

Approved for tabling.

BN
SNA
29/4/15

PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA



Paper laid
By Hon F. Kajiji
Chairperson of Regional
Integration Committee on Med

KENYA NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT -THIRD SESSION

REPORT OF THE COMMITTEE ON REGIONAL INTEGRATION ON THE EAC
PEACE AND SECURITY PROTOCOL AND THE MUTUAL PEACE AND SECURITY
PACT

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI-KENYA

APRIL 2015

CONTENTS

LIST OF ABBREVIATIONS.....	3
1.0 PREFACE.....	4
Establishment and Mandate of the Committee	4
Committee Membership	4
Subject Matter before the Committee.....	5
Legal Basis for EAC Peace and Security protocol.....	5
Legal basis for the Mutual Peace and Security Pact	7
Justification for regional Peace and Security Agreements.....	9
2.0 BACKGROUND.....	12
2.1. THE PROTOCOL.....	13
2.2 THE PACT	15
Implication on matters relating to counties	18
2.3 INTERNATIONAL COMPARISONS.....	21
i) ECOWAS peace and security Agreements.....	21
ii) Common Foreign and Security Policy (CFSP) of the European Union (EU).....	22
3.0 SUBMISSIONS.....	23
3.1 Submission by the Ministry of Interior and Coordination	23
3.1.1 Submission on the EAC peace and Security Protocol.....	24
3.1.2 Submission on the Mutual peace and Security Pact.....	25
3.2 Submission by the Office of the Attorney General on the Mutual Peace and Security Pact.....	27
4.0 COMMITTEE'S OBSERVATIONS OF THE EAC PEACE AND SECURITY PROTOCOL.....	29
5.0 COMMITTEE'S OBSERVATIONS OF THE MUTUAL PEACE AND SECURITY PACT.....	40
6.0 COMMITTEE'S RECOMMENDATIONS.....	49
6.1 THE EAC PEACE AND SECURITY PROTOCOL.....	49
6.2 THE MUTUAL PEACE AND SECURITY PACT.	49
ANNEXTURES	

LIST OF ABBREVIATIONS

AU	-African Union
CEWN	-Conflict Early Warning Mechanism
CFSP	-Common Foreign and Security Policy
EAC	- East African Community
ECOWAS	- Economic Community of West African States
EU	- European Union
NCPR	-Nyerere Centre for Peace and Research
SALW	-Small arms and light weapons
UN	-United Nations
IGAD	- Inter Governmental Agency for Development

1.0 PREFACE

Establishment and Mandate of the Committee

Mr. Speaker, Sir

The Committee on Regional Integration is one of the Select Committees of the National Assembly established under Standing Order 212 and mandated to:-

1. 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;
2. examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
3. examine the Bills introduced in the East African Legislative Assembly and Acts of the East African Community;
4. 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;
5. inquire into and examine any other matter relating to regional integration generally requiring action by the House;

Committee Membership

Mr. Speaker, Sir

The Committee on Regional Integration was constituted by the House on Thursday 2nd May, 2013 comprising of the following members:

1. Hon. Florence Kajuju, MP (**Chairperson**)
2. Hon. Christopher Nakuleu, MP (**Vice Chairperson**)
3. Hon. David OumaOchieng, MP
4. Hon. Dan Kazungu, MP
5. Hon. BadyTwalibBady, MP
6. Hon. Robert Mbui, MP
7. Hon. Anyanga Andrew Toboso, MP
8. Hon. Florence MwikaliMutua, MP
9. Hon. Ogendo Rose Nyamunga, MP

10. Hon. Charles MutisyaNyamai, MP
11. Hon. AloisLentoimaga, MP
12. Hon. Anthony Kimaru, MP
13. Hon. David Kariithi, MP
14. Hon. WanjikuMuhia, MP
15. Hon. MurungiKathuri, MP
16. Hon. Ali Wario, MP
17. Hon. Eric Keter, MP
18. Hon. Mary Seneta, MP
19. Hon. Gideon Konchella, MP
20. Hon. Dido Ali Rasso, MP
21. Hon. Ann Nyokabi, MP
22. Hon. Emmanuel Wangwe, MP
23. Hon. Peter Shehe, MP
24. Hon. Alex Mwiru, MP
25. Hon. Mark Lomunokol, MP
26. Hon. Sarah Korere, MP
27. Hon. Cyprian KubaiIringo, MP
28. Hon. Timothy Bosire, MP
29. Hon. Joseph Kahangara, MP

Subject Matter before the Committee

Mr. Speaker Sir,

On 17th February, 2014, the Leader of the Majority Party in the National Assembly tabled a Cabinet Memoranda on Peace and Security Protocol and Mutual Peace and Security Pact in the House for consideration and ratification pursuant to Article 2 of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012.

The Cabinet Memorandum was subsequently committed to the Committee on Regional Integration for consideration and report to the House. Once ratified, the Protocol and the Pact shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution “any

treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution”

Committee Proceedings

Mr. Speaker, Sir,

During the consideration of the Protocol, The Committee held a total of ten sittings and met with the Ministry of Interior and Coordination of National Government and the State Law Office.

Background for the enactment of EAC Peace and Security protocol

The East African Community (EAC) is a regional inter-governmental organization established under Article 2 of the Treaty for the Establishment of the East African Community that came into force in July 2000. The EAC is made up of the five Partner states namely; United Republic of Tanzania, Republic of Uganda, Republic of Rwanda, Republic of Kenya and Republic of Burundi.

The EAC peace and Security Protocol was drafted in line with Article 151 of the Treaty for the Establishment of The EAC, which empowers partner states to establish protocols as are necessary in the areas of cooperation and Article 5 of the Treaty which states; *The objectives of the Community shall be to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit.*

Further, Article 5 (3) (f) of the Treaty states the *Community shall ensure promotion of peace, security, and stability within, and good neighbourliness among the Partner States.*

The objective of common security policies in the EAC is to safeguard the common values, fundamental interests and independence of the community, strengthen the security of the Community and its Partner States, develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms.(Article 123)

Background for the enactment of the Mutual Peace and Security Pact

The Northern Corridor is an initiative aimed at fast tracking regional development through joint infrastructure, trade, political and economic development for greater integration process in the larger EAC Region. Since its inception, the three Partner States, that is Kenya, Uganda and Rwanda have initiated a number of projects in the areas of infrastructure development, free movement of people and goods, single customs territory among others. These opportunities however come along with a myriad of challenges, security being one of them. These has necessitated the Partner States to come up with measures to ensure there is peace and security in the region, to create a conducive environment for integration efforts, hence the drafting of the Mutual Peace and Security Pact by the partner States of the Northern Corridor Tripartite initiative.

The Pact was drafted in line with the Heads of State of Partner States (Kenya, Rwanda and Uganda) in the Tripartite Summits held in Entebbe, Uganda on 25th June, 2013, Mombasa, Kenya on 28th August, 2013 and Kigali, Rwanda on 28th October, 2013 which they incorporated an article on the security cooperation in its paragraph 'j' of the Kigali communiqué and article 8 and 9 of Memorandum of Understanding on the Tripartite Initiative for fast tracking the East Africa Integration.

Article 8 on common defense established the defense Pact and Article 9 on security established the Mutual Peace and Security Pact.

Once Ratified the pact will obligate Partner States jointly to undertake to combat crimes and ensure safety of people and safeguard development of member countries against instability that might come with the new development initiatives.

Pursuant to the directives of the Heads of State at the Kigali Summit of 28th October 2013, the partner states subjected the pact to the following process before its conclusion:

1. Delegates from the 3 partner states developed the working drafts on the Mutual Peace and Security Pact and the Defense Pact.

2. The Experts Working Group and the Chiefs of Defense Staff and Inspector Generals of the police met from 6th-7th January 2014 in Kigali, Rwanda to implement the decision on the establishment of Mutual Defense Pact and the Mutual Peace and Security Pact that partner states were to sign by the end of January 2014
3. The drafts were forwarded to the council of ministers for consideration and submission to the 4th Northern Corridor Integration Projects Summit which signed the Pact on 20th February 2014.
4. The 4th Summit of the Northern Corridor Integration Projects held on 20th February 2014 in Kampala Uganda and the 5th Summit held on 2nd May 2014 in Nairobi, Kenya directed the partner states to subject the pact to respective ratification process and fast track the development of the pact implementation framework and matrix.

The pact shall enter into force six (6) months after the date of signature by the partner states.

Mr. Speaker Sir,

The main objective of the Peace and Security Protocol and the Mutual Peace and Security Pact is to promote peace, security and stability within the Community and good neighbourliness among partner states. The protocol and the pact obligate the member states to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the East African Community (EAC) against instability arising from the breakdown of law and order, intra and inter states conflict and aggression;
- ii. Coordinate and cooperate in matters related to peace and security in the EAC;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the partner states;

- iv. Observe and encourage implementation of the United Nations, African Union and other international conventions and Treaties on arms control, disarmament and peaceful relations among the partner states;
- v. Develop peace keeping capacity and co-ordinate the participation of Partner States in international and regional peace support operations;
- vi. Enhance the capacity of partner states in combating terrorism and piracy; and
- vii. Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders

Justification for regional Peace and Security Agreements

Africa has emerged as the stage for terrorism and counter terrorism wars and/or activities lately. Indeed, in slightly over a decade, Africa has become an important staging area, training center and a favoured place for terror attacks especially targeting huge western interests in the Sub Saharan Africa, particularly the Eastern Africa. It is in this regard that there is a concerted effort by states and regional actors in the region to ensure that measures are put in place to address this growing security threat.

The EAC and The Tripartite Initiative for fast tracking the East Africa integration aim to achieve prosperity, competitiveness, security, stability and political unification in the larger East Africa. The people's quality of life is to be improved further through increased security, greater competitive capacity, value added trade and investment.

However, economic integration can succeed only if peace, stability and security are established throughout the region. The agreements therefore focus on crisis prevention, conflict resolution, combating terrorism, piracy, transnational and cross border crimes, small arms and light weapons control, and the promotion of good governance. The agreements will also ensure that the partner states do not engage in war amongst themselves.

The Northern Corridor Tripartite Initiative aims to fast track the integration process in the larger East African Community. The Treaty for the establishment of the EAC sets political federation as the ultimate stage of integration, in this regard by the time the EAC enters into a political federation all the important state organs of the respective countries are required to

have harmonised their laws for its smooth functioning. It will require countries to harmonise their counter-terrorism laws and share information and resources in fighting terror

The signing of the Protocol and the Pact is in line with the United Nations Charter, the Constitutive Act of the African Union, The Treaty for the Establishment of the Peace and Security Council of the African Union, the Treaty for Establishment of the East African Community and the Constitutions of the three Partner States. The region will be required to implement the UN and AU model on mutual assistance on criminal matters.

Ratification of the pact is therefore an important milestone towards realization of objectives of the Northern Corridor Integration Projects and the objectives of the EAC. The Protocol and the Pact will unite the partner states efforts' towards collective peace and security, and the achievement of peace, security and stability.

Committee's observations

1. While considering the Protocol and the Pact, the Committee noted that their ratification will bring a lot of benefits to Kenya and the EAC Region as a whole especially by obligating Partner States to:
 - a) Protect its people and safeguard the development of the East African Community (EAC) against instability arising from the breakdown of the law and order, intra and inter states conflict and aggression;
 - b) Coordinate and cooperate in matters related to peace and security in the EAC;
 - c) Prevent, contain and peacefully resolve conflicts and disputes among and within the partner states;
 - d) Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on the Arms Control, Disarmament and peaceful relations among partner states.
2. The Cabinet Memoranda forwarding the East African Community Protocol on Peace and Security and the Mutual Peace and Security Pact both provide that the Protocol and Pact have no provision for reservations. However, Section 8(4) of the Treaty

Making and Ratification Act, 2012 stipulates that *Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty*. According to Section 3 of the Vienna Convention on the Law of Treaties in regard to reservation, a reservation modifies the relationship between the two states as far as the reservation is concerned. However, in case one state has objected to the other state's reservation the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation. To this effect, The Committee has not expressed any reservation to either the Protocol or the Pact.

3. There is a general consensus that the Regional peace and security agreements will be of benefit to Kenya and the region and is relevant in light of the current and emerging terror threats and criminal activities as the agreement will unite the Partner States' efforts towards collective peace and security and the preservation of peace, security and stability. However, there is need to strengthen Kenya's institutions and enhance national capacity to meet its obligations under the Protocol and the Pact.
4. The Committee acknowledges the position of South Sudan as an observer in the Mutual Peace and Security Pact negotiation. The instability in the country affects the stability of a region as a whole as it poses a threat to business environment and good neighbourliness. There should therefore be more concerted efforts by the EAC, The IGAD and other regional bodies to restore peace in the country.

Acknowledgement

The Committee wishes to thank the Office of the Speaker and the Clerk of the National Assembly for facilitation. Further, the Committee appreciates the technical support offered by the staff the National Assembly, State Law Office and the Ministry of Interior and Coordination in the production of this report. I also wish to thank the Honorable Members of the Committee who actively participated in the activities of the Committee and their useful contribution in the compilation of the report.

Mr. Speaker, Sir,

It is therefore my pleasant duty and privilege, on behalf of the Committee on Regional Integration, to commend this report on EAC Peace and security Protocol and the Mutual Peace and Security Pact for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199 (6).

Signed



THE HON. FLORENCE KAJUJU, MP
CHAIRPERSON,
COMMITTEE ON REGIONAL INTEGRATION

Date:

29th. 04. 2015

2.0 BACKGROUND

2.1. THE PROTOCOL

The East African Community (EAC) is a regional inter-governmental organization established under Article 2 of the Treaty for the Establishment of the East African Community that came into force in July 2000. The EAC is made up of the five Partner states namely; United Republic of Tanzania, Republic of Uganda, Republic of Rwanda, Republic of Kenya and Republic of Burundi.

The objectives of the Community shall be to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security, legal and judicial affairs, for their mutual benefit as set out in Article 5(1) of the Treaty.

Partner states have so far established a customs union that came into force in 2005, the EAC Common Market Protocol which was signed in November, 2009 and its implementation started on 1st July, 2010 with the year 2015 set as the target for its full implementation.

The states have since embarked on the third pillar of establishing the monetary union. Kenya has already ratified the protocol for the establishment of the EAC Monetary union. The ultimate goal of the Community is to establish a political federation.

The Protocol was drafted in line with Article 151 of the Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, Articles 5(3) (f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the community. The Partner states subjected the Protocol through due process as summarized below:

- (1) Several experts working groups/ technical experts' meetings constituting the relevant experts from each of the Partner States developed working drafts for consideration by the senior officials of the Sectoral Councils on defense and security, cooperation in

- Defense, Interstate security and meetings of Joint Sectoral councils on Cooperation in Defense, interstate security and Foreign Policy Coordination.
- (2) The relevant senior officials considered the various drafts and made input into it.
 - (3) Upon consideration and input, the senior officials forwarded the drafts to the Coordination Committee consisting of the Permanent Secretaries, service commanders, police chiefs and defense chiefs for consideration and further input before presentation to the Ministerial session of the Sectoral Council on Interstate Security. Thereafter the protocol was forwarded to Sectoral Council on Legal and Judicial Affairs for legal input before being approved by the Council.
 - (4) The EAC Summit of Heads of State approved the Protocol on Peace and Security at its 14th Ordinary Meeting in Nairobi on 30th November, 2012 under the Chairmanship of the then President of the Republic of Kenya, His Excellency Hon. Mwai Kibaki.
 - (5) Signing of the Protocol by the EAC council of Ministers at the 5th meeting of Joint Sectoral Councils on Cooperation in Defense, Interstate Security and Foreign Policy Coordination in Dar es Salaam, Tanzania on 16th February 2013.
 - (6) The EAC council directed that all Partner States endeavor to ratify the protocol by 15th February, 2014

Constitutional Implications

The Protocol proposes no amendments to The Constitution of Kenya. It is in line with the principles of the Constitution and specifically recognizes the principles of sovereignty, equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in the internal affairs of each Partner State.

Obligations imposed on Kenya by the protocol

Since Kenya had already ratified and domesticated the EAC Treaty through the EAC Community Act, 2000, it is also obligated to ratify all the treaty's annexes pursuant to Article 151(4).

Requirements for implementation of the Protocol

The protocol will be implemented by the National Government organs/institutions as provided for under Article 15 of the protocol.

Analysis of the Articles

The protocol is divided into 21 articles as follows

1. Article 1 is the interpretive article of the Protocol
2. Article 2 provides for the scope of cooperation.
3. Article 3 provides for the objective of the Protocol which is to promote peace, security and stability within the Community and good neighbourliness among the Partner States.
4. Article 4 provides that Partner States shall develop an East African Community conflict prevention, management and resolution mechanism. It provides for resolution of disputes or conflicts by peaceful means and that in consultation with the United Nations Security Council and Peace Security Council of the AU the EAC may offer to mediate in disputes between two or more Partner States.
5. Article 5 provides for prevention of genocide and that Partner states shall develop joint mechanisms for the prevention of genocide.
6. Article 6 provides for the cooperation in counter terrorism measures within the Community.
7. Article 7 provides for cooperation in combating piracy in the Community
8. Article 8 provides that Partner States shall formulate a joint mechanism for the operationalization of peace support operations within the context of the Charter of the UN, AU and the EAC treaty.
9. Article 9 provides for the development of mechanisms to provide mutual assistance in disaster management and crisis response.
10. Article 10 provides for the establishment of common mechanisms for the management of refugees.
11. Article 11 provides that Partner States shall undertake to jointly develop policies, measures, mechanisms, strategies and programmes, to control the proliferation of illicit small arms and light weapons.
12. Article 12 provides for joint operations in controlling and preventing transnational and cross-border crimes.
13. Article 13 provides for the development and adoption of policies, laws and strategies to prevent and combat cattle rustling.
14. Article 14 provides for cooperation in the exchange, detention, custody and rehabilitation of prisoners and offenders among Partner States.

15. Article 15 provides that the Council shall determine the institutional arrangements for the implementation of the Protocol.
16. Article 16 provides for the cooperation of Partner states with regional and international organizations whose activities have a bearing on the objectives of the Protocol.
17. Article 17 provides for confidentiality of information obtained in the implementation of this Protocol and that Partner States shall not use any classified information obtained during any multilateral cooperation among them to the detriment of the interest of any Partner State.
18. Article 18 provides that any dispute arising out of interpretation or application of the Protocol shall be settled in accordance with the provisions of the EAC Treaty.
19. Article 19 provides that amendment of the Protocol to be in accordance with Article 150 of the Treaty.
20. Article 20 provides for entry into force of the Protocol upon the ratification and deposit of instruments of ratification with the Secretary General by all Partner States.
21. Article 21 provides for the depository and registration of the Protocol by the secretary General.

2.2 THE MUTUAL PEACE AND SECURITY PACT

The birth of the Tripartite Initiative for Fast Tracking the East African Integration in 2013, injected the much needed, albeit controversial, impetus to the region's integration effort. Bold steps to fast-track integration by the presidents of Kenya, Rwanda and Uganda have demonstrated the substantial strides that are possible with political support at the highest levels.

The Heads of State of the three countries agreed on several measures aimed at fast tracking integration efforts in the region, with an initial focus on joint infrastructure projects and the eradication of Non-Tariff Barriers in the Northern Transport Corridor that covers Kenya, Uganda, Rwanda and South Sudan and is a vital trade link for landlocked countries in the region.

The achievements of the tripartite initiative so far include:-

- (i) Infrastructure (Standard Gauge Railway from Mombasa to Malaba, Kampala, Kigali and Juba);

- (ii) Elimination of NTBs;
- (iii) Freedom of movement;
- (iv) Progress towards establishment of a single area network to facilitate cheaper communication; and
- (v) Fast tracking realization of a single customs territory.

Overview of the Pact

The Pact is divided into 14 articles as follows;

- Article 2: States the objectives of the Pact
 - Article 3: States areas of cooperation
 - Article 4: Requires Partner States to exchange information and experiences
 - Article 5: Requires Partner States to harmonize visa regulations
 - Article 6: Requires Partner States to finance relevant organs implementing the Pact
 - Article 7: Safeguards the confidentiality of information
 - Article 8: Provides for accession of the Pact by other States
 - Article 9: Deals with settlement of disputes arising from the implementation of the Pact
- Article 10-14: Provide for the withdrawal by a member; Amendments; review of the Pact; breach of the Pact; and, Implementation respectively.

Constitutional Implications

The pact proposes no amendments to The Constitution of Kenya. It is in line with the principles of the Constitution and specifically recognizes the principles of sovereignty, equality, territorial integrity, political independence, good neighbourliness, interdependence, non - aggression and non -interference in the internal affairs of each Partner State.

Once ratified, the Pact will give leverage to the Constitution of Kenya in as far as combating crime is concerned and will form part of the laws of Kenya as spelt out in Article 2 (6) of the Constitution.

Impact of the ratification of the Pact on national interest

The Pact obligates Partner States to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining peace and security of Partner States with a view to prevention, better management and resolution of disputes and conflicts between them. To this end, the Protocol will commit the government to develop mechanisms that shall aim to:

- i. Coordinate and cooperate with other EAC Partner States in matters related to peace and security
- ii. Prevent, contain and peacefully resolve conflicts and disputes among and within the EAC Partner States;
- iii. Observe and encourage implementation of international conventions touching on peace and security; and
- iv. Enhance the capacity of the Community with respect to; regional peace support operations, disaster management, and management of refugees, combating terrorism and piracy and exchange of prisoners.

Implication on matters relating to counties

As per the Constitution of Kenya, the areas of cooperation covered by the Protocol and the Pact fall under the functions of the national government. The national government shall therefore coordinate with the county government as and when necessary.

Rationale for Regional Peace and Security Agreements

Africa has emerged as the stage for terrorism and counter terrorism wars and/or activities lately. Indeed, in slightly over a decade, Africa has become an important staging area, training center and a favoured place for terror attacks especially targeting huge western interests in the Sub Saharan Africa, particularly the Eastern Africa. It is in this regard that there is a concerted effort by states and regional actors in the region to ensure that measures are put in place to address this growing security threat.

The EAC and The Tripartite Initiative for fast tracking the East Africa integration aim to achieve prosperity, competitiveness, security, stability and political unification in the larger East Africa. The people's quality of life is to be improved further through increased security, greater competitive capacity, value added trade and investment.

However, economic integration can succeed only if peace, stability and security are established throughout the region. The agreements therefore focus on crisis prevention, conflict resolution, combating terrorism, piracy, transnational and cross border crimes, small arms and light weapons control, and the promotion of good governance. The agreements will also ensure that the partner states do not engage in war amongst themselves.

The Northern Corridor Tripartite Initiative aims to fast track the integration process in the larger East African Community. The Treaty for the establishment of the EAC sets political federation as the ultimate stage of integration, in this regard by the time the EAC enters into a political federation all the important state organs of the respective countries are required to have harmonised their laws for its smooth functioning. It will require countries to harmonise their counter-terrorism laws, and share information and resources in fighting terror

The Treaty also seeks to stop terrorists from committing acts of terror in one country and seeking refuge in another. Partner States are required to undertake joint operations in controlling and preventing transnational and cross border crimes including: motor vehicles theft, smuggling of goods, illegal migration etc. A recent report by the EAC heads of anti-narcotic and human trafficking unit states that drug dealers have penetrated the region, and that transnational crime is the biggest challenge to peace and security in the region. Security analysts have blamed the current lukewarm approach to security for rising insecurity within the region.

