer to the Ninth Cabinet Meeting 2014, held on 20th November, 2014, during which Cabinet Memorandum CAB(14)123, jointly submitted by the Cabinet Secretary for the East African Affairs, Commerce and Tourism, the Cabinet Secretary for Information Communication and Technology, the Cabinet Secretary for Foreign

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Affairs and International Trade, the Attorney General and the Cabinet Secretary for National Treasury was presented and discussed.

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

- (i) **Approved** the ratification of the East African Community Protocol on Information and Communication Technology Networks.
- (ii) **Directed** the Cabinet Secretary for Information, Communication and Technology to submit the Protocol and a Memorandum on the Protocol to the Speaker of the National Assembly for consideration.
- (iii) **Directed** the Cabinet Secretary East African Affairs, Commerce and Tourism, the Cabinet Secretary for Information Communication and Technology, the Cabinet Secretary for Foreign Affairs and International Trade, the Attorney General and the Cabinet Secretary for National Treasury to take appropriate action.

Please proceed and initiate action along the lines of the Cabinet decision.

Yours *Sincerely*
Francis

FRANCIS T. KIMEMIA, EGH, CBS
SECRETARY TO THE CABINET

Copy to:

Mrs. Phyllis Jepkosgei Kiping'or Kandie
Cabinet Secretary,
Ministry of East African Affairs, Commerce and Tourism
NAIROBI.

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Information, Communication and Technology
NAIROBI.

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

Mr. Henry K. Rotich
Cabinet Secretary,
Ministry of the National Treasury
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