



**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**COMMITTEE ON LEGAL, RULES AND PRIVILEGES**

**REPORT OF THE COMMITTEE ON THE ON-SPOT ASSESSMENT OF THE  
IMPLEMENTATION OF THE TREATY, PROTOCOLS AND LAWS OF THE  
COMMUNITY BY THE REPUBLIC OF SOUTH SUDAN**

**4<sup>TH</sup> TO 9<sup>TH</sup> FEBRUARY 2024**

**JUBA – REPUBLIC OF SOUTH SUDAN**

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

**February, 2024**

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## **1.0 INTRODUCTION**

The Treaty for the Establishment of the East African Community (the Treaty) which was adopted on 30<sup>th</sup> November, 1999 and came into force on 7<sup>th</sup> July, 2000 is the constitutive instrument of the East African Community.

### **1.1 Background Information**

#### **1.1.1 Accession to the Treaty**

Since the Treaty was signed between three Partners, all the other countries that are admitted into the East African Community by the Summit under Article 3 of the Treaty, are required to sign a Treaty of Accession with the Community, undertaking to comply with and be bound by the Treaty for the Establishment of the East African Community. The Treaty of Accession must be ratified by each country in accordance with the national procedures and the instrument of Ratification should be deposited with the Secretary General of the East African Community.

In accordance with Article 3 of The Treaty, the Republic of South Sudan signed the Treaty of Accession on 15<sup>th</sup> April, 2016 and ratified the Treaty on 5<sup>th</sup> September, 2016. Accordingly, the Republic of South Sudan became the 6<sup>th</sup> Partner State of the Community on 1<sup>st</sup> October, 2016 when the Instrument of Ratification was deposited with the Secretary General.

In effect, from 1<sup>st</sup> October, 2016, the Republic of South Sudan is bound by the provisions of the Treaty.

#### **1.1.2 Domestication of the Treaty in the Republic of South Sudan**

Domestication is the national process of incorporating the provisions of a Treaty into the legal system of a country in order to give that treaty the force of law in that country.

Article 8(2) of the Treaty requires every Partner State, within twelve months from the date of signing the Treaty, to secure the enactment and the effective implementation of such legislation as is necessary to give effect to the Treaty, and in particular –

- (a) to confer upon the Community, the legal capacity and personality required for the performance of its functions; and

- (b) to confer upon the legislation and directives of the Community and its institutions, the force of law within the territory of that Partner State.

In effect, from 5<sup>th</sup> September, 2016, the Republic of South Sudan was under a legal duty to domesticate the Treaty and give the Treaty and the Laws of the Community, the force of law in its territory.

## **1.2 Oversight Mission in the Republic of South Sudan**

The Treaty, under Article 49 (2) (d) empowers the Assembly to discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty.

Therefore, the Committee on Legal, Rules and Privileges conducted an oversight mission to Juba in the Republic of South Sudan on 4<sup>th</sup> – 9<sup>th</sup> February 2024, to ascertain the level of implementation of the Treaty and the Laws of the Community.

## **2.0 OBJECTIVE**

The overall objective of the activity was to assess how the Republic of South Sudan is implementing its obligations under the Treaty, the Protocols, and the Laws of the Community.

Specifically, the Committee set out to establish:

- i. how the Republic of South Sudan is implementing the Treaty for the Establishment of the East African Community;
- ii. how the South Sudan is implementing the Protocols adopted by the Community especially the Protocol establishing the Customs Union and the Protocol establishing the EAC Common Market; and
- iii. the status and level of implementation of Community Laws in the Republic of South Sudan.

## **3.0 METHODOLOGY**

The Committee assessed the level of implementation of the Community Laws by interacting with various public and private institutions and agencies in the Republic of South Sudan.