The border points of the partner states have remained porous thus giving the terrorists loopholes to move in the region without worries of being apprehended. Partner states therefore need to work together to address the major security challenges facing the region and especially with regard to protecting the border points.

It has also been observed that the danger from proliferation of small arms and light weapons (SALW) is affecting tourism severely through poaching of wildlife and surging number of militia groupings. The ease with which these weapons are acquired explains the rise in the case of penetration of small arms and light weapons. This can be addressed adequately when countries come together in the fight as this will seal all loopholes that could promote proliferation of Small Arms and Light Weapons.

There is a growing realization of the importance of proactive measures to conflicts rather than reactive measures. The nature of conflict in Africa, the high death toll of civilians (genocide) and the gravity of human rights abuses (including sexual exploitation), added to the high cost of peacekeeping and other post-conflict interventions, has diverted and hence placed more focus on conflict prevention. The prevention of conflict is found to be more effective in terms of cost and saving lives. Hence the Protocol and the Pact address this in the Articles on Conflict prevention, management and resolution.

The signing of the Protocol and the Pact is in line with the United Nations Charter, the Constitutive Act of the African Union, The Treaty for the Establishment of the Peace and Security Council of the African Union, the Treaty for Establishment of the East African Community and the Constitutions of the three Partner States. The region will be required to implement the UN and AU model on mutual assistance on criminal matters. This includes:-

- (i) Adhering to the Protocol Relating to The Establishment of The Peace and Security Council of the African Union;
- (ii) The African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, also known as the Bamako Declaration, which was adopted by the Council of Ministers of the OAU in December 2000 among others;
- (iii) The UN Charter VII on peace and security;
- (iv) The UN Convention against Transnational Organized Crime (2003) and its protocols;
- (v) The UN Comprehensive Convention on Terrorism under which Article 4 urges member countries to establish criminal offences and punishment under respective domestic law;
- (vi) The International Convention for the suppression of financing of terrorism (1999), The International Convention for suppression of terrorist bombings;

(vii) Security Council Resolution 1373 (2001) to “Deny terrorists tools of their trade particularly finance, secrecy, arms and shelter”.

Ratification of the pact is therefore an important milestone towards realization of objectives of the Northern Corridor Integration Projects and the objectives of the EAC. The protocol and the Pact will unite the partner states efforts' towards collective peace and security, and the achievement of peace, security and stability.

2.3 INTERNATIONAL COMPARISONS

i) ECOWAS peace and security Agreements

The Economic Community of West African States (ECOWAS) was established in 1975 by developing West African states as part of their strategy to promote economic development and prosperity for their respective countries (Economic integration union). However, following widespread conflict and instability in the sub-region in the 1990s and early 2000s, the leaders came to the realization that economic prosperity cannot be achieved in the absence of peace and security.

Beginning with a process that saw the adoption of nascent security protocols in 1978, the region has today developed and institutionalized elaborate conflict resolution, peacekeeping and security mechanisms. It is in context of external aggression and internal instability that ECOWAS leaders moved to adopt measures that will safeguard the sub-region's security. The organisation's gradual movement into security started in 1978 when ECOWAS adopted the Non-aggression Treaty which called on member states to ‘...refrain from the threat and use of force or aggression’ against each other (ECOWAS, 1978). Subsequently, the sub-regional body intervened in conflicts in Liberia, Sierra Leone, Guinea Bissau and Cote d'Ivoire undertaking tasks ranging from safeguarding civilians to implementing peacebuilding programmes. The organisation has achieved mixed results in these interventions with relative successes in Liberia, Sierra Leone and Cote d'Ivoire and little results in Guinea Bissau.

Through the agreements, ECOWAS has succeeded in rebuilding collapsed states, established safe havens, helped starving civilians and secured humanitarian relief corridors. To varying

degrees of success, their missions also engaged in peace building efforts, including implementing disarmament, demobilization and reintegration programmes, security sector reform and organizing elections. These interventions also provided an opportunity for the UN to co-deploy with a regional organisation in peacekeeping as was envisaged in the UN charter.

The most important security protocol adopted so far is the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security signed in December 1999. As its name implies, this mechanism seeks to strengthen the sub-region's conflict prevention, management and resolution capacity, as well as build effective peacekeeping, humanitarian support and peace building capabilities. It also addresses cross border crime which is becoming a major problem for the sub-region. In a bid to realize these ambitious aims, the ECOWAS Security Mechanism (as it is known) establishes a number of institutions, arms and strategies which include the Mediation and Security Council, an early warning system, and a stand-by force.

ii) Common Foreign and Security Policy (CFSP) of the European Union (EU)

The 1992 Treaty on European Union (Maastricht Treaty) outlines the broad set of principles that guide the EU's external policies and actions. Under the treaty, the EU aims to

- (a) safeguard its values, fundamental interests, security, independence, and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

EU Member states have committed themselves to a Common Foreign Security Policy for the European Union. The European Security and Defence Policy aims to strengthen the EU's external ability to act through the development of civilian and military capabilities in Conflict Prevention and Crisis Management. CFSP is a mechanism for adopting common principles and guidelines on political and security issues, committing to common diplomatic approaches, and undertaking joint actions.

To influence policies violating international law or human rights, or policies disrespectful of the rule of law or democratic principles, the EU has designed sanctions of a diplomatic or economic nature.

The EU is also a leading international actor in the fight against illicit accumulation and trafficking of small arms and light weapons. The EU has contributed to stability and helped maintain peace in the Balkans, South Caucasus, Africa and the Middle East.

3.0 SUBMISSIONS

3.1 SUBMISSION BY THE MINISTRY OF INTERIOR AND COORDINATION

The Principal Secretary for *the Ministry of Interior and Coordination*, Ms. Monica Juma appeared before the Committee on 12th March 2015 and submitted the following on the EAC Peace and Security Protocol and The Mutual Peace and Security Pact:

3.1.1 Submission on the EAC peace and Security Protocol

The Protocol was established in line with Article 151 of the EAC Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Articles 5 (3)(f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the Community. The EAC Summit of Heads of State approved the East African Community Protocol on Peace and Security at its 14th Ordinary Meeting in Nairobi on 30th November 2012.

The EAC Council of Ministers signed the Protocol at the 5th meeting of the joint Sectoral Councils on Cooperation in defense, interstate security and foreign policy coordination held in Dar es Salaam, Tanzania on 16th February 2013 and directed all Partner States to endeavor to ratify the Protocol by 15th February 2014.

Article 15 of the Protocol provides that the EAC Council of Ministers determine the institutional arrangement for the implementation of the Protocol. In Kenya, the Government agencies mandated to handle the specific thematic areas on the Protocol oversee the implementation of the protocol under the supervision of the Ministry of the East African Affairs, Commerce and Industry.

To realize the objectives of the Protocol, the following have to be considered:

- Harmonization of policies and strategies on peace and security;
- A common regional training, standards and curricula for officers cooperating in the relevant sectors;
- Regional centers/institutions of excellence to promote common standards and best practices.

Kenya has not yet Ratified the EAC Protocol on Peace and Security. The delay in ratification is due to the Constitutional requirement of intense public participation as is also required by the Treaty Making and Ratification Act No. 45 of 2012. The Ministry constituted an Inter-Agency Committee that held consultations with relevant stakeholders on 30th January 2014 to ensure public participation.

The Cabinet has already approved the EAC Protocol on Peace and Security and has been submitted to Parliament for Ratification vide our letter Ref. No. OP.PA. 58/4A of 12th February 2015. Once ratified, the Protocol will be deposited with the EAC Secretary General and reported in the next EAC Heads of State Summit. Uganda, Rwanda and Tanzania have ratified the Protocol, while Kenya and Burundi are yet to ratify it.

Once ratified the EAC Protocol on Peace and Security will enhance and strengthen frameworks and structures in addressing security challenges in the region.

The Ministry is therefore seeking the support of the Committee in the ratification of the Protocol as it provides a framework of addressing security challenges in the region.

Once approved, the Ministry of Foreign Affairs and International Trade will write instruments of ratification which will be shared among Partner States and deposited with UN, AU and EAC Secretary General.

3.1.2 Submission on the Mutual peace and Security Pact

The Heads of State and Governments of Kenya, Rwanda and Uganda, have held three Tripartite Summits: in Entebbe, Uganda on 25th June 2013; Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 to discuss various aspects of integration. The Kigali Summit in its paragraph 'j' of the Kigali Communiqué and Article 9 of the MoU on Fast tracking East African Integration signed on 28th October 2013 provided for security cooperation among the Partner states.

The Mutual Peace and Security Pact is established under the Security Cooperation which the Heads of State signed the Pact on 20th February 2014 in Kampala, Uganda.

The Pact is established under the Peace and Security Cluster of the Northern Corridor Integration Projects that transformed from the "Tripartite/ Coalition of the Willing" The Partner States referred to in the Pact are Kenya, Uganda and Rwanda. The Republic of South Sudan will accede the Pact after all Partner States have ratified it. It is envisaged that

implementation of the Pact will fast track the achievements expected of the EAC Protocol on Peace and Security

The Pact resolves to unite Partner States' efforts towards collective peace and security; and, will create a framework that encourages cooperation and consultations on issues pertaining to peace and security of the Partner States.

The 9th Heads of State Summit on the Northern Corridor Integration Projects held on 7th March 2015 in Kigali, Rwanda urged Kenya to expedite ratification of the Pact.

The Pact has already received Cabinet Approval and was submitted to the Parliament vide letter Ref. No. OP.PA/58/4A of 12th February 2015.

Rwanda and Uganda have ratified the Pact; Kenya is yet to finalize the ratification process.

Article 14 of the Pact requires relevant authorities to develop organs, structures and policies for approval by Committee of Ministers for onward transmission to the Summit.

The implementation framework of the Pact is comprised of the following organs:

- The Summit
- Committee of Ministers
- Coordination Committee
- Committee of Chiefs of various Security Services/Agencies.

In Kenya, the implementation of the Pact is coordinated by the Ministry of Foreign Affairs and International Trade under which the office of the National Coordinator was established. The Kenya National Coordinator is Hon. Joe Nyaga, MGH.

The Partner States have developed the matrix of implementation of the Peace and Security Pact and the Republic of Kenya is on course with the implementation of the activities.

As part of the requirements of the Ratification and Treaty Making Act no.45 of 2012, this Pact has been subjected to stakeholders participation.

The Cabinet Approved the Mutual Peace and Security Pact. The Ministry therefore seeks the support of the Committee in ratifying the Pact. Once ratified the Ministry of Foreign Affairs

and International Trade will write the instruments of ratification to be shared among Partner States and deposited with UN, AU and EAC Secretary General.

3.2 SUBMISSION BY THE OFFICE OF THE ATTORNEY GENERAL ON THE MUTUAL PEACE AND SECURITY PACT

The following is a summary of the submission:

The Mutual Peace and Security Pact was prepared pursuant to the directives of the Heads of State in the Tripartite Summits held in Entebbe, Kenya and Rwanda in June, August and September 2013 respectively. The Pact was signed by the Summit on 20th February 2014 under the umbrella of the Northern Corridor Integration Projects and Partner States were requested to commence ratification in accordance with their respective Constitutional processes.

The objective of the Pact is to establish a framework for combating crimes to contribute towards collective peace and security among Partner States. The Pact obligates Partner States to safeguard against breakdown of law and order, coordinate and co-operate in matters related to peace and security, enhance the capacity of Partner States to combat piracy and terrorism and peacefully resolve conflicts and disputes among and within the Partner States

The Republic of Rwanda and Uganda have already ratified the Pact. It is therefore imperative that Kenya expedites the ratification of the Pact taking into account that the Summit had anticipated that it would be ratified within six months from the date of signature in 20th February 2014.

It may also be noted that the Peace and Security Cluster for the Northern Corridor Integration Projects has already begun to undertake preparatory work for the implementation of the Pact. During the period 26th – 30th May 2014, Peace and Security Experts, Chiefs of Defense and Ministers responsible for Security convened in Rwanda to develop an Implementation Framework Matrix. This was approved by the 6th Summit held on 3rd July 2014.

Further, in a meeting held on 6th February 2015 in Juba, Ministers drawn from the Peace and Security Cluster made recommendations relating to co-operation in terrorism, combating proliferation of small arms, conducting peace support operations, genocide prevention and combating transnational crimes.

In this regard, it may be observed that the initial stages of implementing the pact have commenced. In order to avoid a legal gap, it is imperative that Kenya expedites ratification of the Pact.

The Pact does not envisage amendments to the Constitution.

Harmonization of Laws- In order to realize the objectives of the Pact, harmonization of national legislations has been identified. To this extent, the implementation of the Pact may necessitate harmonisation of relevant legislations on a need basis. For instance, in the Peace and Security Cluster Meeting held in Juba, the following recommendations that may lead be inclined to harmonisation of laws were made;

- **Prevention of Genocide-** convening of a workshop to review existing legal framework and develop mechanisms of genocide prevention.
- **Control of Small Arms-** convening of a workshop on harmonisation of laws governing management of firearms, explosives and their accessories be convened.
- **Combating economic crimes-** workshop to harmonize policies, laws and strategies on economic crimes to be convened.
- **Combating and suppressing piracy-** Partner States were urged to develop relevant legal frameworks to suppress and combat piracy.
- **Harmonise laws** to allow for exchange of prisoners, detention, custody and rehabilitation of offenders.

Development of Co-operation Agreements- In addition to the harmonization of laws, some co-operation areas would require implementation through Agreements. The above referenced meeting of the Peace and Security Cluster identified combating Terrorism and Management of Prisons and exchange of prisoners, detention, custody and rehabilitation of offenders as some of the areas where, in addition to harmonizing laws, there may be need to develop Co-operation Agreements.

Implications on Matters relating to Counties-The areas of co-operation covered by the Pact are within the competence of the functions of the National Government.

Stakeholder Consultations- The Treaty Making and Ratification Act requires that the views of stakeholders be sought. The Ministry of Interior and Coordination of National Government invited the view of the public through electronic and print media publications on 10th and 11th July 2014. A public forum was also convened at Utalii on 15th July 2014. To this extent, it can be submitted that the threshold of public participation has been achieved.

Inception work towards implementation of the Protocol is ongoing. The Parliamentary Committee is therefore requested to positively consider the Pact.

4.0 COMMITTEE'S OBSERVATIONS ON THE EAC PEACE AND SECURITY PROTOCOL

After receiving submissions from the government agencies, the Committee made the following observations on the Protocol:-

Preamble- provides background information on the Protocol.

Article 1- Interpretation Section-

It provides definitions and interpretations of the terms as used in the Pact. The most important definitions to point out include:-

- i. **Counter-terrorism** which means practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations of Partner States adopt in response to terrorist threats or acts, both real and imputed;
- ii. **Cross border crime** which means a crime committed across Partner state which share common border;
- iii. **Early warning** means the process of collecting, verifying and analysing information for purpose of identifying threats to peace and security;
- iv. **Genocide** means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group; killing members, inflicting serious bodily or mental harm to the members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing

measures intended to prevent births within the group or forcibly transferring children of the group to another group;

v. **Terrorism** means

(a) any act which is a violation of the criminal laws of a Partner State and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State;

(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) and (ii);

vi. **Transnational Crimes** which are crimes committed across the border of Partner states which do not share a common border.

Article 2- Scope of Cooperation-

The areas of co-operation in the Protocol have been informed by the objectives. These are broad and include all matters relating to peace and security. They range from conflict prevention, management and resolution, peace support, disaster management, combating and suppressing piracy, terrorism and preventing genocide, management of refugees among others.

Crime and terrorism undermine society by establishing a state of instability which can lead to the destabilization of democratic governments which in turn poses a threat to democracy and security in this entire region.

Article 3- Objectives-

The objective of the Protocol is to establish a framework for Partner states to collectively combat crime and terrorism. These includes among others, coordinating and co-operating in matters relating to peace and security, peacefully resolving conflicts within Partner States, enhancing the capacity of Partner States with respect to disaster management and co-operation in exchange of prisoners and rehabilitation of offenders.

The Committee notes with great concern that the region currently faces serious security threats from other existing or newly introduced conditions and challenges. These include drug trafficking and money laundering, economic disenfranchisement, poverty and social exclusion, transnational organized crime, natural disasters, the influx of smuggled small arms and light weapons, terrorism, frightening crime rates, and the increasing number of refugees and asylum seekers.

Trafficking of illegal drugs and its linkage to the trafficking of small arms and light weapons and their impact on peace and security has become an issue of great concern. These types of illegal activities which are transnational in nature, utilize state-of-the-art technology, and their proceeds are used to finance corruption, intimidation and violence in many of our societies, and undermine law and order.

All of these challenges are multi-dimensional and profoundly impact the social, economic, and political existence of a state. All of these problems take a heavy socioeconomic toll on our small countries, and addressing them with the aim of finding solutions is a critical element in allaying security fears and solidifying the culture of democracy in our states.

Article 4- Conflict Prevention, Management and Resolution-

The Protocol stipulates that Partner States shall undertake to develop an East Africa Community conflict prevention, management and resolution mechanism.

Key in the Protocol is the establishment of a Conflict Prevention Management and Resolution (CPMR) Framework, to provide a more structured regional approach to addressing conflicts

not only by way of managing and resolving them when they have occurred but also in preventing them.

A specific instrument, a Conflict Early Warning Mechanism (CEWM), has been developed in line with the African Union continental CEWM. It will comprise a regional early warning center at the EAC Head Quarters and National Early Warning Centers in each Partner State. In this regard a research centre was started at the EAC Secretariat called the Nyerere Centre for Peace Research (NCPR). Its mandate is to, on a continuous and sustainable basis; undertake empirical and policy-oriented research and capacity building in key areas related to deepening and widening the EAC integration in general and peace and security, good governance and common regional foreign policies in particular.

Domestic disputes are likely to become regional conflicts and that the problem of state failure adds to regional instability. Along the same lines, the UN Report of the High Level Panel on Threats, Challenges and Change, points out that to prevent wars within states, "we will have to build on the successes of regional organizations in developing strong norms to protect governments from unconstitutional overthrowing, and to protect minority rights". Bad governance in one national setting could have externalities that affect other neighboring countries, by causing cross-border spill-over effects, such as asylum seekers and refugees. The regionalization of conflict is hence a major trend in international relations to ensure stability of a regional block.

Article 5- Prevention of Genocide-

This article obligates the Partner States to undertake to:

- (a) prevent any act intended to destroy, in whole or in part, a national, ethnic, racial or religious group; and
- (b) develop a joint mechanism for the prevention of genocide and take appropriate measures against the perpetrators

Article 6- Combating Terrorism-

To effectively combat terrorism, the Partner States shall undertake to;

- a. Jointly formulate strategies and mechanisms for the operationalization of counter-terrorism measures;
- b. Jointly formulate strategies and mechanisms to combat terrorism
- c. Jointly formulate strategies on how to conduct joint operations; and
- d. Conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

Lately, terrorism has become more complex and multidimensional. A threat to one country implies threat to the neighboring countries. There is therefore need for increased information gathering and sharing, as well as for more analytical work to be done on information already gathered on terrorism, and collective effort towards fighting terrorism.

A terrorist attack to one state provokes a prompt chain reaction in other states, with whom the attacked state has strong economic, political and social ties (such linkages are even stronger within regions). Thus, either directly or indirectly, both the origin and the target of threats have a regional dimension. And once regional threats have been coped with, regional security will emerge.

Article 7- Combating and Suppressing Piracy-

Partner states agree to cooperate in combating piracy in the Community. The Partner states undertake to:

- a. Jointly formulate mechanisms for the operationalization of anti -piracy measures and
- b. Jointly formulate mechanisms to fight piracy;
- c. Jointly develop strategies on how to fight and suppress piracy; and
- d. Conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

Modern maritime piracy has become one of the major threats to safety at sea. How to combat maritime piracy effectively is the major concern to many nations. It is argued that some form of government cooperation involving the affected governments is the best way to combat maritime piracy, although it is not an easy task due to various political, economic, and historical reasons. A unilateral and expedient arrangement by one or a few governments to

combat maritime piracy may be convenient but may also encounter resistance or raise suspicion from other governments.

The effective repression of transnational organized crime at sea will never be possible without having adequate and precise legislation in place. It is a common observation that very often States sign and ratify treaties, yet they fail in taking the appropriate legislative measures to give teeth to these international instruments.

As a consequence, many incidents involving transnational organized crime at sea never reach a trial phase, while it is observed that often national courts assume a divergent and controversial standing in relation to some issues, e.g. drug trafficking. Therefore effective realization of this Article will highly depend on the implementing agencies.

Article 8- Peace Support Operations-

The Partner States shall formulate a joint mechanism for the operationalisation of peace support operations within the context of the Charter of the United Nations, the Constitutive Act of the African Union and the Treaty. The Partner States shall conduct peace support operations within the Community under a conflict prevention, management and resolution framework. There is, already constituted, an EAC Directorate of Peace and Security. This will make the implementation of this Article easier.

Article 9 – Disaster Risk Reduction, Management and Crisis Response-

The Partner States shall develop mechanisms to provide mutual assistance in disaster management and crisis response in line with Article 124 (3) of The Treaty for the Establishment of the EAC which states *the Partner States shall evolve and establish regional disaster management mechanisms which shall harmonise training operations, technical co-operation and support in this area.*

For the purposes of this, the Partner States shall: (a) develop an early warning and response system for common disasters within the Community; (b) establish the database for disaster management; and (c) develop capacity to manage disaster situations.

Article 10 - Management of Refugees-

The Partner States shall undertake to establish common mechanisms for the management of refugees. The Partner States shall:

- (a) harmonize their policies, laws, strategies and programmes on the management of refugees; (b) incorporate the provisions of the 1951 UN Convention on Refugees and 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa in their national legislation;
- (c) establish and harmonise asylum procedures;
- (d) network and share information regarding asylum seekers and refugees;
- (e) institute mechanisms to facilitate family re-union;
- (f) establish systems for agencies involved with refugees within the Community to share views and exchange experiences; and
- (g) develop joint training modules for stakeholders in refugee management.

Kenya has been home to thousands of refugees from neighboring countries like Uganda during the dictatorial rule of Idd Amin, South Sudan, Somalia among others. However, the Dadaab refugee camps introduced in 1991 to host Somali refugees fleeing the clashes and subsequent civil wars after the ouster of SiadBarre in January 1991 have posed more security concern to Kenya.

Until 2009, majority of Kenyans had not heard of Dadaab and hardly knew of its geographical location in the Kenyan map. Surprisingly, Kenya hosts the World's largest refugee camp- Dadaab refugee camp. Indeed, the Kenyan government has been in dilemma of a genuine humanitarian concern for the refugees and the need to control its borders as a security matter. The persistent security threats associated with Dadaab refugee camps has put pressure on the Kenya government on the need to obey the international law by continually hosting refugees and that of protecting its national interests as regarding its national security.

Terrorists manage to sneak into the Country as refugees, where they manage to plan and execute their attacks without notice. The need to develop capacity to handle refugees and harmonised legislations, policies and strategies on refugees cannot be overemphasized

Article 11 - Control of Proliferation of Illicit Small Arms and Light Weapons-

The Partner States undertake to jointly develop policies, measures, mechanisms, strategies and programmes, to control the proliferation of illicit small arms and light weapons.

Pursuant to the decision by the AU Assembly of Heads of State declaring **2010 the Year of Peace in Africa**, the EAC commemorated it with a major public event in Bujumbura, Burundi on 17th April 2010 with the destruction of 1000 assorted illicit arms. In May 2010 another 2560 assorted illicit arms recovered mainly from the refugee population on the Tanzania/Burundi border were also publicly destroyed.

