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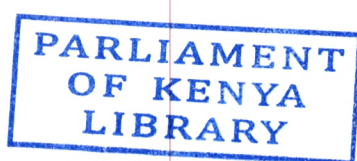


**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**REPORT OF THE COMMITTEE ON ACCOUNTS TO ASSESS THE
STATUS OF IMPLEMENTATION OF THE ASSEMBLY
RECOMMENDATIONS ON**

**THE EAC AUDITED ACCOUNTS FOR THE EAST AFRICAN COURT
OF JUSTICE AND EAST AFRICAN COMMUNITY COMPETITION
AUTHORITY FOR THE FINANCIAL YEAR ENDED 30TH JUNE 2017
AND 2018**

(VIRTUAL 17TH – 21ST JANUARY, 2021)



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

April 2021



List of Acronyms

EAC	–	East African Community
EACCA	–	East African Community Competition Authority
EACJ	–	East African Court of Justice
EALA	–	East African Legislative Assembly
FS	–	Financial Statement
VAT	–	Value Added Tax

Contents

1.0 INTRODUCTION	4
2.0 OBJECTIVES OF THE ACTIVITY	5
3.0 METHODOLOGY	5
4.0 PRESENTATION ON THE GOVERNANCE AND MANAGEMENT OF EAST AFRICAN COURT OF JUSTICE	6
5.0 STATUS OF IMPLEMENTATION OF THE ASSEMBLY RECOMMENDATIONS FOR EACJ	8
5.1 Delay in the delivery of Cases and References submitted to the Court	8
5.2 Wrong figure used in Budget Performance Report in EACJ financial statement	9
5.3 Underperformance	10
5.4 Long outstanding VAT not recovered	11
5.5 Long outstanding receivables from Partner States	11
5.6 Review of Internal Control Systems and Corporate Governance	12
6.0 PRESENTATION ON THE GOVERNANCE AND MANAGEMENT OF EAST AFRICAN COMMUNITY COMPETITION AUTHORITY	12
6.1 STATUS OF IMPLEMENTATION OF THE ASSEMBLY RECOMMENDATIONS FOR EACCA	14
6.1.1 Absence of Records on the Resources and Obligations of EACCA	14
6.1.2 Untimely submission of Financial Statements	15
7.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS	15
7.1 Understaffing at the EACJ and EACCA	16
7.2 Permanency of Judges	16
7.3 Expiry of the Term of the Board of Commissioners of the EACCA	16
7.4 Structure of EACCA	17
7.5 Retirement of Judges	17
8.0 CURRENT POSITION	17
9.0 CONCLUSION	17
10. ACKNOWLEDGMENTS	18

1.0 INTRODUCTION

The East African Legislative Assembly is the legislative organ of the East African Community responsible for; among other things, carrying out the oversight function on all matters pertaining to the Community. Article 49 (2) (c) of the Treaty for the Establishment of the East African Community empowers the Committee on Accounts to discharge the oversight function on behalf of the Assembly on all financial expenses of the Community. In accordance with the Rules of Procedure of the Assembly particularly Annex 5(A), the Committee on Accounts is specifically mandated to;

- i. Carry out a post audit review and scrutiny of the expenditure incurred by the EAC Secretariat, and other Organs and Institutions of the Community; the sums appropriated in an annual budget approved by EALA upon presentation by the Chairperson of the Council of Ministers of EAC;
- ii. Carry out post audit review and scrutiny of the expenditure on the basis of an annual audit report of the Audit Commission, pursuant to provisions of Article 49 (2)(c) and 134 of the Treaty for the Establishment of the East African Community. This function involves scrutinizing and evaluating the performance of the budget;
- iii. Carry out a post audit function that encompasses the monitoring and implementation of the budget in a manner similar to internal audit, pursuant to Rule 74 (1) of the Rules of Procedure of the Assembly, and;
- iv. Present a report with recommendations to the House for consideration, approval and adoption after the post audit review and scrutiny.

Article 134 (3) of the Treaty requires the Audit Commission to submit its reports to the Council which shall cause the same to be laid on the floor of the Assembly within six months after receipt for debate, adoption and such other action as the Assembly may deem necessary.

Over the last couple of years, the Accounts Committee has expressed its disappointment at the persistent non implementation of the Assembly recommendations arising from the report on the EAC audited accounts.

It's on this basis that the Committee on Accounts undertook an oversight activity to assess the progress made on issues previously raised by the EAC Audit Commission report for the financial years ended 30th June 2017 and 2018 respectively.

During the review and consideration of the above mentioned audited financial statements a number of queries were reported on the EACJ and EACCA namely;

- i. Wrong figures used in budget performance report in the financial statements;
- ii. Long outstanding VAT not recovered;
- iii. Delay in the delivery of cases and references submitted to the Court;
- iv. Long outstanding receivables from Partner States and specifically for the EACCA namely;
- v. Absence of records for the resources and obligations;
- vi. Untimely submission of financial statements;
- vii. Improper revenue recognition;
- viii. Unjustified direct procurement;
- ix. Under absorption of budgeted authority funds among others.

2.0 OBJECTIVES OF THE ACTIVITY

The Objectives of the activity included the following;

- i. To assess the governance and management systems of EACJ and EACCA;
- ii. To evaluate the Progress on issues previously raised by the Audit Commission in its report for the year ended 30th June 2017 and 2018. This mainly assessed the status of implementation of previous recommendations of the Assembly in respect of the two reports.

