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Wednesday 30/11/16
Afternoon
Sitting
Ado*

ELEVENTH PARLIAMENT – FOURTH SESSION

SELECT COMMITTEES ON REGIONAL INTEGRATION

**REPORT ON THE CONSIDERATION OF THE EAST AFRICAN COMMUNITY
PROTOCOL ON PRIVILEGES AND IMMUNITIES**

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

NOVEMBER, 2016

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ABBREVIATIONS

EAC - East African Community

CHAIRPERSON'S FOREWORD

Through a memorandum to the Speaker of the National Assembly dated 3rd May 2016, and Pursuant to Article 27(2) of the Treaty, the Cabinet Secretary for the Ministry of Foreign Affairs and International Trade requested the National Assembly to note the content of the Memorandum and approve the ratification of the East African Community (EAC) Protocol on Privileges and Immunities.

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

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

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

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

It is therefore my pleasant duty and privilege, on behalf of the Select Committee on Regional Integration to table its Report in the House on the consideration of the East African Community (EAC) Protocol on Privileges and Immunities.

Hon. Florence Kajuju, MP

EXECUTIVE SUMMARY

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

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

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

The Committee noted that the purpose of the Protocol is to harmonize and ensure consistency in the manner that Partner States grant privileges and immunities to EAC's property, assets and staff.

The Committee further noted that the Protocol provides for:

- a) Immunities of the property and assets of the Community. Partner States are required to accord the Community, its property and assets, immunity from legal processes except where the Community has expressly waived this immunity, provided that the waiver does not extend to attachment of property and assets;
- b) Protection of the funds of the Community against attachment, theft, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action;
- c) Tax exemptions for the Community from all taxes on its properties except charges for public utility services, funds and property availed to the Community for its functions and customs duties on imports and exports in respect of articles imported or exported by the Community for official use;
- d) Facilities in respect of official communications where Partner States are to ensure that the Community enjoys in the territory of each Partner State, for its official communications, treatment not less favourable than that accorded to similar international organizations; and
- e) Privileges and immunities of persons employed in the service of the Community in respect of immunity from civil processes in the performance of their official duties, exemptions

from taxation on salaries and emoluments, exemptions from customs duties and other taxes as well as immunities from immigration restrictions.

1. MANDATE OF THE COMMITTEE

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

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

1.1 COMMITTEE MEMBERSHIP

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

1.2 COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Brigita Mati
Research Officer III	SharonRotino

1.3 RECOMMENDATION

The National Assembly approves the ratification of the East African Community Protocol on Privileges and Immunities pursuant to Section 8 of the Treaty making and Ratification Act of 2012.

2 BACKGROUND INFORMATION

2.1 Historical Perspective of the Protocol

The development of the EAC Protocol on Privileges and Immunities was necessitated by the need to harmonize the treatment of the assets, properties and people employed in the service of the EAC across all Partner States. The Protocol aims at standardizing the status, privileges and immunities to be accorded by the Partner States to the Community, its assets and properties and to persons employed by the Community.

The process leading to the development of the Protocol commenced pursuant to a decision of the EAC Council of Ministers in 2007. The Protocol, which was developed pursuant to Article 73 of EAC Treaty which related to immunities of persons employed in the service of the Community, consultants and experts of the Community and delegates of the Partner States, as well as Articles 138 thereof, on the status, privileges and immunities of the Community, was negotiated by experts from all the EAC Partner States.

The protocol was subsequently approved by the 16th Summit of the EAC Heads of State in February 2015 and thereafter signed by the Partner States' respective Ministries during the 31st meeting of the Council of Ministries held in April 2015. The Council then directed the Partner States to finalize ratification of the Protocol and deposit their respective instruments of ratification with the EAC Secretary General.

2.2 Objective of the Protocol

The purpose of the Protocol is to harmonize and ensure consistency in the manner that Partner States grant privileges and immunities to EAC's property, assets and staff.

The Protocol provides for:

- i. Immunities of the property and assets of the Community. Partner States are required to accord the Community, its property and assets, immunity from legal processes except where the Community has expressly waived this immunity, provided that the waiver does not extend to attachment of property and assets;
- ii. Protection of the funds of the Community against attachment, theft, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action;
- iii. Tax exemptions for the Community from all taxes on its properties except charges for public utility services, funds and property availed to the Community for its functions and customs duties on imports and exports in respect of articles imported or exported by the Community for official use;

- iv. Facilities in respect of official communications where Partner States are to ensure that the Community enjoys in the territory of each Partner State, for its official communications, treatment not less favourable than that accorded to similar international organizations; and
- v. Privileges and immunities of persons employed in the service of the Community in respect of immunity from civil processes in the performance of their official duties, exemptions from taxation on salaries and emoluments, exemptions from customs duties and other taxes as well as immunities from immigration restrictions.