Similar activities had been undertaken in the other EAC Partner States and so far over 170,000 SALW and 300 tons of explosive remnants of war including ammunitions have been destroyed in the region. However, there still exists the problem of SALW. There is therefore need for continuous efforts by the Regional states to ensure eradication of weapons in the regional to ensure peace and security prevails.

Article 12 - Combating Transnational and Cross Border Crimes

The Partner States shall undertake joint operations in controlling and preventing transnational and cross-border crimes including: (a) the theft of motor vehicles; (b) the smuggling of goods; (c) illicit drug trafficking; (d) human trafficking; (e) illegal migration; (f) trade in counterfeit goods; (g) intellectual property piracy; and (h) any other transnational and cross – border crimes.

The Partner States shall develop appropriate mechanisms, policies, measures, strategies and programmes to combat cross-border crimes including:

- (a) the establishment of regional databases on cross-border crimes;
- (b) the enhancement of technical capacity for criminal intelligence;
- (c) the enhancement of the exchange of criminal intelligence and other security information between the Partner States central criminal intelligence information centres;
- (d) the strengthening of cross border security;
- (e) the training of personnel and sharing information on the modus operandi being used by criminals;
- (f) the enactment of laws on mutual legal assistance in criminal matters; and

(g) the establishment of cross border and inter-state communication.

It has been observed by many experts that whatever measures the international community adopts at sea in tackling transnational organized crimes, it should be borne in mind that a significant part of the associated criminality (e.g. planning, recruiting, directing) takes place on dry land. This means that measures such as targeting the beneficial owner of the illicit activity or "lifting the corporate veil" as well as entering into extradition or mutual legal assistance treaties becomes of importance. Needless to say that without international cooperation both at regional and international level, no significant progress can be achieved.

International Treaties and Conventions have not adequately addressed the problem of transnational crime due to its multidimensional and dynamic nature, hence the need to continuously formulate and implement such legislations.

Article 13 - Preventing and Combating Cattle Rustling

The Partner States that do not have policies and laws to prevent and combat cattle rustling agree to develop and adopt policies, law and strategies to achieve this and agree to harmonise their policies, laws and strategies to prevent and combat cattle rustling.

The Mifugo Protocol on the prevention, combating and eradication of cattle rustling in Eastern Africa will complement the implementation of this Article.

Article 14 - Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders

The Partner States agree to cooperate in the exchange, custody and rehabilitation of prisoners and offenders. For purposes of this, the Partner States agree to, inter alia cooperate in the following areas: (a) the governance and management frameworks of prisons and correctional services; (b) penal reform agenda; and (c) research, data collection, information exchange and the enhancement of regional standards, policies and practices.

The Partner States agree to harmonise their training programmes and practices in relation to the management of penal and rehabilitation institutions.

The EAC through its Inter-State Security Sectoral Council has embarked on programs to harmonise police standards and to cooperate in prisons/correctional services. To facilitate a harmonized approach, the Chiefs of Intelligence hold regular strategic meetings and strategies are being shared to address cyber-crime, drug and human trafficking, money laundering and cross –border motor vehicle thefts.

Article 15 - Institutional Arrangements

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

Article 16 - Relationship with Regional and International Organisations

The Partner States shall foster cooperation with regional and international organizations whose activities have a bearing on the objectives of this Protocol.

Article 17 - Confidentiality of Information

The Partner States undertake not to disclose any classified information, obtained under this Protocol or as a result of their participation in the Community, other than to their own officials to whom such disclosure is essential for purposes of giving effect to this Protocol or any directive taken by the Summit.

Partner States shall ensure that the officials referred to in this Article shall at all times maintain strict secrecy and undertake not to use any classified information obtained during any multilateral co-operation between and or among them to the detriment of any Partner State.

Further, a Partner State shall remain bound by the requirement of confidentiality under this Article even after withdrawal and expulsion from the Community.

This is generally the practice in matters of security and all security agencies are under oath to treat all information in a confidential manner. Section 49(9) of the National Police Service Act states; *Matters of a personal nature and operational information in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.*

Article 18 - 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 19 - 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 20 - Entry into Force

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

Article 21 - Depository and Registration

The original text of this protocol shall be deposited with the Secretary General who shall transmit certified true copies thereof to all Partner States.

The Secretary General shall register this protocol with the African Union, United Nations and such other organization as the Council may determine.

5.0 COMMITTEE'S OBSERVATIONS OF THE MUTUAL PEACE AND SECURITY PACT

Preamble- provides background information and notes that the Pact will supplement other efforts at the EAC Regional level.

Article 1:

Highlights the interpretation of key words as used in the Protocol. It defines key terms such as genocide, Community, counter terrorism, disaster management, early warning cross border crime etc.

Article 2: Objectives

The purpose of the pact is to establish a framework for combating crimes to contribute towards collective peace and security among partner states. This article outlines the obligations that shall be imposed on the states with regard to implementation of the pact.

Kenya lately has become vulnerable to terrorism related security threats. There are acts perpetrated in Kenya, by organizations based outside the country and those from organizations within our borders but aimed at neighboring countries. Terror networks operate on the premise that they are likely to destabilize and perhaps take over the running of the governments or businesses within a country or control its natural resources.

The Pact will therefore help in addressing this to a large extent as there will be combined efforts to fight terrorism and ensuring stability in the region to provide a conducive environment for integration efforts.

Upon ratifying the Pact, it obligates the Partner states to *inter alia* undertake to:

- a. Protect the people and safeguard the development of the Community against instability arising from the breakdown of law and order, intra- and inter- state conflicts and aggression;
- b. Coordinate and cooperate in matters related to peace and security in the Partner States
- c. Prevent, contain and peacefully resolve conflicts and disputes among the partner states and within the Partner states

- d. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms control, Disarmament and peaceful relations among the partner states.
- e. Enhance the capacity of the Partner States in management of refugees
- f. Enhance the capacity of the partner states in combating terrorism and piracy
- g. Cooperate in the exchange of prisoners, detention, custody and rehabilitation of the offenders

Article 3-Areas of cooperation

This Article outlines the areas of cooperation as peace and security matters. The security inter-agencies of partner states shall cooperate in all areas relevant for the promotion, maintenance of peace, security and stability in the region and shall include:

- i. Conflict prevention, management and resolution
- ii. Combating terrorism, piracy, organized crimes, economic crimes, trans-national and cross border crimes
- iii. Disaster risk reduction, management and crisis response
- iv. Establishment of database on cross border crimes
- v. Harmonizing national legislations etc.

The pact will create a framework that encourages and maintains cooperation and consultations on issues pertaining to the peace and security of the partner states with a view to prevention, better management and resolution of disputes and conflicts between them.

The pact also obligates partner states to engage in sharing and promoting best practices including, mobilization of the population to prevent, combat and eradicate crimes, disaster preparedness and management.

For purposes of combating cross border crimes, the partner states shall develop appropriate mechanisms, strategies and programs as follows:

- i. Establishment of fusion centers

- ii. Establishment of database on cross border crimes
- iii. Enhancing technical capacity for criminal intelligence
- iv. Facilitating joint operations to hunt down criminals among member states;
- v. Management of fugitives and suspects
- vi. Capacity building, training and knowledge sharing
- vii. Harmonizing national legislations
- viii. Fast tracking identified centers of excellence in policing

Article 4: Exchange of information and experience

Obligates the partner states, through the established organs to regularly exchange information, to conduct and coordinate operations in the field of combating crimes.

The partner states shall work together to develop and enhance their capacities in a closer cooperation to facilitate the effective implementation of this pact and the achievement of its objectives. The areas of capacity building and development include:-

- a. IT skills
- b. Criminal investigation,
- c. Intellectual property crimes
- d. Financial crimes
- e. Drug trafficking
- f. Smuggling of goods
- g. Human trafficking
- h. Counter terrorism
- i. Forensic skills

The security organs in the partner states will engage each other in the identification and sharing of indicators of terrorism and crime threats in the region and their manifestations.

In light of the ongoing initiatives, it is imperative that reciprocal measures are taken to enhance availability of well researched information to facilitate informed decision making. In this regard a research centre was started at the EAC Secretariat called the Nyerere Centre for Peace Research (NCPR). Its mandate is to, on a continuous and sustainable basis; undertake

empirical and policy-oriented research and capacity building in key areas related to deepening and widening the EAC integration in general and peace and security, good governance and common regional foreign policies in particular.

Article 5: Free movement of people

The free movement of people using Identification cards, voter's card and student IDs poses security challenges.

Each partner state shall:-

- a. Establish a mechanism for issuing student identification documents
- b. Harmonize visa regulations to guide the issuance of single tourist visa.

Under the auspices of the Northern Corridor, Rwanda, Uganda and Kenya have implemented several projects to deepen integration. These include the use of national IDs to cross borders, single tourist visa for foreigners touring the three countries, as well as the single customs territory that has made the movement of goods faster among member states.

This requirement is already being implemented. The three countries in January started issuing a single tourist visa whereby Kenya would take 40 per cent of revenues, with Uganda and Rwanda splitting the rest between them. Under the arrangement, tourists wishing to visit Kenya, for example, will be required to pay \$100 for a 90-day visa that will also enable them to tour Rwanda and Uganda. The scheme is aimed at making the three countries a single tourist destination.

Kenya, Uganda and Rwanda also began using their respective national identity cards as official travel documents that would enable their citizens to travel in the three countries. Travelers just have to present their identity cards to immigration officers at border posts to verify their validity before being issued with a stamped coupon to cross the border.

Article 6: Funding

Partner states are obligated to adequately finance the activities of the relevant organs, structures and operations to ensure smooth implementation of the pact.

The implementation of the pact will ultimately call for additional allocation of resources from partner states to adequately fund all the initiatives. Currently, most of the funding for projects within the region (and especially EAC) is funded by development partners. There is need to reverse the trend in order to ensure all activities are implemented in order to promote peace and stability within the region, or else the efforts will not be realized. The partner states, party to the pact should be prepared to adequately fund the project, and be less reliant on development partners.

However, this may take longer to be realized given that even the individual partner states still experience huge budget deficits.

Article 7: Confidentiality of information

Partner states are obligated to undertake not to:-

- a. disclose any classified information obtained in the implementation of this pact, or any other related agreements, other than to their own staff, to whom such disclosure is essential for purposes of having effect to the pact
- b. use any classified information obtained during any multilateral cooperation among them to the detriment of or against the interests of any partner state.

It also states that in the implementation of the pact, visiting personnel shall comply with the security regulations of the host partner state. All information made available to him/her shall be treated with confidentiality.

This is generally the practice in matters of security and all security agencies are under oath to treat all information in a confidential manner. Section 49(9) of the National Police Service Act states; *Matters of a personal nature and operational information in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.*

Article 8: Accession

This pact shall remain open for accession by any state as shall be approved by the partner states through the policy organs from time to time.

This gives rooms for other countries to come on board at their own volition.

There is growing concern that the Tripartite Agreements between the partner states (i.e. Kenya Uganda and Rwanda) is an advancement of the interests of the Coalition of the willing. This is because it does not bring on board all the EAC partner states. Security analysts argue that while it may be a good move for the Northern Corridor Tripartite Initiative partners, from the best strategic security position, it could have been better if they waited for the other EAC partners.

They are of the opinion that for the three countries to sign the common security pact without the other two partners, then the acceptability by the international community on security matters will be diminished. However, this shall be resolved when all the Partner states will have ratified the EAC Peace and Security Protocol.

Article 9: Settlement of Disputes

The pact stipulates that any dispute among the partner states arising from the interpretation and /or implementation of this pact shall be settled amicably. Where there is no resolution, the matter shall be referred to the EAC Court of Justice or any other mechanism agreed upon by the Partner states.

This will help to prevent the partner states from warring each other. It will also ensure smooth implementation of the pact and the realization of the objectives therein.

Article 10: withdrawal of a member

Any partner state may withdraw from the pact upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Summit and shall cease to enjoy all rights and benefits under the pact.

Article 11: Amendment

Any partner state may propose an amendment to the pact. Such proposals are to be made to the relevant organs which shall duly notify the Summit for consideration. An amendment to this pact shall be adopted by consensus of all the partner states.

Article 12: Review of the Pact

The pact shall be reviewed every three years.

Article 13: Breach of the pact

Any partner state may report an alleged breach of the pact to the Summit, which shall instruct the relevant organs to carry out an investigation, report thereon and make recommendations back to the summit. This Article does not outline the consequences of the breach of the Pact. However, it refers to the Summit which is established under Article 10 of the Treaty Establishing the East African Community. In addition, Article 124(1) of the Treaty provides that:

“...Partner States agree to foster and maintain an atmosphere that is conducive to peace and security through co-operation and consultations on issues pertaining to peace and security of the Partner States with a view to prevention, better management and resolution of disputes and conflicts between them”.

In this regard, the consequences for the breach of the Pact will be as outlined in the Treaty. These are Sanctions under Article 143, Suspension of a Member under Article 146 or Expulsion of a Member under Article 147.

Article 14: Implementation

The implementation of the pact shall be carried out by the relevant authorities including other National Security Services such as correctional immigration and Intelligence services. These institutions are required to develop such organs, structures and policies as shall be necessary for the implementation of the pact by 30th March 2014 for subsequent approval by the committee of ministers for onward transmission to the Summit.

Article 15: Entry into force

The Pact shall enter into force upon ratification, 6 months after the date of signature by partner states. The Pact was signed by the Heads of State on 20th February 2014; hence the Pact should have entered into force by August 2014. This is not going to be the case because as it is, Kenya has delayed in ratifying the Pact. This can be attributed to the long procedural requirements imposed by the Constitution of public participation.

The Pact was committed to the Committee on 17th February 2015. The Committee has since then endeavored to consider the pact with the urgency it deserves, taking into consideration the timelines placed by the Standing Orders and the Constitution.

GENERAL OBSERVATIONS

To be secure is by definition, to be secure from threats. As early as in the Roman period security was regarded as "the absence of distress upon which happy life depends. However, presently, most conflicts are civil wars or are associated to terrorism which in the present globalized world a threat (or an attack) to the national security of one state (be it perpetrated by a domestic opposition force or by a global terrorist organization) has an inevitable seismic reaction in neighboring states.

It is therefore necessary that states harmonise their legislations in order to fight crime and terrorism together, to ensure peace and security throughout. There is a general consensus that the EAC Protocol on Peace and Security and the Mutual Peace and Security Pact is of benefit to Kenya and the region in light of the existing and emerging threats to peace and security.

Defense, security and foreign policy fall in the realm of the proposed political federation, whose end-game would be the transformation of the bloc into a single political territory. Such an entity is expected to have a unitary policy on defense, security and foreign affairs. Ratification of the Protocol and the Pact is therefore a step towards the realization of this as it involves harmonisation of legislations.

Africa and The EAC in Particular continues to face considerable challenges to peace and security. The AU's commitment to resolving these crises is a mixed bag of achievements, opportunities and gaps. It appears, however, that there is a new window of opportunity to address some of these challenges through the implementation of the EAC peace and Security Protocol. Above all, the political commitments and will of Partner states will remain the most important factor to drive the quest for peace in the region.

The implementation of the Pact and the Protocol will call for additional allocation of resources from partner states to adequately fund all the initiatives. Currently, most of the funding for projects within the region (and especially EAC) is funded by development partners. There is need to reverse the trend in order to ensure all activities are implemented in order to promote peace and stability within the region, or else the efforts will not be realized. The partner states should be prepared to adequately fund the projects, and be less reliant on development partners. The expectations from the Partner States will be higher because of the speed of integration and the depth to which the EAC needs to go to achieve its ultimate objective of a political federation.

The region has become much more unified; a region in which business and personal interactions are becoming a lot easier. Companies with operations in the EAC will, for instance, increasingly draw greater benefits from the efforts being made to facilitate smooth movement of people, capital and goods within the region's boundaries as well as large market for goods and services.

Corruption has severely weakened the security infrastructure thereby increasing vulnerability of the region to terrorism. Due to corruption, terror operatives are able to freely recruit the youngsters and radicalize them within the country; they are able to move across the region as the borders remain open as long as the border security agencies are bribed; and key government actors receive heavy pay-outs as fraction of the returns from the illegal businesses which support terror operations within the region. There is therefore need to address corruption and good governance within the region, an item the pact and the protocol are silent about. However, this will be addressed once the Protocol on Good Governance is ratified

It is the scenario in most countries/ regions where conflicts occur that they enjoy little or no presence of the government in power. Groupings emerge to fight against exclusion, marginalization from state affairs and related development. It is therefore imperative to address the problem of the marginalized communities to avoid conflicts and ensure stability in the region going forward.

6.0 COMMITTEE'S RECOMMENDATIONS

6.1 THE EAC PEACE AND SECURITY PROTOCOL

Having considered the protocol and examined the presentations from various government agencies, and pursuant to Section 8(4) of the Treaty Making and Ratification Act, the Committee recommends as follows:

- (1) The House ratifies the EAC Peace and Security protocol.
- (2) The Ministry of East African Affairs, Commerce & Tourism; the Ministry of Foreign Affairs & International Trade; the National Treasury, the Ministry of Interior and Coordination, Parliament and all the implementing agencies should aggressively sensitize the public on the provisions of the protocol. Consequently, the National Treasury and Parliament should allocate adequate resources to the implementing agencies to facilitate adequate public sensitization.
- (3) The Ministry of Interior and Coordination, the Attorney General and all other implementing agencies should expeditiously identify the legal reforms to be undertaken to facilitate proper and timely implementation of the Protocol.
- (4) All partner states should fully commit to implementing the first two pillars of integration (Customs union and the Common Market Protocol) as contained in the integration road map and all other protocols of the Community.

6.2 THE MUTUAL PEACE AND SECURITY PACT

Having considered the Pact and examined the presentations from various government agencies, and pursuant to Section 8(4) of the Treaty Making and Ratification Act, the Committee recommends as follows:

- (1) The House ratifies the Mutual Peace and Security Pact.

- (2) The Ministry of East African Affairs, Commerce & Tourism; the Ministry of Foreign Affairs & International Trade; the National Treasury, the Ministry of Interior and Coordination, Parliament and all the implementing agencies should aggressively sensitize the public on the provisions of the Pact in line with the tenets of people - centered integration process. Consequently, the National Treasury and Parliament should allocate adequate resources to the implementing agencies to facilitate adequate public sensitization.
- (3) The Ministry of Interior and Coordination, the Attorney General and all other implementing agencies should expeditiously identify the legal reforms to be undertaken to facilitate proper and timely implementation of the Pact.

ANNEXTURES

MINUTES OF THE 6TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 5TH MARCH, 2015 AT CONTINENTAL HOUSE, 2ND FLOOR, PARLIAMENT BUILDINGS AT 12.00 PM

Present:

- | | | |
|-----------------------------------|---|------------------|
| 1. Hon. Florence Kajuju, MP | - | Chairperson |
| 2. Hon. Christopher Nakuleu, MP | - | Vice-Chairperson |
| 3. Hon. David Ouma Ochieng', MP | | |
| 4. Hon. Mary Seneta, MP | | |
| 5. Hon. Peter Shehe, MP | | |
| 6. Hon. David Karithi, MP | | |
| 7. Hon. Robert Mbui, MP | | |
| 8. Hon. Andrew Toboso, MP | | |
| 9. Hon. Eric Keter, MP | | |
| 10. Hon. Ogendo Rose Nyamunga, MP | | |
| 11. Hon. Gideon Konchella, MP | | |
| 12. Hon. Timothy Bosire, MP | | |
| 13. Hon. Mark Lomunokol, MP | | |
| 14. Hon. Wanjiku Muhia, MP | | |

Absent With Apology

1. Hon. Dan Kazungu, MP
2. Hon. Bady Twalib Bady, MP
3. Hon. Sarah Korere, MP
4. Hon. Kathuri Murungi, MP
5. Hon. Dido Ali Rasso, MP
6. Hon. Emmanuel Wangwe, MP
7. Hon. Alois Lentoimaga, MP
8. Hon. Ali Wario, MP
9. Hon. Joseph Kahangara, MP
10. Hon. Florence Mutua, MP
11. Hon. Charles Nyamai, MP
12. Hon. Anthony Kimaru, MP
13. Hon. Annah Nyokabi, MP
14. Hon. Alex Mwiru, MP
15. Hon. Cyprian Kubai Iringo, MP

Absent

Hon. Charles Nyamai, MP

In Attendance

- 1. Mr. Evans Oanda - Clerk Assistant
- 2. Mr. Fredrick Otieno - Clerk Assistant
- 3. Ms. Lynette Otieno - Legal Counsel

MIN.NO. CRI/019/2015 PRELIMINARIES

The Chairperson called the meeting to order at 12.15 p.m and prayed. She then welcomed all Members to the meeting.

MIN.NO.CRI/020/2015 CONSIDERATION OF THE EAC PEACE AND SECURITY PROTOCOL AND MUTUAL PACT ON PEACE AND SECURITY

The Committee considered the brief by the Legal Counsel on the EAC Peace and Security Protocol and Mutual Peace and Security Pact. The brief included a summary of the provisions of the Protocol and the Pact and the compliance of the same with the Treaty Making and Ratification Act. The Protocol and the Pact as submitted to the National Assembly is in compliance with the section 8 of the Act as it is accompanied by a Cabinet Memorandum. The Cabinet Memorandum further complies with section 7 of the Act.

The Committee noted the following issues that needed clarification from the Cabinet Secretaries for who were scheduled to brief the Committee. This included-

- (a) the budgetary implications of the Protocol and Pact;
- (b) the effect, benefits and disadvantage of the single tourist visa; and
- (c) the boundary issues raised by the provisions of the Protocol and Pact.

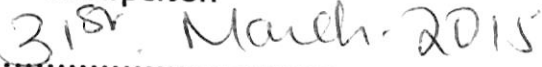
The Committee further resolved to invite the Attorney General to give a brief on the Protocol and the Pact.

MIN.NO.CRI/021/2015 ADJOURNMENT

The Chairperson adjourned the meeting at 1.20 p.m.

Signed.....

Chairperson

Date.....

MINUTES OF THE 7TH SITTING OF THE COMMITTEE ON REGIONAL INTEGRATION
HELD ON THURSDAY 12TH MARCH, 2015 AT CONTINENTAL HOUSE, COMMITTEE
ROOM, 5TH FLOOR, PARLIAMENT BUILDINGS AT 12.00 PM

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. Dido Ali Rasso, MP
4. Hon. Emmanuel Wangwe, MP
5. Hon. Kathuri Murungi, MP
6. Hon. Robert Mbui, MP
7. Hon. Eric Keter, MP
8. Hon. Timothy Bosire, MP
9. Hon. Mark Lomunokol, MP

Absent With Apology

1. Hon. Dan Kazungu, MP
2. Hon. Bady Twalib Bady, MP
3. Hon. Sarah Korere, MP
4. Hon. Wanjiku Muhia, MP
5. Hon. Alois Lentoimaga, MP
6. Hon. Ali Wario, MP
7. Hon. Joseph Kahangara, MP
8. Hon. Florence Mutua, MP
9. Hon. Anthony Kimaru, MP
10. Hon. Annah Nyokabi, MP
11. Hon. Alex Mwiru, MP
12. Hon. Cyprian Kubai Iringo, MP
13. Hon. David Ouma Ochieng', MP
14. Hon. Mary Seneta, MP
15. Hon. Peter Shehe, MP
16. Hon. David Karithi, MP
17. Hon. Andrew Toboso, MP
18. Hon. Ogendo Rose Nyamunga, MP
19. Hon. Gideon Konchella, MP

Absent Without Apology

1. Hon. Charles Nyamai, MP

IN ATTENDANCE

Ministry of Interior & Coordination of National Government

1. Amb. (Dr.) Monica Juma - Principal Secretary
2. Mr. Joseph W. Irungu - Secretary
3. Mr. Eddyson H. Nyale - Under Secretary
4. Ms. Mary Njenga - Assistant Secretary

Kenya National Assembly

1. Mr. Evans Oanda - Clerk Assistant
2. Mr. Fredrick Otieno - Clerk Assistant
3. Ms. Sharon Cheron - Research Officer

MIN.NO. CRI/022/2015

PRELIMINARIES

The Chairperson called the meeting to order at 12.45 p.m and prayed. She then welcomed everyone and asked for self-introduction.