3.0 METHODOLOGY

The Committee adopted the following methodology in compiling this report;

- i. Studied the relevant literature pertaining to EACJ and EACCA
- ii. Interacted and held discussions with the management of the EACJ and EACCA;
- iii. Reviewed the reports of the EACJ and EACCA on the implementation status of the Assembly recommendations for the financial year ended 30th June 2017 and 2018;
- iv. Received presentations on the governance and management systems of EACJ and EACCA and the issues previously raised by the Audit Commission in its report for the financial year ended 30th June 2017/2018
- v. Interacted with Council Member from the United Republic of Tanzania Hon. William Tate Ole Nasha.
- vi. Held the Committee meeting to discuss the report;

4.0 PRESENTATION ON THE GOVERNANCE AND MANAGEMENT OF EAST AFRICAN COURT OF JUSTICE

The Committee interacted with the Registrar of the EACJ His Worship Yufnalis Okubo and his team. The Registrar presented an overview of the mandate, functions of EACJ, challenges faced and the efforts in place to address the challenges.

The East African Court of Justice (EACJ) is the judicial arm of the Community. It was inaugurated on 30th November 2001 when the first batch of Judges and the Registrar were sworn in. The mandate of the Court is to ensure adherence to law in the interpretation, application and compliance with the Treaty.

The Court has two divisions; the First Instance and the Appellate Divisions, with their seats currently in Arusha with Sub-registries in Partner States. The First Instance Division comprises of 6 Judges (one from each Partner States) while the Appellate Division comprises of five (5) judges drawn from the Republic of Burundi, Republic of Kenya, Republic of Rwanda, United Republic of Tanzania and Republic of Uganda. The EAC Treaty limits the number of appellate judges to 5. The Judges are appointed by the Summit on recommendation of the Partner States for a seven (7) years tenure.

Article 24 of the Treaty (4, 5, 6 and 7) spells out the organization of the Court headed by the Judge President (resident) and assisted by the Vice President (a non-resident). The President is the Head of the Court of the First Instance. The Principal Judge (a resident) is assisted by the Deputy Principal Judge (a non-resident) directs the work of the First Instance Division (Article 23(3)). In terms of Article 45(5) the Registrar is in charge of the day -to- day administration of the business of the Court and carries out other duties as stipulated under the Treaty and the rules of the Court. The Registrar is assisted by the Deputy Registrar and Court Administrator with the support of other Court Staff.

The major business of the Court is dispensation of quality justice which involves the following.

- i. Settlement of disputes;
- ii. Provision of advisory opinions;
- iii. Provision of preliminary rulings; and
- iv. Arbitration.

Key Achievements of EACJ

- i. The EACJ jurisprudence has developed especially in the area of the fundamental principles of the Community i.e. rule of law, good governance and human rights;
- ii. The cases filed at the EACJ have increased. Case clearance rate has also increased with 88% of the cases filed at the Court having been determined and disposed of in the period 2010 – 2015(**Annex, Page 9**);
- iii. The *Court Users'* trust and confidence in the Court has increased significantly as evidenced by the increase filing of cases;
- iv. The Court has contributed to regional integration through the growth of jurisprudence in the region with regard to the principles enshrined in the Treaty;
- v. The Court's decisions have greatly influenced policies and practices in Partner States;
- vi. The Court has adopted the use of an electronic case management, recording and transcribing system to ensure timely dispensation of justice, improve reporting and reduce costs;
- vii. The Court has published its own law reports thereby making its jurisprudence readily available;
- viii. The Court has enhanced access to justice by establishing sub-registries in all Partner States and abolishing court fees for filing cases;
- ix. Continuous judicial education has frequently been undertaken and skills have been developed in areas such as arbitration; and
- x. The Judge President and the Principal Judge are now resident in Arusha.

Challenges facing the Court

- i. The service of the Judges of the Court continues to be ad-hoc and only the tenure of the President and the Principal Judge are resident and based in Arusha. This affects the performance of the Court since the meetings are not as frequent as they should have been;
- ii. The *ad-hoc* nature of the service of judges and limitation of their tenure by either age or duration of service also negatively impacts the performance of the Court;
- iii. Visibility of the Court continues to be a challenge as there is limited knowledge of the Court among citizens, legal practitioners, and judicial officers resulting into limited use of the Court;

- iv. The Court is financially constrained since it has insufficient funds to undertake its sittings and its visibility;
- v. Delay in operationalizing the Court's administrative and financial autonomy means that it still relies on the Secretariat to undertake some activities or implement its decisions.

5.0 STATUS OF IMPLEMENTATION OF THE ASSEMBLY RECOMMENDATIONS FOR EACJ

As part of its oversight function, during the Committee interaction with EACJ and reviving past year's efforts, the Committee has witnessed a slow pace in the general implementation of the previous recommendations. The Committee reviewed the status of implementation of the previous audit recommendations and submits to the Assembly as follows;

5.1 Delay in the delivery of Cases and References submitted to the Court

The Audit Commission reported that Provision 68 (1) of the East African Court of Justice Rules of Procedures 2013 states that judgement shall be delivered within sixty days (60) from the conclusion of the hearing except where the Court is unable to do so; and in line with the best practices that justice must be dispensed fairly and expeditiously.

When the Audit Commission reviewed pending cases as of 21st November 2018 it noted the following:

- i. There are a number of cases that have been pending for many years (2 to 5 years) as detailed below:

PENDING CASES		Less 1yr	1 year	2years	3 years	4 years	5 years	Tot al
COURT	year	2018	2017	2016	2015	2014	2013	
1st Division	Number of cases	30	12	5	3	1	1	52
Appellate Division	Number of cases	6	1	0	1	0	0	8

- ii. Judges are not permanent staff of the court and deal with cases on session basis as shown in below:

COURT	Court Session/ Schedule			
1st Division	March	June	September	November
Appellate Division	February	May	August	November

- iii. The court is in operation for less than half of the year and it is likely that the pending cases shall continue to accumulate further every year. For instance, last year comparative pending cases were 39 for both 1st division and appellate division combined.

Management reported that it has prepared a policy document to be submitted to the forthcoming Council of Ministers meeting for a policy decision on the permanency of the services of the Judges. A cost benefit analysis has been done and is part of the information in the paper.

Committee Observation

The Committee observed that the costs of having full time Judges and ad hoc Judges is more or less the same with a difference being only USD 5,611 which is not a substantial amount for the interest of Justice **(Annex page 10-11)**.

