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2017.

**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

COMMITTEE ON LEGAL, RULES AND PRIVILEGES

**REPORT OF THE COMMITTEE ON THE CONSIDERATION OF THE
ADMINISTRATION OF THE EAST AFRICAN COURT OF
JUSTICE BILL, 2016**

19 JANUARY 2017

Clerk's Chambers
EALA Headquarters, 3rd Floor
EAC Headquarters
Arusha - TANZANIA

25th January 2017

1. INTRODUCTION

The East African Court of Justice (EACJ) is one of the organs of the Community established under Article 9 (1) (e) of the Treaty for the Establishment of the East African Community. The EACJ is the judicial body of the Community mandated by Article 23 of the Treaty to ensure the adherence to law in the interpretation and application of and compliance with the Treaty. The Court consists of a First Instance Division and an Appellate Division.

Judges of the Court are appointed by the Summit of the EAC Heads of State from among persons recommended by the Partner States who are proven integrity, impartiality and independence and who fulfil the conditions required in their own countries for the holding of such high judicial office, or who are jurists of recognised competence, in their respective Partner States. The Registrar and other staff of the Court are appointed in accordance with Article 45 of the Treaty.

The Administration of the EACJ Bill is a private member's Bill introduced by Hon. Chris Opoka- Okumu for the purpose of operationalizing the provisions of the Treaty relating to EACJ, to strengthen its independence and to streamline the administration of the Court. The Bill seeks to provide for the efficient and effective administration of the EACJ, rationalize its judicial independence, establish structures of administration, and provide for employment and disciplinary control of the Court's employees and other matters incidental to the Court.

The Bill came for the First Reading on 28th November, 2016 and thereafter it was committed to the Committee on Legal, Rules and Privileges for consideration. The Committee met on 19th January, 2017, in Kampala, Uganda to consider the Bill. The Meeting of the Committee took place during the 4th Meeting of 5th Session of Third Assembly, held from 15th – 27th January, 2017.

2. METHODOLOGY

During the consideration of the Bill, the Committee reviewed literature relating to the East African Court of Justice and held interactive discussion with Hon. Chris Opoka-Okumu (the mover of the Bill) and Mr. Yufnalis Okubo (the Registrar of EACJ).

3. OBSERVATIONS OF THE COMMITTEE

The Committee made the following observations:

- i. The Bill is premised on the principles of good governance as provided for by Article 6 (d) of the Treaty. The Bill will strengthen the judicial independence of EACJ to promote the separation of powers within the East African Community;
- ii. Judicial independence is one of the fundamental elements of a successful democracy because a successful democracy cannot be achieved if judicial

independence is undermined. There is a close link between judicial independence and the effectiveness of a court;