2.3 Constitutional Implications

The Protocol does not anticipate any amendments to the Constitution of Kenya.

2.4 Implementation of the Protocol

In Kenya, the Protocol will be implemented in accordance with the privileges and Immunities Act, Cap 179 of the Laws of Kenya.

2.5 Financial Implications

Since the implementation of the Protocol will be through the existing institutional framework, there are no financial commitments envisaged upon ratification.

However, as a host country, Kenya will be required to accord privileges and immunities including tax exemptions to the EAC in relation to its operations, assets, property and staff engaged of located within the country. This will have an implication in terms of loss of tax revenue.

2.6 Summary of the Provisions of the Protocol

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

Article 1-provides for the definitions of various terms as used in the protocol. Such as-“**persons employed in the service of the Community**” means all persons engaged in rendering service to

the Community including staff of the Community, members of the East African Legislative Assembly and the Judges of the East African Court of Justice; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. COMMITTEE OBSERVATIONS

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

1. The purpose of the Protocol is to harmonize and ensure consistency in the manner that Partner States grant privileges and immunities to EAC's property, assets and staff.
2. The Protocol provides for:
 - i. Immunities of the property and assets of the Community. Partner States are required to accord the Community, its property and assets, immunity from legal processes except where the Community has expressly waived this immunity, provided that the waiver does not extend to attachment of property and assets;
 - ii. Protection of the funds of the Community against attachment, theft, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action;
 - iii. Tax exemptions for the Community from all taxes on its properties except charges for public utility services, funds and property availed to the Community for its functions and customs duties on imports and exports in respect of articles imported or exported by the Community for official use;
 - iv. Facilities in respect of official communications where Partner States are to ensure that the Community enjoys in the territory of each Partner State, for its official communications, treatment not less favourable than that accorded to similar international organizations; and
 - v. Privileges and immunities of persons employed in the service of the Community in respect of immunity from civil processes in the performance of their official duties, exemptions from taxation on salaries and emoluments, exemptions from customs duties and other taxes as well as immunities from immigration restrictions.
3. In Kenya, the Protocol will be implemented in accordance with the privileges and Immunities Act, Cap 179 of the Laws of Kenya.
4. The application of the Protocol does not anticipate amendments to the Constitution.
5. Since the implementation of the Protocol will be through the existing institutional framework, there are no financial commitments envisaged upon ratification. However, as a host country, Kenya will be required to accord privileges and immunities including tax exemptions to the EAC in relation to its operations, assets, property and staff engaged of located within the country. This will have an implication in terms of loss of tax revenue.

4. RECOMMENDATION

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

Signed  Date 30th Nov. 2016

(HON. FLORENCE KAJUJU, MP)

CHAIRPERSON, SELECT COMMITTEE ON REGIONAL INTEGRATION

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

Present:

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

Absent With Apology

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

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

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

MIN.NO. CRI/119/2016 PRELIMINARIES

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

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

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

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

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

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

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

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

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

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

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

MIN.NO.CRI/122/2016: ADJOURNMENT

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

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

CHAIRPERSON

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

Present:

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

Absent With Apology

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

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

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

MIN.NO. CRI/096/2016 PRELIMINARIES

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

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

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

Brief overview

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

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

1. The provisions of the protocol

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Brief overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) **The East African Community Protocol on Privileges and Immunities**

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

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

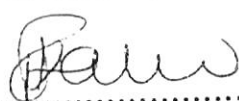
b) The East African Community Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice

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

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

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

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

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

CHAIRPERSON

SELECT COMMITTEE ON REGIONAL INTEGRATION

MEMBERS ATTENDANCE REGISTER

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

	NAME	TITLE	SIGNATURE
1	Hon Florence Wajuu	CHAIRPERSON	
2	Hon Chris Nankulu	VICE-CHAIR	
3	Hon Wajitu Muli	MP	
4	Hon. Robert Mbu	Member	
5	Hon Gideon Kanchala	Member	
6	Hon. Andrew Mwachira	member	
7	Hon. Willy Nteyo	Member	
8	Hon Meme Lomualiel	Member	
9	Hon Sarah Kere	member	
10	Hon David Kanti	member	
11	Hon. Alfreo Ugo	member	
12	Hon. Kido Raso	Member	
13	Hon. Anyang Anyang Tobiso	"	
14	Hon. Mary Sireta	"	
15	Hon Alois N. Centomaga	"	
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(Memo No.....)