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to:

- i. Consider the policy paper with proposal made towards changes within the EACJ operations.***
- ii. Work on the amendments of the Treaty so as to take care of the factors that are hindering integration and forward the same to the summit for approval in particular Article 24 (2), so as to open up the number of judges appointed to the Appellate Division.***

5.2 Wrong figure used in Budget Performance Report in EACJ financial statement

The Audit Commission reported that a wrong figure was used in the Budget Performance Report in EACJ financial statement leading to an unexplained difference of USD 62,130.

Management of EACJ informed the Committee that this was occasioned by wrong figures being keyed in the system. This was attributed to a staff member in the

Accounts department taking leave amidst the already existing staff shortage in the department which it was not the case, this would have been resolved before the audit. Management further informed the Committee that the correction has since been made and that in the interim, EACJ Management had devised measures to borrow the services of an Accountant from the Secretariat whenever a key staff in the department takes leave.

Committee Observation

The Committee took note of the adjustments but observed that such occurrences could still arise since several key positions at the EACJ are still not filled. Notably, the post of Deputy Registrar which is key position serving as a first point of review of the work of accountants and in matters of financial management and reporting.

Committee Recommendation

The Committee recommends to Assembly to urge the EAC Council of Ministers to fast-track the implementation of the Report of the EAC ad-hoc Service Commission undertaken after the Institutional Review Exercise and advertise all key posts so that the glaring manpower gaps are urgently filled.

5.3 Underperformance

The Audit Commission reported an underperformance of budget below 10% on some budget lines.

Management of EACJ informed the Committee that the underperformance was caused by failure to recruit new staff that had been budgeted for. There was also delayed remittances by the Partner States as well as non-remittance of funds by development partners thus leaving gaps in the budget in addition to the lengthy procurement processes that did not enable management to execute planned activities.

Committee Observation

Failure to utilize budget lines could result into partial achievement of the Courts mandate.

Committee Recommendation

The Committee recommends to the Assembly to urge the Registrar of the EACJ, Mr. Yufnalis Okubo, to make necessary follow up during budget execution and undertake the relevant review processes to ensure that the budget is appropriately executed.

5.4 Long outstanding VAT not recovered

The Audit Commission reported that the figure of VAT outstanding had risen from USD 118,264 to 164,065 representing a 28% increase in the year under audit. Some of the VAT had been outstanding since FY 2011/2012.

Management of EACJ informed the Committee that they have filed all VAT refund claims with the relevant authorities and had made several follow-ups with the Ministry of Foreign Affairs in United Republic of Tanzania.

Committee Observation

The Committee observed that though VAT refund claims were filed with the relevant authorities, no refunds have been remitted by them to the EACJ. The entire cost therefore, remains outstanding and if not resolved, will continue to rise.

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to ensure that the management of EAC, the ministry responsible for foreign affairs and that of finance and the revenue authorities adopt a strategy geared at bringing Partner States to honor their obligation towards VAT recoverable

5.5 Long outstanding receivables from Partner States

The Audit Commission reported outstanding accounts receivable of USD 809,227 from Partner States under Non-Exchange Transactions at the end of the FY.

Management of EACJ informed the Committee that through the EAC Secretariat, it continues to follow up on Partner States arrears with frequent reminders.

Committee Observation

The Committee observed that none or delayed - remittance of funds from the Partner States as stated in the regulation affects the operations of the Court. As a result, many activities may remain unimplemented or delayed meaning the Court may not fully achieve its mandate. It is therefore anticipated that such shortcoming may be resolved by adopting new financing mechanisms for the EAC since the existing one seems to be performing inadequately.

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to finalize the alternative financing mechanism and table it before the EAC Heads of State Summit; and EACJ should adopt strategies geared at bringing the Partner States to fulfill their Obligation on time.

5.6 Review of Internal Control Systems and Corporate Governance

The Audit Commission revealed the following anomalies:

- a) Fully depreciated assets still in use;
- b) Deficiencies in preparation of minutes of some meetings;
- c) Delay in formulating of a strategic plan despite expiry of the previous strategic plan 2010-2015;
- d) Absence of an established plan for training of staff;
- e) Long delays in the delivery of cases submitted to the Courts;
- f) Irregularities noted in the employment of staff including two temporary staff that had been hired for longer than the regulations provide; and their remunerations not matching with the first step of the appropriate salary grade to which the appointment was made.

Committee Observation

The Committee noted that the EACJ management through the EAC Secretariat developed a software system used for asset management; training plan has been developed which is followed to train and equip staff with necessary skills; and further to note a position paper on delivery of cases has been prepared and submitted to Council for consideration recommending judges to be resident in Arusha

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to consider the position Paper on the delivery of cases and recommending the judges to be resident in Arusha.

6.0 PRESENTATION ON THE GOVERNANCE AND MANAGEMENT OF EAST AFRICAN COMMUNITY COMPETITION AUTHORITY

The Committee interacted with the Registrar of the EACCA, Ms. Lilian K. Mukoronia, and her team. The Registrar presented an overview mandate,

functions of EACCA, challenges and the effort put in place to address the challenges.

Globalization of economic activity and cross-border flows of trade, investment and finance are key drivers for the development of competition regimes at the regional level. To this extent, the Treaty for the Establishment of the East African Community recognizes the importance of promoting competition in the region and makes explicit the need to promote a competitive industrial sector in Article 79. The Protocol on the Establishment of the East African Customs Union confirms the important role of competition in regional integration. Article 21 provides for the prohibition of practices that prevent, restrict and distort competition in line with the EAC competition policy and law. The Protocol on the Establishment of the East African Common Market further asserts the importance of competition in several articles. Articles specifically mandates cooperation to ensure fair competition and consumer welfare as part of facilitating a Common Market, while Articles 33 - 37 prohibits agreements, subsidies and discriminatory public procurement practices that prevent, restrict and distort competition.