MIN.NO. CRI/023/2015

CONSIDERATION OF THE PEACE AND SECURITY PROTOCOL AND MUTUAL PACT ON PEACE AND SECURITY

Presentation by the Ministry of Interior & Coordination of National Government

Amb. (Dr.) Monica Juma, Principal Secretary Ministry of Interior & Coordination of National Government appeared before the Committee and briefed the Committee Members on the Pact and Protocol as follows, that:

EAC Protocol on Peace and Security

1. The Protocol was established in line with Article 151 of the EAC Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Articles 5(3)(f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the Community.
2. The Protocol was approved by the EAC Summit of Heads of State at its 14th Ordinary Meeting in Nairobi on 30th November, 2012 and was later signed by the Council of Ministers at the 5th Meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination held in Dar es Salaam, Tanzania on 16th February 2013. The EAC Council further directed that all Partner States endeavor to ratify the Protocol by 15th February, 2014.
3. The Protocol has 21 Articles.

4. Article 15 of the Protocol provides that the EAC Council of Ministers determine the institutional arrangement for the implementation of the Protocol. In Kenya, the Government agencies mandated to handle the specific thematic areas on the Protocol oversee the implementation of the protocol under the supervision of the Ministry of East African Affairs, Commerce and Tourism.
5. To realize the objectives of the Protocol, the following have to be considered:
 - i. Harmonization of policies and strategies on peace and security
 - ii. A common regional training, standards and curricula for officers cooperating in the relevant sectors
 - iii. Regional centers/institutions of excellence to promote common standards and best practices.
6. Kenya has not ratified the EAC Protocol on Peace and Security and the delay is due to the Constitutional requirement of intense public participation as required by the Treaty Making and Ratification Act No. 45 of 2012.
7. Uganda, Rwanda and Tanzania have ratified while Burundi and Kenya are yet to do so.

The Mutual Peace and Security Pact

1. The Pact was established under the Security Cooperation which the Heads of States signed on 20th February, 2014 in Kampala, Uganda.
2. The Pact was established under the Peace and Security Cluster of the Northern Corridor Integration Projects that transformed from the "Tripartite/ Coalition of the Willing"
3. The Partner States referred to in the Pact are Kenya, Uganda and Rwanda. The Republic of South Sudan will accede the Pact after all Partner States have ratified it.
4. It is envisaged that implementation of the Pact will fast track the achievements expected of the EAC Protocol on Peace and Security.
5. The pact is divided into 14 articles.
6. The Pact resolves to unite Partner States' efforts towards collective peace and security; and, will create a framework that encourages cooperation and consultations on issues pertaining to peace and security of the Partner States.
7. The 9th Heads of State Summit on the Northern Corridor Integration Projects held on 7th March 2015 in Kigali, Rwanda urged Kenya to expedite ratification of the Pact.
8. The Pact has already received Cabinet Approval and was submitted to the Parliament vide a letter Ref. No. OP.PA/58/4A of 12th February, 2015.
9. Rwanda and Uganda have ratified the Pact; Kenya is yet to finalize the ratification process.

10. The implementation framework of the Pact is comprised of the following organs:

- i. The Summit
- ii. Committee of Ministers
- iii. Coordination Committee
- iv. Committee of Chiefs of various Security Services/Agencies

11. In Kenya, the implementation of the Pact is coordinated by the Ministry of Foreign Affairs and International Trade under which the office of the National Coordinator was established. The Kenya National Coordinator is Hon. Joe Nyaga, MGH.

While Concluding, the PS informed the Committee that:

- i. The Partner States have developed the matrix of implementation of the Peace and Security Pact and the Republic of Kenya is on course with the implementation of the activities.
- ii. As part of the requirements of the Ratification and Treaty Making Act no.45 of 2012, this Pact has been subjected to stakeholders participation.
- iii. Once ratified by Parliament, the Ministry of Foreign Affairs and International Trade will write the instruments of ratification to be shared among Partner States and deposited with UN, AU and EAC Secretary General.

MIN.NO. CRI/024/2015

MEMBERS CONCERNS

Having considered the presentations by the Ministry, Members raised the following concerns:

1. The issues contained in the EAC Protocol on Peace and Security and the Mutual Peace and Security Pact are cross cutting and needed to be dealt with by various Committees of the Parliament. Therefore the document should have also been presented to the relevant departmental committees for consideration.
2. Due to warring problems in South Sudan, Southern Sudan should not have taken part in the process of the Protocol development. Therefore Southern Sudan should re-linguish its observer status pending accession into the EAC.
3. It was noted that Kenya has delayed to ratify the protocol due to Constitutional requirement of public participation. However it was noted with concern that Parliament was not involved in the exercise.
4. Going forward, it will be important for Partner States to adequately finance the EAC programmes to avoid dependence on donations.

MIN.NO. CRI/025/2015

ADJOURNMENT

The Chairperson adjourned the meeting at 2.05p.m.

Signed.....


Chairperson

Date.....
2nd April 2015

MINUTES OF THE 8TH SITTING OF THE COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 17TH MARCH, 2015 IN THE COMMITTEE ROOM, 4TH FLOOR, PROTECTION HOUSE AT 12:00PM.

Present:

1. Hon. Andrew Toboso, MP - Chairing
2. Hon. David Ouma Ochieng', MP
3. Hon. Emmanuel Wangwe, MP
4. Hon. Robert Mbui, MP
5. Hon. Kubai Iringo, MP
6. Hon. Dan Kazungu, MP
7. Hon. Mark Lomunokol, MP
8. Hon. Peter Shehe, MP
9. Hon. David Karithi, MP
10. Hon. Eric Keter, MP
11. Hon. Kathuri Murungi, MP
12. Hon. Wanjiku Muhia, MP
13. Hon. Mary Seneta, MP

Absent With Apology

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. Joseph Kahangara, MP
4. Hon. Alex Mwiru, MP
5. Hon. Gideon Konchella, MP
6. Hon. Anthony Kimaru, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Bady Twalib Bady, MP
9. Hon. Florence Mutua, MP
10. Hon. Annah Nyokabi, MP
11. Hon. Ali Wario, MP
12. Hon. Alois Lentoimaga, MP
13. Hon. Timothy Bosire, MP
14. Hon. Dido Ali Rasso, MP
15. Hon. Sarah Korere, MP

Absent

Hon. Charles Nyamai, MP

INATTENDANCE

Kenya National Assembly

1. Mr. Nicodemus Maluki - Third Clerk Assistant
2. Ms. Sharon Cheronu - Research Officer

3. Ms. Emma Esendi - Legal Counsel

OFFICE OF ATTORNEY GENERAL & DEPARTMENT OF JUSTICES

1. Ms, Dorcas Achapa - Deputy Solicitor General
2. Mr. Allan Githaiga - Senior State counsel
3. Mr. Martin Macharia - State Counsel

MIN.NO. CRI/24/2015 PRELIMINARIES

The Hon. Andrew Toboso, MP and a Member designated to chair the meeting in the absence of the Committee leadership (Standing Order 188)) called the meeting to order at 12: 10 pm followed by a word of prayer from Hon. David Ouma Ochieng', MP

MIN.NO. CRI/25 /2015 PRESENTATION BY ATTORNEY GENERAL'S OFFICE ON T ; CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT

The Deputy Solicitor General, Ms. Dorcas Achapa, appeared before the Committee and informed it as follows regarding the Pact:

1.0 BACKGROUND

The Mutual Peace and Security Pact was prepared pursuant to the directives of the Heads of State in the Tripartite Summits held in Entebbe, Kenya and Rwanda in June, August and September 2013 respectively. The Pact was signed by the Summit on **20th February 2014** under the umbrella of the Northern Corridor Integration Projects and Partner States were requested to commence ratification in accordance with their respective Constitutional processes.

2.0 OBJECTIVE AND PURPOSE

The objective of the Pact is to establish a framework for combating crimes to contribute towards collective peace and security among Partner States. The Pact obligates Partner States to safeguard against breakdown of law and order, coordinate and co-operate in matters related to peace and security, enhance the capacity of Partnet States to combact piracy and terrorism and peacefully resolve conflicts and disputes among and within the Partner States.

3.0 STRUCTURE OF THE PACT

Preamble- it provides background information and notes that the pact will *supplement efforts achieved at the EAC Regional level*. (It is to be noted that EAC Partner States have concluded a Protocol on Peace and Security)

Article 1- Interpretation Section- it provides definitions and interpretations of the terms as used in the Pact

Article 2- Objectives- the section defines the broad objective as establishing a framework for collectively combating peace and security. The specific objectives have also been listed. These include

among others, coordinating and co-operating in matters relating to peace and security, peacefully resolving conflicts within Partner States, enhancing the capacity of Partner States with respect to disaster management and co-operation in exchange of prisoners and rehabilitation of offenders.

Article 3- Areas of Co-operation- the areas of co-operation have been informed by the objectives. These are broad and include all matters relating to peace and security. They range from conflict prevention, peace support, disaster management, suppressing piracy, combating piracy, terrorism and preventing genocide, etc. It may be noteworthy that the pact has incorporated the prevention of genocide as one of the areas of co-operation.

Article 4- Exchange of Information and experience - It proposes that relevant organs shall regularly exchange information and coordinate operations in the field of combating crimes. In order to achieve this, Partner States are required to also co-operate in relevant trainings in criminal intelligence, forensics, human trafficking and counter terrorism.

Article 5- Free Movement of People - The Article notes that the free movement of people using IDs, Voters cards and student IDs may pose security challenges. Due to this concern, Partner States are required to establish a mechanism for issuing student identification documents and harmonise visa regulations to guide issuance of single tourist visa.

Article 6 - Funding- Obligates Partner States to adequately finance activities relating to the implementation of the pact.

Article 7- Confidentiality of Information- Provides that Partner States will not disclose classified information obtained other than for purposes related to the implementation of the pact.

Articles 8, 9 10,11 and 12 are standard clauses on Accession, Settlement of disputes, Withdrawal of a Member, Amendment and Review of the Pact

Article 13 - Breach of the Pact - Breaches of the Pact may be reported to the Summit which shall instruct that investigations be carried out and a report thereon be submitted.

Article 14- Implementation- The Article provides for other National Security Services e.g Immigration and Intelligence Services to develop policies and structures necessary for the implementation of the Pact.

Article 15- Entry into Force- Provides that it shall enter into force upon ratification and six months after the date of signature by Partner States.

4.0 PROGRESS IN IMPLEMENTATION

The **Republic of Rwanda** and **Uganda** have already ratified the Pact. It is therefore imperative that Kenya expedites the ratification of the Protocol taking into account that the Summit had anticipated that the Protocol would be ratified within six months from the date of signature in 20th February 2014.

It may also be noted that the Peace and Security Cluster for the Northern Corridor Integration Projects has already begun to undertake preparatory work for the implementation of the Pact. During the period 26th – 30th May 2014, Peace and Security Experts, Chiefs of Defence and Ministers responsible for

Security also convened in Rwanda to develop an Implementation Framework Matrix. This was approved by the 6th Summit held on 3rd July 2014.

Further, in a meeting held on 6th February 2015 in Juba, Ministers drawn from the Peace and Security Cluster made recommendations relating to co-operation in terrorism, combating proliferation of small arms, conducting peace support operations, genocide prevention and combating transnational crimes.

In this regard, it may be observed that the initial stages of implementing the pact have commenced. In order to avoid a legal gap, it is imperative that Kenya expedites ratification of the Pact.

5.0 LEGAL CONSIDERATIONS

5.1 Amendment of the Constitution

The Pact does not envisage amendments to the Constitution

5.2 Harmonization of Laws

In order to realize the objectives of the Pact, harmonization of national legislations has been identified. To this extent, the implementation of the Pact may necessitate harmonisation of relevant legislations on a need basis.

For instance, in the Peace and Security Cluster Meeting held in Juba, the following recommendations that may lead be inclined to harmonisation of laws were made;

- **Prevention of Genocide-** workshop be convened to review existing legal framework and develop mechanisms of genocide prevention.
- **Control of Small Arms-** a workshop on harmonisation of laws governing management of firearms, explosives and their accessories be convened.
- **Combating economic crimes-** workshop to harmonise policies, laws and strategies on economic crimes be convened.
- **Combating and suppressing piracy-** Partner States were urged to develop relevant legal frameworks to suppress and combat piracy.

5.3 Development of Co-operation Agreements

In addition to the harmonization of laws, some co-operation areas would require implementation through Agreements. The above referenced meeting of the Peace and Security Cluster identified combating Terrorism and Management of Prisons and exchange of prisoners, detention, custody and rehabilitation of offenders as some of the areas where there may be need to develop Co-operation Agreements.

6.0 Implications on Matters relating to Counties

The areas of co-operation covered by the Pact are within the competence of the functions of the National Government. However, the National Government has a duty to coordinate with the County Governments as and when necessary.

7.0 Stakeholder Consultations

The Treaty Making and Ratification Act requires that the views of stakeholders be sought. The Ministry of Interior and Coordination of National Government invited the view of the public through electronic and print media publications on 10th and 11th July 2014. A public forum was also convened at Utalii on 15th July 2014. To this extent, it can be submitted that the threshold of public participation has been achieved.

8. Way Forward

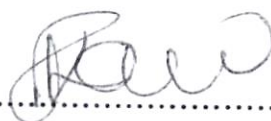
From the foregoing, inception work towards implementation of the Protocol is ongoing. The Parliamentary Committee is therefore urged to positively consider the Pact with a view of approving its recommendation.

MIN. NO. CRI/26/2015 COMMITTEES OBSERVATIONS

- i) The areas of co-operation covered by the Pact are within the competence of the functions of the National Government hence involvement of county governments is not necessary.
- ii) The regional challenges within the partner states should be addressed and harmonized first.
- iii) Though the pact has addressed most of the crimes, emerging crimes driven by technological growth within the States have not been considered exhaustively.
- iv) Stakeholder consultation had not been done effectively hence the need to involve the public in harmonizing the laws
- v) It was resolved that the Attorney Generals Office would sent amended pact as agreed with Committee later in the day.

MIN.NO.CRI/27/2015: ADJOURNMENT.

The Ag. Chairperson adjourned the meeting at 1.30 pm.

Signed.....


Chairperson

Date.....
2nd. April, 2015

MINUTES OF THE 9TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 19TH, MARCH 2015 IN THE COMMITTEE ROOM, 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE AT 12:00PM.

Present:

1. Hon. Florence Kajuju, MP (**Chairperson**)
2. Hon. Andrew Toboso, MP
3. Hon. David Ouma Ochieng', MP
4. Hon. Robert Mbui, MP
5. Hon. Kubai Iringo, MP
6. Hon. Dan Kazungu, MP
7. Hon. Mark Lomunokol, MP
8. Hon. Peter Shehe, MP
9. Hon. David Karithi, MP
10. Hon. Eric Keter, MP
11. Hon. Wanjiku Muhia, MP
12. Hon. Mary Seneta, MP
13. Hon. Timothy Bosire, MP
14. Hon. Ali Wario, MP
15. Hon. Joseph Kahangara, MP

Absent With Apology

1. Hon. Christopher Nakuleu, MP(**Vice-Chairperson**)
2. Hon. Alex Mwiru, MP
3. Hon. Gideon Konchella, MP
4. Hon. Anthony Kimaru, MP
5. Hon. Kathuri Murungi, MP
6. Hon. Ogendo Rose Nyamunga, MP
7. Hon. Bady Twalib Bady, MP
8. Hon. Florence Mutua, MP
9. Hon. Emmanuel Wangwe, MP
10. Hon. Annah Nyokabi, MP
11. Hon. Alois Lentoimaga, MP
12. Hon. Dido Ali Rasso, MP
13. Hon. Sarah Korere, MP

Absent

Hon. Charles Nyamai, MP

INATTENDANCE

1. Mr. Nicodemus Maluki - Third Clerk Assistant
2. Ms. Sharon Cherono - Research Officer

MIN.NO. CRI/30/2015 PRELIMINARIES

The Chairperson called the meeting to order at 12: 25 pm followed by a word of prayer from Ms. Sharon Cherono.

MIN.NO. CRI/31/2015 CONFIRMATION OF MINUTES

The minutes of the previous meetings were confirmed as follows:

1. Minutes of the 1st sitting held on 10th February ,2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Robert Mbui, MP, and seconded by the Hon. Timothy Bosire, MP
2. Minutes of the 2nd sitting held on 17th February ,2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Robert Mbui, MP, and seconded by the Hon. Timothy Bosire, MP
3. Minutes of the 3rd sitting held on 24th February ,2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Seneta, MP and seconded by the Hon. Wanjiku Muhia, MP
4. Minutes of the 4th sitting held on 26th February ,2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Mark Lomunokol, MP
5. Minutes of the 5th sitting held on 3rd March ,2015 were confirmed as a true record of the proceedings after being proposed by Hon. Mark Lomunokol, MP the and seconded by the Hon. Robert Mbui, MP

MIN.NO.CRI/32/2015: MATTERS ARISING

1. Under Min. No.CRI/003/2015 regarding Tourism stand-off between Kenya and Tanzania and the Implementation status of EPAs, the Committee deliberated it and undertook to discuss it further when it finishes its report on the Pact.
2. In the 4th, 5th and 6th Sitting the Hon. Wanjiku Muhia, MP submitted that she had been erroneously recorded absent with apologies instead of present. The secretariat was requested to countercheck and report back to the Committee.

MIN.NO.CRI/33/2015: CONSIDERATION OF CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT & EAST AFRICAN COMMUNITY PROTOCOL ON PEACE AND SECURITY.

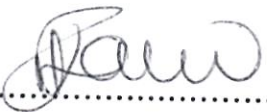
Under this agenda item the Chairperson informed the Committee that though the Committee was scheduled to meet with the Ministry of the East African Affairs, Commerce and Tourism the Cabinet Secretary had written to the Committee informing it that it was the Ministry of Foreign Affairs and International Trade that was coordinating the Northern Corridor Integration Projects and the Ministry of

Interior and Coordination of National Government was the lead Ministry spearheading the Peace and Security Pact and the formulation of the Cabinet Memorandum. Therefore the information provided by the Ministry of Interior and Coordination of National Government will suffice.

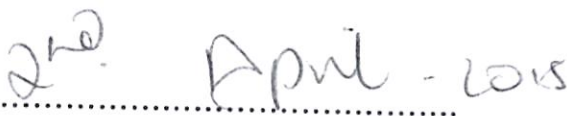
The Committee concurred with the explanation.

MIN.NO.CRI/34/2015: ADJOURNMENT.

The Chairperson adjourned the meeting at 1.30 pm.

Signed.....

Chairperson

Date.....

- xv. 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
- xvi. Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

MIN.NO.CRI/038/2015: MEMBERS OBSERVATION

It was observed that the EAC Protocol on Peace and Security was signed by all the five partner states unlike the Peace and Security Pact that was signed by only three states; Uganda, Kenya and Rwanda. The signing of the Pact was on the coalition of the willing. And again other Partner States might have not signed the Pact due to mistrust and political differences among other factors.

MIN.NO.CRI/038/2015: ANY OTHER BUSINESS

Under this agenda item, the Chairperson urged Members who had not confirmed their preferred travelling dates and time to Mombasa for the Joint retreat with EALA Members (K) Cap to do the same with the Secretariat.

MIN.NO.CRI/039/2015: ADJOURNMENT.

The Chairperson adjourned the meeting at 1.20 pm.

Signed.....

Chairperson

Date.....

20. Article 20 provides for entry into force of the Protocol upon the ratification and deposit of instruments of ratification with the Secretary General by all Partner States.

21. Article 21 provides for the depository and registration of the Protocol by the secretary General.

The Protocol on Peace and Security as submitted to the National Assembly was in compliance with the section 8 of the Treaty Making and Ratification Act as it is accompanied by a Cabinet Memorandum. The Cabinet Memorandum further complied with section 7 of the Act, which provides that where the 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—

- i. the objects and subject matter of the treaty;
- ii. any constitutional implications including—
 - a) any proposed amendment to the Constitution; and
 - b) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- iii. the national interests which may be affected by the ratification of the treaty;
- iv. obligations imposed on Kenya by the treaty;
- v. requirements for implementation of the treaty;
- vi. policy and legislative considerations;
- vii. financial implications;
- viii. ministerial responsibility;
- ix. implications on matters relating to counties;
- x. the summary of the process leading to the adoption of the treaty;
- xi. the date of signature;
- xii. the number of states that are party to the treaty;
- xiii. the views of the public on the ratification of the treaty;
- xiv. whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;

6. Article 6 provides for the cooperation in counter terrorism measures within the Community.
7. Article 7 provides for cooperation in combating piracy in the Community
8. Article 8 provides that Partner States shall formulate a joint mechanism for the operationalization of peace support operations within the context of the Charter of the UN, AU and the EAC treaty.
9. Article 9 provides for the development of mechanisms to provide mutual assistance in disaster management and crisis response.
10. Article 10 provides for the establishment of common mechanisms for the management of refugees.
11. Article 11 provides that Partner States shall undertake to jointly develop policies, measures, mechanisms, strategies and programmes, to control the proliferation of illicit small arms and light weapons.
12. Article 12 provides for joint operations in controlling and preventing transnational and cross-border crimes.
13. Article 13 provides for the development and adoption of policies, laws and strategies to prevent and combat cattle rustling.
14. Article 14 provides for cooperation in the exchange, detention, custody and rehabilitation of prisoners and offenders among Partner States.
15. Article 15 provides that the Council shall determine the institutional arrangements for the implementation of the Protocol.
16. Article 16 provides for the cooperation of Partner states with regional and international organizations whose activities have a bearing on the objectives of the Protocol.
17. Article 17 provides for confidentiality of information obtained in the implementation of this Protocol and that Partner States shall not use any classified information obtained during any multilateral cooperation among them to the detriment of the interest of any Partner State.
18. Article 18 provides that any dispute arising out of interpretation or application of the Protocol shall be settled in accordance with the provisions of the EAC Treaty.
19. Article 19 provides that amendment of the Protocol to be in accordance with Article 150 of the Treaty.

serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
- disrupt any public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State;

(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) and (ii);

vi. Transnational Crimes which are crimes committed across the border of Partner states which do not share a common border;

2. Article 2 provides for the scope of operation. It further provides for the areas in which inter-agencies of Partner States shall cooperate which include: conflict prevention, management and resolution, prevention of genocide, combating terrorism, combating and suppressing piracy, peace support operations, disaster risk reduction, management and crisis response; management of refugees; control of proliferation of illicit small arms and light weapons; combating transnational and cross border crimes; including drug and human trafficking, illegal migration, money laundering, cyber-crime and motor vehicle theft; addressing and combating cattle rustling; prisons and correctional services including exchange of prisoners, detention, custody and rehabilitation of offenders.
3. Article 3 provides for the objective of the Protocol which is to promote peace, security and stability within the Community and good neighbourliness among the Partner States.
4. Article 4 provides that Partner States shall develop an East African Community conflict prevention, management and resolution mechanism. It provides for resolution of disputes or conflicts by peaceful means and that in consultation with the United Nations Security Council and Peace Security Council of the Au the EAC may offer to mediate in disputes between two or more Partner States.
5. Article 5 provides for prevention of genocide and that Partner states shall develop joint mechanisms for the prevention of genocide.