The Committee met and interacted with stakeholders from the following institutions:

- (i) Ministry of East African Community Affairs
- (ii) Ministry of Justice and Constitutional Affairs
- (iii) Ministry of Foreign Affairs
- (iv) South Sudan Revenue Authority
- (v) Ministry of Interior: Directorate of Civil Registry and National Identification
- (vi) Private Sector Representatives:
  - a. Academia
  - b. Media
  - c. Business Community

#### **4.0 MEETING WITH THE CHAIRPERSON EAC COUNCIL OF MINISTERS**

On 5<sup>th</sup> February, 2024 the Committee met and interacted with Hon. Deng Kuol Alor, Minister of East African Community Affairs and Chairperson of the EAC Council of Ministers. The Minister also opened the interactions of the Committee with the stakeholders on 6<sup>th</sup> February, 2024.

The Minister reaffirmed to the Committee, the commitment of the Republic of South Sudan to implement the Treaty and the laws passed by the Assembly and informed the Committee that the Ministry of East African Community Affairs is looking forward to the Report of the Committee and recommendations of the Assembly in this regard.

#### **5.0 FINDINGS FROM THE INTERACTION WITH STAKEHOLDERS**

The Committee established the following:

1. The Republic of South Sudan has not yet domesticated the Treaty for the Establishment of the East African Community as required by Article 8 (2) of the Treaty.
2. Whereas the Ministry responsible for EAC Affairs and the Ministry responsible for Justice and Constitutional Affairs developed the East African Community Treaty Bill, in 2023, whose objective is to domesticate the Treaty, to date, the Bill has not been presented to the Council of Ministers (Cabinet of the Republic of South

Sudan) for approval as required by the national processes before being submitted to the Transitional National Legislative Assembly for debate and enactment.

3. In the case of the Customs Union, the Republic of South Sudan is still implementing the Customs Service Act of 2013, instead of the EAC Customs Management Act, 2004 which is the Community law implementing the Treaty and the EAC Customs Union Protocol on matters relating to the Customs Union.
4. In the case of immigration and other aspects relating to the free movement of persons as provided for by the Protocol on Establishment of the EAC Common Market:
  - i. the Republic of South Sudan still requires a visa for citizens from the Democratic Republic of Congo (DRC);
  - ii. all EAC Citizens are required to report and register their presence with the nearest Competent Authority within three days after entering the Republic of South Sudan, at a prescribed fee. This is a requirement by the Passport and Immigration Act, 2011 Chapter VI, Section 25 on registration of aliens; and
  - iii. The Committee was also informed by the Director of Civil Registry and National Identification that the Republic of South Sudan is in the final stages of commencing the issuing of the EAC e-Passports to her citizens.
5. There is visa-free entry into South Sudan for citizens of Burundi, Kenya, Rwanda, Uganda and Tanzania.
6. As they await domestication of the Treaty, critical departments of the Government of the Republic of South Sudan like the South Sudan Revenue Authority have taken some steps to implement the Customs Law and the Treaty, including:
  - i. Deploying Customs Officers to the ports in Mombasa and Dar es Salaam as part of the implementation of the EAC Single Customs Territory;

- ii. Developing Exemption Regulations under the Customs Service Act of 2013 which take into account the harmonised exemption regime under the EAC Customs Management Act, 2004;
  - iii. Establishing Harmonized System (HS) and Rules of Origin units within the South Sudan Revenue Authority;
  - iv. Training Customs officers and clearing agents on the HS Tariff book, the EAC Common External Tariff (CET) and the EAC Rules of Origin;
  - v. Full participation in all meetings and programmes of the EAC Sectoral Committees, including the Committee on Customs and the Forum of Revenue Authority Commissioners General.
7. In addition to prevailing national security concerns, some of the challenges that Departments and Agencies of the Government of the Republic of South Sudan face in implementation of the Treaty, Protocols and other laws of the Community include the need to balance the benefits of free movement of persons under the EAC Treaty with the daunting national security challenges including –
- i. Border control challenges arising from porous borders, immigration management, documentation and verification and lack of standardized identification systems;
  - ii. Transnational crime including human trafficking and smuggling; and
  - iii. Threats of terrorism and extremists.

## **6.0 OBSERVATIONS**

The Committee made the following observations:

- (a) Treaties do not automatically become law, upon ratification in the Republic of South Sudan. Article 55 of the Constitution provides that the legislative competences of the National Government vest in the National Legislature on all matters assigned to the National Government in Schedules A, C and D which include the international treaties in item 25 of Schedule A of the Constitution. In effect, the Treaty for the Establishment of the East African Community did not get the force of law upon ratification but will require an enactment by the National Legislature in accordance with Article 55 of the Constitution.

