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Wednesday 24th
January 2017.

**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

COMMITTEE ON LEGAL, RULES AND PRIVILEGES

**REPORT ON CONSIDERATION OF THE EAST AFRICAN COMMUNITY
PROHIBITION OF FEMALE GENITAL MUTILATION BILL, 2016**

24TH JANUARY 2017

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

25th January 2017

1. INTRODUCTION

On 1st June 2016 the East African Legislative Assembly granted leave to Hon. Dora Christine Kanabahita Byamukama to introduce a Private Member's Bill titled "The East African Community Prohibition of Female Genital Mutilation". The purpose of the Bill is to prohibit the practice of female genital mutilation in the East African Community, promote cooperation in the prosecution of perpetrators of female genital mutilation and develop common measures, strategies and programmes for effective eradication of that bad practices in the Community.

The Bill was read for the first time on 25th August 2016 during the 1st Meeting of 5th Session of 3rd Assembly held in Arusha, United Republic of Tanzania. Thereafter, the Bill was committed to the Committee on Legal, Rules and Privileges for consideration. The Committee considered the Bill on 24th January 2017, during the 4th Meeting of 5th Session of 3rd Assembly, held in Kampala, Uganda. The Committee prepared this report which has four parts: Background; Observation; Findings; and Recommendations.

2. BACKGROUND INFORMATION

Female Genital Mutilation (FGM) is defined by the World Health Organization (WHO) as "comprising of all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons."

Female Genital Mutilation is classified by the WHO as follows:

- i. **Type I** which is often referred to as **clitoridectomy**, this is the partial or total removal of the clitoris.
- ii. **Type II** which encompasses partial or total removal of the clitoris and labia minora with or without excision of the labia majora referred to as **excision**.
- iii. **Type III** referred to as **infibulation** and includes the removal of all ...and narrowing of the vaginal opening through the creation of a covering seal.
- iv. **Type IV** defined as "all other **harmful procedures to the female genitalia** for non-medical purposes."

According to the Fact Sheet prepared by UNICEF in 2016, the practice is mostly carried out by traditional circumcisers, who often play other central roles in communities, such as attending childbirths. FGM is recognized internationally as a violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person's rights to health, security and physical integrity, the right to be free from

torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.

According to the Fact Sheet, Female Genital Mutilations is mostly carried out on young girls sometime between infancy and adolescence, and occasionally on adult women. More than 3 million girls are estimated to be at risk for FGM annually. Statistics indicates that more than 200 million girls and women alive today have been cut in 30 countries in Africa, the Middle East and Asia where FGM is concentrated. The practice is most common in the western, eastern, and north-eastern regions of Africa, in some countries the Middle East and Asia, as well as among migrants from these areas. FGM is therefore a global concern.

3. METHODOLOGY USED BY THE COMMITTEE TO CONSIDER THE BILL

In consideration of this Bill the Committee did the following:

- i. Reviewed literature available relating to Female Genital Mutilation;
- ii. Considered stakeholders' views from consultative meetings on the Bill held during the 3rd EALA Sensitization program held from 27th October to 7th November 2016; and
- iii. Considered the Bill clause by clause.

4. OBSERVATIONS AND FINDINGS

- 4.1 The Committee noted that the practice of Female Genital Mutilation persists in some communities in the East African Community such as the Kadama and Tepeth of Uganda; the Pokot and Mount Elgon Maasai (Sabiny and Kalenjin) of both Kenya and Uganda, Maasai of Tanzania, people around Mount Kilimanjaro in Tanzania and among immigrant and refugee communities (such as the Somali and Ethiopians).
- 4.2 The Committee further noted that the practice of FGM is a cross border practice which requires cooperation and collaboration of EAC Partner States in order to effectively implement the law and eventually eliminate it.
- 4.3 The Committee observed that some EAC Partner States such as Kenya, Uganda and Tanzania have specific laws that prohibit and criminalize FGM.
- 4.4 The Committee further observed that all Partner State in the EAC need a law that prohibits FGM considering that adoption of free movement of persons under the EAC Common Market and existence of immigrants and refugees that practice FGM.

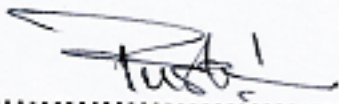
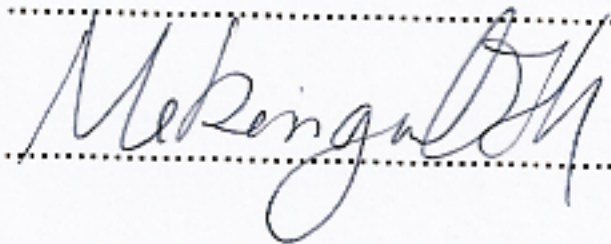