2. Ms. Emma Esendi - Legal Counsel

MIN.NO. CRI/036/2015 PRELIMINARIES

The Chairperson called the meeting to order at 12: 30 pm followed by a word of prayer from Hon. Kathuri Murungi, MP. She then informed Members that Hon. Ali Wario, MP has been hospitalized in Nairobi Hospital.

MIN.NO.CRI/037/2015: CONSIDERATION OF CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT & EAST AFRICAN COMMUNITY PROTOCOL ON PEACE AND SECURITY

The legal Counsel to the Committee Ms. Emma Esendi, briefed the Committee Members on the EAC Protocol on Peace and Security as follows:-

1. Article 1 is the interpretive article of the Protocol and the most important definitions to point out are-
 - i. Counter-terrorism means practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations of Partner States adopt in response to terrorist threats or acts, both real and imputed;
 - ii. Cross border crime which means a crime committed across Partner state which share common border;
 - iii. Early warning means the process of collecting, verifying and analyzing information for purpose of identifying threats to peace and security;
 - iv. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group as such:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to the members of the group;
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) imposing measures intended to prevent births within the group;
 - (e) forcibly transferring children of the group to another group;
 - v. Terrorism means
 - (a) any act which is a violation of the criminal laws of a Partner State and which may endanger the life, physical integrity or freedom of, or cause

MINUTES OF THE 10TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 24TH MARCH, 2015 IN BOARD ROOM, 4TH FLOOR PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 12:00PM.

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. Andrew Toboso, MP
4. Hon. Timothy Bosire, MP
5. Hon. Annah Nyokabi, MP
6. Hon. Alois Lentoimaga, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Robert Mbui, MP
9. Hon. Kubai Iringo, MP
10. Hon. Kathuri Murungi, MP
11. Hon. Dido Ali Rasso, MP
12. Hon. Dan Kazungu, MP
13. Hon. David Karithi, MP
14. Hon. Wanjiku Muhia, MP
15. Hon. Joseph Kahangara, MP
16. Hon. Bady Twalib Bady

Absent With Apology

1. Hon. Alex Mwiru, MP
2. Hon. Gideon Konchella, MP
3. Hon. Anthony Kimaru, MP
4. Hon. Florence Mutua, MP
5. Hon. Emmanuel Wangwe, MP
6. Hon. Sarah Korere, MP
7. Hon. Ali Wario, MP
8. Hon. Mark Lomunokol, MP
9. Hon. Peter Shehe, MP
10. Hon. David Ouma Ochieng', MP
11. Hon. Eric Keter, MP
12. Hon. Mary Seneta, MP

Absent

Hon. Charles Nyamai, MP

INATTENDANCE

1. Mr. Fredrick Otieno - Third Clerk Assistant

MINUTES OF THE 11TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION
HELD ON THURSDAY 26TH MARCH, 2015 IN THE BOARD ROOM, 2ND FLOOR
PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 12:00PM.

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. Andrew Toboso, MP
4. Hon. Timothy Bosire, MP
5. Hon. Robert Mbui, MP
6. Hon. Kubai Iringo, MP
7. Hon. Kathuri Murungi, MP
8. Hon. Dido Ali Rasso, MP
9. Hon. Dan Kazungu, MP
10. Hon. David Karithi, MP
11. Hon. David Ouma Ochieng', MP
12. Hon. Eric Keter, MP
13. Hon. Wanjiku Muhia, MP
14. Hon. Joseph Kahangara, MP
15. Hon. Bady Twalib Bady
16. Hon. Gideon Konchella, MP
17. Hon. Anthony Kimaru, MP
18. Hon. Mark Lomunokol, MP

Absent With Apology

1. Hon. Alex Mwiru, MP
2. Hon. Florence Mutua, MP
3. Hon. Annah Nyokabi, MP
4. Hon. Alois Lentoimaga, MP
5. Hon. Ogendo Rose Nyamunga, MP
6. Hon. Emmanuel Wangwe, MP
7. Hon. Sarah Korere, MP
8. Hon. Ali Wario, MP
9. Hon. Peter Shehe, MP
10. Hon. Mary Seneta, MP

Absent

Hon. Charles Nyamai, MP

INATTENDANCE

1. Mr. Fredrick Otieno - Third Clerk Assistant

- | | | |
|-------------------------|---|-----------------------|
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Ms. Sharon Cheronu | - | Research Officer |
| 4. Ms. Emma Esendi | - | Legal Counsel |

MIN.NO. CRI/040/2015 PRELIMINARIES

The Chairperson called the meeting to order at 12: 40 pm and prayed.

MIN.NO.CRI/041/2015: CONSIDERATION OF CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT & EAST AFRICAN COMMUNITY PROTOCOL ON PEACE AND SECURITY

Under this agenda, the Chairperson informed the Members that there was a communication from the clerk's office that the Ministry of Foreign Affairs and International Trade had written a letter requesting for standing apology from 17th March, 2015 to 2nd April, 2015 not to attend any meeting in Parliament due to exigencies of duty elsewhere.

While deliberating on the matter, Members noted that the line Ministry responsible for the Protocol was the Ministry of Interior and Coordination of National Government. Therefore the information that they presented together with that from Attorney General's Office could be sufficient to do a report.

The Committee finally resolved to meet and consider its draft report in its next meeting scheduled for Tuesday 31st March, 2015.

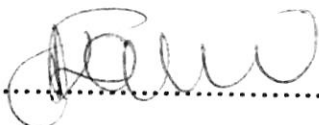
MIN.NO.CRI/042/2015: ANY OTHER BUSINESS

1. Members were reminded to confirm their preferred travelling dates and time to Mombasa for the Joint retreat with EALA Members (K) Cap for the list to be forwarded to the organisers for arrangements.
2. Members noted with concern of the inadequate Committee rooms in Parliament thus affecting the work of the Committee. It was resolved that the Chairperson consults the Clerk with a view to getting a lasting solution.

MIN.NO.CRI/043/2015: ADJOURNMENT.

The Chairperson adjourned the meeting at 1.30 pm.

Signed.....



Chairperson

Date.....

2nd April 2015

MINUTES OF THE 12TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 31ST MARCH, 2015 IN THE BOARD ROOM, 9TH FLOOR, HARAMBEE PLAZA, PARLIAMENT BUILDINGS AT 10:00AM.

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. Andrew Toboso, MP
4. Hon. Timothy Bosire, MP
5. Hon. Robert Mbui, MP
6. Hon. Kubai Iringo, MP
7. Hon. Kathuri Murungi, MP
8. Hon. Dido Ali Rasso, MP
9. Hon. Florence Mutua, MP
10. Hon. Alois Lentoimaga, MP
11. Hon. Ogendo Rose Nyamunga, MP
12. Hon. Emmanuel Wangwe, MP
13. Hon. David Karithi, MP
14. Hon. David Ouma Ochieng', MP
15. Hon. Wanjiku Muhia, MP
16. Hon. Ali Wario, MP
17. Hon. Peter Shehe, MP
18. Hon. Mark Lomunokol, MP

Absent With Apology

1. Hon. Alex Mwiru, MP
2. Hon. Annah Nyokabi, MP
3. Hon. Sarah Korere, MP
4. Hon. Mary Seneta, MP
5. Hon. Dan Kazungu, MP
6. Hon. Eric Keter, MP
7. Hon. Joseph Kahangara, MP
8. Hon. Bady Twalib Bady
9. Hon. Gideon Konchella, MP
10. Hon. Anthony Kimaru, MP

Absent

Hon. Charles Nyamai, MP

Inattendance

1. Mr. Fredrick Otieno - Third Clerk Assistant
2. Ms. Sharon Cheronu - Research Officer
3. Ms. Emma Esendi - Legal Counsel

MIN.NO. CRI/044/2015 PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am and prayed.

MIN.NO.CRI/045/2015: CONSIDERATION OF THE DRAFT REPORT ON CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT & EAST AFRICAN COMMUNITY PROTOCOL ON PEACE AND SECURITY

The Chairperson asked Ms. Sharon Cheron, Research Officer to take the Committee Members through the draft report.

While considering the draft report, the Members recommended that the differences between the Pact and the Protocol should clearly come out in the report and the legal implication of the reservation.

The issue of South Sudan being an observer was also raised with lots of concerns on the state of security in South Sudan. The Committee felt that despite the warring faction in the Country, its observant position should be accepted but more emphasis to be put on the means of resolving internal disputes before admission to become a member state. Also the EAC should put more efforts to ensure there is peace and stability in South Sudan.

The Committee was also concerned with the public participation as stipulated in Article 118(1) (b) of the Constitution and the Ratification and Treaty Making Act No. 45 of 2012 and felt that the concerned Ministries failed to carry out extensive Public Participation and did not involve the Committee.

MIN.NO.CRI/046/2015: CONFIRMATION OF MINUTES

Minutes of the 6th sitting held on 5th March, 2015 were confirmed as a true record of the proceedings after being proposed by the Hon. Robert Mbui, MP, and seconded by the Hon. Andrew Toboso, MP

MIN.NO.CRI/047/2015: ANY OTHER BUSINESS

The Chairperson informed the Members on the letter from the Ministry of Foreign Affairs and International Trade on benchmarking visit to Uruguay and asked Members that it will be discussed during the next meeting.

MIN.NO.CRI/048/2015: DATE OF NEXT MEETING AND ADJOURNMENT.

The Chairperson informed Members that the date of the next meeting will be on Thursday 2nd April, 2015. She then adjourned the meeting at 12.35 pm.

Signed..........Date.....

Chairperson

· MINUTES OF THE 15TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 21ST APRIL, 2015 IN THE MEDIA CENTRE, PARLIAMENT BUILDINGS AT 12:00PM.

Present:

1. Hon. Florence Kajuju, MP - Chairperson
2. Hon. Christopher Nakuleu, MP - Vice-Chairperson
3. Hon. David Ouma Ochieng', MP
4. Hon. Alois Lentoimaga, MP
5. Hon. Robert Mbui, MP
6. Hon. Emmanuel Wangwe, MP
7. Hon. Sarah Korere, MP
8. Hon. Peter Shehe, MP
9. Hon. Joseph Kahangara, MP
10. Hon. Andrew Toboso, MP
11. Hon. Timothy Bosire, MP
12. Hon. Kubai Iringo, MP
13. Hon. Kathuri Murungi, MP
14. Hon. David Karithi, MP
15. Hon. Mary Seneta, MP
16. Hon. Dan Kazungu, MP
17. Hon. Dido Ali Rasso, MP
18. Hon. Florence Mutua, MP

Absent With Apology

1. Hon. Alex Mwiru, MP
2. Hon. Annah Nyokabi, MP
3. Hon. Wanjiku Muhia, MP
4. Hon. Bady Twalib Bady
5. Hon. Ali Wario, MP
6. Hon. Gideon Konchella, MP
7. Hon. Anthony Kimaru, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Eric Keter, MP
10. Hon. Mark Lomunokol, MP

Absent

Hon. Charles Nyamai, MP

In attendance

- 1. Mr. Nicodemus Maluki - Third Clerk Assistant
- 2. Ms. Sharon Rotino - Research Officer

MIN.NO. CRI/058/2015 PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm and prayed.

MIN.NO.CRI/059/2015: ADOPTION OF THE REPORT ON CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT & EAST AFRICAN COMMUNITY PROTOCOL ON PEACE AND SECURITY

The Committee considered the report and adopted it unanimously.

MIN.NO. CRI/060/2015 ADJOURNMENT

The Chairperson adjourned the meeting at 1.50 p.m.

Signed.....

Chairperson

Date.....

**MEETING OF THE PARLIAMENTARY COMMITTEE ON
REGIONAL INTEGRATION ON ADOPTION AND RATIFICATION
OF THE MUTUAL PEACE AND SECURITY PACT**

PRESENTED BY

AMB. (DR.) MONICA K. JUMA, MBS.

PRINCIPAL SECRETARY/INTERIOR

12TH MARCH, 2015

OUTLINE

- The presentation will be in two parts:
 1. East African Community Protocol on Peace and Security
 2. The Mutual Peace and Security Pact of the Northern Corridor Integration Projects

PART-1
**The East African Community
Protocol on Peace and Security**

Background

- The Protocol was established in line with Article 151 of the EAC Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Articles 5(3)(f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the Community.
- The EAC Summit of Heads of State approved the East African Community Protocol on Peace and Security at its 14th Ordinary Meeting in Nairobi on 30th November 2012.

Background cont...

- The EAC Council of Ministers signed the Protocol at the 5th Meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination held in Dar es Salaam, Tanzania on 16th February 2013.
- The EAC Council directed that all Partner States endeavor to ratify the Protocol by 15th February, 2014

Overview of the Protocol

The Protocol is divided into 21 articles. Here below is an overview:

Article 1. Interpretation

Article 2. Scope of cooperation:

- Conflict management (Art. 4)
- Prevention of genocide (Art. 5)
- Combating Terrorism (Art. 6)
- Combating and suppressing piracy (Art. 7)
- Peace support operations (Art. 8)

Overview of the Protocol, cont...

- Disaster risk reduction, management and crisis response (Art. 9)
- Management of refugees (Art. 10)
- Control of proliferation of small arms and light weapons (Art. 11)
- Combating transnational and cross border crime (Art. 12)
- Preventing and combating cattle rustling (Art. 13)
- Exchange, detention, custody and rehabilitation of prisoners and offenders (Art. 14)

Overview cont...

- Article 15- 21 provide for: Institutional arrangements;
Relationship with regional and international organizations;
Confidentiality of information; Dispute settlement;
Amendment to the protocol; Entry into force; and
Depository and registration respectively.

Implementation of the Protocol

- Article 15 of the Protocol provides that the EAC Council of Ministers determine the institutional arrangement for the implementation of the Protocol.
- In Kenya, the Government agencies mandated to handle the specific thematic areas on the Protocol oversee the implementation of the protocol under the supervision of the Ministry of the East African Affairs, Commerce and Industry.

Policy and legislation

To realize the objectives of the Protocol, the following have to be considered:

- Harmonization of policies and strategies on peace and security;
- A common regional training, standards and curricula for officers cooperating in the relevant sectors;
- Regional centers/institutions of excellence to promote common standards and best practices;

Status of Ratification of the Protocol

- **Kenya has not Ratified the EAC Protocol on Peace and Security**
- Kenya's delay in ratification is due to the Constitutional requirement of intense public participation as is also required by the Treaty Making and Ratification Act No. 45 of 2012.
- The Ministry constituted an Inter Agency Committee that held consultations with relevant stakeholders to ensure public participation on 30th January 2014

Status of Ratification of the Protocol

- The Cabinet has already approved the EAC Protocol on Peace and Security and has been submitted to Parliament for Ratification vide our letter Ref. No. OP.PA. 58/4A of 12th February 2015.
- Once ratified, the Protocol will be deposited with the EAC Secretary General and reported in the next EAC Heads of State Summit
- Uganda, Rwanda and Tanzania have ratified the Protocol, while Kenya and Burundi are yet to ratify it.

Conclusion

- Once ratified the EAC Protocol on Peace and Security will enhance and strengthen frameworks and structures in addressing security challenges in the region.
- This is therefore to seek your support on the ratification of the Protocol as it provides a framework of addressing security challenges in the region.
- Once approved, the Ministry of Foreign Affairs and International Trade will write instruments of ratification which will be shared among Partner States and deposited with UN, AU and EAC Secretary General.

PART 2

The Mutual Peace and Security Pact

Background

- The Heads of State and Governments of Kenya, Rwanda and Uganda, have held three **Tripartite Summits**: in Entebbe, Uganda on 25th June 2013; Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 to discuss various aspects of integration.
- The Kigali Summit in its paragraph 'j' of the Kigali Communiqué and Article 9 of the MoU on Fast tracking East African Integration signed on 28th October 2013 provided for security cooperation among the Partner States.

Background Cont...

- The Mutual Peace and Security Pact is established under the Security Cooperation which the Heads of State signed the Pact on **20th February 2014** in Kampala, Uganda.
- The Pact is established under the Peace and Security Cluster of the Northern Corridor Integration Projects that transformed from the “Tripartite/ Coalition of the Willing”
- The Partner States referred to in the Pact are Kenya, Uganda and Rwanda. The Republic of South Sudan will accede the Pact after all Partner States have ratified it.
- It is envisaged that implementation of the Pact will fast track the achievements expected of the EAC Protocol on Peace and

Overview of the Pact

The Pact is divided into 14 articles. Here below is an overview of key components:

Article 2. states the objectives of the Pact

Article 3. states areas of cooperation

Article 4. Requires Partner States to exchange information and experiences

Article 5. Requires Partner States to harmonize visa regulations

Article 6. Requires Partner States to finance relevant organs implementing the Pact

Overview Cont...

- **Article 7.** Safeguards the confidentiality of information
- **Article 8.** Provides for accession of the Pact by other States
- **Article 9.** Deals with settlement of disputes arising from the implementation of the Pact.
- **Article 10-14.** Provide for the withdrawal by a member; Amendments; review of the Pact; breach of the Pact; and, Implementation.

Justification for Ratification of the Pact

- The Pact resolves to unite Partner States' efforts towards collective peace and security; and, will create a framework that encourages cooperation and consultations on issues pertaining to peace and security of the Partner States.
- The 9th Heads of State Summit on the Northern Corridor Integration Projects held on 7th March 2015 in Kigali, Rwanda urged Kenya to expedite ratification of the Pact.

Justification for Ratification of the Pact

- The Pact has already received Cabinet Approval and was submitted to the Parliament vide our letter Ref. No. OP.PA/58/4A of 12th February 2015.
- Rwanda and Uganda have ratified the Pact; **Kenya is yet to finalize the ratification process.**

Implementation of the Pact

- Article 14 of the Pact requires relevant authorities to develop organs, structures and policies for approval by Committee of Ministers for onward transmission to the Summit.

The implementation framework of the Pact is comprised of the following organs:

- The Summit
- Committee of Ministers
- Coordination Committee
- Committee of Chiefs of various Security Services/Agencies

Implementation of the Pact Cont..

- In Kenya, the implementation of the Pact is coordinated by the Ministry of Foreign Affairs and International Trade under which the office of the National Coordinator was established. The Kenya National Coordinator is Hon. Joe Nyaga, MGH.

Conclusion

- The Partner States have developed the matrix of implementation of the Peace and Security Pact and the Republic of Kenya is on course with the implementation of the activities.
- As part of the requirements of the Ratification and Treaty Making Act no.45 of 2012, this Pact has been subjected to stakeholders participation.
- The Cabinet Approved the Mutual Peace and Security Pact.
- This is therefore to seek your support and once ratified the Ministry of Foreign Affairs and International Trade will write the instruments of ratification to be shared among Partner States and deposited with UN, AU and EAC Secretary General.

ASANTENI SANA

THANKYOU

OFFICE OF THE ATTORNEY GENERAL AND
DEPARTMENT OF JUSTICE



IN THE MATTER OF RATIFICATION OF THE MUTUAL PEACE AND
SECURITY PACT

BRIEF TO PARLIAMENTARY COMMITTEE ON REGIONAL INTEGRATION

1.0 BACKGROUND

The Mutual Peace and Security Pact was prepared pursuant to the directives of the Heads of State in the Tripartite Summits held in Entebbe, Kenya and Rwanda in June, August and September 2013 respectively. The Pact was signed by the Summit on 20th February 2014 under the umbrella of the Northern Corridor Integration Projects and Partner States were requested to commence ratification in accordance with their respective Constitutional processes.

2.0 OBJECTIVE AND PURPOSE

The objective of the Pact is to establish a framework for combating crimes to contribute towards collective peace and security among Partner States. The Pact obligates Partner States to safeguard against breakdown of law and order, coordinate and co-operate in matters related to peace and security, enhance the capacity of Partner States to combat piracy and terrorism and peacefully resolve conflicts and disputes among and within the Partner States.

3.0 STRUCTURE OF THE PACT

Preamble- it provides background information and notes that the pact will *supplement efforts achieved at the EAC Regional level*. (It is to be noted that EAC Partner States have concluded a Protocol on Peace and Security)

Article 1- Interpretation Section- it provides definitions and interpretations of the terms as used in the Pact

Article 2- Objectives- the section defines the broad objective as establishing a framework for collectively combating peace and security. The specific objectives have also been listed. These include among others, coordinating and co-operating in matters relating to peace and security, peacefully resolving conflicts within Partner States, enhancing the capacity of Partner States with respect to disaster management and co-operation in exchange of prisoners and rehabilitation of offenders.

Article 3- Areas of Co-operation- the areas of co-operation have been informed by the objectives. These are broad and include all matters relating to peace and security. They range from conflict prevention, peace support, disaster management, suppressing piracy, combating piracy, terrorism and preventing genocide, etc. It may be noteworthy that the pact has incorporated the prevention of genocide as one of the areas of co-operation.

Article 4- Exchange of Information and experience - It proposes that relevant organs shall regularly exchange information and coordinate operations in the field of combating crimes. In order to achieve this, Partner States are required to also co-operate in relevant trainings in criminal intelligence, forensics, human trafficking and counter terrorism.

Article 5- Free Movement of People - The Article notes that the free movement of people using IDs, Voters cards and student IDs may pose security challenges. Due to this concern, Partner States are required to establish a mechanism for issuing student identification documents and harmonise visa regulations to guide issuance of single tourist visa.

Article 6 - Funding- Obligates Partner States to adequately finance activities relating to the implementation of the pact.

Article 7- Confidentiality of Information- Provides that Partner States will not disclose classified information obtained other than for purposes related to the implementation of the pact.

Articles 8, 9 10,11 and 12 are standard clauses on Accession, Settlement of disputes, Withdrawal of a Member, Amendment and Review of the Pact

Article 13 - Breach of the Pact - Breaches of the Pact may be reported to the Summit which shall instruct that investigations be carried out and a report thereon be submitted.

Article 14- Implementation- The Article provides for other National Security Services e.g Immigration and Intelligence Services to develop policies and structures necessary for the implementation of the Pact.

Article 15- Entry into Force- Provides that it shall enter into force upon ratification and six months after the date of signature by Partner States.

4.0 PROGRESS IN IMPLEMENTATION

The Republic of Rwanda and Uganda have already ratified the Pact. It is therefore imperative that Kenya expedites the ratification of the Protocol taking into account that the Summit had anticipated that the Protocol would be ratified within six months from the date of signature in 20th February 2014.

It may also be noted that the Peace and Security Cluster for the Northern Corridor Integration Projects has already began to undertake preparatory work for the implementation of the Pact. During the period 26th – 30th May 2014, Peace and Security Experts, Chiefs of Defence and Ministers responsible for Security also convened in Rwanda to develop an Implementation Framework Matrix. This was approved by the 6th Summit held on 3rd July 2014.

Further, in a meeting held on 6th February 2015 in Juba, Ministers drawn from the Peace and Security Cluster made recommendations relating to co-operation in terrorism, combating proliferation of small arms, conducting peace support operations, genocide prevention and combating transnational crimes.