In light of the above obligation, the EACCA as an institution of the EAC, was established by Article 9(2) of the Treaty for the Establishment of the East African Community and section 37 of the EAC Competition Act, and regulated within the framework of Article 21 of the Protocol on the Establishment of the EAC Customs Union and Article 33 of the Protocol on the Establishment of the EAC Common Market Protocol. The EACCA is mandated to enforce the EAC Competition Act by promoting fair trade and providing for consumer welfare in the Community.

The EACCA is in nascent stages of its establishment and has commenced initial operation with objectives in line with Section 3 of the EAC Competition Act as follows;

- a) enhance the welfare of the people in the Community by protecting all market participants' freedom to compete by prohibiting anti-competitive practices through:
 - i) protecting the opening of Partner States' markets against the creation of barriers;
 - ii) interstate trade and economic transactions by market participants;
 - iii) guaranteeing equal opportunities in the Community to all market participants in the Community, and especially to small and medium sized enterprises;

- iv) guaranteeing a level playing field for all market participants in the Community by eliminating any discrimination by Partner States on the basis of nationality or residence;
 - v) providing consumer access to products and services within the Community at competitive prices and better quality;
 - vi) providing incentives to producers within the Community for the improvement of production and products through technical and organizational innovation;
 - vii) promoting economic integration and development in the Community;
- b) enhance the competitiveness of Community enterprise in world markets by exposing them to competition within the Community;
 - c) create an environment which is conducive to investment in the Community;
 - d) bring the Community's competition policy and practice in line with international best practices; and
 - e) strengthen the Partner States role in relevant international organization.

6.1 STATUS OF IMPLEMENTATION OF THE ASSEMBLY RECOMMENDATIONS FOR EACCA

The Committee reviewed the status of execution of the previous audit recommendations and reports as follows;

6.1.1 Absence of Records on the Resources and Obligations of EACCA

The Audit Commission reported that a review of EACCA books revealed that there was no record showing how much funds had been received from Partner States on behalf of EACCA by the EAC Secretariat and how much was in arrears by the end period. It was also not clear whether the contributions from development partners had been received or not.

The EAC Secretariat informed the Committee that in the year under Audit, EACCA was being manned by only one person (the Registrar) and it was therefore, improper for this one person to run bank accounts for the institution since it would contravene the EAC Financial Rules and Regulations. EACCA was fully funded from the EAC General Reserve Fund and therefore, the issue of Partner States disbursements could not arise. Furthermore, the Development Partners did not release their contributions amounting to USD 746,201 hence, the issue of disbursements from them could also not suffice. These however, recorded as outstanding receivables in the books of accounts.

The EAC Secretariat further informed the Committee that Council had since approved the appointment of a Deputy Registrar and that EACCA would now be able to manage its resources and to keep books of accounts.

Committee Observations

The Committee observed that EACCA is still being manned by one person, the Registrar assisted by a temporary Accounts Assistant from the EAC Secretariat; and in the recent concluded workload analysis carried out by the ad-hoc Service Commission, the structure was reduced from twenty-two (22) positions previously approved by Council to ten (10) which if implemented, will jeopardize the full operations of the Authority.

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to fully operationalize the EACCA by recruiting staff to manage the Authority such that it can independently and efficiently carry out its mandate;

6.1.2 Untimely submission of Financial Statements

The financial statements for EACCA for the period ended 30th June 2017 were submitted to the Audit Commission on 30th October 2017 contrary to the requirements of the EAC Financial Rules and Regulations.

Management of EACCA informed the Committee that the Secretariat had assigned a temporary Accountant to EACCA and since then, financial statements are now being submitted on time.

Committee Observations

The Committee observed that ever since an Accounts Assistant was assigned to assist the Registrar, financial Statements are now submitted on time.

Committee Recommendation.

The Committee recommends to the Assembly to urge the Council of Ministers to expedite the recruitment process of key positions in the Authority so as to avoid such anomalies.

7.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

7.1 Understaffing at the EACJ and EACCA Committee Observation

The Committee observed that like all other EAC organs and institutions, the EACJ and EACCA are understaffed which has led to non-segregation of duties. This is in violation of EAC Staff Rules and Regulations. For instance, under the EACJ there are only 2(two) research officers who facilitate 11 Judges while the position of Deputy Registrar is not yet filled despite the expiry of the contract of the staff whose tenure ended three years ago while under the EACCA out of the 10 positions only one staff has been recruited as the Registrar.

Committee Recommendation

The Committee recommends to the Assembly to urge the Council of Ministers to:

Ensure that the implementation of the Institution Review Exercise outcome/recommendations are expedited to allow the recruitment of vacant positions at EACJ and EACCA by July 2021;

7.2 Permanency of Judges

The presence of judges permanently in Arusha will give the Court a sense of belonging and visibility in the Community as opposed to the current situation where it appears to be missing. Most important cases will be heard in a record time as expected of a world class international Court and this will completely eliminate backlog as the daily work will also be based on the support from the case management system. Furthermore, urgent matters will be handled on spot for the benefit of the Community

The Committee recommends to the Assembly to urge the Council of Ministers to consider the policy paper of EACJ with regard to permanent residence of Judges in Arusha so as to accelerate cases as is expected at the level of an international Court (Annex pages 10-13).

7.3 Expiry of the Term of the Board of Commissioners of the EACCA

The Committee observed that the Board of the EACCA which is the decision-making body of the authority expired and now decisions cannot be made regard to important activities of the authority. It was noted that there is only one member of the board from United Republic of Tanzania who was appointed later than all the other members. With such a glaring gap, EACCA as currently constituted, is unable to fulfil its mandate.

The Committee recommends to the Assembly to urge the Council of Ministers to fast-track the appointment of the Board of the Authority.

7.4 Structure of EACCA

The Committee observed that there is a reduction of staff recommended by the report of the EAC ad-hoc Service Commission on the structure of the authority to 10 (Ten) positions as opposed to the 22 (twenty-Two) positions that the Council had previously approved.