REPUBLIC OF KENYA



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
TRADE

MEMORANDUM TO THE SPEAKER OF THE NATIONAL
ASSEMBLY ON THE RATIFICATION OF THE EAST
AFRICAN COMMUNITY PROTOCOL ON PRIVILEGES AND
IMMUNITIES

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

May 2016

1.0 OBJECTIVES

The objectives of the memorandum are:

- i. To inform the National Assembly about the East African Community (EAC) Protocol on Privileges and Immunities ("Protocol"); and
- ii. To request the National Assembly to approve the ratification of the Protocol, in accordance with the Treaty Making and Ratification Act number 45 of 2012.

2.0 BACKGROUND

The development of the Protocol was necessitated by the need to harmonize the treatment of the assets, properties and people employed in the service of EAC across all Partner States. The Protocol aims at standardizing the status, privileges and immunities to be accorded by the Partner States to the Community, its assets and properties and to persons employed by the Community:

The process leading to the development of the Protocol commenced pursuant to a decision of the EAC Council of Ministers in 2007. The Protocol, which was developed pursuant to Article 73 of EAC Treaty, which relates to Immunities of persons employed in the service of the Community, consultants and experts of the Community and delegates of the Partner States; as well as Articles 138 thereof, on the status, privileges and immunities of the Community, was negotiated by experts from all the EAC Partner States.

The Protocol was subsequently approved by the 16th Summit of the EAC Heads of State in February 2015 and thereafter signed by the Partner States' respective Ministers during the 31st meeting of the Council of Ministers held in April 2015. The Council then directed the Partner States to finalize ratification of the Protocol and deposit their respective instruments of ratification with the EAC Secretary General.

3.0 ANALYSIS OF THE PROBLEM

Under the Treaty for the Establishment of the EAC, the Community enjoys international legal personality. In order to uphold this status, Partner States recognized the need to provide the Community and its officials with such immunities and privileges as are necessary for the proper discharge of their functions.

It is noteworthy that since its establishment in 2000, EAC has been expanding in scope and creating new institutions. Its assets and staff are also increasing and are distributed across the Partner States. Currently Kenya hosts two EAC institutions namely: Lake Victoria Basin Commission, based in Kisumu and the Center for Aviation Medicine to be based in Nairobi. There are also a number of institutions that have been approved by the Partner States but whose hosting is yet to be agreed upon and Kenya will be applying to host some of them.

Under the present arrangement, the Secretary General of the EAC concludes host country agreements relating to privileges and immunities with Partner States within whose territory institutions of the Community are situated. These privileges and immunities vary depending on the Partner State with which the Secretary General concludes the host country agreement.

It is in this respect that the purpose of the Protocol is to harmonize and ensure consistency in the manner that Partner States grant privileges and immunities to EAC's property, assets and staff.

The Protocol provides for:

- (a) Immunities of the property and assets of the Community. Partner States are required to accord the Community, its property and assets, immunity from legal processes except where the Community has expressly waived this immunity, provided that the waiver does not extend to attachment of property and assets;
- (b) Protection of funds of the Community against attachment, theft, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action;

- (c) Tax exemptions for the Community from all taxes on its properties except charges for public utility services, funds and property availed to the Community for its functions and customs duties on imports and exports in respect of articles imported or exported by the Community for official use;
- (d) Facilities in respect of official communication where Partner States are to ensure that the Community enjoys in the territory of each Partner State, for its official communication, treatment not less favourable than that accorded to similar international organizations; and
- (e) Privileges and immunities of persons employed in the service of the Community in respect of immunity from civil processes in the performance of their official duties, exemption from taxation on salaries and emoluments, exemptions customs duties and other taxes as well as immunities from immigration restrictions.

In Kenya, the Protocol will be implemented in accordance with the Privileges and Immunities Act, Cap 179 of the Laws of Kenya.

The application of the Protocol does not envisage amendment(s) to the Constitution.

4.0 OPTIONS ON THE WAY FORWARD

The EAC Treaty provides that protocols shall be subject to ratification and that the implementation of protocols commences once all Partner States have ratified and deposited the instruments of ratification with the EAC Secretary General.

In order to allow for the entry into force, it is proposed that Kenya ratifies the Protocol on Privileges and Immunities of the EAC. The ratification of the Protocol would ensure that Kenya meets her obligations under the EAC integration process.

Cabinet has already approved the ratification of the Protocol during its Fourth Meeting held on April 1, 2016.

5.0 FINANCIAL IMPLICATIONS

Since the implementation of this Protocol will be through the existing institutional framework, there are no financial commitments envisaged upon ratification.