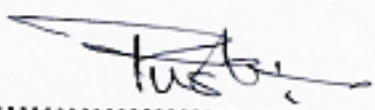
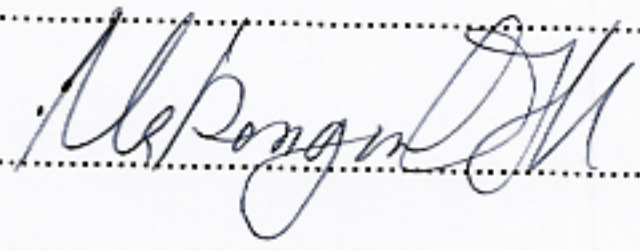
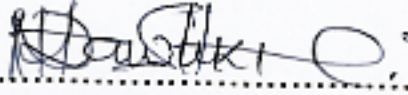
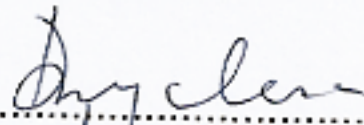
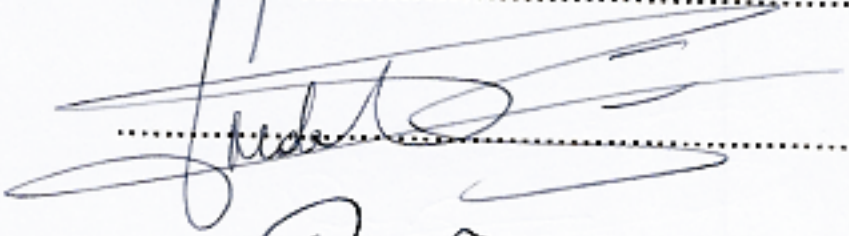
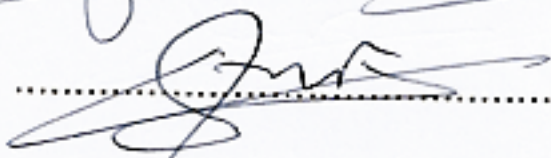
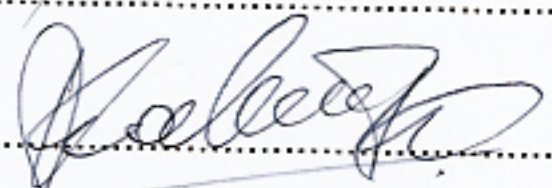
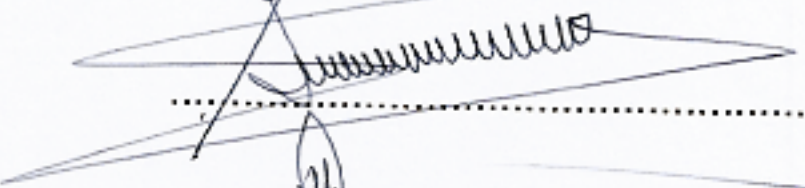
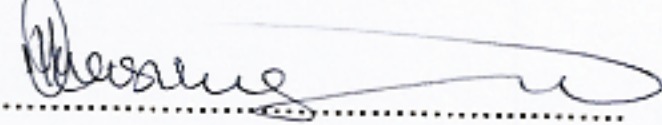
- iii. The Bill will enhance the effectiveness of the EACJ for the better administration of justice in the Community;
- iv. The Bill operationalizes Articles 16 and 45 (2) of the Treaty for putting in place structures and systems to facilitate administrative functions of the Court;
- v. The Council of Ministers granted financial and administrative autonomy to the Court and the Assembly, hence this Bill puts in place the necessary legal framework for the Court to attain that autonomy; and
- vi. The Bill will facilitate the administration of EACJ and enhance its effectiveness for the better administration of justice in the East African Community.

5.0 RECOMMENDATIONS

The Committee recommends to the Assembly to:

- i. Adopt this report of the Committee together with the attached schedule of amendments; and
- ii. Pass the Administration of the East African Court of Justice Bill, 2016.

**REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE
ADMINISTRATION OF THE EAST AFRICAN COURT OF JUSTICE BILL, 2016**

1. Hon. Peter M. Mathuki
2. Hon. Judith Pareno
3. Hon. Joseph Kiangoi Ombasa
4. Hon. Twaha Issa Taslima 
5. Hon. Maryam Ussi Yahya 
6. Hon. Charles M. Nyerere
7. Hon. Mukasa Fred Mbidde
8. Hon. Susan Nakawuki 
9. Hon. Dora C. K. Byamukama 
10. Hon. Isabella Ndahayo 
11. Hon. Frederic Ngenzebuhoro 
12. Hon. Leonce Ndarubagiye
13. Hon. Francois Xavier Kalinda 
14. Hon. Martin Ngoga 
15. Hon. Oda Gasinzigwa 