The Committee recommends to the Assembly to urge the Council of Ministers to reconsider the decision of the 10 positions recommended by the EAC ad-hoc Service Commission to the initial 22 so that the operations of the Authority will not be jeopardized in future.

7.5 Retirement of Judges

The Committee took note of the retirement of 7(seven) EACJ judges including the Judge President and the Principal Judge who are head of Appellate and First Instance Divisions respectively. This has jeopardized the operations of the Court in terms of hearing cases and delivering judgement.

The Committee recommends to the Assembly to urge the Council of Ministers to follow up on the appointment of Judges by the Summit.

8.0 CURRENT POSITION

- During the 21st Summit meeting that took place on 27th February 2021, 6 Judges for the East African Court of Justice were appointed after a delay of 4 months.
- During the 40th Ordinary meeting of Council of Ministers from 22nd – 25th February 2021 reappointed the Board of commissioners of the EACCA whose term had ended in November so the delay was for 4 months.

The Committee commends the 21st EAC Summit and 40th Ordinary meeting of Council of Ministers towards the appointment of Judges of the EACJ and reappointment of the board of Commissioners of the EACCA respectively however the Committee recommends to the Assembly to urge the Council of Ministers to have a smooth transition of appointments in future.

9.0 CONCLUSION

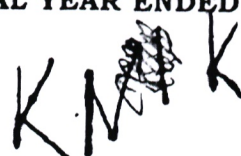
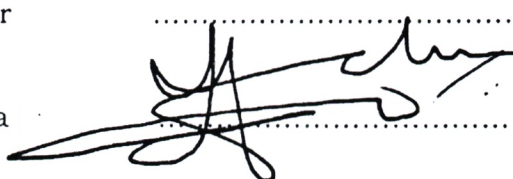
The EAC Council of Ministers should fully support strategies of the EAC Organs and Institutions. Funding is a pre-requisite to; capacity building, quality

assurance, sustainability and effective competition. There is need for increased funding for EAC Organs and Institutions. The Zero increment should be fully discouraged in the view that EAC Organs and Institutions continue to increase their mandate. By doing so it will enable Organs & Institutions implement their planned activities and Assembly recommendations. The EAC Council of Ministers should also play their role to ensure that the Assembly's recommendations are implemented on time.

10. ACKNOWLEDGMENTS

The Committee on Accounts wishes to thank the Rt. Hon. Speaker, Members, the Clerk and the entire administration of the Assembly for allowing it to carry out its oversight function. The Committee further appreciates the valuable time and information accorded to it by the management of the EACJ and EACCA. The Committee therefore recommends that the report be adopted

**REPORT OF THE COMMITTEE ON ACCOUNTS TO ASSESS THE STATUS
OF IMPLEMENTATION OF THE ASSEMBLY'S RECOMMENDATIONS ON
THE AUDITED ACCOUNTS FOR THE FINANCIAL YEAR ENDED 30TH JUNE
2017 AND 2018 FOR EACJ AND EACC A**

1. Hon. Kennedy Kalonzo Muskyoka 
2. Hon. Aden Abdikadir
3. Hon. Simon Mbugua
4. Hon. Thomas Dut Gatkek
5. Hon. Dr. Woda Jeremiah Odok 
6. Hon. Dr. Gabriel Garang Aher
7. Hon. Eng. Mohammed Mnyaa 
8. Hon. Happiness Lugiko
9. Hon. Alhaj. Adam Kimbisa
10. Hon. Oda Gasinzigwa
11. Hon. Dr. Francois Xavier Kalinda 
12. Hon. Jean Claude Barimuyabo

13. Hon. Pierre – Claver Rurakamvye

TCR-2



14. Hon. Marie – Claire Burikukiye

15. Hon. Leontine Nzeyimana

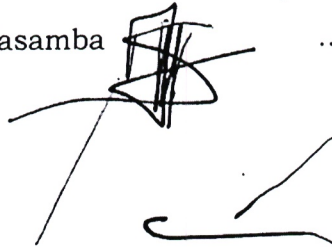
16. Hon. Susan Nakawuki



17. Hon. Mukasa Fred Mbidde



18. Hon. Mathias Kasamba



Annex



EAST AFRICAN COURT OF JUSTICE

PERMANENT OF THE SERVICES OF JUDGES OF EAST AFRICAN COURT OF JUSTICE (EACJ)

CONCEPT NOTE

10th October 2019

Arusha, Tanzania

EAST AFRICAN COURT OF JUSTICE

1.0 Introduction

Decision EAC/EXCM38 Decision 86 Council advised EACJ to prepare a concept note on the proposed permanency on the services of the EACJ Judges and report the progress to the 39th meeting of the Council (EAC/CM/38/Decision 52)

The East African Court of Justice (EACJ) was established under Article 9 of the Treaty for the establishment of the East African Community (the Treaty) and formally inaugurated on 30th November 2001. EACJ's role is to ensure adherence to law in the interpretation and application of and compliance with the Treaty (EAC Treaty).

The Court has a total of 11 Judges and pursuant to Article 24 of the Treaty this number can be increased to a maximum of 15 Judges. Judges are appointed by the Summit and on the basis of two Judges from each Partner State. With the Treaty amendment of August 2007, the Court now consists of the First Instance Division and the Appellate Division.

The EACJ **vision** is to create "a world class Court dispensing quality justice for a united, prosperous community". To translate this vision into reality, the Court set a clear **mission** which is "to contribute to the enjoyment of the benefits of regional integration by ensuring adherence to justice, the rule of law and fundamental rights and freedoms through the interpretation of and compliance with the East African law".

For the vision of the Court to be a reality, EACJ embarked on an ambitious journey to use ICT in the administration of justice. This has been done by implementing ICT systems such as Court room technology used in audio and visual recording of Court's sessions as well as a Case Management System to digitize Court's processes related to filing of cases.