However as a host country Kenya will be required to accord privileges and immunities including tax exemptions to the EAC in relation to its operations, assets, property and staff engaged or located within the country. This will have an implication in terms of loss of tax revenue.

6.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to;

- a) take note of the contents of this Memorandum;
- b) approve ratification of the EAC Protocol on Privileges and Immunities;

Signed



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

3/05/16

DATE

ANNEXES

1. East African Community Protocol on Privileges and Immunities
2. Cabinet Approval of the ratification of the Protocol

ANNEX VII



EAST AFRICAN COMMUNITY

**PROTOCOL ON
PRIVILEGES AND IMMUNITIES OF THE EAST
AFRICAN COMMUNITY**

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(Signature)

**PROTOCOL
ON
PRIVILEGES AND IMMUNITIES OF THE EAST AFRICAN COMMUNITY**

PREAMBLE:

WHEREAS the Republic of Burundi, the Republic of Kenya, the United Republic of Tanzania, the Republic of Uganda and the Republic of Rwanda (hereinafter referred to as "the Partner States") are parties to the Treaty for the Establishment of the East African Community (hereinafter referred to as "the Community");

AND WHEREAS the Partner States recognize that the Community enjoys international legal personality;

AND WHEREAS the Partner States recognize and uphold the international character and the responsibilities of the Community and persons employed in the service of the Community;

AND WHEREAS the Partner States recognize the need to provide for the Community and persons employed in the service of the Community with such immunities and privileges as are necessary for the proper discharge of their functions under the Treaty;

AND PURSUANT to the provisions of Articles 73 and 138 of the Treaty for the Establishment of the East African Community;

HEREBY AGREE AS FOLLOWS:

**ARTICLE 1
Definitions**

In this Protocol except where the context otherwise requires,

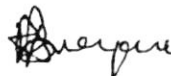
"appropriate authorities" means national, regional, municipal or other authorities in the Partner States as may be appropriate in the context of this Protocol and in accordance with the laws, customs and practices applicable in the Partner States;

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

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

"dependant" means a spouse and a child of a person employed in the service of the Community;

"international organisation" means an international organisation accredited with diplomatic status in any of the Partner States;



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

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

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

"Property" means assets belonging to the Community.

ARTICLE 2

Objective

The objective of this Protocol is to standardize the status, privileges and immunities to be accorded by the Partner States to:

- (a) the assets and properties of the Community wherever situated in the Partner States; and
- (b) persons employed in the service of the Community.

ARTICLE 3

Scope of the Protocol

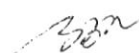
The provisions of this Protocol shall apply to the :

- (a) immunity of the property and assets of the Community;
- (b) protection of funds of the Community;
- (c) tax exemptions for the Community;
- (d) facilities in respect of official communication; and
- (e) privileges and immunities of persons employed in the service of the Community.

ARTICLE 4

Immunity of the Property and Assets

1. Partner States shall accord the Community, its premises, property and assets, wherever located immunity from legal process, except in any case where the Community has expressly waived its immunity, provided that no waiver of immunity shall extend to any measure of attachment of property and assets.
2. For the purposes of paragraph 1:



- (a) the premises, property and assets of the Community shall be inviolable;
- (b) the property and assets of the Community, wherever located and however held shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action; and
- (c) the archives of the Community and all documents belonging to or held by the Community wherever located, shall be inviolable.

ARTICLE 5
Funds of the Community

- 1. The Partner States shall take all appropriate steps to protect the funds of the Community against attachment, theft, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- 2. Without being restricted by the Partner States' financial controls, regulations or moratoria of any kind -
 - (a) the Community may hold funds or currency of any kind and operate accounts in any Partner State;
 - (b) the Community shall be free to transfer its funds or currency from one Partner State to another or within any Partner State and to convert any currency into any other currency.
- 3. In exercising its rights under paragraph 2, the Community shall pay due regard to any representations made by the Government of a Partner State in so far as it is considered that effect can be given to such representations without detriment to the interests of the Community.

ARTICLE 6
Tax Exemptions for the Community

- 1. The Community, its income, assets and other property shall be exempt from:
 - (a) all taxes on the property, income and official transactions of the Community except charges for public utility services;
 - (b) customs duties on imports and exports in respect of articles imported or exported by the Community for its official use; provided that, the articles imported under such exemption shall not be sold or otherwise disposed of in the territory of the Partner State into which they were imported, except under conditions agreed with the Government of that Partner State;
 - (c) customs duties on imports and exports in respect of publications by the Community for official purposes, except payments for services rendered.

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