



EAST AFRICAN COMMUNITY

**4TH MEETING OF THE 1ST SESSION OF THE
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**Bujumbura, Burundi
20th January- 1st February 2013**

**PRIORITY QUESTIONS FOR ORAL
ANSWERS**

29th January 2013

1.0 QUESTION : EALA/PQ/OA/3/12/2012 (By Hon. Dora Byamukama)

Article 126 of the Treaty for the Establishment of the East African Community specifically on Legal and Judicial Affairs refers.

In light of this provision could the Chairperson of Council of Ministers inform this august house:

- (a) What steps have been taken to harmonize legal training and certification;**
- (b) What measures have been taken to encourage standardization of judgements of courts within the Community?**

Madam Speaker,

At its 11th Meeting held on 24th October 2009, the Sectoral Council on Legal and Judicial Affairs commissioned a study on harmonization of legal training and certification. The aim of the study is to establish a common regional syllabus for the training of lawyers and common examination standards for training both in law and legal practice.

The study, which was conducted by the International Law Institute-Centre for Legal Excellence, Kampala, started with a desk review of existing literature on the subject, preparation of the Inception Report, visits to designated institutions in the Partner States, preparation of the Interim Report and its consideration in national stakeholders workshops and validation of the Final Draft Report in a regional validation workshop. The Report recommends –

- (a) An EAC Model Syllabus for University Law Schools;
- (b) An EAC Model Syllabus for Post-University Law-Training Institutes;
- (c) EAC Model Criteria for Admission to EAC Law Schools and Post-University Law-Training Institutes;
- (d) EAC Model Standards to be attained in examinations on the path leading to admission to law practice as an advocate in the Partner States;
- (e) EAC Model Advocates Legislation to govern admission and supervision of lawyers in the Partner States;
- (f) A Roadmap of steps to be taken and timeframes for achieving Community-wide adoption of these models;

- (g) A Roadmap towards achieving cross border legal practice within the Community; and
- (h) The Initiation of a Regional Cross Border Legal Practise Bill.

At its 14th Meeting held on 24th October 2012, the Sectoral Council took note of the Report but observed that the Report addresses matters that are currently under negotiations by the Sectoral Council on Education, Culture, Sports, Science and Technology which is developing an Annex to the Common Market Protocol known as EAC Common Market (Harmonisation and Mutual Recognition of Academic and Professional Qualification Regulations).

Pursuant to a directive made by the Sectoral Council, the Secretariat has submitted the Report to the Partner States for comments. With inputs from the Partner States the Report will be submitted to the Sectoral Council on Education, Culture, Sports, Science and Technology for consideration in the development of the EAC Common Market (Harmonisation and Mutual Recognition of Academic and Professional Qualifications) Regulations.

Madam Speaker,

Regarding the second part of the question, on harmonisation of judgments of Courts within the Community, which is a requirement of paragraph 1 of Article 126 of the Treaty, the East African Judicial Education Committee has spearheaded training in various judicial and related matters including:-

- (a) Judgment writing;
- (b) Case management for judicial and para- judicial officers;
- (c) Taxation of costs;
- (d) Computer skills.

Specifically on judgment writing the Committee has since 2009 guided on the standardisation of such requirements of effective judgments as elements of a judgment; purpose of a judgment; use of plain, unequivocal and understandable language; clarity or precision; attention to issues worth adjudication; application of citations and authorities; and structure of judgments.

In pursuit of its training programmes, the East African Judicial Education Committee, which is answerable to the Sectoral Council on Legal and Judicial Affairs, caters for Judges and Magistrates serving at different levels in the Partner States' judiciaries and at the East African Court of Justice.

2.0 QUESTION : EALA/PQ/OA/3/13/2012 (By Hon. Dora Byamukama)

Article 27(2) of the Treaty refers. In respect of Jurisdiction of the East African Court of Justice.

Can the Chairperson of the Council of Minister inform the house of what steps are being taken to operationalise extended jurisdiction that was envisaged under Article 27(2) that is, other original, appellate, human rights and other jurisdiction to be determined by Council.

Madam Speaker,

On 24th November 2004 the Sectoral Council on Legal and Judicial Affairs decided that in view of the growing scope of the integration process the jurisdiction of the East African Court of Justice be extended as envisaged under Article 27(2) of the Treaty. This decision was adopted by the Council of Ministers at its 10th Meeting held on 9th August 2005. Accordingly and pursuant to directives made by the Council, the Secretariat prepared a draft protocol to operationalise extended jurisdiction of the Court.

The draft protocol for the operationalisation of extended jurisdiction was thereafter considered at national and regional consultative workshops involving such key stakeholders as the Offices of the Attorney General, the judiciaries, the Law Reform Commissions, the Bar Associations, the East African Court of Justice, the East African Legislative Assembly, the Business Community and Civil Society, among others.