Hand in hand with ICT is the capacity building of the personnel of the Court in ICT and other judicial related trainings.

Originally the Court had six Judges, two from each Partner State. It commenced its operations as a single chamber Court with Judges serving on ad hoc basis. This was mainly because after its establishment there were no cases filed that would have warranted judges to be permanently in Arusha.

1.1 Current status

1.1.1 Access to the Court

The Treaty Provides that, “any person who is a resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision, or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of the Treaty” (Article 30)

The Court is therefore accessible by a range of stakeholders from State level to that of a simple individual. The following have expressly been given access to the Court by the Treaty; Partner States Secretary General, National Courts and Legal or natural persons resident within the Community. Individual litigants can therefore access the Court directly and have indeed done so in the majority of the cases filed at EACJ.

1.1.1 Hearing

Sessions and sittings of the Court are conducted in Arusha where the Court is located for the time being until the Summit determines the permanent seat of the Court. However, if the Court considers it desirable it can conduct its activities at a place other than the seat of the Court and if such activities involve hearing a case the Court will direct the Parties accordingly. This arrangement aims at bringing justice closer to the people for it would be difficult and expensive to expect a person resident in Wau in South Sudan or Turkana for example, to easily access the Court that is physically located very far away from him thus constituting a barrier to access to justice. This flexibility allows the Court to consider such situations and direct part or all of the proceedings to be conducted at a place other than the seat of the Court eg it happened in 2010 in the Anyang Nyong'o case where the Appellate Division held its sessions in Nairobi. There has however been persistent challenges of late leading to delays in conclusion of cases and building up a backlog of cases. One of the problems or causes identified is the ad hoc nature of the services of judges which this paper seeks to highlight and propose solutions.

1.1.2 Delays in conclusion of cases

Justice delayed is justice denied. Delays have taken many different forms in our region but at trial level the most common ones include: granting of *ex-parte* orders by the Court, unnecessary adjournment of cases by lawyers and unlimited period within which to pronounce judgement after conclusion of the hearing. The Court took into consideration all these concerns when formulating its rules of procedures that govern litigation.

Parties are encouraged as much as possible to present their cases in the presence of each other and no *ex-parte* proceedings are allowed save for special reasons where the Court is satisfied that the ordinary way may entail irreparable injustice. To mitigate against those who may abuse that leeway, the Court will grant an *ex-parte* order only once, set the matter for hearing within 30 days and the *ex-parte* order once granted shall never be extended. This of late has proved very difficult to achieve due to the absence of Judges permanently in Arusha as most of them have to attend to their national responsibilities in their respective judiciaries.

In an effort to curb abuse of adjournment, the Court makes it mandatory for hearing of evidence to proceed on a day to day basis till all witnesses have been heard save where the Court finds it necessary to adjourn for reasons to be recorded.

An order by the Court at the conclusion of the hearing to deliver “judgement on notice” has been tagged with specific time within which the Court must pronounce the judgement and cannot therefore put the parties on hold without pronouncing the judgement beyond the prescribed period, At EACJ judgement is delivered within sixty days except where the court is unable to do so and with very good reasons to be recorded.

However, there are emerging new factors that are contributing to delays in the conclusion of cases. The number of cases filed has been on the increase while the budget has not only remained stagnant but even that which is approved is not disbursed on time or at all. In the last financial year and in the current financial year, the Court had to miss a total of two sessions for each division. To date, the missed sessions have not been recovered meaning those cases have been pushed forward. The number of sessions has also remained the same despite the increased work load. This means the waiting period for the cases to be determined is also becoming longer. On two occasions the Court had to conduct extra ordinary sessions in a bid to conclude some cases on a very tight budget. That did not help the situation.

The issue of delays in concluding cases was picked up by the Audit commission during the audit of the year ending June 2017 and the Audit commission for the period that ended June 2018. The Audit commission noted long delay in the delivery of cases submitted to the Court and observed cases that have been pending for many years (for a period between two and six years) which means the hearing took longer. Refer to tables below:

Table 1: Situation of pending cases in the first instance division and the appellate division of the EACJ as at the time of audit on 14th November 2017

Year	Less than 1 year pending (2017)	1 year pending (2016)	2years pending (2015)	3 years pending (2014)	4 years pending (2013)	5 years pending (2012)	6years pending (2011)	Total
Number of cases	20	12	2	3	1	0	1	39

Table 2: Situation of cases delivered during the year 2017 by first instance Division and the appellate division

Case Year	Less than 1year before delivery	1 year before delivery	2years before delivery	3 years before delivery	4 years before delivery	5 years before delivery	Total Number of cases delivered
2016	1	4	3	0	0	1	9
2017	0	6	2	1	1	0	10
Total cases delivered	1	10	5	1	1	1	19

Risk/ implication

Too long delay in delivery of cases lead to undermining the reputation of the East African Court performance and the expected service delivery is not timely obtained.

In their recommendations the Audit Commission advised EACJ management to *take necessary strategies to expediate the hearing of long pending cases and make efforts to deliver cases in a reasonable time.*

1.1.3 Opening of Sub registries

In tandem with the philosophy and desire to bring services closer to the people, the Rules of Procedure provide for the establishment of sub-registries of the Court at such places in the Partner States as the President of the Court may from time to time direct.

In 2010 the Council of Ministers approved the Courts request to establish sub registries in each of the capital of the Partner States. All are functional except for South Sudan that is yet to be opened. The opening of the sub-registries has greatly contributed to the

increase in the number of cases filed as it has cut down the cost of litigation to the benefit of the residents of the Community.

1.1.4 Arbitration

The East African Court of Justice does constitute itself into an arbitration tribunal as provided under Article 32 of the Treaty. In order to discharge its mandate, the Court formulated rules to govern arbitration proceedings. The uptake of arbitration matters has been slow but a number of arbitration matters have been filed. This has also increased the workload of the Judges who constitute themselves as Arbitrators.