In this regard, it may be observed that the initial stages of implementing the pact have commenced. In order to avoid a legal gap, it is imperative that Kenya expedite ratification of the Pact.

5.0 LEGAL CONSIDERATIONS

5.1 Amendment of the Constitution

The Pact does not envisage amendments to the Constitution

5.2 Harmonization of Laws

In order to realize the objectives of the Pact, harmonization of national legislations has been identified. To this extent, the implementation of the Pact may necessitate harmonisation of relevant legislations on a need basis.

For instance, in the Peace and Security Cluster Meeting held in Juba, the following recommendations that may lead be inclined to harmonisation of laws were made;

- **Prevention of Genocide-** workshop be convened to review existing legal framework and develop mechanisms of genocide prevention.
- **Control of Small Arms-** a workshop on harmonisation of laws governing management of firearms, explosives and their accessories be convened.
- **Combating economic crimes-** workshop to harmonise policies, laws and strategies on economic crimes be convened.
- **Combating and suppressing piracy-** Partner States were urged to develop relevant legal frameworks to suppress and combat piracy.

5.3 Development of Co-operation Agreements

In addition to the harmonization of laws, some co-operation areas would require implementation through Agreements. The above referenced meeting of the Peace and Security Cluster identified combating Terrorism and Management of Prisons and exchange of prisoners, detention, custody and rehabilitation of offenders as some of the areas where there may be need to develop Co-operation Agreements.

6.0 Implications on Matters relating to Counties

The areas of co-operation covered by the Pact are within the competence of the functions of the National Government. ~~However, the National Government has a duty to coordinate with the County Governments as and when necessary.~~

7.0 Stakeholder Consultations

The Treaty Making and Ratification Act requires that the views of stakeholders be sought. The Ministry of Interior and Coordination of National Government invited the view of the public through electronic and print media publications on 10th and 11th July 2014. A public forum was also convened at Utalii on 15th July 2014. To this extent, it can be submitted that the threshold of public participation has been achieved.

8. Way Forward

From the foregoing, inception work towards implementation of the Protocol is ongoing. The Parliamentary Committee is therefore urged to positively consider the Pact with a view of approving its recommendation.

Evans



CONFIDENTIAL

REPUBLIC OF KENYA

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT

A. OBJECTIVE OF THE MEMORANDUM

The purpose of this Cabinet Memorandum is to apprise the Cabinet on Kenya's participation in regional peace and security under the Mutual Peace and Security Pact of the Northern Corridor Integration Projects and to seek approval for Kenya to ratify the Mutual Peace and Security Pact, hereinafter referred to as the Pact.

B. THE BACKGROUND OF THE SUBJECT MATTER

The Pact was drafted in line with the Heads of State of Partner States (Kenya, Rwanda and Uganda) in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 which they incorporated an article on security cooperation in its paragraph 'j' of the Kigali communiqué and Articles 8 and 9 of Memorandum of Understanding on the Tripartite Initiative for fast tracking the East Africa Integration. Article 8 on common defense established the Defense Pact and Article 9 on security established the Mutual Peace and Security Pact.

Pursuant to the directives of the Heads of State at the Kigali Summit of 28th October 2013, the Partner States subjected the Pact to the following process before its conclusion:

CONFIDENTIAL

- i. The delegates of Experts that comprised of representative from the Republic of Kenya, the Republic of Rwanda and the Republic of Uganda developed two working drafts on the Mutual Peace and Security Pact and Defense Pact.
- ii. The Experts Working Group and the Chiefs of Defense Staff and Inspectors Generals of the Police met from the 6th- 7th January 2014 in Kigali Rwanda to implement the decision on the establishment of a Mutual Defense Pact and the Mutual Peace and Security Pact that Partner States were to sign by the end of January 2014.
- iii. The relevant senior officials from each of the Partner States considered the various drafts and subsequently forwarded to the Council of Ministers for consideration and submission to the 4th Northern Corridor Integration Projects Summit which signed the Pact on 20th February 2014.
- iv. The 4th Summit of the Northern Corridor Integration Projects held on 20th February 2014, Kampala, Uganda and 5th Summit held on 2nd May 2014 in Nairobi, Kenya directed the Partner States to subject the Pact to respective ratification process and fast track the development of Pact implementation framework and matrix. The Pact shall enter into force six (6) months after the date of signature, that is, by **24th August, 2014**.
- v. Joint Defense, Peace and Security Experts, Chiefs of Defense Staff/Force and Ministers responsible with National Police/Security met from 26th to 30th May 2014 in Kigali Rwanda and developed an implementation Framework and Matrix of the Defense, Peace and Security Pacts.
- vi. Pursuant to meeting of Chiefs of Services held in Kigali, Rwanda, on 26th -30th May 2014 to develop organs, structures and the framework for the implementation of the Mutual Peace and Security Pact, the Council of Ministers for the Peace and Security cluster of the Northern Corridor Integration Projects

from the Partner States convened for a consultative meeting in Nairobi, Kenya, on 23rd June 2014 to assess progress made on the implementation of the Pact.

- vii. The 6th Northern Corridor Integration Projects Summit held in Kigali, Rwanda from 29th June 2014 to 3rd July 2014 was preceded by Senior Officials and Ministers Meetings that developed the Pact Implementation Framework and Matrix.
- viii. The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 requires Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the Ministry of Interior and Coordination of National Government organized for stakeholder forum to seek their views as well as that of the public through electronic and print media.

C. ANALYSIS OF THE PROBLEM

a. Objects and subject matter of the Pact

The purpose of the Pact is to establish a framework for combating crimes towards collective peace and security among Partner States. Partner States according to the Pact are obligated to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the Partner States against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the Partner States;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Enhance the capacity of the Partner States in combating terrorism and piracy;

- v. Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.
- vi. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States

b. Constitutional implications

The Pact proposes no amendments to the Constitution of Kenya.

c. Impact of the ratification of the Pact on national interest

The preamble of the Pact informs the Partner States that the Pact will unite the Partner States' efforts towards collective peace and security, and the preservation of peace, security and stability.

Pact will create a framework that encourages and maintains cooperation and consultations on issues pertaining to the peace and security of the Partner states with a view of prevention, better management and resolution of disputes and conflicts between them.

The 4th Summit urged the Partner States to subject the Pact to respective ratification process and it shall enter into force six (6) months after the date of signature, that is, by **24th August 2014**.

To this end, the Pact (Article 3 (3)) will commit the Government to develop appropriate mechanisms, strategies and programs to combat cross border crime as follows:

- i. Conflict prevention, management and resolution
- ii. Combating terrorism
- iii. Establishment of Fusion Centers
- iv. Establishment of database on cross border crimes
- v. Harmonizing national legislations

u. Obligations imposed on Kenya by the Pact

Article 2(6) of the constitution makes any treaty or convention ratified by Kenya shall form part of the law of Kenya.

e. Requirements for implementation of the Pact

Article 14 of the Pact provides that the relevant authorities including other National Security Services such as Correctional, Immigration and Intelligence Services are to develop such organs, structures and policies as shall be necessary for the implementation of this Pact by 30th March 2014 for subsequent approval by the Committee of Ministers for onward transmission to the Summit.

In reference to Article 14 and 19 of the Mutual Peace and Security and Defense Pact respectively, Joint Defense, Peace and Security Experts, Chiefs of Defense Staff/Force and Ministers responsible with National Police/Security met from 26th to 30th May 2014 in Kigali Rwanda and developed an implementation Framework and Matrix of the Defense, Peace and Security Pacts.

The 6th Northern Corridor Integration Projects Summit held in Kigali, Rwanda on 3rd July 2014 approved the Mutual Peace and Security Pact Implementation Framework and Matrix (**ANNEX 1**).

f. Policy and legislative considerations

To realize the objectives of the Pact, Partner States in Article 3 (3), Article 4 (2) and Article 5 agree to undertake measures to:

- i. Enhance cooperation in training and development;
- ii. Harmonize visa regulations to guide the issuance of single tourist visa;
- iii. Harmonize national legislations
- iv. Establish database on cross border crimes
- v. Fast track identified centers of excellence in policing

g. Ministerial responsibility

The responsibility for the implementation of the Pact shall be by Cabinet Secretary responsible for, internal security, disaster management, refugee affairs, immigration affairs, prisons, probation and after care services, peace building and conflict management, children affairs, registrar of motor vehicles, marine services, and any other area of cooperation that may be agreed by consensus of the Partner States to be included in the Northern Corridor Integration Projects.

h. Implications on matters relating to counties

As per the Constitution, the areas of cooperation covered by the Pact fall under the functions of the national government. The national government shall therefore coordinate with the county government as and when necessary.

i. Date of signature

The Pact was signed on 20th February, 2014 in Kampala, Uganda during the 4th Northern Corridor Integration Projects Summit.

j. The number of states party to the Pact

Three states are currently party to the Pact namely, Republics of Kenya, Rwanda and Uganda. Article 8 on Accession states that this Pact shall remain open for accession by any State as shall be approved by the Partner States through the policy organs from time to time.

k. Views of the public on the ratification of the Pact

The Ministry invited the views of the public by publishing the Pact in two electronic and print media on Thursday 10th July 2014 (People Daily) and Friday 11th July 2014 (Nation Daily). The Ministry also convened a public forum at the Utalii Hotel on 15th July, 2014 where it received the views of the public and relevant stakeholders. The same are contained in the enclosed report (*REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC*

PARTICIPATION PROCESS ON THE RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT DATED 22ND JULY 2014)

I. Provision for reservations and recommendations

The Protocol has no provision for reservations.

m. Reservations/ declarations to align with national interests/ constitution

No Pact provision applies in this regard.

n. Use of public funds in the implementation of the Pact

The implementation of the Pact will involve the use of public funds by the relevant departments and agencies involved in the implementation. The estimated cost of expenditure may not be apparent at the moment.

D. FINANCIAL IMPLICATIONS

The implementation of the Pact in the short term is not envisaged to have any major financial implications save for greater emphasis on the regional dimension to the functions and responsibilities during the budgeting process by the relevant Departments and agencies.

In addition, whilst the existing government agencies will carry on with implementation of the Pact, the obligations arising from the Pact will call for additional allocation of resources from Partner States. Currently, much of these resources are mainly dependent on development partners.

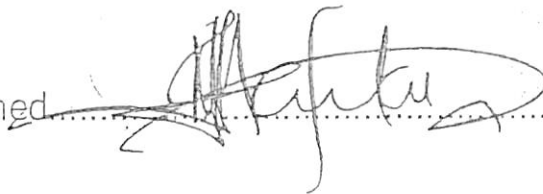
E. RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:

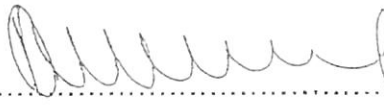
- (i) Note the contents of the Cabinet Memorandum
- (ii) Consider and approve the ratification of the Pact

CONFIDENTIAL

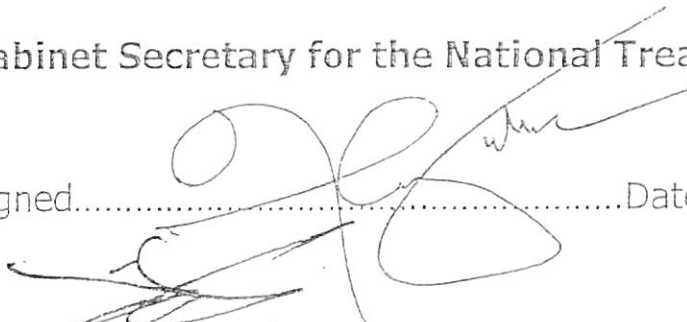
Cabinet Secretary for Interior and Coordination of National Government

Signed  Date 23/7/14

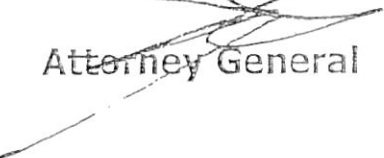
Cabinet Secretary for Foreign Affairs and International Trade

Signed  Date 15/8/14

Cabinet Secretary for the National Treasury

Signed  Date 28/8/14

Attorney General

Signed  Date 20/7/14

CONFIDENTIAL

REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT.

BACKGROUND

The Pact was drafted in line with the Heads of State of Partner States (Kenya, Rwanda and Uganda) in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 which they incorporated an article on security cooperation in its paragraph 'j' of the Kigali communiqué and Articles 8 and 9 of Memorandum of Understanding on the Tripartite Initiative for fast tracking the East Africa Integration. Article 8 on common defense established the Defense Pact and Article 9 on security established the Mutual Peace and Security Pact.

Pursuant to the directives of the Heads of State at the Kigali Summit of 28th October 2013, Kenya subjected the Pact to the following ratification process.

OBJECTIVES

The purpose of the Pact is to establish a framework for combating crimes towards collective peace and security among Partner States. Partner States according to the Pact are obligated to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the Partner States against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the Partner States;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Enhance the capacity of the Partner States in combating terrorism and piracy;
- v. Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.
- vi. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States

PUBLIC PARTICIPATION

The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 requires Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the Ministry of Interior and Coordination of National Government invited the views of the public by publishing the Pact in two electronic and print media on Thursday 10th July 2014 (People Daily) and Friday 11th July 2014 (Nation Daily).

The Ministry convened a public forum at the Utalii Hotel on 15th July, 2014 to seek their views on the Pact and be incorporated in the report of Inter-Agencies Committee.

STAKEHOLDERS SUBMISSIONS

The stakeholders made the following observations and recommendations on the Mutual Peace and Security Pact signed by the partners on 20th February, 2014:

1. **PREAMBLE:** The stakeholders observed that the Pact may duplicate or conflict with the EAC Peace and Security Protocol whose ratification process is ongoing. However, it was noted that the Pact stems from the Protocol therefore; it will complement and enhance the implementation of the Protocol to attain the regional peace and security.

2. ARTICLE 1

The stakeholders were in support of the Article with following recommendations:

- **Part (f)** on page 3 of the Pact, stakeholders recommended the definition of TERRORISM to end with the words "... pre-emption to terrorist threats or acts, both real and imputed" as they appear in the EAC Protocol on Peace and Security.
- **Part (i)**, the stakeholders recommended to change the word [ethical] to read [ethnic], racial to race on the definition of the word GENOCIDE.
- **Part (i)(b)** the forum recommended to have the statement read "Causing [serious] bodily or ..." instead of [Seriously] bodily.

- **Part (i)(e)** on page 4 of the Pact, the forum proposed to have the sentence read "... conditions of life calculated to bring about ..." instead of [calculation to bring ...].
- **Part (j)** stakeholders recommended for the inclusion of the words "Radicalisation and Extremism" on the definition for terrorism.

3. ARTICLE 3

- **Part (1)(i)** on page 6 of the Pact, members recommended to include the [...illegal trade in minerals] in combating transnational and cross border crime under the areas of cooperation.
- The stakeholders recommended the inclusion of "Combating Environmental and Wildlife Crime" as a new thematic area of cooperation by Partner States.
- **Part (3)(d)**, the stakeholders observed the wording "Hunt down" criminals was not portraying the best picture for the Partner States. Instead, they recommended the use of the word [Pursue] criminals among member states.

4. **ARTICLE 7:** The stakeholders were concerned with the extent or level at which information should be shared with other member states. More so, the mechanism put in place in handling sensitive security information.

- The stakeholders observed the need to include a clause which binds Partner States on the principle of confidentiality on received or accessed information in the process of withdrawing from the Pact or when the Pact comes to an end.

CONCLUSION:

There was consensus that the Mutual Peace and Security Pact is of benefit to Kenya in light of the existing and emerging threats to peace and security. The

CONFIDENTIAL

ratification of the Mutual Peace and Security Pact will therefore enhance the fulfillment of Kenya's obligation to the AU and UN Peace and Security.

WAY FORWARD:

The stakeholders therefore recommended that Kenya ratifies this Pact in line with the provision of the Constitution 2010 and the Treaty Making and Ratification Act, 2012.

CONFIDENTIAL



REPUBLIC OF KENYA

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT

CABINET MEMORANDUM ON RATIFICATION OF THE EAST AFRICAN
COMMUNITY PROTOCOL ON PEACE AND SECURITY

A. OBJECTIVE OF THE MEMORANDUM

The purpose of this Cabinet Memorandum is to apprise the Cabinet on Kenya's participation in regional peace and security under the Treaty for the Establishment of the East African Community (the Treaty), and to seek approval for Kenya to ratify the East African Community Protocol on Peace and Security, hereinafter referred to as the Protocol.

B. THE BACKGROUND OF THE SUBJECT MATTER

The Protocol was drafted in line with Article 151 of the Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Articles 5(3)(f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the Community. The Partner States subjected the Protocol to the following process before its conclusion:

- i. Several experts working group/ technical experts' meetings constituting the relevant experts from each of the Partner States developed working drafts for consideration by the senior officials of the Sectoral Councils on Defence and security, Cooperation in Defence, Interstate Security and meetings of Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination;

- ii. The relevant senior officials from each of the Partner States considered the various drafts and severally made input into the experts' drafts whenever referred to them;
- iii. Upon consideration and input, the senior officials forwarded their drafts with their input to the Coordination Committee consisting of the Permanent Secretaries/ service commanders/ police chiefs/ defence chiefs for consideration and further input before presentation to the ministerial session of the Sectoral Council on Interstate Security;
- iv. The ministerial session of the Sectoral Council on Interstate Security gave directives and made decisions that required that the certain matters be clarified by the experts while others required further consultations by Partner States. The decisions and directives of the Sectoral Council on Interstate Security were forwarded to the Council;
- v. The Council on a number of occasions directed the Sectoral Council on Interstate Security to convene a meeting of Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination to consider and develop consensus on cross cutting issues covered by the Protocol;
- vi. When consensus was reached by the meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination on consideration of the policy provisions and implications of the Protocol, the Council referred the Draft Protocol to the Sectoral Council on Legal and Judicial Affairs for legal input. This is the Sectoral Council constituted by the Attorneys General of the Partner States;
- vii. The Sectoral Council on Legal and Judicial Affairs did refer the Draft Protocol three times to the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination or the Sectoral Council on Interstate Security for clarification of cross cutting issues or on matters of policy concerns. When it was satisfied that the Protocol was sound, the

Protocol was forwarded to the Council for approval and onwards submission to the Summit for adoption. The EAC Summit of Heads of State approved the East African Community Protocol on Peace and Security at its 14th Ordinary Meeting in Nairobi under the chairmanship of the President of the Republic of Kenya, His Excellency Hon. Mwai Kibaki on 30th November 2012.

- viii. The then Minister for Gender, Children and Social Development, Hon (Dr) Naomi Shabaan, signed the Protocol on behalf of the Republic of Kenya at the 5th Meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination held in Dar es Salaam, in the United Republic of Tanzania on 16th February 2013.
- ix. The EAC Council, sitting in Dar es Salaam on 16th February 2013, directed that all partner States endeavor to ratify the Protocol by 15th February, 2014.

C. ANALYSIS OF THE PROBLEM

a. Objects and subject matter of the Protocol

The main objective of the Protocol is to promote peace, security and stability within the Community and good neighbourliness among Partner States. To this end, the Protocol obligates the Partner States to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the East African Community (EAC) against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the EAC;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on

Arms Control, Disarmament and peaceful relations among Partner States

b. **Constitutional implications**

- i. The Protocol proposes no 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, equality, territorial integrity, political independence, good neighbourliness, interdependence, non aggression and non interference in the internal affairs of each Partner State.

c. **Impact of the ratification of the Protocol on national interest**

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to peace and security of Partner States with a view of prevention, better management and resolution of disputes and conflicts between them. To this end, the protocol will commit the government to develop mechanisms that shall aim to:

- i. Coordinate and cooperate with other EAC partner States in matters related to peace and security;
- ii. Prevent, contain and peacefully resolve conflicts and disputes among and within the EAC Partner States;
- iii. Observe and encourage implementation of international conventions touching on peace and security; and
- iv. Enhance the capacity of the Community with respect to; regional peace support operations, disaster management, and management of refugees, combating terrorism and piracy, and exchange of prisoners.

d. **Obligations imposed on Kenya by the protocol**

Article 151(4) of the Treaty provides that Annexure and Protocols form an integral part of the Treaty which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the East African

Community Act of Kenya, 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**

Article 15 of the Protocol provides that the EAC Council of Ministers shall determine the institutional arrangement for the implementation of the Protocol. At the national level, the existing government agencies, mandated to handle the specific thematic areas on the Protocol shall oversee the implementation of the protocol under the supervision of the Department of the East African Affairs.

f. **Policy and legislative considerations**

To realize the objectives of the Protocol, the following have to be considered:

- i. A common regional training standards and curricular for officers cooperating in the relevant sectors;
- ii. Regional centres/institutions of excellence to promote common standards and best practices;
- iii. Harmonization of policies and strategies on peace and security;
- iv. Harmonization and approximation of laws and regulations for effective coordination of cooperation in the sector.

g. **Ministerial responsibility**

The responsibility for the implementation of the Protocol shall be by all Cabinet Secretaries responsible for, internal security, disaster management, refugee affairs, immigration affairs, prisons, probation and after care services, peace building and conflict management, defence affairs, children affairs, registrar of motor vehicles, marine services, and any other area of cooperation that may be agreed by consensus of the Partner States to be included in the EAC regional strategy on peace and security.

h. Implications on matters relating to counties

As per the Constitution, the areas of cooperation covered by the Protocol fall under the functions of the national government. The national government shall therefore coordinate with the county government as and when necessary.

i. Date of signature

The Protocol was signed on 16th February 2013 in Dar es Salaam, in the United Republic of Tanzania

j. The number of states party to the protocol

Five states are currently party to the protocol namely, Republics of Burundi, Kenya, Rwanda, United Republic of Tanzania and Uganda. The Protocol shall apply to any other country granted membership to the EAC under Article 3 of the Treaty.

k. Views of the public on the ratification of the protocol

The Ministry invited the views of the public by publishing the Protocol in the electronic and print media on 22nd November 2013. The Ministry also convened a public forum at the Kenya School of Monetary Studies on 28th January 2014 where it received the views of the public and relevant stakeholders. The same are contained in the enclosed report (REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE EAST AFRICA COMMUNITY PROTOCOL ON PEACE AND SECURITY DATED 30TH JANUARY 2014)

l. Provision for reservations and recommendations

The Protocol has no provision for reservations.

m. Reservations/ declarations to align with national interests/ constitution

No Protocol provision applies in this regard.

n. Use of public funds in the implementation of the protocol

The implementation of the Protocol will certainly involve the use of public funds by the relevant departments and agencies involved in the implementation. The estimated cost of expenditure may not be apparent at the moment.

D. FINANCIAL IMPLICATIONS

The implementation of the Protocol in the short term is not envisaged to have any major financial implications save for greater emphasis on the regional dimension to the functions and responsibilities during the budgeting process by the relevant Departments and agencies.

In addition, whilst the existing government agencies will carry on with implementation of the Protocol, the obligations arising from the Protocol will call for additional allocation of resources from Partner States. Currently, much of these resources are mainly dependent on development partners.

E. RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:

- (i) Note the contents of the Cabinet Memorandum
- (ii) Consider and approve the ratification of the Protocol

Cabinet Secretary for East African Affairs, Tourism and Commerce

Signed..... *Phadia* Date *28th August 2014*

Cabinet Secretary for Interior and Coordination of National Government

Signed..... *Mutur* Date *14/8/14*

Cabinet Secretary for National Treasury

Signed..... *[Signature]* Date *25/8/14*

Attorney General

Signed..... *[Signature]* Date *14/8/14*

Handwritten text, possibly a signature or name, located in the middle-left section of the page.