When the Republic of South Sudan signed the Treaty on 15<sup>th</sup> April, 2015, she undertook under Article 2 (4) of the Treaty of Accession that Republic of South Sudan shall within twelve months, secure the enactment and the effective implementation of such legislation as is necessary to give effect to the Treaty in particular:

- i. to confer upon the Community the legal capacity and personality required for the performance of its functions; and
- ii. to confer upon the legislation, regulations and directives of the Community and its institutions the force of law within her territory.

This obligation is still unfulfilled by the Republic of South Sudan. The twelve months provided for by Article 8(2) of the Treaty lapsed in October, 2017.

- (b) Until the Treaty is domesticated, the Treaty, all Protocols and laws passed by the Assembly cannot have the force of law in the Republic of South Sudan.
- (c) The non-domestication of the Treaty makes implementation of EAC programmes and activities within the territory of the Republic South Sudan irregular and unsupported by law as they are not anchored in the legal system of the Republic of South Sudan.
- (d) Whereas the Republic of South Sudan and the Community agreed during the negotiations for admission that the Republic of South Sudan will commence implementation of the Common Market Protocol within three (3) years from the coming into force of the Accession Treaty, that period lapsed in October 2019.
- (e) On 22<sup>nd</sup> July, 2022, the 22<sup>nd</sup> Ordinary Summit of EAC Heads of State noted that the Council had concluded the Roadmap for the Integration of the Republic of South Sudan into the EAC and Directed the Council to expedite the implementation of the roadmap.
- (f) Whereas the Republic South Sudan agreed to waive immigration visa fees for East Africans once they become members of the EAC, this has been done for all Partner States except the Democratic Republic of Congo.
- (g) There is need for the Community to enhance border control and cross- border cooperation to counter transnational crime, drug trafficking and prevent terrorism and extremist threats and attacks.



- (h) There is urgent need for the Community to assist the South Sudan to enhance its capacity to implement the Treaty, Protocols and other laws of the Community.
- (i) There is need for the Ministry responsible for East African Community Affairs in the Republic of South Sudan and the Community to enhance awareness and sensitization for the citizens of South Sudan on the EAC Treaty, Protocols and laws of the Community.

## **7.0 RECOMMENDATIONS**

The Committee makes the following recommendations:

1. That the Republic of South Sudan expedites the national processes for domesticating the Treaty by fast-tracking the enactment of the East African Community Treaty Bill into law in order to give the Treaty the force of law in the Republic of South Sudan and to facilitate the implementation of the programmes and activities of the Community in the Republic of South Sudan.
2. The Council should ensure that the Roadmap for the Integration of the Republic of South Sudan into the Community is implemented as directed by the 22<sup>nd</sup> Ordinary Summit of EAC Heads of State. The Council should identify and allocate specific resources for the implementation of the Roadmap and the Chairperson of the Council should within six (6) months submit to the House a Report on the implementation of the roadmap.
3. The EAC Secretariat should urgently work with the Ministry responsible for EAC Affairs in the Republic of South Sudan to carry out an audit of the laws and institutions that need to be harmonised with the Treaty, Protocols and other laws of the Community to facilitate smooth and effective implementation of the Treaty in the Republic of South Sudan.
4. The Assembly directs the relevant Committees of the Assembly (Communication, Trade and Investment and General Purpose) to examine the matters relating to implementation of the Customs Union and the Common Market in South Sudan and report to the House.
5. The Republic of South Sudan should urgently consider waiving immigration visa requirements for citizens of the Democratic Republic of Congo (DRC) and alien

registration and exit permit fees and requirements for all citizens of East African Partner States in order to facilitate free movement of persons within the Community.

6. The Ministry responsible for East African Community Affairs in the Republic of South Sudan and the Organs and Institutions of the Community, including the Assembly, enhance awareness and sensitization for the citizens of South Sudan on the EAC Treaty, Protocols and laws of the Community.