1.1.5 Judges serving at national level and at EACJ

Some Partner States have appointed Judges to EACJ who are also serving in the national judiciaries. On occasions we get cases filed at EACJ that emanated from the national judiciaries and may have been canvassed before the same judge. It creates a difficulty in the Courts work besides creating a suspicion on the impartiality of that Judge even if he did not handle the case. The fact that he is coming from a Judiciary which handled the case is a good reason to raise doubts. Currently we have the President of the Court and the Principal Judge who are permanently stationed in Arusha. That number is not sufficient to convene a quorum for a Court sitting as it requires a minimum of 3 Judges. Making the Judges permanent will detach them from the national cases and concentrate on their regional mandate. Permanency of the Judges does not require any Treaty amendment but a policy decision.

1.1.6 Workload and *ad hoc* services of Judges

The Treaty was amended after the 8th Summit of Heads of State and Government directives following the ruling in the Anyang Nyong'o case. The amendments established the First Instance Division and the Appellate Division. This is provided for in Article 23(3) of the Treaty.

The number of Judges was accordingly increased. There are currently 11 Judges of the Court, six (6) being of the First Instance Division and five (5) being of the Appellate Division. The maximum number is capped at fifteen (15). In terms of Article 24(2) the Judges serve for a maximum period of seven (7) years non-renewable term. Read together with Article 140(4) Judges only come to Arusha or elsewhere only when there is business to transact mainly hearing of disputes. It is only the President, the Principal Judge (since July 2012), the Registrar and the Court staff who are on full time basis in Arusha.

Articles 24(4,5,6 and 7) spells out the organization of the Court headed by the President and assisted by the Vice President (a non-resident). The President is the Head of the Court as well as the head of the Appellate Division. The Principal Judge assisted by the Deputy Principal Judge (a non-resident) directs the work of the First Instance Division under Article 23(3). In terms of Article 45(5) the Registrar is in charge of the day to day administration of the business of the Court and carry out other duties as stipulated under the Treaty and the rules of the Court.

The mode of operations of the Court goes hand in hand with the tenure of the Judges. The current arrangement where Judges work on a non-renewable seven years' term does not help the Court or the Community.

The fact that the Court works on an *ad hoc* basis is an element that undermines its efficiency. It has proven difficult to compose a panel of Judges to seat especially on matters filed under certificate of urgency due to their commitments within their respective home countries where they are also serving judges.

Initially Judges of First Instance used to come to Arusha to hear cases every last week of the month. This arrangement was to enable them deal with their other judicial duties at the national level. With time the seating period was increased to 30 days in every quarter of a year due to increase in the workload. But still this occasions delay in the disposal of cases and hinders efficiency.

While acknowledging that the initial work load of EACJ did not require all the Judges to reside permanently at the seat of the Court, the situation has since changed. The Court has enough work to engage the judges on a full time basis before the backlog builds up and be the cause of delays of justice as it has indeed started and noticed by the audit commission.

This argument is buttressed as earlier stated by the fact that the Court workload has increased and also on anticipation it will increase more with the implementation of various Protocols of the Community.

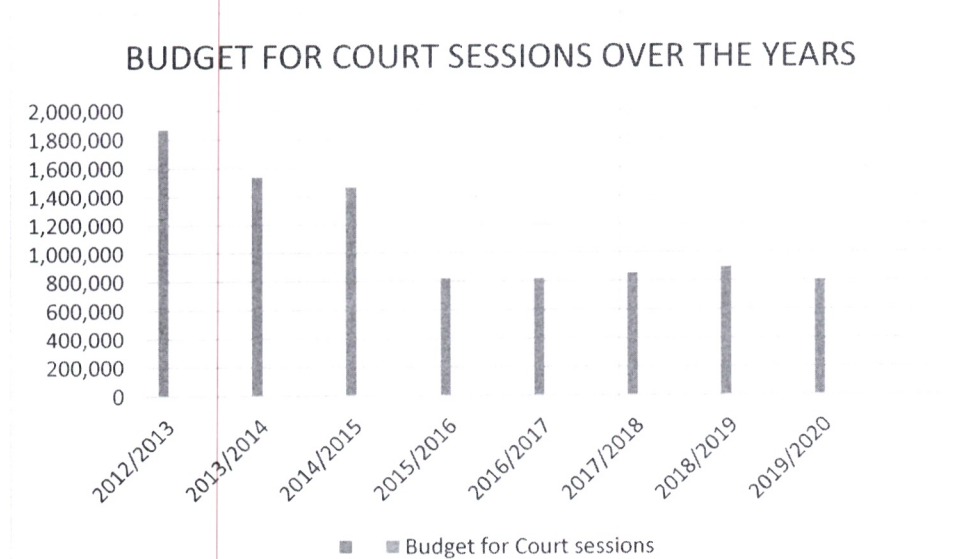
Cases go through several stages, that is, pre-trial conference, hearing and rendering of decision in their lifespan at the Court. With the current Ad hoc nature of the services of Judges, one case may be handled in more than three sessions of the Court and more if there are other applications in between.

The Court has been having one month quarterly sessions every financial year.

1.1.7 Current working days

The Court seats four times in a year meaning once in every quarter of the year. The working days **are 22 days only** in every quarter of a year and assuming there will be no public holiday.

The Courts sessions budget has however continued to decrease as shown below:



We can also look at the above chart in terms of the overall percentage of the Court sessions budget with the total budget of the Court.

Financial year	Total PS Budget	Court sessions Budget	%
2012/13	3,714,160	1,869,180	50
2013/14	3,850,939	1,539,669	40
2014/15	3,850,939	1,467,391	38
2015/16	4,111,051	821,800	20
2016/17	4,107,997	821,000	20
2017/18	3,997,366	855,400	21
2018/19	4,190,846	899,140	21
2019/20	4,106,090	805,660	20

The actual facts are that Court seats for 17 days in a quarter due to reducing budget allocations the rest of the days being weekends.