Handwritten text, possibly a date or number, located below the first signature.

Handwritten text, possibly a date or number, located in the lower-middle section of the page.

Handwritten text, possibly a signature or name, located in the middle-right section of the page.

Handwritten text, possibly a date or number, located below the second signature.

Handwritten text, possibly a date or number, located in the lower-right section of the page.

ANNEX 1

LIST OF STAKEHOLDERS INVITED TO CONSULTATIVE FORUM ON EAC PEACE AND SECURITY PROTOCOL HELD AT KENYA SCHOOL OF MONETARY STUDIES ON TUESDAY 28TH JANUARY 2014.

1. Principal Secretary for Ministry of Defence
2. Principal Secretary for Ministry of Foreign Affairs and International Trade
3. Principal Secretary for Ministry of Devolution and Planning
4. Principal Secretary for Ministry of EA Affairs, Tourism and Commerce
5. Principal Secretary for Ministry of Interior & CNG-Probation, Prisons, security
6. Principal Secretary for Ministry of labour, social security and services
7. Attorney General
8. Director General
9. Director NCTC
10. Deputy IG Kenya Police
11. Deputy IG Admin Police
12. Kenya National Assembly
13. Chairman CIC
14. Chairman Kenya Law Reform Commission
15. Director KWS
16. Secretary National Steering Committee on Peace Building and Conflict Management
17. Director Kenya National Focal Point on SALW
18. Director Immigration
19. Commissioner Refugee Affairs
20. Director Children Department
21. Managing Director Maritime Authority
22. Country Representative UNHCR
23. Peace and Development Network Trust
24. Act Change Transformation
25. African Peace Forum
26. Safer World
27. Security Research and Information Centre

28. County Commissioner-Muranga,
29. County Commissioner-Nakuru,
30. County Commissioner- Bomet,
31. County Commissioner- Bungoma,
32. County Commissioner- Kisii,
33. County Commissioner- Kirinyaga,
34. County Commissioner-Machakos,
35. County Commissioner- Kitui

REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE EAST AFRICA COMMUNITY PROTOCOL ON PEACE AND SECURITY DATED 30TH JANUARY 2014

Background:

The East African Community Protocol on Peace and Security (the Protocol) was drafted in line with Article 151 of the Treaty Establishing the East African Community which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Article 124 which underscores that peace and security are pre-requisites to social and economic development within the Community.

In furtherance of the spirit of cooperation in East Africa the EAC Partner States Ministers at the Joint Meeting of the Sectoral Councils on Cooperation in Defence, Inter State Security and Foreign Affairs Coordination in Dar es Salaam, Tanzania on 16th February 2013 signed the Protocol on Peace and Security.

Pursuant to the directive of the EAC Council of Ministers that Partner States ratify the Protocol by 15th February 2014, Kenya commenced the ratification process in line with the Treaty Making and Ratification Act No. 45 of 2012.

Subsequently the Ministry of Interior and Coordination of National Government in liaison with the Ministry of East African Affairs, Commerce and Tourism established an inter-agency committee to oversee the ratification process of the Protocol.

Objectives:

The main objective of the Protocol is to promote peace, security and stability within the Community and good neighbourliness among Partner States. To this end the Partner States shall undertake inter alia to:

- Protect people and safeguard the development of the Community against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- Coordinate and Cooperate in matters related to peace and security in the community;
- Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States;

Public Participation:

The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 require Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the inter-agency committee invited the views of the public by publishing the Protocol in the electronic and print media on 22nd November 2013. The Committee also convened a public forum at the Kenya School of Monetary Studies on 28th January 2014 where it received the views of the public and relevant stakeholders. The stakeholders were drawn from members of the public, civil societies and government agencies as per annex 1.

STAKEHOLDERS SUBMISSIONS:

Comments on Specific Articles of the Protocol

Article 4 – Conflict Prevention, Management and Resolution (CPMR)

The Committee received the following background information on this article:

That the CPMR component provided by Article 4 has been a work in progress since 2007 at the level of inter-ministerial, technical, and sectoral consultations whose main purpose was to collaborate, to promote regional peace and security through the development, adoption and implementation of the CPMR mechanism. It consists of the establishment of an EAC Peace Facility and adoption of indicators for the EAC Early Warning Mechanism in tandem with UN and AU obligations.

The committee was also informed that the following structures and initiatives have been made and will support implementation of the CPMR component

- Development and operationalisation of the National Peace Policy with key pillars on CPMR, EWARM, Mediation support unit;
- Development of the SALW Policy;
- Institutionalization of peace process to include cross border mechanisms;
- Continuous training and capacity development of stakeholders at regional level through exchange visits.
- Established joint administrative border committees
- Developed Structures to oversee implementation of cross-border community agreements on peace and security
- Mainstreaming gender in peace building and conflict management processes;
- Joint training in Peace Support Operations e.g. at the International Peace support Training Centre (Karen) and Humanitarian Peace School Studies (Embakasi);
- Provided platforms for partnerships, information sharing and synergy among respective agencies i.e. the CEWERUs, the National Focal Point on SALW, Police chiefs and military

Stakeholders' recommendations on Article 4

- Ratification of the protocol will hasten the joint approaches to address insecurity thereby setting the right environment for stability and development in the region.
- Ratification will commit Member States to put in place national mechanisms as well as set aside funds to support implementation;
- Integration on security issues will not only mitigate but foster confidence among the Partner States which will have a significant bearing on Kenya's potential to growth and development;
- Provides opportunity for further negotiation and avenue for fair, transparent and practical enforceable measures.

Article 5 – Prevention of Genocide

The Stakeholders were concerned about the development of joint mechanisms to prevent Genocide and whether it would be more practicable to develop mechanisms to deal with prevention of genocide at individual Partner States level.

The Stakeholders were cognizant of the international principles of non-interference and noted the difficulties of getting involved in the internal affairs of a Partner State and this may pose a challenge in fully implementing the provisions of this Article.

There were concerns raised on the controversy surrounding the definition and existence of Genocide and questions were raised on how to address the issue where the perpetrator was a government of a member State.

It was suggested that maybe the Article should have been substituted with a joint mechanism to promote transitional justice both restorative and retributive.

The forum was however given a background of the intentions of the drafters who were concerned with dealing with the consequences of genocide such as mechanisms to provide humanitarian assistance, granting of asylum to refugees and general prevention measures that can prevent genocide.

There was a suggestion that perhaps Article 5 would have been well captured under Article 4. The forum was informed that this was negotiated text that had become acceptable to all Partner States which is also in accord with International Law such as the definition of genocide as provided by the Rome Statute and therefore it is in order to have Article 5 as a stand-alone provision.

Article 6 – Combating Terrorism

The Stakeholders appreciated Article 6 and observed that cooperation in counter terrorism is a positive move and should be enhanced.

Article 7 – Combating and Suppressing Piracy

The Stakeholders deliberated on whether Piracy happened only in the Indian Ocean or it included piracy in the inland waters such as Lake Victoria. It was clarified that Piracy existed not only in the Indian Ocean but in inland waters as well and hence the need for joint mechanisms to combat and suppress the menace.

The Stakeholders embraced operationalization of this Article noting it will be beneficial to Kenya in terms of safeguarding trade and security. They further noted that joint mechanism would also benefit Kenya because combating piracy is an expensive affair and cooperation with other EAC Partner States would ease the burden and ensure trade benefits within the EAC.

Article 8 – Peace Support Operations

The Stakeholders observed that since there is an East Africa Community Directorate of Peace and Security, it will be easy to implement provisions of this Article.

Article 9 – Disaster Risk Reduction, Management and Crisis Response

The Stakeholders noted that this was an area in which Kenya was greatly challenged in that the country is vulnerable to disasters and yet lacks adequate capacity to mitigate the same. They also noted that although implementation of this Article would be beneficial to Kenya, there was urgent need to:

1. Fast track the development and adaption of a policy framework on disaster management;
2. Establish a full-fledged Disaster Management Authority;
3. Build capacity for prevention of disasters;
4. Enhance coordination of all departments and stakeholders that deal with disaster prevention and management;
5. Conduct civic education on disaster risk reduction;

Stakeholders' Recommendations on Article 9:

The stakeholders concluded that there was need to establish a Disaster Management Authority before effectively developing mechanisms to provide mutual assistance and crisis response at the regional level. However they noted that development of joint mechanisms to deal with disasters is positive and should be encouraged.

Article 10 – Management of Refugees

The Stakeholders appreciated this Article and stated that it would encourage Partner States to consider developing a common policy to regulate refugee camps and other refugee affairs. They also made the following observation and recommendations:

1. That local communities support government's policy on closure of refugee camps;
2. The need to harmonize identification and documentation of refugees entering the region;
3. The need to fast track enactment of the Refugee Amendment Bill;
4. The need to develop a policy for the management of refugees.

Article 11 – Control of Proliferation of Illicit Small Arms and Light Weapons (SALW)

The Stakeholders acknowledged that progress on this Article had been made in terms of:

1. Establishment of a National Focal Point (NFP) on SALW;
2. Formulation of SALW Policy;
3. All Partner states are members of the Nairobi Protocol on SALW;
4. All Partner States have shown commitment to regional and international instruments on SALW

The Stakeholders however noted that successful implementation of this Article will depend on effective operationalization of the following:

1. The Nairobi Protocol on SALW
2. National Action Plans on SALW
3. Strengthening the capacities of NFPs and Regional Centre on Small Arms in the Great Lakes Region, Horn of Africa and bordering States;

Ratification of the Peace and security protocol will therefore be a boost in areas of SALW proliferation and cattle rustlings.

Article 12 – Combating Transnational and Cross Border Crimes

The Stakeholders welcomed the inclusion of this Article but observed the following:

1. The Republics of Kenya, Uganda and Rwanda have entered a pact on a Single EAC Tourist Visa;
2. Any joint operations on cross border security management should be guided by the Constitution of Kenya and International Human Rights Instruments

The Stakeholders observed that there had been challenges since some of the EAC Partner States do not issue National identity Cards and this poses security challenges when their nationals seek entry into Kenya using non travel identification documents.

Stakeholders' Recommendations on Article 12:

The Stakeholders noted that there are challenges posed by lack of harmonized documents that are acceptable to allow cross border movement and in the absence of new generation identify cards by all Partner States, there is need to fast track and internationalize a common travel document for use within the Community.

Article 13 – Preventing and Combating Cattle Rustling

The Stakeholders noted the Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa (Mifugo Protocol) will compliment the implementation of this Article.

Stakeholders' Recommendation on Article 13:

There is need to:

1. Create structures and programs for joint operations and initiatives.
2. Develop a policy on Prevention and Combating of Cattle Rustling
3. Develop a Strategic Plan especially in branding, marking, surveillance and tracking of animals.

This protocol takes cognizance of others such as Mifugo Protocol and Nairobi Protocol. Improved coordination and linkage of security agencies on areas of converging is therefore of great interest for the country.

Article 14 – Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders

The Stakeholders noted the following:

1. There is need to incorporate correctional services and to fast track the enactment of the Transfer of Prisoners Bill towards realization of the objectives of Article 14.
2. There is need for Partner States to develop a platform for sharing information on prohibited persons and those declared persona non grata;
3. There is need to develop a common travel document within the Community.

The Stakeholders proposed that the government be advised to insist on the required use of the East Africa Passport as the official travel document within the EAC.

The Stakeholders submitted the following general comments.

1. That the Protocol had already been signed by the Partner States;
2. Once ratified, implementation of the Protocol will be made easier through the use of existing mechanisms/institutions for example the EAC Directorate of Peace and Security;
3. Stakeholders views will inform the Cabinet on the way forward and especially address the following concerns on implementation of the Protocol:
 - (a) Financial Implications;
 - (b) Kenya's level of preparedness;
 - (c) Availability of structures in Kenya that will assist in implementation;
 - (d) Harmonization of policies, laws, strategies and measures for realization of Protocol objectives;
 - (e) Development of strategic plans and action plans
 - (f) Strengthening focal points.
4. There was consensus that the Protocol is relevant but there is need to strengthen Kenya's institutions and enhance national capacity;
5. There is need to bring together all agents that have been acting singularly and whose competencies touch on security.
6. There is need to act in synergy to address border security which would require harmonization of policies, strategies and laws that deal with the same which will be realized with the ratification of the Protocol.
7. Financial implications: While the existing government agencies will carry on with Implementation, the obligations arising herein will call for additional allocation of resources from Partner States.

Conclusion:

There was consensus that the Protocol is of benefit to Kenya in light of the existing and emerging threats to peace and security. The Committee was requested to appraise the government on the areas for improvement that had been highlighted by the Stakeholders. It was also requested to appraise the government to strengthen officers' capacity to mitigate and deal with the challenges that will arise from implementation of the Protocol.

The ratification of the EAC Peace and Security Protocol will therefore enhance the fulfillment of Kenya's obligation to the AU and UN peace and security requirements.

Way Forward:

Kenya should ratify the Protocol after fulfilling the requirements of the Constitution and the Treaty Making and Ratification Act of 2012.



LAWS OF KENYA

TREATY MAKING AND RATIFICATION ACT

No. 45 of 2012

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Application.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation.
5. Initiation of treaty making process.
6. Values and principles in negotiating treaties.

PART III – RATIFICATION OF TREATIES

7. Approval by Cabinet.
8. Consideration by Parliament.
9. Approval for ratification.
10. Ratification of treaty.
11. Grant of full powers.
12. Offence to ratify without approval.

PART IV – REGISTRY OF TREATIES

13. Registry of Treaties.
14. Registrar.

PART V – GENERAL PROVISIONS

15. Public awareness.
16. Reporting in compliance with terms of treaties.
17. Denunciation of certain treaties.
18. Rules.

NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

[Date of assent: 13th December, 2012.]

[Date of commencement: 14th December, 2012.]

An Act of Parliament to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Treaty Making and Ratification Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“bilateral treaty” means an agreement concluded between Kenya and any other State or between Kenya and an international organisation;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to treaties;

“full powers” means all those powers conferred, by way of a legal document, to a person or persons designated by a competent state authority, to represent the State for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect of a treaty;

“international organisation” means an intergovernmental organization;

“ratification” means the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides;

“Registrar” means the Registrar of Treaties appointed under section 14;

“Registry” means the Registry of Treaties established by section 10;

“relevant Cabinet Secretary” means the Cabinet Secretary for the time being responsible the subject matter of the treaty;

“relevant State department” means the State department responsible for the subject matter of the treaty to be approved for ratification;

“reservation” means a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State;

“signature” means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

“treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” and “State Department” shall be construed to mean “Minister” and “Ministry” respectively.

3. Application

(1) This Act applies to treaties which are concluded by Kenya after the commencement of this Act.

(2) This Act shall apply to—

- (a) multilateral treaties;
- (b) bilateral treaties which deal with—
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;
 - (ii) the rights and duties of citizens of Kenya;
 - (iii) the status of Kenya under international law and the maintenance or support of such status;
 - (iv) the relationship between Kenya and any international organisation or similar body; and
 - (v) the environment and natural resources.

(3) A treaty relating to the adjustment, alteration or variation of the present position of Kenya on matters of sovereignty, independence and territorial integrity shall be approved in a referendum in accordance with Article 255 of the Constitution.

(4) Notwithstanding subsection (2)(b), the Government may enter into bilateral agreements—

- (a) necessary for matters relating to government business; or
- (b) relating to technical, administrative or executive matters.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation

(1) Subject to the provisions of this Act, the national executive shall be responsible for initiating the treaty making process, negotiating and ratifying treaties.

(2) The responsibility provided for in subsection (1) may be delegated to a relevant State department.

5. Initiation of treaty making process

(1) Subject to the provisions of this section, the relevant national executive or the relevant State department shall initiate the treaty making process in such manner as may be prescribed by the Cabinet Secretary.

(2) When deciding whether to initiate the treaty-making process or not, the national executive or the relevant State department shall consider the following—

- (a) the need that the new treaty is to meet;
- (b) the existing legal regime, including the extent of its applicability to the perceived problem;
- (c) the probability of reaching the required measure of agreement on the solution aimed for;
- (d) any relevant legislative efforts related to the perceived problem;
- (e) the optimal form for the proposed treaty;
- (f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
- (g) the anticipated time schedule for completing the treaty-making process;
- (h) the expected costs of formulating and adopting the treaty to Kenya;
- (i) in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

(3) The national executive or the relevant State department shall record whether the conditions in subsection (2) are met, and shall present a proposal to commence treaty-making for approval by the Cabinet.

(4) The Cabinet shall consider and approve or disapprove a proposal for treaty making presented in accordance with subsection (3) within a reasonable time.

6. Values and principles in negotiating treaties

(1) In negotiating treaties, the national executive or the relevant State department shall be bound by the values and principles of the Constitution; and shall take into account the regulatory impact of any proposed treaty.

(2) When appointing persons to negotiate a treaty, the national executive or the relevant State department shall appoint persons who are competent to undertake such negotiations in the interest of the people of Kenya.

PART III – RATIFICATION OF TREATIES**7. Approval by Cabinet**

Where the 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.

8. Consideration by Parliament

(1) 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.

(2) A treaty approved for ratification by the Cabinet under section 7 shall, depending on its subject matter, be considered by both or the relevant House of Parliament paying due regard to Part 1 and Part 2 of Chapter Eight of the Constitution.

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) Where one House approves the ratification of a treaty and the other House refuses to approve the ratification of a treaty, the treaty shall be referred to the mediation committee in accordance with Article 112 of the Constitution.

(7) Where the both Houses refuse to approve the ratification of a treaty, the Speakers of the two Houses shall submit their decision to the relevant Cabinet Secretary within fourteen days of the decision.

(8) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate, where approval for the ratification of the treaty had been refused.

(9) Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

9. Approval for ratification

(1) Where the ratification of a treaty referred to in section 7 is approved by Parliament without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

(2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.

(3) Where Parliament refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.

10. Ratification of Treaty

(1) All instruments of ratification of a treaty shall be signed, sealed and deposited by the Cabinet Secretary at the requisite international body and a copy thereof shall be filed with the Registrar.

(2) Where a treaty ratified under this Act is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in this Part.

(3) The provisions of subsection (2) shall apply similarly to protocols signed under a treaty.

11. Granting of full powers

The Cabinet Secretary may grant full powers to such persons as may be appropriate for the purposes of ratification of any treaty in accordance with this Act.

12. Offence to ratify without approval

(1) A person shall not ratify any treaty on behalf of the Government of Kenya unless the treaty has been considered and approved by the Cabinet and Parliament in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to imprisonment for a term not exceeding fifteen years or to a fine not exceeding twenty million shillings or to both such fine or imprisonment.

PART IV – REGISTRY OF TREATIES

13. Registry of Treaties

(1) There shall be a Registry of Treaties which shall be a department within the State Department responsible for matters relating to treaties.

(2) The Registry shall—

- (a) be the depository of all treaties to which Kenya is a party;
- (b) contain a record of all treaties in such manner as may be prescribed;
- (c) contain the status of all treaties pending ratification or domestication and the timelines for such ratification or domestication;
- (d) perform such other function as may be assigned to it by the Cabinet Secretary.

14. Registrar

(1) The Registry shall be headed by the Registrar of Treaties who shall be appointed by the Cabinet Secretary through an open and competitive process, with the approval of the Public Service Commission.

(2) The office of the Registrar shall be an office in the public service.

(3) A person shall be qualified to be appointed as Registrar if such person has—

- (a) at least a degree in law from a university recognised in Kenya; and
- (b) at least seven years experience in the practice of law or international relations;

(4) The Registrar shall—

- (a) maintain a record of—
 - (i) the treaties to which Kenya is a signatory;
 - (ii) the treaties proposed for ratification by Kenya;
 - (iii) the treaties that Kenya has ratified;
 - (iv) Kenya's reports to any treaty body;
 - (v) the recommendations and concluding observations from any treaty body on Kenya's reports;
- (b) monitor the implementation of the treaties ratified by Kenya;
- (c) inform lead State departments to observe and uphold the obligations of the respective lead state department under the respective treaties;
- (d) advise any citizen of Kenya on the rights and obligations of Kenya under a treaty;
- (e) maintain a website of the treaties to which Kenya is a signatory;
- (f) keep copies of the published reports of proceedings of the negotiations that led to the adoption of the treaties ratified by Kenya;
- (g) facilitate public access to treaties which Kenya has ratified;

- (h) respond to public inquiries on any treaty ratified by Kenya; and
- (i) perform such other functions as may be prescribed by the Cabinet Secretary.

PART V – GENERAL PROVISIONS

15. Public awareness

(1) The Cabinet Secretary shall cause to be laid before the National Assembly, at least once every financial year, a report containing records of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.

(2) The Cabinet Secretary shall, through publication in at least two newspapers of nationwide circulation, notify the public of every treaty, which may in any way bind, or to which Kenya is a party.

(3) The relevant State Department in respect of each treaty shall take measures to inform and create awareness to the public about the effects and benefits of the treaty.

16. Reporting in compliance with terms of treaties

Where a treaty provides for the submission of periodic reports as part of its monitoring mechanisms the Cabinet Secretary shall, in conjunction with the Attorney-General and the relevant State Department facilitate the preparation and submission of such report within the prescribed period.

17. Denunciation of certain treaties

(1) Where Kenya wishes withdraw from a treaty, the relevant Cabinet Secretary shall prepare a cabinet memorandum indicating the reasons for such an intention.

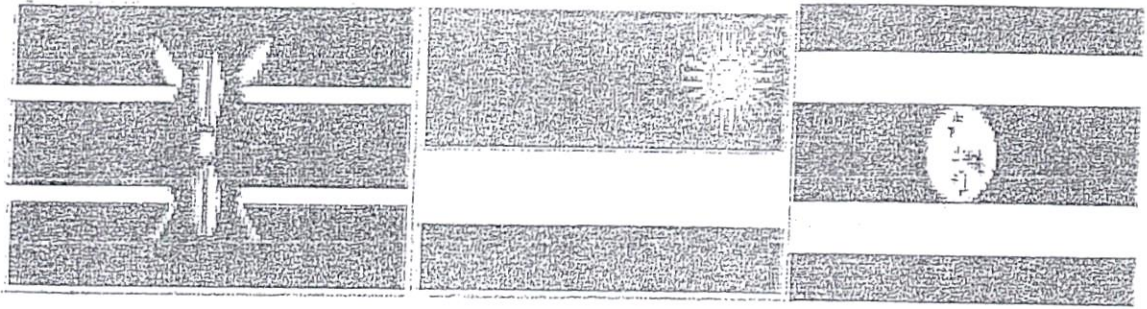
(2) The provisions of sections 4, 5 and 6 shall apply with necessary modifications, to withdrawal from a treaty.

18. Rules

(1) The Cabinet Secretary may make Rules for giving effect to this Act.

(2) Without limiting the generality of subsection (1) the Cabinet Secretary may make Rules—

- (a) prescribing anything that needs to be prescribed under this Act;
 - (b) for the granting of full powers in other areas in addition to the one specified under section 8;
 - (c) providing for the administrative steps to be taken prior to the preparation of the cabinet memorandum for cabinet approval of a treaty under this Act;
 - (d) the dissemination of information under this Act.
-



MUTUAL PEACE AND SECURITY PACT

Jx MJ

[Handwritten scribble]

PREAMBLE

PURSUANT TO the decisions of the Heads of State and Government in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 in its paragraph 'j' of the Kigali Communiqué on security cooperation. In compliance with article 8 of the MoU on fast tracking East African Integration signed on 28th October 2013 providing for a defense pact by end January 2014.

