

**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**



**COMMITTEE ON LEGAL, RULES AND PRIVILEGES**

**REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE  
OVERSIGHT ACTIVITY ON THE APPROXIMATION AND HARMONISATION OF  
NATIONAL LAWS IN THE EAC CONTEXT**

**24<sup>TH</sup> TO 27<sup>TH</sup> OCTOBER 2016**

**EAC PARTNER STATES**

**Clerk's Chambers  
EALA Headquarters, 3<sup>rd</sup> Floor  
EAC Headquarters  
Arusha – TANZANIA**

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## **1. INTRODUCTION**

Article 126(2)(b) of the Treaty for the Establishment of the East African Community provides that in order to achieve the objectives of the Community, the Partner States shall through their appropriate national institutions take all necessary steps to harmonize all their national laws pertaining to the Community. Likewise, the EAC Common Market Protocol requires Partner States to approximate their national laws and to harmonize their policies and systems. This report presents the status of approximation and harmonisation of national laws appertaining to the Community in relation to laws identified by the Sub-Committee on Approximation and Harmonization of National Laws in the EAC Context.

## **2. BACKGROUND INFORMATION**

In a bid to operationalise the implementation of the provisions Article 126 (2) (b) of the Treaty, the Council of Ministers established a Sub-Committee to spearhead the process of harmonisation and approximation of national laws in the EAC context. The Sub-Committee is headed by the Law Reform Commissions of Partner States and it works under the Sectoral Council on Legal and Judicial Affairs. In undertaking its activities, the Sub- Committee considers/analyses national laws to ascertain their convergences and divergences from one Partner State to another. Also, the Sub- Committee determines whether national laws are in line with the Treaty for the Establishment of the East African Community and its Protocols. After the analyses, the Sub- Committee makes specific recommendations to Partner States to amend their national laws to address the discrepancies identified. The recommendations of the Sub- Committee are later discussed by the Council of Ministers which makes the directives to Partner States to implement the recommendations of the Sub-Committee.

On 21<sup>st</sup> – 24<sup>th</sup> February, 2016, the Committee on Legal, Rules and Privileges undertook an oversight activity on the approximation and harmonisation of national laws appertaining to the Community by holding a meeting in Arusha. In that meeting, the Committee reviewed the reports of the Sub-Committee and interfaced with the Office of

the Council to the Community (CTC). It was noted that the Sub-Committee has reviewed national laws governing: Company; Insolvency; Partnership; Business Names Registration; Immigration; Labour and Employment and Sale of Goods. The Sub-Committee also developed two cyber-law frameworks. The Committee further observed that Partner States are slow in amending their laws to comply with the directive of the Council of Ministers pertaining to harmonization of national laws.

### **3. OBJECTIVES OF THE ACTIVITY**

The objectives of this oversight activity was to assess the progress made by Partner States in amending their national laws as recommended by the Sub-Committee. The specific objectives were:

- i. to interact with National Institutions involved in the approximation and harmonisation of national laws;
- ii. to examine the actions taken by Partner States in amending their national laws as recommended by the Council of Ministers;
- iii. to find out whether the amended laws by Partner States are in conformity with the Treaty and EAC laws.

### **4. METHODOLOGY**

The Members of the Committee interacted with stakeholders from the ministries responsible for EAC Affairs; Finance, Labour and Employment, Justice and Immigration. Other experts came from Law Reform Commissions; Judiciary and the Attorneys General Offices. In the Republic of Burundi, the meeting was also attended by Members of the National Assembly. While undertaking this activity, the Committee:

- i. Divided itself into five groups and held meetings in the five Partner States simultaneously;
- ii. Each group received and reviewed briefs on the status of the Harmonisation of laws in each Partner State. The status reports indicated amended/enacted laws and those yet to be amended; and

- iii. Prepared the final report with matrix showing the progress made by each Partner State in harmonizing their laws in the EAC context. **(The matrix is hereby attached as annex 1).**

## **5. FINDINGS AND OBSERVATIONS**

### **a. Specific Findings and Observations**

The Committee observed that Partner States are at different levels of amendment of their laws appertaining to the Community as recommended by the Sub-Committee. It should be noted that some areas of harmonisation of national laws are initiated by other EAC Secretariat departments and institutions in collaboration with the relevant Sectoral Councils and not by the Sub-Committee. For example, the harmonisation of health and pharmaceutical regulatory policies and laws is initiated by the Department of Health; the harmonisation of statistics policies and laws is initiated by the Department of Statistics. In undertaking this activity, the Committee focused only on the works of the Sub-Committee on Approximation and Harmonisation of National Laws, therefore, the findings does not include the undertaking of Partner States under the other initiatives although some Partner States reported them.

The Committee observed that some Partner States did not include in their report to the Committee the laws they amended and reported to the Sub-Committee in 2015 as indicated in the matrix found from page 6-8 of the Report of the Meeting of the Sub-Committee on Harmonisation of National Laws in the EAC Context attached to this report as **annex 2**. This report therefore contains the status of implementation as reported by the Partner States to the Committee during the undertaking of this activity and to the Sub-Committee in 2015 as per **annex 2**.

#### **I. Republic of Burundi**

The Republic of Burundi reported to have amended the following laws:

- a. Revised the Immigration Act in 2012 to provide six months pass for EAC citizens;
- b. The Law no 1/07 of 26 April 2010 of Code of Commerce; and
- c. The Law Governing Public and Private Partnerships.