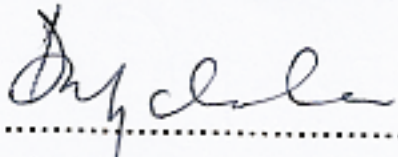
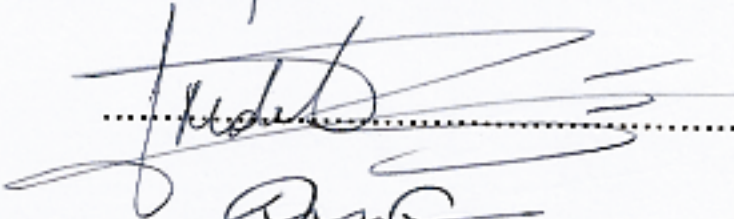
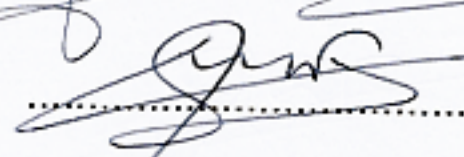
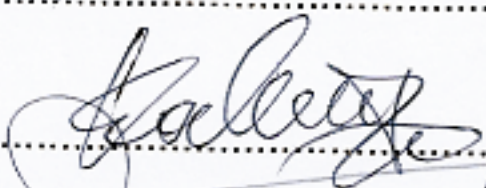
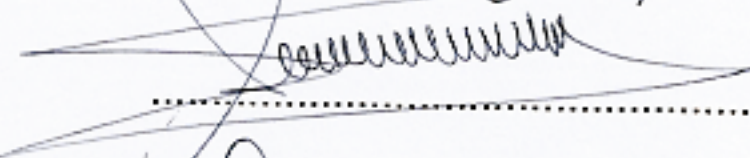
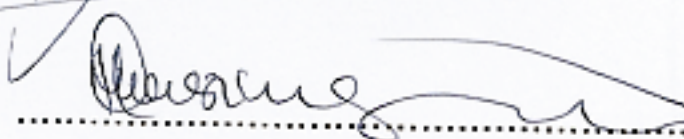
- 4.5 The Committee acknowledges that the Bill is premised on Treaty provisions and specifically Articles 3(b); 6(d); 7(2) and 121(b). Articles 3(b), 6(d) and 7(2) provide for the principle of good governance. In particular, Article 6(d) states that: "good governance includes adherence to, inter alia, the rule of law, social justice, equal opportunities, as well as recognition and protection of human and peoples' rights in accordance with the provisions of the Africa Charter on Human and Peoples' Rights.
- 4.6 The Committee further acknowledges that the African Charter on Human and Peoples Rights Protocol on Women's Rights (Maputo Protocol) under Article 5 provides for elimination of harmful practices, which mandates State Parties to, inter alia, create public awareness, prohibit, through legislative measures backed by sanctions all forms of FGM and other practices in order to eradicate them; provision of necessary support to victims of harmful practices; and protection of women who are at risk.
- 4.7 And that all EAC Partner States are party to the Maputo Protocol and other international legal instruments such as the Convention on the Rights of Children (CRC) and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), thus have an obligation to adhere to commitments made under this international legal instruments.
- 4.8 The Committee noted that Article 121(b) of the Treaty further provides that "Partner States are mandated to 'abolish legislation and discourage customs that are discriminatory against women' such as FGM.
- 4.9 The Committee further noted that the practice of FGM contravenes universally accepted standards of human rights that include:
- i. The right to life; liberty and security; and
 - ii. The right to freedom from torture or cruel, inhuman or degrading treatment.
- 4.10 The Committee observed that the focus of the Bill is on cutting of the female genitalia and not on Type IV which is all other harmful procedures mainly because the impact of cutting is obviously injurious and destructive and that research is on-going on other forms of FGM.

5. RECOMMENDATIONS

The Committee makes the following recommendations:

- i. **THAT** the Assembly adopt this Report and the attached schedule of amendments;
- ii. **THAT** the Assembly enacts the EAC Prohibition of the FGM Bill, 2016;
- iii. **THAT** Council supports and provides resources and institutional arrangements for the elimination of FGM in the EAC premised on the good governance principle provided for under the Treaty.

**REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE
EAST AFRICAN COMMUNITY PROHIBITION OF FEMALE GENITAL
MUTILATION 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 

ANNEX

EAST AFRICAN COMMUNITY EAST AFRICAN LEGISLATIVE ASSEMBLY



SCHEDULE OF PROPOSED AMENDMENTS BY THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE EAC PROHIBITION OF FEMALE GENITAL MUTILATION BILL, 2016

| Clause | Amendment | Justification |
|--------------------------------|---|---|
| Long Title | <p>To include the word “of” between “establishment” and “an” to read as follows:</p> <p>An Act to prohibit the practice of female genital mutilation in the Community, to provide for establishment of an East African Community Institutional mechanisms to foster regional cooperation for the prosecution of offenders and to provide for other related matters.</p> | Correction of a typing error. |
| Clause 2 Interpretation | <p>Delete the phrase-</p> <p>a) “joint operations” means the operations, which involve multi-sectoral agencies of the Partner States engaged in peace support, disaster management, search and rescue, counter-terrorism, transnational and cross border crimes and any other operations</p> | This phrase is not referred to in the Bill. |

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| | which may be mutually determined by the Partners. | |
| | b) Delete the phrase “transnational crime” means a crime committed across the border of the Partner States who do not share a common border. | The phrase is not used in the Bill. |
| Clause 11 Penalty for Offences | Delete “or a fine of not less than one thousand dollars or both” at the end of the clause. | Imposition of fines in the EAC has over time been proved to be impracticable. It’s best that fines are left in the jurisdiction of Partner States. |