Madam Speaker,

The development of the Draft Protocol as reflected in decisions taken at subsequent meetings of the Council and the Sectoral Council has necessitated further and wide consultations by the Partner States. These consultations which are ongoing will consider policy matters that pertain to the nature and extent of extended jurisdiction of the Court of Justice including the following:-

- (i) The impact of the expansion of the Country membership of the East African Community to include the Republic of Burundi and the Republic of Rwanda both of whose legal systems differ from other Partner States' common law systems;
- (ii) The re-constitution of the Court of Justice following amendments in 2006 of Chapter Eight of the Treaty;

- (iii) The need to make the Court of Justice a permanent institution of the Community in view of the Court's growing role as a Regional Judicial Forum and the extended jurisdiction;
- (iv) A proposal that pending the attainment of a political federation the application and interpretation of universal human rights original jurisdiction and appellate powers in matters of human rights should be a primary obligation of national courts and the same be left at national level;
- (v) Appellate jurisdiction of the Court of Justice may necessitate amendment of some of the Partner States' constitutions and other relevant national laws given the Partner States' different court hierarchical structures;
- (vi) The fact that some Judges currently serving on the Court of Justice would be considering, on appeal, matters they had already considered in their Partner States; and
- (vii) The East African Court of Justice's lack of capacity given the fact that by virtue of Article 140(4) of the Treaty the EACJ Judges are still serving on ad hoc basis.

Madam Speaker,

Following a Resolution adopted by this august House in May 2012 calling upon the Summit to consider extension of the jurisdiction of the Court to cover crimes against humanity, the Council directed the Secretariat to prepare a comprehensive paper and table it before the Sectoral Council on Legal and Judicial Affairs.

At its 14th Meeting held on 24th October 2012 the Sectoral Council on Legal and Judicial Affairs took note of the Secretariat's Comprehensive Technical Paper but deferred consideration of the said paper pending further revision and comments by Partner States. The Sectoral Council therefore –

- a) directed the Secretariat to revise the Comprehensive Technical Paper on Extending the Jurisdiction of the East African Court of Justice (taking into account all relevant aspects of international crimes such as genocide, crimes against humanity, terrorism and war crimes and highlighting lessons from other jurisdictions that are in the processes of addressing such crimes in order to assess the capability of the East African Court of Justice to address all the challenges

related to international crimes) and circulate it to the Partner States for comments; and

- b) directed the Partner States to submit comments on the revised Comprehensive Technical paper to the Secretariat by 31st January 2013 in preparation for consideration of the Paper by the Sectoral Council at its next meeting scheduled for 13th -16th March 2013.

Madam Speaker,

The outcome of the Partner States' consultations on both the draft Protocol and the Comprehensive Technical Paper are expected to inform and further guide on the extension of jurisdiction of the East African Court of Justice.

3.0 QUESTION : EALA/PQ/OA/3/14/2012 (By Hon. Dora Byamukama)

Article 138 of the Treaty refers. In respect to status, Privileges and Immunities:

Can the Chairperson of the Council inform this August House:-

- (a) What steps have been taken to ensure that the Community enjoys international legal personality?**
- (b) What is the status quo in respect to conclusion of agreements with Governments of Partner States in whose territory the headquarters of offices are situated?**

Madam Speaker,

The steps so far taken by the Community to ensure that it enjoys international legal personality are-

- (a) Compliance with the provisions of Article 153 (2) of the Treaty by depositing the Treaty with the United Nations and the African Union. This is a legal requirement under the international law principle of Recognition. This requirement similarly applies to all Protocols concluded and ratified by the Partner States. This is because by virtue of Article 151 (4), such Protocols become integral parts of the Treaty. In short, every treaty and every Protocol that has ,after ratification, been registered as mentioned above;
- (b) The conclusion, pursuant to Article 138(2) of the Treaty, of headquarters agreements with the Government of The United Republic of Tanzania in respect of EAC Headquarters; with the Government of Kenya in respect of the Lake Victoria Basin Commission; with the Government of the Republic of Uganda in respect of the East African Community Civil Aviation Safety and Security Oversight Agency; and in respect of the Inter-University Council for East Africa;
- (c) The initiation of negotiations on a headquarters agreement with the Republic of Rwanda in respect of The East African Science and Technology Commission; and
- (d) The negotiation of a Protocol on Immunities and Privileges which will be used as a common basis for the Partner States' extension of immunities to secure the Community's international legal personality. This Protocol was approved by the Summit at the 13th Summit held on 30th November 2012 as an annexure to the Treaty and awaits signing by the Ministers Responsible for Foreign Affairs. This will be done after the Sectoral Council on Foreign Policy Coordination, which is scheduled to meet on 13th -15th February 2013, has taken into account

additional comments made by the Republic of Burundi, the Republic of Uganda and the United Republic of Tanzania.

Madam Speaker,

As far as the status quo regarding the conclusion of headquarters agreements is concerned allow me to inform this august House that -

(a) there are Headquarters' Agreement in place in respect of the EAC headquarters and the headquarters of the Lake Victoria Basin Commission; the East African Civil Aviation Safety and Security Oversight Agency; and the Inter-University Council for East Africa; and

(b) negotiations are underway with the Republic of Rwanda in respect of the East African Science and Technology Commission.

Institutions like the East African Development Bank and the Lake Victoria Fisheries Organization, whose creation antedates the establishment of the Community have in place headquarters agreements concluded with the Government of the Republic of Uganda.