The number of Judges increased with the joining of the Republic of South Sudan and consequently increasing the expenditure of court sessions, yet the budget allocation has been reducing.

CASES FILED FROM 2012 TO JUNE 2019

ITEM	YEAR	NUMBER OF REFERENCES, CLAIMS, ADVISORY OPINIONS AND APPEALS	NUMBER OF APPLICATIONS	TOTAL NUMBER OF CASES
1.	2012	11 References, 1 Claim, 4 Appeals and 1 Case Stated 1 Arbitration	19Applications	37Cases
2.	2013	11 References 3 Appeal	7Applications	21Cases
3.	2014	17 References 6 Appeal, 1 Reference on Taxation, 1 Case Stated	24Applications	49Cases
4.	2015	8 References 1 Taxation Reference 7 Appeals, 1 Advisory Opinion	16 Applications	33 Cases
5.	2016	12 Reference, 3 Claims, 4 References on Taxation 4 Appeal	16 Application	39Cases
6.	2017	14 References, 2 Arbitration, 4 Appeals	18 Applications	38 Cases
7.	2018	19 References, 1 Claim, 3 Appeals	22Applications	45Cases
8.	2019			

PENDING CASES

69 References, **1** Claim, **6** Appeals, **1** Arbitration, **1** Case Stated and **17** Applications pending
(Total cases pending 94)

TAXATION CAUSES

	YEAR	NUMBER OF BILLS OF COSTS FILED
1.	2012	2
2.	2013	5
3.	2014	4

4.	2015	4
5.	2016	1
6.	2017	4
7.	2018	2
Bill of Costs pending Taxation: 0		

CASES HANDLED BY FIRST INSTANCE DIVISION

	FINANCIAL YEAR	CASES HANDLED	RULINGS	JUDGMENTS
1.	JULY 2012-JUNE 2013	27	7	5
2.	JULY 2013-JUNE 2014	39	0	9
3.	JULY 2014-JUNE 2015	33	4	9
4.	JULY 2015-JUNE 2016	35	10	10
5.	JULY 2016-JUNE 2017	37	8	5
6.	JULY 2017-JUNE 2018	34	5	5
7.	JULY 2018-JUNE 2019	22	4	4

First Instance Division had a total of **56** cases pending before it at the end of financial year 2018-2019. It has become impossible to commence hearing a case within one year of its filing which has led to concerns by litigants over the period taken in determining their cases. The decrease in the number of cases held in the last financial year is because of the missed sessions due to lack of funds. All those cases had to be pushed to the current financial year.

1.1.8 Cost analysis of *ad hoc* service versus permanent service of Judges

The below analysis is based on the current costs of the Principle Judge who is permanent in Arusha as against the costs of *ad hoc* services.

CURRENT ANNUAL COSTS OF PRINCIPAL JUDGE BEING PERMANENT RESIDENT IN ARUSHA

		PRINCIPAL JUDGE - D1
SN	DESCRIPTION	US\$ PER ANNUM
1	Basic Salary	72,073
2	Housing Allowance	30,000
5	Domestic Servants Allowance	2,400

6	Communication Allowance	6,000
7	24 Hour Security services	5,400
8	Robe Allowance	300
9	Spouse Allowance	800
10	Education Allowance	4,000
13	Gratuity	18,018
14	Medical cover	2,400
15	Life Insurance Cover	2,400
19	Sitting Allowance (per sitting day average of 4 per week for 4 week in month times 4 session)	12,800
	Grand total	156,591

CURRENT ANNUAL FINANCIAL COST FOR AD HOC JUDGE

SN	DESCRIPTION	US\$ PER ANNUM
1	Basic Salary	24,000
2	Gratuity USD per annual	12,000
3	Medical cover	2,400
4	Life Insurance Cover	2,400
5	Air tickets within EAC	4,800
6	DSA per day \$ 450 at average of 35 days for 4 quarter sessions	63,000
7	Sitting allowance per day \$200 average of 4 sitting per week per month times 4 session in year	16,000
8	Vehicle hired per day \$ 185 for 30days for 4 session	25,900
9	snacks during court session	1,280
	Grand total	151,780

Note the difference is USD 5,611

But it means we need to employ drivers and buy vehicles.

As of now from this financial year EACJ has a budget provision to buy 2 cars for the judges every year. EACJ has already acquired 3 vehicles and this budget line is to run for three years so that we don't spend money to hire cars. This may however be fastracked or the vehicles buying period may be extended so that we gradually reduce hiring of vehicles.

Below is the annual cost of a driver.

S/N	DESCRIPTION	US/ANNUM
1	Salary	11,244.00
2	Gratuity	2,811.00
3	House allowance	4,800.00
4	Transport allowance	1,800.00
5	Education allowance	4,000.00
6	Spouse allowance	150.00
7	Grand total per One driver	24,805.00

Total number of drivers that will be required is 9.

1.1.9 Benefits of Permanency of Judges

The presence of Judges permanently in Arusha will give the Court a sense of belonging and visibility in the community as opposed to the current situation where it appears to be missing;

Most important cases will be heard in a record time as expected of a world class international Court and this will completely eliminate backlog as the daily work will also be based on the support from the case management system (justice delayed is justice denied);

Urgent matters will be handled on the spot for the benefit of the community residents' litigants;

Development of EAC jurisprudence shall be rapid with the growing pillars of integration.

1.1.10 Gradual granting of permanency of the services of Judges as an option

Management of EAC wish to have all Judges Permanent in Arusha so as to have the Court complete in its establishment.

Note that the Rules of the Court allow a minimum quorum is three (3) Judges in some cases and a full bench in other cases. If such an approach is granted it would mean having additional two judges to be permanent in the first instance and two additional Judges to be permanent in the Appellate Division.

1.1.11 Request to Council

The Council is urged to consider and approve the permanency of the services of EACJ Judges.