



EAST AFRICAN COMMUNITY

**4TH MEETING OF THE 2ND SESSION OF THE
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**Kampala, Uganda
19th -31st January 2014**

**PRIORITY QUESTIONS FOR ORAL
ANSWERS**

January 2014

1.0 QUESTION : EALA/PQ/OA/3/33/2013 (By Hon. Dora K. Byamukama)

The East African Community initiated the Institutional Review process in 2009. It is now four years down the road without any information about its progress.

Could the Chairperson, Council of Ministers inform this August House the status of the EAC Institutional Review Process and the timeline for its completion? Could he also inform the House about the process of addressing the structural challenges since the process appears to have stalled?

Madam Speaker,

At its 20th Extra-Ordinary Meeting held in April 2009, the Council of Ministers directed the Secretariat to undertake a comprehensive study of the Community and propose institutional reforms aimed at transforming the Community into an organization that will effectively and efficiently discharge the expanded mandate of the integration process of the Community. In addition the 21st Meeting of the Council held in November, 2010 directed the Secretariat to-

- (a) expedite the finalization of the Institutional Review of the EAC Organs and Institutions in line with the roadmap that had been presented; and
- (b) convene an Extra-Ordinary Meeting of Council by the end of March 2011 to consider the final Report.

At its 24th Meeting, the Council “*directed the Secretariat to engage a Consultant to undertake a detailed review of the Institutional Review in the next Financial year.* Accordingly, at its 26th Meeting of the Council of Ministers held in Nairobi, Kenya on 19th – 26th November, 2012 the Council, took note of the progress made on the Institutional Review exercise, revised and approved the Terms of Reference for engagement of the consultant for the review of the Institutional Review.

Madam Speaker,

The following Subsequent developments have taken place:-

- (a) The Secretariat engaged the external consultants; WYG International on 21st January 2013. It began the assignment on the same day.

- (b) On 20th March, 2013, the Consultants presented their Inception report to the Secretary General. It was accepted and they proceeded with the assignment which will be of two phases (1st phase:- Structural analysis, Functional analysis, Decision making and Work processes and the 2nd phase:- job/workload analysis staffing issues and Financial implications).
- (c) On 4th June, 2013, the Consultants presented the 1st Draft Report to the Secretary General for Validation and eventual consideration.
- (d) On 8th–19th June, 2013 The Retreat for the Hon. Ministers/Cabinet Secretary and Permanent Secretaries responsible for East African Community Affairs was held and the Institutional Review consultants presented a draft report composed of the 1st phase (analysis and recommendations on a functional and structural analysis of the EAC's Institutional framework, policy and decision-making processes and institutional work processes). It briefly indicates how the 2nd phase staffing implications (job/workload analysis job description, grading) and Financial implications (cost assessment) would be approached to finalise the institutional assessment. It does not cover those elements in detail, however, because they are conditioned by the decisions Partner States need to make on key strategic options recommended in the 1st phase related to structures and functions. The Retreat:
- (i) appreciated that the consultancy was still work in progress, noted the need for the Council to take decisions on key strategic issues raised in the interim report and recommend that these decisions be taken by Council at its 27th Meeting; and
 - (ii) Advised the Council to consider extension of time for the Consultants to finalize outstanding work.
 - (iii) On 12th - 13th August 2013 The Institutional Review Report Validation Workshop (for the first phase) was successfully conducted with a representation of all Partner States as well as EAC Organs and Institutions;
 - (iv) On 31st August 2013, the final Institutional Review Report on Structure and Functions with proposals from the consultants to address the structural, functional and decision making challenges was presented to the 27th Meeting of the Council of Ministers.

The Institutional Review is work in progress and therefore there is need for Partner States to study the Consultants' Report and appreciate the proposals made.

At the 15th Summit, held on 30th November 2013, the Heads of State, directed the Council to conclude the Institutional Review and report to the Summit at the 12th Extraordinary Summit in April 2014. The matter is on the Provisional Agenda for the 2nd Quarterly Session of Ministers Responsible for EAC Affairs scheduled for 13th -14th February 2014.

Considering that the outcome of the 1st phase (Structural analysis, Functional analysis, Decision making and Work processes) is to inform and guide the 2nd phase staffing implications (job/workload analysis job description, grading) and Financial implications (cost assessment), the review has been suspended pending the consideration of the 1st phase.

2.0 QUESTION : EALA/PQ/OA/3/34/2013 (By Hon. Dora K. Byamukama)

The Council of Ministers decided to extend the jurisdiction of the East African Court of Justice in 2005 in accordance with Article 27(2) of the Treaty.

Could the Chairperson Council of Ministers inform this August House what action has been taken to this effect?

Madam Speaker,

It is true that at its 10th Meeting held on 9th August 2005, the Council of Ministers decided to extend the jurisdiction of the East African Court of Justice beyond its current jurisdiction. The Court's current jurisdiction is limited to ensuring adherence to law in the interpretation and application of and compliance with the Treaty for the Establishment of the East African Community.

Madam Speaker,

You will recall while answering Question EALA/PQ/OA/3/13/2012, which was also asked by Hon. Byamukama, Hon. Shem Bageine as then Chairperson of the Council of Ministers did extensively inform this August House on the steps being taken to operationalise extended jurisdiction of this Court as envisaged under Article 27(2) of the Treaty. However on account of subsequent developments on this matter I will augment that answer as appropriate.

For purposes of following up on the Council's decision, 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 fully operational organ 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 in preparation for consideration of the Paper by the Sectoral Council.

Madam Speaker,

The outcome of the Partner States' consultations on both the draft Protocol and the Comprehensive Technical Paper have informed and further guided on the extension of jurisdiction of the East African Court of Justice. Generally the Partner States expressed a view to extend jurisdiction to cover only trade and commercial disputes at this point in time.

As a result, the Council at its 28th Meeting directed the Secretariat to expedite the preparation of the draft protocol to cover trade and investment matters associated with the East African Monetary Union. It also directed the Sectoral Council on Legal and Judicial Affairs to expedite deliberations on the feasibility of extending jurisdiction to cover crimes against humanity.

Madam Speaker,

At the 15th Summit of EAC Heads of State, held on 30th November 2013, the Heads of State approved the Council recommendation to extend the jurisdiction of the East African Court of Justice to cover trade and investment as well as matters associated with the East African Monetary Union. On human rights matters as well as crimes against humanity, the Summit directed the Council of Ministers to work with the African Union on this matter.