## **II. Republic of Kenya**

The Republic of Kenya reported the following:

- a. Enacted the Insolvency Act, 2015;
- b. Partnership Act and the Limited Liability Partnership Act are in place;
- c. Kenya citizens and Foreign Nationals Management Act and the Kenya citizenship and immigration Act are in place; and
- d. The Labour Institutions Act, the Labour Relations Act and the Work Injury Benefits Act are in place.

## **III. Republic of Rwanda**

The Republic of Rwanda reported to have enacted/amended the following laws:

- a. Law relating to Immigration and Emigration in Rwanda;
- b. Law Regulating Labour in Rwanda;
- c. Law of Contracts;
- d. Sale of Goods;
- e. Companies law;
- f. Laws relating to Commercial Recovery and Settling of Issues Arising from Insolvency;
- g. Law on the Protection of Intellectual Property;
- h. Private and Public Partnership;
- i. Competition and Consumer Protection; and
- j. Law relating to Investment Promotion and Facilitation.

## **IV. United Republic of Tanzania**

United Republic of Tanzania reported to have made amendment/enacted the following laws:

- a. Amended the Immigration Regulation and the Immigration (Visa) Regulations;
- b. Enacted the law on employment of non-citizens;
- c. Enacted a new Companies law;
- d. Enacted the Business Names and Registration Act;

- e. Amended the Forex Exchange Act, 2008; and
- f. Amended the Capital Market and Securities Act.

## **V. Republic of Uganda**

The Republic of Uganda reported to have amended/enacted the following laws:

- a. Companies Act;
- b. Insolvency Act;
- c. Partnership Act;
- d. Business Names and Registration Act
- e. The Accountancy Regulation Act;
- f. The Trade Licensing Act;
- g. The Airport Service Charges Act;
- h. The Civil Aviation (Air Operator Certification and Administration) Regulations No. 26 of 2012;
- i. The Civil Aviation (Air Craft Regulation and Marking) Regulations;
- j. The Financial Institutions Act, No. 2 of 2007.

Apart from the status of amended/enacted laws above, Partner State reported work on progress on a number of laws which are at different stages as indicated in annex 1.

### **b. General Findings and Observations**

In addition to the above specific findings and observations, the Committee observed the following:

- i. There is still limited awareness among the stakeholders about the EAC integration especially with regard to the application of the principles of the EAC Common Market;
- ii. It was noted that there are budgetary constraints to undertake harmonization and approximation of laws in respective sectors, in addition to Council Decisions that arise and are not budgeted for in particular financial years;

- iii. The delay of some Partner States to amend their national laws affects the Partner States that have amended theirs in particular and the Community in general;
- iv. It was observed that surveys and studies need to be carried out to understand the implications of certain laws and decisions before they are harmonized. Therefore, this process slows down the pace at which harmonization is done;
- v. It was also noted that there are coordination challenges among the various Government Ministries, Departments and Agencies (MDAs) responsible for harmonization and approximation of laws;
- vi. Information flow at different levels from the Community level to Ministries of EAC and to different Sector Ministries and other relevant stakeholders is sometimes not well streamlined;
- vii. The Sub-Committee on Approximation and Harmonisation of National Laws no longer meets regularly and this has slowed down the process;
- viii. It was noted that the National Institution spearheading the process of Harmonisation of Laws in the Republic of Burundi (the National Service for Legislation) is undergoing reforms and it has been given more mandates to enable it to do Law Reform;
- ix. While the National Parliament may play a critical role in the process of harmonization of laws in the Partner States, their representation at the national task force on harmonization of laws is less visible; and
- x. It was noted that there is no established framework for regular information sharing with the stakeholders about the harmonized laws.

## **6.0 CHALLENGES FACING THE HARMONISATION PROCESS**

- i. The approximation task is carried out by Members of the Sub-Committee that have other duties at national level, which makes the work of the Community thereby considered secondary to their national obligations;
- ii. The National Assemblies of Partner States does not participate in the activities of the Sub-Committee, hence they are not aware of what is going on;

- iii. The process requires a lot of research into the identified laws both at national and regional level;
- iv. There is lack of relevant technical expertise while approximating certain specialized fields of law;
- v. The speed of approximation at regional level is very slow which makes it difficult for Partner States to amend their national laws based on identified principles at EAC level;
- vi. Frequent postponement of the Meeting of the Sectoral Council of Legal and Judicial Affairs (SCLJA) which also delays the consideration of the report of the Sub-Committee. The last was the 17<sup>th</sup> Sectoral Council of Legal and Judicial Affairs;
- vii. Mainstreaming of the EAC Agenda into the budgets of the relevant Ministries, Departments and Agencies (MDAs) still remains a challenge; and
- viii. Each MDA was tasked to approximate laws that fall under its mandate. However, some MDAs lack the required capacity and resources.

## **7.0 RECOMMENDATIONS**

- 1. Robust sensitization programs should be continuous to enhance awareness among the people at all levels.
- 2. Republics of Rwanda and Uganda need to be commended for being ahead in the approximation and harmonisation of their laws.
- 3. There is need for Partner States to prioritize and increase the budget allocations on the harmonization and approximation of laws.
- 4. There is need to adopt streamlined mechanisms to improve on the coordination and information flow between different stakeholders at different levels.
- 5. United Republic of Tanzania should fast track the developing of policy relating to Intellectual Property.
- 6. There is need for the Sectoral Council on Legal and Judicial Affairs to prioritize and consider the Reports on Harmonisation of Laws in the Partner States.



7. All national stakeholders must be informed about all laws amended for the purpose of implementing the Community Laws.