RECOGNIZING that various efforts have been made under the EAC in the peace and security sector;

NOTING that the ratification process of the EAC Protocol on Peace and Security is ongoing

AND WHEREAS the Partner states further agreed to encourage and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to the peace and security of the Partner states with emphasis to the in prevention, better management and resolution of disputes and conflicts in the region;

AND WHEREAS the Partner States agreed to enhance co-operation for mutual peace and security;

IN COMPLIANCE with the provisions of the MoU between Republic of Kenya, the Republic of Rwanda and the Republic of Uganda on the Tripartite Initiative for fast-tracking the East African Integration;

AND IN COMPLIANCE with the Integration Projects Summit Joint Communiqué held in Kigali, Rwanda on 28th October 2013;

DO RESOLVE to unite their efforts towards collective peace and security, and the preservation of peace, security and stability;

Now, therefore, the Partner States hereby agree to conclude this Mutual Peace and Security Pact (hereinafter referred to as "the Pact") as follows:

ARTICLE 1:

Interpretation

1. In this Pact, except where the context otherwise requires, the following terminologies shall mean:

- a. Mutual and Collective security: The collective measures taken by the Partner States to ensure peace and security.
- b. Partner States: The Partner States signatory to this Pact
- d. Summit: The committee composed of the Heads of State and Government of the Member States;
- e. Cross border crime: A crime committed across Partner states which share common border;
- f. Counter Terrorism: Practices, tactics, approaches, techniques and strategies established by Partner states in response or pre-emption to terrorist threats or acts;
- g. Transnational Crimes: Crimes committed across the border of Partner states which do not share a common border.
- h. Disaster Management: Strategies for managing disaster which help to ensure that loss of life, property and environmental degradation is at a minimum and includes strategies for the prevention, preparedness, response and recovery, situation and risk analysis, and the planning and the implementation of plans or programs, and for monitoring and evaluation.
- i. Genocide: Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:
 - a) Killing member of the group;
 - b) Causing seriously bodily or mental harm to the members of the group;

- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

j. Terrorism:

a) Any act which is the a violation of the criminal Laws of a partner State and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and calculated or intended to:

i. Intimidate, put in fear, put in force, coerce or induce any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular stand point, or to act according to certain principles.


ii. Disrupt any service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a partner State.

b) Any promotion, sponsoring, contributing to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) and (ii).

ARTICLE 2

Objectives

1. The purpose of this Pact is to establish a framework for combating crimes to contribute towards collective peace and security among Partner States.
2. Without prejudice to paragraph 1, the Partner States undertake to;



4



- a) Protect the people in and safeguard the development of the Partner States against the instability arising from the breakdown of the Law and order, intra and inter-State conflicts and aggression;
- b) Coordinate and cooperate in matter related to peace and security in the Partner States;
- c) Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- d) Observe and encourage the implementation of the United Nations, African Union and other International conventions and treaties on the arms control, disarmament and the, peaceful relations between Partner States;
- e) Develop peace keeping capacity and coordinate participation of the Partner States in International and Regional peace support operations;
- f) Enhance the capacity of the Partner States with respect to disaster management and coordination of the International Humanitarian assistance;
- g) Enhance the capacity of the Partner States in the management of refugees;
- h) Enhance the capacity of the Partner States in combating terrorism and piracy and;
- i) Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.

ARTICLE 3

Areas of cooperation

1. In order to achieve the Pact objective as in Art 2, the security inter-agencies of Partner States shall cooperate in all areas relevant for the promotion, maintenance of peace and security, stability in the region and shall include:

- a. Conflict prevention, management and resolution
- b. Prevention of genocide
- c. Combating terrorism
- d. Combating and suppressing piracy
- e. Peace support operations
- f. Disaster risk reduction, management and crisis response

- g. Management of refugees
- h. Control of proliferation of illicit small arms and light weapons
- i. Combating transnational and cross border crimes, including drug and human trafficking, illegal migration, money laundering, cyber crime and motor vehicle theft
- j. Addressing and combating cattle rustling
- k. Prisons and correctional services including exchange of prisoners, detention, custody and rehabilitation of offenders
- l. Combating organized crimes;
- m. Combating economic crimes;
- n. Collect, collate and share intelligence on emerging and existing threats

2. Sharing and promoting best practices including, mobilization of the population to prevent, combat and eradicate crimes, disaster preparedness and management.

3. For purposes of combating cross border crimes the Partner states shall develop appropriate mechanisms, strategies and programs as follows: :

- a. Establishment of fusion centers
- b. Establishment of database on cross border crimes;
- c. Enhancing technical capacity for criminal intelligence;
- d. Facilitating joint operations to hunt down criminals among member states;
- e. Management of fugitives and suspects;
- f. Capacity building ,Training and Knowledge sharing;
- g. Harmonizing national legislations.
- h. Fast Tracking identified centers of excellence in Policing.

ARTICLE 4

Exchange of information and experience

1. The Partner states, through the established relevant organs, shall regularly exchange information, conduct and coordinate operations in the field of combating crimes.

2. Partner states, through established relevant organs and structures, shall work together to develop and enhance their capacities in a closer cooperation to facilitate the effective implementation of this pact and the achievement of its objective. In order to achieve the objectives of the Pact, the Partner States agree to undertake concerted measures to enhance cooperation in training and development mostly but not limited to:

- a. IT skills,
- b. Criminal investigations techniques
- c. Intellectual Property crimes
- d. Financial crimes
- e. Drug trafficking
- f. Smuggling of goods
- g. Human trafficking
- h. Counter terrorism
- i. Forensic Skills
- j. Any other areas of shared priority and common interest as may be agreed to by the Partner States.

ARTICLE 5

Free Movement of People

The free movement of people using ID, Voter's Cards and Student IDs poses security challenges. Each Partner State shall:

- a. Establish a mechanism for issuing student identification documents.
- b. Harmonize visa regulations to guide the issuance of single tourist visa.

ARTICLE 6

Funding

Partner States shall adequately finance the activities of the relevant organs, structures and operations.

ARTICLE 7

Confidentiality of Information

1. The Partner States undertake not to disclose any classified information obtained in the implementation of this Pact, or any other related agreements, other than to their own staff, to whom such disclosure is essential for purposes of having effect to this Pact or such further agreements pursuant to this Pact.
2. The Partner States further undertake not to use any classified information obtained during any multilateral cooperation among them to the detriment of or against the interests of any Partner State.
3. Visiting personnel, in the implementation of this Pact, shall comply with the Security Regulations of the host Partner State. Any information disclosed or made available to such visiting personnel shall be treated in accordance with the provisions of this Article.

ARTICLE 8

Accession

This Pact shall remain open for accession by any State as shall be approved by the Partner States through the policy organs from time to time.

ARTICLE 9

Settlement of Disputes

Any dispute among the Partner States arising from the interpretation and/or implementation of this Pact shall be settled amicably. Where there is no resolution, the matter shall be referred to the EAC Court of Justice or any other mechanism agreed upon by the Partner States.

ARTICLE 10

Withdrawal of a Member

Any Partner State may withdraw from this Pact upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Summit and shall cease to enjoy all rights and benefits under this Pact.

ARTICLE 11

Amendment

1. Any Partner State may propose an amendment to this Pact.
2. Such proposals are to be made to the relevant organs which shall duly notify the Summit for consideration.
3. An amendment to this Pact shall be adopted by consensus of all the Partner States.

ARTICLE 12

Review of the Pact

This Pact shall be reviewed every three years.

ARTICLE 13

Breach of the Pact

Any Partner State may report an alleged breach of the Pact to the Summit, which shall instruct the relevant organs to carry out an investigation, report thereon and make recommendations back to the Summit.

JK

M

[Handwritten mark]

ARTICLE 14

Implementation

The relevant authorities including other National Security Services such as Correctional, Immigration and Intelligence Services are to develop such organs, structures and policies as shall be necessary for the implementation of this Pact by 30th March 2014 for subsequent approval by the Committee of Ministers for onward transmission to the Summit.



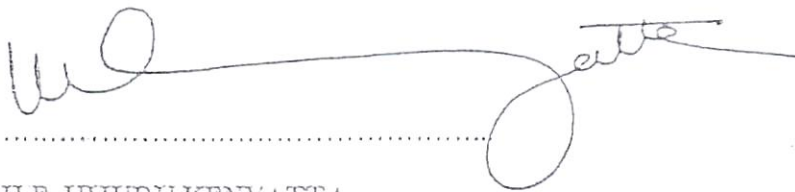
ARTICLE 15

Entry into Force

This Pact shall enter into force upon ratification by Partner States. The Pact shall enter into force 6 months after the date of signature by Partner States.

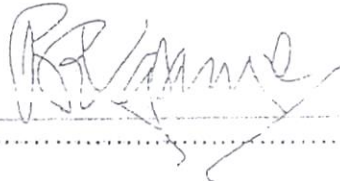
DONE at Kampala, Uganda this 20th day of February, 2014

IN WITNESS WHEREOF, WE, THE HEADS OF STATE OF PARTNER STATES HAVE SIGNED THIS PACT.



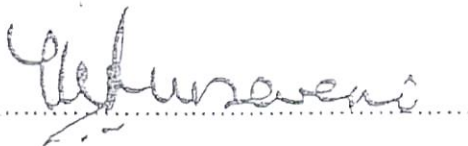
H.E. UHURU KENYATTA

PRESIDENT OF THE REPUBLIC OF KENYA



H.E. PAUL KAGAME

PRESIDENT OF THE REPUBLIC OF RWANDA



H.E. YOWERI KAGUTA MUSEVENI

PRESIDENT OF THE REPUBLIC OF UGANDA



East African Community

Protocol on Peace and Security



East African Community

Protocol on Peace and Security

Table of Contents

Preamble	5
Article 1 Interpretation	6
Article 2 Scope of Cooperation	8
Article 3 Objectives	8
Article 4 Conflict Prevention, Management and Resolution	9
Article 5 Prevention of Genocide	9
Article 6 Combating Terrorism	10
Article 7 Combating and Suppressing Piracy	10
Article 8 Peace Support Operations	10
Article 9 Disaster Management and Crisis Response	11
Article 10 Management of Refugees	11
Article 11 Control of Proliferation of Illicit Small Arms and Light Weapons	11
Article 12 Combating Transnational and Cross Border Crimes	12
Article 13 Preventing and Combating Cattle Rustling	12
Article 14 Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders	13
Article 15 Institutional Arrangements	13
Article 16 Relationship with Regional and International Organisations	13
Article 17 Confidentiality of Information	13
Article 18 Dispute Settlement	14
Article 19 Amendment of the Protocol	14
Article 20 Entry into Force	14
Article 21 Depository and Registration	14

Preamble

.....5
.....6
.....8
.....8
.....9
.....9
.....10
.....10
.....10
.....11
.....11
Weapons11
.....12
.....12
.....13
.....13
1513
.....13
.....14
.....14
.....14
.....14

WHEREAS the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda signed the Treaty Establishing the East African Community on the 30th day of November 1999;

AND WHEREAS the Republic of Burundi and the Republic of Rwanda acceded to the accession Treaty on the 1st day of July 2007;

AND WHEREAS in order to promote the achievement of the objectives of the Community set out in the Treaty the Partner States agreed under Article 5(3)(f) to promote peace, security, and stability within, and good neighborliness among themselves;

AND WHEREAS under Article 124 of the Treaty the Partner States agreed that peace and security are pre-requisites to social and economic development within the Community and vital to the achievement of the objectives of the Community;

AND WHEREAS the Partner States further agreed to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to the peace and security of the Partner States with a view to the prevention, better management and resolution of disputes and conflicts between them;

AND WHEREAS under Article 151 of the Treaty, the Partner States undertook to conclude such protocols as may be necessary in each area of cooperation which shall spell out the objectives, scope of, and the institutional mechanisms for cooperation and integration ;

NOW THEREFORE the Partner States;

RE-AFFIRMING their faith in the purposes and principles of the Charter of the United Nations, and the Constitutive Act of the African Union and the desire to live in peace with all peoples and governments;

RECOGNIZING the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in the internal affairs of each Partner State;

AWARE that peace, security and strong political relations are critical factors in creating a conducive environment for regional co-operation and integration;

CONSCIOUS of the fact that close co-operation, mutual understanding and collaboration in matters of peace and security will be to the mutual benefit of the Partner States;

DETERMINED to establish a regional mechanism for the effective implementation of decisions made in areas of peace and security, and to consolidate further ties of friendship and fraternity amongst the Partner States;

AGREE as follows:

ARTICLE 1 - Interpretation

In this Protocol, except where the context otherwise requires-

“combined operations” means any operation carried out by the forces of the Partner States under one command;

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

“Council” means the Council of Ministers of the Community provided for under Article 9 of the Treaty;

“counter-terrorism” means practices, tactics, techniques, and strategies that Governments, militaries, police departments and corporations of Partner States adopt in response to terrorist threats or acts, both real and imputed;

“cross border crime” means a crime committed across Partner States which share a common border;

“disaster management” means strategies for managing disasters which help to ensure that loss of life, property and environmental degradation is at a minimum and includes strategies for the prevention, preparedness, response and recovery, situation and risk analysis, and the planning and the implementation of plans or programs, and for monitoring and evaluation;

“early warning” means the process of collecting, verifying and analysing information for the purpose of identifying threats to peace and security and communicating the information to the responsible authorities;

n
n
f
“genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group;

“joint operations” means operations, which involve multi-Sectoral agencies of the Partner States engaged in peace support operations, disaster management, search and rescue, counter-terrorism, transnational and cross border crimes and any other operations which may be mutually determined by the Partner States;

“terrorism” means:

- (a) any act which is a violation of the criminal laws of a Partner State and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State;
- (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) and (ii);

“transnational crime” means a crime committed across the border of Partner States which do not share a common border.

ARTICLE 2 - Scope of Cooperation

1. The Partner States shall cooperate in peace and security matters and collaborate with international and regional organisations to promote peace and security in the region.
2. The Partner States shall where necessary develop common measures, strategies and programmes and enter into agreements for the effective implementation of this Protocol.
3. Without prejudice to the generality of this Article, the Partner States agree to, *inter alia* cooperate in the following areas:
 - (a) conflict prevention, management and resolution;
 - (b) prevention of genocide;
 - (c) combating terrorism;
 - (d) combating and suppressing piracy;
 - (e) peace support operations;
 - (f) disaster risk reduction, management and crisis response;
 - (g) management of refugees;
 - (h) control of proliferation of illicit small arms and light weapons;
 - (i) combating transnational and cross border crimes; including drug and human trafficking, illegal migration, money laundering, cyber crime and motor vehicle theft;
 - (j) addressing and combating cattle rustling; and
 - (k) Prisons and Correctional Services including exchange of prisoners, detention, custody and rehabilitation of offenders.
4. For purposes of paragraph 3, the Partner States agree to establish an early warning mechanism to facilitate the anticipation, preparedness and early responses to prevent, contain and manage conflict and crisis situations in the areas of cooperation.

ARTICLE 3 - Objectives

1. The objective of this Protocol is to promote peace, security, and stability within the Community and good neighbourliness among the Partner States.
2. Without prejudice to paragraph 1, the Partner States undertake to:
 - (a) protect the people and safeguard the development of the Community against instability arising from the breakdown of law and order, intra-and inter-state conflicts and aggression;
 - (b) co-ordinate and co-operate in matters related to peace and security in the Community;

- th
n.
es
is
er
- (c) prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
 - (d) observe and encourage the implementation of the United Nations, African Union and other international conventions and treaties on arms control, disarmament and peaceful relations between Partner States;
 - (e) develop peacekeeping capacity and co-ordinate the participation of Partner States in international and regional peace support operations;
 - (f) enhance the capacity of the Community with respect to disaster management and co-ordination of international humanitarian assistance;
 - (g) enhance the capacity of the Partner States in the management of refugees;
 - (h) enhance the capacity of the Partner States in combating terrorism and piracy;
 - (i) cooperate in exchange of prisoners, detention, custody and rehabilitation of offenders; and
 - (j) implement the East African Community Strategy on Regional Peace and Security.

n
le

ARTICLE 4 - Conflict Prevention, Management and Resolution

- 1,
g
t,
1. The Partner States undertake to develop an East African Community conflict prevention, management and resolution mechanism.
 2. For purposes of paragraph 1, Partner States shall manage and seek to resolve any dispute or conflict within and between two or more Partner States or with foreign countries by peaceful means.
 3. The Community may, in consultation with the United Nations Security Council and the Peace and Security Council of the African Union, offer to mediate in disputes or conflicts within and between two or more Partner States or with foreign countries.

e

ARTICLE 5 - Prevention of Genocide

- it
e
e
1. The Partner States undertake to cooperate in the prevention of genocide within the Community.
 2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) prevent any act intended to destroy, in whole or in part, a national, ethnic, racial or religious group; and
 - (b) develop a joint mechanism for the prevention of genocide and take appropriate measures against the perpetrators.

ARTICLE 6 - Combating Terrorism

1. The Partner States agree to cooperate in counter terrorism measures within the Community.
2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) jointly formulate strategies and mechanisms for the operationalisation of counter-terrorism measures;
 - (b) jointly formulate strategies and mechanisms to combat terrorism;
 - (c) jointly formulate strategies on how to conduct joint operations; and
 - (d) conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

ARTICLE 7 - Combating and Suppressing Piracy

1. The Partner States agree to cooperate in combating piracy in the Community.
2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) jointly formulate mechanisms for the operationalisation of anti piracy measures; and
 - (b) jointly formulate mechanisms to fight piracy;
 - (c) jointly develop strategies on how to fight and suppress piracy; and
 - (d) conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

ARTICLE 8 - Peace Support Operations

1. The Partner States shall formulate a joint mechanism for the operationalisation of peace support operations within the context of the Charter of the United Nations, the Constitutive Act of the African Union and the Treaty.
2. The Partner States shall conduct peace support operations within the Community under a conflict prevention, management and resolution framework.

ARTICLE 9 - Disaster Risk Reduction, Management and Crisis Response

1. The Partner States shall develop mechanisms to provide mutual assistance in disaster management and crisis response
2. For the purposes of paragraph 1, the Partner States shall:
 - (a) develop and early warning and response system for common disasters within the Community;
 - (b) establish the database for disaster management; and
 - (c) develop capacity to manage disaster situations.

ARTICLE 10 - Management of Refugees

1. The Partner States undertake to establish common mechanisms for the management of refugees.
2. For the purposes of paragraph 1, the Partner States shall:
 - (a) harmonize their policies, laws, strategies and programmes on the management of refugees;
 - (b) incorporate the provisions of the 1951 UN Convention on Refugees and 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa in their national legislation;
 - (c) establish and harmonise asylum procedures;
 - (d) network and share information regarding asylum seekers and refugees;
 - (e) institute mechanisms to facilitate family re-union;
 - (f) establish systems for agencies involved with refugees within the Community to share views and exchange experiences; and
 - (g) develop joint training modules for stakeholders in refugee management.

ARTICLE 11 - Control of Proliferation of Illicit Small Arms and Light Weapons

The Partner States undertake to jointly develop policies, measures, mechanisms, strategies and programmes, to control the proliferation of illicit small arms and light weapons.

ARTICLE 12 - Combating Transnational and Cross Border Crimes

1. The Partner States shall undertake joint operations in controlling and preventing transnational and cross-border crimes including:
 - (a) the theft of motor vehicles;
 - (b) the smuggling of goods;
 - (c) illicit drug trafficking;
 - (d) human trafficking;
 - (e) illegal migration;
 - (f) trade in counterfeit goods;
 - (g) intellectual property piracy; and
 - (h) any other transnational and cross – border crimes.

2. For purposes of paragraph 1, the Partner States shall develop appropriate mechanisms, policies, measures, strategies and programmes to combat cross-border crimes including:
 - (a) the establishment of regional databases on cross-border crimes;
 - (b) the enhancement of technical capacity for criminal intelligence;
 - (c) the enhancement of the exchange of criminal intelligence and other security information between the Partner States central criminal intelligence information centres;
 - (d) the strengthening of cross border security;
 - (e) the training of personnel and sharing information on the *modus operandi* being used by criminals;
 - (f) the enactment of laws on mutual legal assistance in criminal matters; and
 - (g) the establishment of cross border and inter state communication.

ARTICLE 13 - Preventing and Combating Cattle Rustling

1. The Partner States that do not have policies and laws to prevent and combat cattle rustling agree to develop and adopt policies, law and strategies to achieve this.
2. The Partner States agree to harmonise their policies, laws and strategies to prevent and combat cattle rustling.

ARTICLE 14 - Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders

1. The Partner States agree to cooperation in the exchange, custody and rehabilitation of prisoners and offenders.
2. For purposes of Paragraph 1, the Partner States agree to, *inter alia* cooperate in the following areas:
 - (a) the governance and management frameworks of prisons and correctional services;
 - (b) penal reform agenda; and
 - (c) research, data collection, information exchange and the enhancement of regional standards, policies and practices.
3. The Partner States agree to harmonise their training programmes and practices in relation to the management of penal and rehabilitation institutions.

ARTICLE 15 - Institutional Arrangements

The Council shall determine the institutional arrangements for the implementation of this Protocol.

ARTICLE 16 - Relationship with Regional and International Organisations

The Partner States shall foster cooperation with regional and international organizations whose activities have a bearing on the objectives of this Protocol.

ARTICLE 17 - Confidentiality of Information

1. The Partner States undertake not to disclose any classified information, obtained under this Protocol or as a result of their participation in the Community, other than to their own officials to whom such disclosure is essential for purposes of giving effect to this Protocol or any directive taken by the Summit.
2. Partner States shall ensure that the officials referred to in this Article shall at all times maintain strict secrecy.
3. Partner States further undertake not to use any classified information obtained during any multilateral co-operation between and or among them to the detriment of any Partner State.
4. A Partner State shall remain bound by the requirement of confidentiality under this Article even after withdrawal and expulsion from the Community.

ARTICLE 18 - 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 19 - 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 20 - Entry into Force

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

ARTICLE 21 - Depository and Registration

1. The original text of this protocol shall be deposited with the Secretary General who shall transmit certified true copies thereof to all Partner States.
2. The Secretary General shall register this protocol with the African Union, United Nations and such other organisation as the Council may determine.

DONE at Dar es Salaam Tanzania this15th....., day of February, 2013.

IN WITNESS WHEREOF the undersigned have appended their signatures hereto:

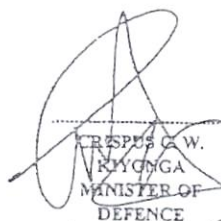
For and on behalf of the
Republic of Uganda

For and on behalf of the
Republic of Burundi

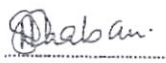
For and on behalf of the
Republic of Kenya

For and on behalf of
the United Republic of
Tanzania

For and on behalf of the
Republic of Rwanda


CRISPUS C.W.
KYUNGA
MINISTER OF
DEFENCE

C P P GABRIEL
NIZIGAMA
MINISTER FOR
PUBLIC SECURITY


HON. DR NAOMI
SHAABAN
MINISTER FOR
GENDER,
CHILDREN AND
SOCIAL
DEVELOPMENT


BERNARD
KAMILLIUS MEMBE
MINISTER OF
FOREIGN AFFAIRS


SHEIKH MUSA FAZIR
HARERIMANA
MINISTER OF
INTERNAL
SECURITY