**SCHEDULE OF AMENDMENTS TO THE ADMINISTRATION OF THE EAST AFRICAN
COURT OF JUSTICE BILL, 2016**

| CLAUSE | PROPOSED AMENDMENT | JUSTIFICATION |
|----------------------------|---|---|
| Long Title | Delete the Long Title and replace it with the following words <i><u>"An Act of the Community to make provisions for the efficient and effective administration of the East African Court of Justice, establish structures of administration, provide for employment and disciplinary control of the Court's employees and other matters incidental to the above objectives"</u></i> | To make it more clear and understandable |
| CLAUSE 2 | Amend the definition of the word Court by deleting the words <i><u>"provided for"</u></i> and replacing it with the word <i><u>"established"</u></i> Amend the definition of the word Rules of Procedure by deleting the word "2013" | |
| Additional of Part II | Additional Part II – <i><u>THE EAST AFRICAN COURT OF JUSTICE</u></i> | |
| Additional of New Clause 3 | 3 <i><u>(1) The Court shall be the judicial body which shall ensure adherence to law in the interpretation and application of and compliance with the Treaty</u></i> <i><u>(2) The Court shall consist of First Instance Division and an Appellate Division</u></i> <i><u>(3) The First Instance Division shall have jurisdiction to hear and determine at first instance, subject to the right of appeal to the Appellate Division any matter before the Court in accordance with the Treaty"</u></i> <i><u>(4) Judges of the Court shall be appointed as provided under Article 24 of the Treaty</u></i> | To mention and clarify about the East African Court of Justices |
| Clause 3 (2) | Additional of new paragraph (b) <i><u>(b) The Vice President</u></i> | To add the Vice President in the Membership of the Commission to be in line with clause 3 (3) which |

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| | | requires the Vice President to preside in the absence of the President of the Court |
| | Delete paragraph (d) and replace it with the following new paragraph <i>(d) "one judge elected by the judges in the Plenary"</i> | To make clarification on how this Member of the Commission will be elected |
| Clause 3 (4) | Additional of new Sub Clause (3) with the following words <i>3 (4) <u>The Commission may co-opt any person whom in the opinion of the Commission is required for the effective functioning of the Commission</u></i> Sub- Clause (3) will become Sub-Clause (4) | |
| Clause 4 | Delete paragraph (a) | The proposed function is the function of the Plenary and not the Commission |
| | Delete paragraph (b) | This function will be listed later under this Clause |
| | Paragraph (d) Amend paragraph (d) by deleting the words " <u>other officers</u> " and replacing them with the word " <u>staff</u> " | To make it more clear |
| | Paragraph (e) Amend paragraph (e) by deleting the words " <u>officers and</u> " | |
| | Paragraph (g) Delete paragraph (g) and replace it with the following new paragraph <i>(g) <u>recommend to the Council the staff rules and regulations and financial rules and regulations of the Court</u></i> | |
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| Clause | <p>Additional of New Sub – Paragraphs</p> <p>Add the following new three paragraphs before paragraph (h)</p> <p><u>(h) designate such number of offices as will ensure the efficient functioning of the Court</u></p> <p><u>(i) Create, abolish, reclassify or change any description of offices in the Court</u></p> <p><u>(j) approve report of the Plenary</u></p> <p>The current paragraph (h) will be paragraph (k)</p> | |
| | <p>Paragraph (h)</p> <p>Amend the current paragraph (h) by replacing the word "<u>functioning</u>" with the word "<u>administration</u>"</p> | |
| 5(2) | <p>Amend Sub Clause (2) by replacing it with the following new Sub Clause</p> <p><u>"Members of the Commission – under section 3(2)(d) shall be elected from among the judges service the Court during the first meeting of the plenary after the commencement of this Act and shall hold office for a period of 3 years, and shall be eligible for re-election once"</u></p> | |
| 9 (2) | <p>Paragraph (c)</p> <p>Amend paragraph (c) by replacing the word "<u>Council</u>" with the word "<u>Commission</u>". Also delete the words "<u>from the Commission</u>"</p> | |
| 11 | <p>Clause 11</p> <p>Amend Clause 11 by deleting the entire Clause and replacing it with the following new Clause</p> <p><u>"The Council shall appoint the Registrar in accordance with Article 45 of the Treaty"</u></p> | T |
| 12 (1) | Paragraph (a) | |

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| | Delete the whole paragraph (a) | |
| | Paragraph (b) Delete the words " <i>conduct of the</i> " | |
| | Add the following new paragraphs after paragraph (d) (e) <u>"provide administrative and technical support to the President and other judges"</u> (f) <u>"coordinate and administer the day to day administrative functions of the Court"</u> (g) <u>"Supervise the staff of the Court"</u> (h) <u>"coordinate implementation of Council decision relating to the operation of the Court and consolidate progress and annual reports on status of implementation of the Council decisions and directives"</u> (i) <u>"support the Secretary General in his or her accounting functions"</u> (j) <u>"be the custodian of the seal of the Court and maintain Court records, documents and publications of the Court"</u> | |
| 15 | Amend Clause 15 by deleting the word " <u>generally</u> " | |